

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: ABANDONED PROPERTY

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ABANDONED MOTOR VEHICLES

§ 90.01 IMPOUNDMENT AND SALE.

The city police department shall take into custody and impound any abandoned motor vehicle as defined by M.S. § 168B.02, Subd. 2, as it may be amended from time to time. It shall give notice of the taking as provided by law, and, if the owner or any lienholder does not reclaim the vehicle to the highest bidder, [dispose of the vehicle] at public auction or sale following two weeks' published notice. (^77 Code, § 2.6.1.1)

§ 90.02 DISPOSITION OF PROCEEDS.

The proceeds of the sale of an abandoned motor vehicle shall be placed in the general fund of the city. If the former owner or entitled lienholder makes application and furnishes satisfactory proof of ownership or lien interest within 90 days of the sale, the former owner shall be paid the proceeds of the

sale of the vehicle less the cost of towing, preserving, and storing the vehicle and all administrative, notice, and publication costs incurred in its handling.
(^77 Code, § 2.6.1.3)

OTHER ABANDONED PROPERTY

§ 90.15 PROCEDURE.

All other property lawfully coming into the possession of the city shall be disposed of as provided in this subchapter.
(^77 Code, § 2.6.2.1)

§ 90.16 STORAGE.

The department of the city acquiring possession of the property shall arrange for its storage. If city facilities for storage are unavailable or inadequate, the department may arrange for storage at privately owned facilities.
(^77 Code, § 2.6.2.2)

§ 90.17 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.
(^77 Code, § 2.6.2.3)

§ 90.18 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 chief of police of the city after two weeks published notice setting forth the time and place of the sale and the property to be sold.
(^77 Code, § 2.6.2.4)

§ 90.19 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.

(77 Code, § 2.6.2.5)

CHAPTER 91: ANIMALS

Section

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- 91.06 Impounding
- 91.07 Regulation of dangerous dogs

Other Animals

- 91.25 Cats or animals of allied genera
- 91.26 Certain animals regulated
- 91.27 Shod animals prohibited on city streets
- 91.28 Prohibition to the feeding of stray/feral cats within the city limits

- 91.99 Penalty

DOGS

§ 91.01 RUNNING AT LARGE PROHIBITED.

No dog shall be permitted to run at large within the limits of the city. This restriction does not prohibit the appearance of any dog upon the streets or public property when the dog is kept under the control of the person charged with its care.

(Ord. 61, passed 7-10-84) Penalty, see § 91.99

§ 91.02 LICENSES.

(A) *Limit on number.* No dog or cat over the age of six months shall be kept within the city limits unless a license therefore shall first be secured. No person shall keep more than three dogs, or more than

three cats, or a mixture of dogs and cats, not to exceed three pets in total, at one residence within the city, except that a fresh litter of pups or kittens may be kept for a period of three months.

(B) *License required.* No person shall keep any dog or cat within the city without securing an annual license therefor from the Clerk-Treasurer, who shall keep a record of all licenses issued and shall issue a metal tag for each license.

(C) *Fee.* Annual license fees shall be \$2 for a male dog or cat and spayed female dog or cat and \$4 for a female dog or cat not spayed. License fees may be adjusted by order of Council resolution. No license fee may be prorated but shall be paid in full when issued and be renewable in full on the following first day of January.

(D) *Rabies vaccination.* Every application for a license shall be accompanied by a certificate from a qualified veterinarian showing that the dog or cat has been vaccinated for rabies and the vaccination is effective for at least one year from the date of application.

(E) The owner shall permanently affix the tag to the collar of the dog so licensed in such a manner that the tag may be easily seen. The owner shall see that the tag is constantly worn by the dog.

(F) The cat owner shall keep the tag of any cat in a reasonable place which is not affixed to any collar of the cat, so that upon request, the cat owner shall be able to furnish the tag to any animal control officer or poundmaster.

(Ord. 61, passed 7-10-84; Am. Ord. 86, passed 2-11-03) Penalty, see § 91.99

§ 91.03 DOG NUISANCE.

The owner or custodian of any dog shall prevent the dog from committing in the city any act which constitutes a nuisance. It is a nuisance for any dog habitually or frequently to bark or cry between the hours of 10 p.m. and 8 a.m., to frequent parks, to chase vehicles, to molest or annoy any person away from the property of its owner or custodian, or to damage, defile, or destroy public or private property. Failure of the owner or custodian of a dog to prevent the dog from committing such a nuisance is a violation of this section.

