TITLE IX: GENERAL REGULATIONS

Chapter

CHAPTER 90: STREETS AND SIDEWALKS

Section

§ 90.01 SCOPE.

The provisions of Chapters 70, 71, and 90 relate exclusively to the streets, alleys, and private roads in the city, and the operation and parking of vehicles upon the streets, alleys, and private roads.
(Prior Code, § 6.02)

§ 90.02 APPLICATION.

(A) The provisions of Chapters 70, 71, and 90 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, this state, or any county, city, town, district, or any other political subdivision of the state, subject to the specific exemptions as set forth in Chapters 70, 71, and 90 with reference to authorized emergency vehicles.

(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 Chapters 70, 71, and 90 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 these chapters applying to vehicles.
(Prior Code, § 6.03)

§ 90.03 TRAFFIC AND PARKING CONTROL.

(A) *Authority.* No permanent device, sign, or signal shall be erected or maintained for traffic or parking control unless approved by City Council resolution. The Council may reverse or amend or otherwise change any action taken by the City Engineer and Chief of Police under this section.

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

(1) When clearly marked or sign-posted, traffic and parking may be temporarily restricted for any public or private purpose. All the restrictions shall be in accordance with a uniform policy promulgated by the Chief of Police but who shall be ultimately responsible to the Council for proper enforcement thereof.

(2) Restricted or prohibited used 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 Chief of Police and in compliance with the provisions of Chapters 70, 71, and 90.

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

(4) The Chief of Police's authority to temporarily restrict or direct traffic or parking shall not exceed a period of 90 days.
(Prior Code, § 6.04) Penalty, see § 10.99

§ 90.04 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 48 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 48 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 Clerk 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 Clerk 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 therefore.

(E) *Placing snow or ice in public street or on other city property.* It is unlawful for any person, not acting under a specific contract with the city, to remove snow from private property and place the same on a public street (which includes sidewalks) in the quantity, or in the manner, as to cause a hazard to travel, without adequate arrangements for the immediate removal thereof; and it is also unlawful for any person not acting under a contract with the city to dump snow on other city property.
(Prior Code, § 6.05) Penalty, see § 10.99

§ 90.05 GRASS, WEEDS, AND TREES IN STREETS.

(A) *City to control trees and grass plats.* The city shall have control and supervision over all shrubs and trees upon, or overhanging all streets or other public property, and all street right-of-way or other public property.

(B) *Duty of property owners to cut grass and weeds and maintain trees and shrubs.* Every owner of property abutting on any street shall cause the grass and weeds to be cut from the line of the property nearest to the street in the center of the street. If the grass or weeds in such a place attain a height in excess of 12 inches it shall be prima facie evidence of a failure to comply with this division (D). Every owner of property abutting on any street shall, subject to the provisions herein requiring a permit therefore, trim, cut, and otherwise maintain all trees and shrubs from the line of the property nearest to the street to the center of the street.

(C) *City may order work done.* The city shall, in cases of failure to comply with division (D) above, perform the work with employees of the city, keeping an accurate account of the cost thereof for each lot, piece, or parcel of land abutting upon the street.

(D) *Assessment.* If the maintenance work is performed by the city as set forth in division (E) above, the City Clerk shall forthwith upon completion thereof ascertain the cost attributable to each lot, piece or parcel of abutting land. The City Clerk shall, at the next regular meeting thereof, present the certificate to the Council and obtain its approval thereof. 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 the taxes to the County Auditor, be certified and collection, or in the alternative, the city may institute civil suit to collect the cost of the service.
(Prior Code, § 6.06) Penalty, see § 10.99

§ 90.06 CONSTRUCTION AND RECONSTRUCTION OF ROADWAY SURFACING, SIDEWALK, AND CURB AND GUTTER.

(A) *Methods of procedure.*

(1) Abutting or affected property owners may contract for construct or reconstruct roadway surfacing, sidewalk, or curb and gutter in accordance with this section if advance payment is made therefore or arrangements for payment considered adequate by the city are completed in advance.

(2) With or without petition by the methods set forth in the Local Improvement Code of Minnesota Statutes, presently beginning with M.S. § 429.011, as it may be amended from time to time.

(B) *Permit required.* It is unlawful to construct a sidewalk, curb and gutter, or roadway surfacing in any street or other public property in the city without a permit in writing from the Public Works Department. Application for the permit be made in forms approved and provided by the city and shall sufficiently describe the contemplated improvements, the contemplated date of beginning of work, and the length of time required to complete the same, provided, that no permit shall be required for any such improvement ordered installed by the Council. All the applications shall contain an agreement by the applicant to be bound by this chapter and plans and specifications consistent with the provisions of this chapter and good engineering practices shall also accompany the application. A permit from the city shall not relieve the holder from damages to the person or property of another caused by the work.

(C) *Specifications and standards.* All construction and reconstruction of roadway surfacing, sidewalk, and curb and gutter improvements shall be strictly in accordance with specifications and standards on file in the Engineering Department and open to inspection and copying there. The specifications and standards may be amended from time to time by the city, but shall be uniformly enforced.

(D) *Inspection.* The Public Works Department shall inspect the improvements as deemed necessary or advisable. Any work not done according to the applicable specifications and standards shall be removed and corrected at the expense of the permit holder. Any work done hereunder may be stopped by the Public Works Department if found to be unsatisfactory or not in accordance with the specifications and standards, but this shall not place a continuing burden upon the city to inspect or supervise the work. (Prior Code, § 6.07) Penalty, see § 10.99

§ 90.07 RIGHT OF WAY MANAGEMENT.

Sec. 1.01. Findings, Purpose, and Intent.
To provide for the health, safety, and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights of way, the city strives to keep its rights of way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the city hereby enacts this new chapter of this code relating to right of way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights of way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights of way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights of way.

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Minn. Laws, ch. 94, art. 9, amending the Act, and the other laws governing applicable rights of the city and users of the right of way. This chapter shall also be interpreted consistent with Minn. R. 7819.0050–7819.9950 and Minn. R., ch. 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

Sec. 1.02. Election to Manage the Public Rights of Way
Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant to Minn. Stat. 237.163 subd. 2(b), to manage rights of way within