(Ord. 61, passed 7-10-84) Penalty, see § 91.99

§ 91.04 CONFINEMENT OF FEMALE DOGS.

Every female dog in heat shall be confined in a building or other secure enclosure in such a manner that it cannot come into contact with another dog, except for planned breeding.

(Ord. 61, passed 7-10-84) Penalty, see § 91.99

§ 91.05 QUARANTINE OF CERTAIN DOGS.

Any dog which bites a person shall be quarantined for such time as may be directed by the health officer designated by the City Council. During quarantine, the animal shall be securely confined and kept from contact with any other animal. At the discretion of the health officer, the quarantine may be on the premises of the owner; however, if the health officer requires any other confinement, the owner shall surrender the animal for the quarantine period to an animal shelter or shall, at the owner's own expense, place it in a veterinary hospital.

(Ord. 61, passed 7-10-84) Penalty, see § 91.99

§ 91.06 IMPOUNDING.

(A) *Poundmaster.* The City Council shall appoint/hire a poundmaster. The poundmaster shall maintain a pound and perform other duties imposed upon him or her by this section.

(B) *Poundmaster to impound.* Any dog or cat found unlicensed or running at large contrary to the provisions of this chapter may be impounded by the poundmaster or any other City Council appointed authority, who shall give notice of the impounding to the owner of the dog or cat, if known. If the owner is unknown, the appointed authority shall post notices at the pound and at city hall that if the dog or cat is not claimed within five regular business days of the posting notice, it will be disposed of.

(C) *Redemption.* Any dog or cat may be redeemed from the pound by the owner within the time stated in the notice by the payment to the Clerk-Treasurer of the license fee for the current year, if unpaid, together with an impounding fee as may be set from time to time by resolution of the City Council.

(D) *Disposition of unclaimed dogs and cats.* Any dog or cat which is not redeemed within the time specified in division (C) may be sold for not less than the amount provided in that division to anyone desiring to purchase the dog or cat, if it is not requested by a licensed educational or scientific institution under M.S. § 35.71, as it may be amended from time to time. All sums received in addition to the fees fixed by division (C) shall be paid to the owner if the owner makes a claim within one year of the sale and furnishes satisfactory proof of ownership. Any dog or cat which is not claimed by the owner or sold shall be painlessly disposed of by the poundmaster.

(Ord. 61, passed 7-10-84; Am. Ord. 72, passed 5-8-90; Am. Ord. 86, passed 2-11-03) Penalty, see § 91.99

§ 91.07 REGULATION OF DANGEROUS DOGS.

The city is empowered by its enabling legislation and M.S. § 471.62, as it may be amended from time to time, to adopt and incorporate in its ordinance by reference any statute of Minnesota. The purpose of this section is to adopt by reference M.S. §§ 347.50 et seq., pertaining to the regulation of dangerous dogs, in furtherance of the safety, health and welfare of the citizens of the city.

(Ord. 86, passed 2-11-03) Penalty, see § 91.99

OTHER ANIMALS**§ 91.25 CATS OR ANIMALS OF ALLIED GENERA.**

(A) It shall be the obligation and responsibility of the owner of any cat or animal of allied genera to prevent the animal from molesting, defiling, or destroying any property, public or private.

(B) It shall be unlawful for any owner of cat or animal of allied genera to permit or allow the animal to roam or engage in activities which otherwise constitute a nuisance.

(^77 Code, § 5.8.19) Penalty, see § 91.99

§ 91.26 CERTAIN ANIMALS REGULATED.

It shall be unlawful to keep or harbor in the city any of the following animals, or animals of allied genera, without first obtaining a written permit therefor from the City Council: horses, cows, sheep, goats, swine, chickens, animals of the genus reptilia or allied genera which are venomous or of the constrictor type, birds, or other animals the keeping in captivity of which is prohibited by law. All permitted animals must be confined when they are outdoors within a secure enclosure. In the event that animals are found to be in violation of this Section, either by the animal's owner not receiving a permit from the City or the animal's owner allowing the animal to roam free range, the City may revoke the permit and/or remove the animal from the property at the property owner's expense.

Adopted by the City Council of the City of Kettle River this 14th day of November 2023. This Ordinance shall take effect upon its passage and publication.

(^77 Code, § 5.8.20) Penalty, see § 91.99.

§ 91.27 SHOD ANIMALS PROHIBITED ON CITY STREETS.

It shall be unlawful for any person to permit or allow an animal with shod hoofs on any city street, without approval of City Council.

(^77 Code, § 5.8.21) Penalty, see § 91.99

§ 91.28 PROHIBITION TO THE FEEDING OF STRAY/FERAL CATS WITHIN THE CITY LIMITS.

(A) (1) It shall be unlawful for any person to place, or permit to be placed either on property owned or controlled by such person or on property controlled by others and occupied as a renter, and located within the city limits of the City of Kettle River (unless that property is screened in a manner which prevents cats from feeding thereon), any food, including scraps or meat products or any other food stuffs including feed for cats or other domesticated animals, which may reasonably be expected to result in the encouragement of stray or feral cats feeding thereon.

(2) This provision shall not apply to:

(a) Feeding programs or efforts undertaken by or under the auspices of the Minnesota Department of Natural Resources or for designated public purposes as approved by the City Council;

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(b) Veterinarians, city Animal Control Officers, or county, state, or federal game official who, in the course of their duties, have feral cats or animals in their custody; and

(c) Any food placed upon the property for the purpose of entrapping or otherwise taking feral cats or other nuisance animals where such trapping or taking is pursuant to a permit issued by the Minnesota Department of Natural Resources or is otherwise authorized by the City Council.

(B) *Violations and penalties.* Any person violating, or otherwise refusing to comply with any provisions of this section shall be guilty of an administrative offense. Each day a violation of this section is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this section.

(1) *Administrative offense defined.* An **ADMINISTRATIVE OFFENSE** for purposes of this section is a violation of the provisions cited by this code provision and is subject to the following administrative penalties:

(a) First offense \$50.

(b) Second offense same calendar year \$75.

(c) Third offense and any subsequent offense in same calendar year \$100.

(2) *Notice.* Any peace officer or any other person or agent employed or designated by the city, including animal control officers are authorized by the city as having authority to enforce this code provision and shall, upon determining that there has been a violation, provide prompt written notice in writing to the violating party of the offense cited. The notice shall set forth the nature, date and time of violation, the name of the official issuing the notice, and the amount of the scheduled administrative penalty to be paid. Hand delivery in person or mailing by certified mail to the address of the alleged violating person will constitute notice. If notice is mailed all time lines will commence three days after mailing.

(3) *Payment.* Once such notice is given, the alleged violator may, within five days of the time of issuance of the notice, pay the amount set forth on the schedule of penalties for the violation, or request a hearing in writing, as is provided for hereafter. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the violation.

(4) *Hearing.* Any person contesting an administrative offense pursuant to this chapter may, within five days of the time of issuance of the notice of violation, request an administrative hearing before the City Council to contest the fact that a violation has occurred. The City Council may designate a hearing officer to conduct the hearing or hold a hearing at the next scheduled City Council meeting at its discretion. Either will have authority to dismiss the violation or reduce or waive the penalty. If the violation is sustained by the hearing officer or the City Council, the violator shall pay the penalty

imposed. Failure to pay the administrative penalty for the violation cited may result in the person being cited for a criminal violation or may cause the City Council to certify the administrative penalty to be assessed against the violator's property and added to their real estate tax assessment.

(5) *Hearing officer.* The City Council may designate a hearing officer for purposes of this code provision. The hearing officer is authorized to hear and determine any controversy relating to the administrative offenses provided for in this section.

(6) *Failure to pay.* In the event a party charged with an administrative offense fails to pay the penalty provided by this section, a misdemeanor or petty misdemeanor charge may be brought against the alleged violator in accordance with applicable statutes or ordinance. If the penalty is paid or if an individual is found not to have committed the administrative offense by the hearing officer, no such criminal charge may be brought by the city for the same violation.

(7) *Disposition of penalties.* All penalties collected pursuant to this section shall be paid to the City Administrator's office and may be deposited in the city's general fund.

(8) *Offenses and penalties.* Offenses which may be charged as administrative offenses under this section shall be designated by the City Council and may be established by resolution of the City Council from time to time. Copies of such resolutions shall be maintained in the office of the City Clerk.

(Ord. 92, passed 10-9-07)

§ 91.99 PENALTY.

(A) Any person who violates a provision of this chapter to which no other specific penalty applies shall be punished as set forth in § 10.99.

(B) Any person keeping a dog without a license or allowing a dog under that person's control to run at large, or violating any other provision of §§ 91.01 through 91.06, is guilty of a petty misdemeanor.

(Ord. 61, passed 7-10-84)

Chapter 92: Fireworks

Section

- 92.01 License required.
- 92.02 Application
- 92.03 Fee

§ 92.01 LICENSE REQUIRED.

No person shall use or explode any fireworks as defined M.S. § 624.20, as it may be amended from time to time, without a license, therefore.

(^77 Code, § 5.5.1) Penalty, see § 91.99.

§ 92.02 APPLICATION.

Every application for a license for a fireworks display shall be made in writing to the Clerk-Treasurer at least 15 days in advance of the date of the display. The application shall be promptly referred to the Fire Marshal, who shall make an investigation to determine whether the operator of the display is competent and whether the display is of such a character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. The Fire Marshal shall report the findings of this investigation to the Clerk-Treasurer and, if the Marshal reports that in the Marshal's opinion the operator is competent and that the display as planned will conform to safety requirements, including the rules and regulations of the State Fire Marshal, the Clerk-Treasurer shall issue a license for the display.

(^77 Code, § 5.5.12) Penalty, see § 91.99.

§ 92.03 FEE.

The license shall not be issued until a fee of \$25 is paid for each day of display.

(^77 Code, § 5.5.13) Penalty, see § 91.99

CHAPTER 93: STREETS AND SIDEWALKS

Section

Street Excavations

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- 93.02 Application and relations
- 93.03 Bond
- 93.04 Permit denial
- 93.05 General regulations for excavation
- 93.06 Refilling excavations
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Right-Of-Way Construction Regulations

- 93.20 Election to manage the public right-of-way.
- 93.21 Definitions and adoption of rules by reference
- 93.22 Permit requirement
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- 93.35 Location of facilities
- 93.36 Damage to other facilities
- 93.37 Right-of-way vacation
- 93.38 Indemnification and liability
- 93.39 Abandoned facilities; removal of abandoned facilities
- 93.40 Appeal
- 93.41 Reservation of regulatory and police powers

STREET EXCAVATIONS**§ 93.01 PERMIT REQUIRED.**

No person, except an authorized city employee or a contractor performing work under a contract with the city, shall make an excavation in a street, alley, sidewalk, or public ground without first having secured a permit therefor from the Clerk-Treasurer. The fee for the permit shall be \$25 for each location covered by the permit, but no fee shall be required for an excavation made pursuant to a permit for sewer or water construction.

(^77 Code, § 3.1.1) Penalty, see § 10.99

§ 93.02 APPLICATION AND RELATIONS.

The Clerk-Treasurer shall prepare the necessary application forms and permits required under section § 93.01. The Clerk-Treasurer shall also prepare such rules and regulations with respect to excavations as the City Council finds necessary to protect the public from injury, prevent damage to public or private property, and minimize interference with the public use of streets, alleys, sidewalks, and public grounds. Any person making an excavation covered by this section shall comply with such rules and regulations.

(^77 Code, § 3.1.2) Penalty, see § 10.99

§ 93.03 BOND.

(A) Any permittee, except a public utility corporation or a bonded plumber, shall file with the Clerk-Treasurer a corporate surety bond, cash deposit, or certified check in the amount of \$1,000 conditioned that the permittee will:

(1) Perform work in connection with excavation in accordance with applicable ordinances and regulations;

(2) Indemnify the city and hold it harmless from all damages caused in the execution of such work; and

(3) Pay all costs and damages suffered by the city by reason of the failure of the permittee to observe the terms of applicable ordinances and regulations or because of negligence in the execution of the work;

(B) The bond shall be approved as to form and legality by the city attorney.

(C) Any permittee except a public utility corporation shall furnish proof that the permittee has in existence an insurance policy protecting the permittee from liability to the public, including the city, to an amount equal to the maximum claim the city might be required to pay under M.S. Ch. 466, as it may be amended from time to time.

(^77 Code, § 3.1.3) Penalty, see § 10.99

§ 93.04 PERMIT DENIAL.

Failure to comply with the conditions of this chapter of the code shall be grounds for denial of future permits.

(^77 Code, § 3.1.4)

§ 93.05 GENERAL REGULATIONS FOR EXCAVATION.

Street openings shall be made in a manner that will cause the least inconvenience to the public. Provision shall be made for the passage of water along the gutters and at least one-half of the traveled portion of the street shall be left open and in good condition for the safe passage of vehicles. Open excavations shall be guarded with substantial barriers and marked with red flags and at night with red lights or flashing devices. Pipes or mains exposed to freezing temperatures shall be protected so as to prevent freezing. Any person responsible for exposing a city main or pipe so that it might be damaged by freezing shall be liable to the city for all damages caused by such freezing and all damages sustained by others by such freezing for which the city may be liable.

(^77 Code, § 3.1.5) Penalty, see § 10.99

§ 93.06 REFILLING EXCAVATIONS.

Every street excavation shall be refilled as soon as possible after work is completed, and paving, sidewalks, and appurtenances shall be replaced in at least as good condition as before the excavation to the satisfaction of the city Utilities Superintendent. All dirt and debris shall be removed immediately. Any person who fails to comply with these requirements within 24 hours after notice from the city shall be liable to the city for the full cost incurred by the city in remedying the defect and restoring the street, alley, or public ground to its proper condition. The cost shall be an obligation of the surety bond of the permittee.

(^77 Code, § 3.1.6) Penalty, see § 10.99

§ 93.07 MAP SUBSURFACE INSTALLATIONS.

The Utilities Superintendent shall maintain a map showing the location of all utility and other installations made beneath the surface of any public street, grounds, or right-of-way. The information

on the map shall be sufficiently complete and accurate to permit anyone making an excavation in a public place having any underground installation to avoid damage to any existing underground installation and to properly locate them. Any new underground facilities shall be recorded on the map as soon as practicable upon the issuance of an excavation permit or the completion of a contract for the installation of city underground installations.

(^77 Code, § 3.1.7) Penalty, see § 10.99

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

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

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

§ 93.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

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

§ 93.22 PERMIT REQUIREMENT.

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

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

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

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

(C) *Delay penalty.* In accordance with Minnesota Rules part 7819.1000 subp. 3, as it may be amended from time to time, and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by an ordinance establishing fees and charges, as it may be amended from time to time.

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

Penalty, see § 10.99

§ 93.23 PERMIT APPLICATIONS.

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

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

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

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

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

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

(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

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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 Director 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, worker's compensation and umbrella coverage established by the Director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

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

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

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

(B) Payment of money due the city for:

(1) Permit fees as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

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

(4) Franchise fees or other charges as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time, if applicable.

§ 93.24 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the Director 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.

§ 93.25 PERMIT FEES.

(A) *Generally.* Permit fees shall be in an amount established in an ordinance establishing fees and charges, as it may be amended from time to time.

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

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(C) *Obstruction Permit Fee.* The city shall establish the obstruction permit fee as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time, and shall be in an amount sufficient to recover the city management costs.

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

(E) *Non-refundable.* Permit fees as established by an ordinance establishing fees and charges, as that ordinance may be amended from time to time, that were paid for a permit that the Director has revoked for a breach as stated in § 93.33 are not refundable.

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

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

§ 93.26 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit,

increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable.

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

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

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

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule part 7819.1100, as it may be amended from time to time. The Director 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 Director, shall correct all restoration work to the extent necessary, using the method required by the Director. The work shall be completed within five calendar days of the receipt of the notice from the Director, 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.

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

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

§ 93.27 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except

as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.

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

§ 93.28 DENIAL OF PERMIT.

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

§ 93.29 INSTALLATION REQUIREMENTS.

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

§ 93.30 INSPECTION.

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

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

(C) *Authority of Director.*

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

§ 93.31 WORK DONE WITHOUT A PERMIT.

(A) Emergency situations.

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

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

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

§ 93.32 SUPPLEMENTARY NOTIFICATION.

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

§ 93.33 REVOCATION OF PERMITS.

(A) Substantial breach. The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund if there is a substantial breach of the terms and conditions of any statute,

ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 93.26.

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

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

(D) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with the revocation.

§ 93.34 MAPPING DATA; INFORMATION REQUIRED.

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

§ 93.35 LOCATION OF FACILITIES.

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

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

(C) *Limitation of space.* To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Director 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 Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

§ 93.36 DAMAGE TO OTHER FACILITIES.

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

§ 93.37 RIGHT-OF-WAY VACATION.

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

§ 93.38 INDEMNIFICATION AND LIABILITY.

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

§ 93.39 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.

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

§ 93.40 APPEAL.

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

§ 93.41 RESERVATION OF REGULATORY AND POLICE POWERS.

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

CHAPTER 94: NUISANCES

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NUISANCES**§ 94.01 PUBLIC NUISANCE DEFINED.**

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

- (1) Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public;
- (2) Interferes with, obstructs, or renders dangerous for passage any public highway or right-of-way, or waters used by the public; or
- (3) Is guilty of any other act or omission declared by law or this subchapter to be a public nuisance and for which no sentence is specifically provided.

(^77 Code, § 8.1.1) Penalty, see § 10.99

Statutory reference:

Similar provisions, see M.S. § 609.74

§ 94.02 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

- (A) Exposed accumulation of decayed or unwholesome food or vegetable matter;
- (B) All diseased animals running at large;
- (C) All ponds or pools of stagnant water;
- (D) Carcasses of animals not buried or destroyed within 24 hours after death;
- (E) Accumulations of manure, refuse or other debris;
- (F) Privy vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
- (G) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances;
- (H) All noxious weeds and other rank growths of vegetation upon public or private property;
- (I) Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities;
- (J) All public exposure of people having a contagious disease; and
- (K) Any offensive trade or business as defined by statute not operating under local license.
(^77 Code, § 8.1.2) Penalty, see § 10.99

§ 94.03 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

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

- (A) All gambling devices, slot machines and punch boards, except as otherwise authorized by federal, state, or local law;
- (B) Betting, bookmaking, and all apparatus used in such occupations;
- (C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame and bawdy houses;

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

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

(^77 Code, § 8.1.3) Penalty, see § 10.99

§ 94.04 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

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

(A) All snow and ice not removed from public sidewalks 12 hours after the snow or other precipitation causing the condition has ceased to fall;

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

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

(D) All unnecessary noises and annoying vibrations;

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

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

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

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

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

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

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

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

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

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

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

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

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

(R) Permitting litter to remain on private property in any zoning district unless

(1) The property had been designated an appropriate disposal site for litter by federal, state, or local government entities;

(2) The litter is placed in a receptacle or other container intended by the owner or tenant in lawful possession of that property for the deposit of litter;

(3) The person is acting under the direction of proper officials during special cleanup days; or

(4) The person is lawfully acting in or reacting to an emergency situation where health and safety is threatened, and removes and properly disposes of such litter when the emergency situation no longer exists;

(5) Litter means any discarded, used or unconsumed substance or waste. Litter may include, but is not limited to any garbage, trash, refuse, debris, rubbish, glass, metal, plastic or paper containers or other packaging material, motor vehicle parts, furniture, appliances, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person, or anything else of an unsightly or unsanitary nature, which exists upon any private property within the jurisdiction of the city.

(S) Permitting or allowing to remain in the open an inoperable vehicle.

(1) An ***INOPERABLE VEHICLE*** as used in this section shall include any self-propelled device in, upon or by which any person or property is or may be transported or drawn within the city which has become incapable of being driven under its own power for a period of at least seven days regardless of whether it is a motor vehicle that is required by law to be licensed or registered with the city, county or State of Minnesota and regardless of whether the driver, operator or person in physical control of the vehicle is required by law to obtain a license, permit or endorsement. It will also include a part of a substantial portion of a motor vehicle or former motor vehicle, such as a chassis, a trailer, a truck trailer, a truck bed or component capable of being used as such but which is not currently licensed for use upon the highways of the State of Minnesota, and is not being used for that purpose or is presently either (a) component parts; or (b) unusable or inoperable because of damage from collision, deterioration, alteration, disassembly or other factors; or (c) is beyond repair and therefore, is not intended for future use as a motor vehicle, or (d) is being retained on the property for possible use for salvageable parts.

(2) It is permissible to keep inoperable vehicles stored in any fully enclosed building, to keep inoperable historic motor vehicles over 25 years of age which are licensed or to keep inoperable motor vehicles on the premises of a duly authorized place of business engaged in wrecking or junking motor vehicles.

(3) Owners or persons in control of any private property shall store all inoperable vehicles in a completely enclosed building or otherwise remove the same from the property.
(^77 Code, § 8.1.4) (Am. Ord. 95, passed 12-9-08) Penalty, see § 10.99

§ 94.05 DUTIES OF CITY OFFICERS.

The City Engineer, and Utilities Superintendent, or other designated official shall enforce the provisions of this subchapter relating to nuisances affecting public safety.
(^77 Code, § 8.1.5)

§ 94.06 ABATEMENT.

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

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

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

Nuisances

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

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

(B) *Procedure.* Whenever the officer charged with enforcement determines that a public nuisance is being maintained or exists on premises in the city, the officer shall notify in writing the owner of record or occupant of the premises of such fact and order that such nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the enforcing officer shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement.
(^77 Code, § 8.1.6)

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

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

(E) *Weed removal costs.* The costs to the city for weed removal shall be collected as provided in § 94.07.

Penalty, see § 10.99

§ 94.07 RECOVERY OF COST.

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

(^77 Code, § 8.1.7)

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

(^77 Code, § 8.1.7)

Penalty, see § 10.99

TREE DISEASES**§ 94.20 DECLARATION OF POLICY.**

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

(^77 Code, § 8.2.1)

§ 94.21 POSITION OF FORESTER CREATED; DUTIES.

(A) *Position created.* The position of Forester is hereby created under the duties of the Utilities Superintendent.

(B) *Duties of Forester.* It is the duty of the Forester to coordinate, under the direction and control of the City Council, all activities of the municipality relating to the control and prevention of Dutch elm disease and oak wilt disease and other epidemic diseases of shade trees. The Forester shall recommend to the City Council the details of a program for the control of such diseased and perform the duties incident to such a program adopted by the City Council.
(^77 Code, § 8.2.2)

§ 94.22 TREES CONSTITUTING NUISANCES; ABATEMENT.

(A) The following are public nuisances whenever they may be found within the city:

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

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

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

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

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

(B) It is unlawful for any person to permit any public nuisance, as defined in division (A) of this section, to remain on any premises the person owns or controls within the city. Such nuisances may be abated in the manner prescribed by this part.
(^77 Code, § 8.2.3) Penalty, see § 10.99

§ 94.23 INSPECTION.

As often as practicable, the Forester shall inspect all public and private premises within the city which might harbor any plant pest as defined in M.S. § 18.46, Subd. 13, as it may be amended from time to time, to determine whether any condition described in § 94.22 exists thereon. The Forester shall investigate all reported incidents of infestation by Dutch Elm fungus, elm bark beetles, oak wilt fungus, or any other epidemic disease of shade trees.

(^77 Code, § 8.2.4.1)

§ 94.24 INVESTIGATION; ENTRY ON PRIVATE PREMISES.

The Forester or the duly authorized agents of the Forester may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this code.
(^77 Code, § 8.2.4.2) Penalty, see § 10.99

§ 94.25 ABATEMENT OF DISEASES CREATING NUISANCE.

In abating a nuisance defined in § 94.22, the Forester shall cause the infected tree or wood to be sprayed, removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of epidemic diseases, including Dutch elm disease and oak wilt disease. The Forester shall also take such steps as are necessary to prevent root graft transmission of the diseases. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.
(^77 Code, § 8.2.5)

§ 94.26 PROCEDURE FOR REMOVAL OF INFECTED TREES AND WOOD.

(A) *Action by Forester.* Whenever the Forester finds with reasonable certainty that the infestation defined in § 94.22 exists in any tree or wood in any public or private place in the city, the Forester shall in writing notify the owner of the existence of a nuisance, which notice shall state that the owner has 60 days to abate the nuisance and avoid city action. A copy of the notice shall be transmitted to the Clerk-Treasurer for the information of the City Council. If within the 60-day period the property owner has not abated the nuisance, the Forester shall report all the facts surrounding the unabated nuisance to the City Council.
(^77 Code, § 8.2.6.1)

(B) *Action by City Council.* Upon receipt of the Forester's report required in division (A) of this section, the City Council shall by resolution order the nuisance abated. Before action is taken on such resolution, the City Council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners and published once no less than one week prior to such meeting. The notice shall state the time and place of the meeting, the streets affected, action proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs. At such hearing or adjournment thereof, the City Council shall hear property owners with reference to the scope and desirability of the proposed project. The City Council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for the doing of the work by day labor or by contract.
(^77 Code, § 8.2.6.2)

§ 94.27 RECORD.

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

(^77 Code, § 8.2.6.3)

§ 94.28 ASSESSMENT.

On or before September 1 of each year, the Clerk-Treasurer shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this chapter. The City Council may then spread the charges or any portion thereof against the property involved as a special assessment under M.S. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

(^77 Code, § 8.2.6.4)

§ 94.29 INTERFERENCE PROHIBITED.

It is unlawful for any person to prevent, delay, or interfere with the Forester or the Forester's agents while they are engaged in the performance of duties imposed by this chapter. However, it is a defense to prosecution under this section that the interference alleged consisted of constitutionally protected speech only.

(^77 Code, § 8.2.7) Penalty, see § 10.99

WEEDS**§ 94.40 SHORT TITLE.**

This subchapter shall be cited as the "Weed Ordinance."

§ 94.41 JURISDICTION.

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

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

§ 94.42 DEFINITIONS; EXCLUSIONS.

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

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

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

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

(1) Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), buckthorn, bur cucumber, Canada thistle, corncockle, cressleaf groundsel, curly dock, dodder, field bindweed, French weed, hairy whitetop, hedge bindweed, hoary cress, horsenettle, Johnsongrass, leafy spurge, mile-a-minute weed, musk thistle, oxeye daisy, perennial sowthistle, poison hemlock, purple loosestrife, quackgrass, Russian knapweed, Russian thistle, serrated tussock, shatter cane, sorghum, wild carrot, wild garlic, wild mustard, wild onion, wild parsnip;

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

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

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

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

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

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

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

All property owners within the corporate limits of the city shall be required and be financially responsible for the removal, cutting, or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of ten inches in average height, and in no event, exceeds 15 inches maximum height on at least 20% of the surface area of the property.

Penalty, see § 10.99

§ 94.44 FILING COMPLAINT.

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

§ 94.45 NOTICE OF VIOLATIONS.

(A) Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the City Council shall make an inspection and prepare a written report to the City Council regarding the condition. The City Council, upon concluding that there is a probable belief that this subchapter has been violated, shall forward written notification in the form of a "Destruction Order" to the property owner or the person occupying the property as that information is contained within the records of the Clerk-Treasurer or any other city agency. Such notice shall be served in writing by certified mail. The notice shall provide that within seven regular business days after the receipt of the notice that the designated violation shall be removed by the property owner or person occupying the property.

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

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

§ 94.46 APPEALS.

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

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

§ 94.47 ABATEMENT BY CITY.

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

§ 94.48 LIABILITY.

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

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

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

OPEN BURNING

§ 94.60 PURPOSE.

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

§ 94.61 DEFINITIONS.

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

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

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

RECREATIONAL FIRE. A fire set with approved starter fuel no more than three feet in height, contained within the border of a “recreational fire site” using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality so that nuisance, health, or safety hazards will not be created. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers, and propane or natural gas devices are not defined as “recreational fires.” No more than one recreational fire is allowed on any property at one time.

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

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

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

§ 94.62 PROHIBITED MATERIALS.

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

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

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

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

§ 94.63 PERMIT REQUIRED FOR OPEN BURNING.

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in § 94.61.

Penalty, see § 10.99

§ 94.64 PURPOSES ALLOWED FOR OPEN BURNING.

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

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

(2) Ground thawing for utility repair and construction;

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

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

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

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

§ 94.65 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

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

(B) An open burning permit shall require fee. Permit fees shall be set annually by City Council resolution. However, the City Council may at other times amend its resolution setting the fee as it deems necessary. The fee established by City Council resolution shall continue to be the required fee until amended by a resolution.

Penalty, see § 10.99

§ 94.66 PERMIT PROCESS FOR OPEN BURNING.

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

§ 94.67 PERMIT HOLDER RESPONSIBILITY.

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

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

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

Penalty, see § 10.99

§ 94.68 REVOCATION OF OPEN BURNING PERMIT.

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

Penalty, see § 10.99

§ 94.69 DENIAL OF OPEN BURNING PERMIT.

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

§ 94.70 BURNING BAN OR AIR QUALITY ALERT.

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

Penalty, see § 10.99

§ 94.71 RULES ADOPTED BY REFERENCE.

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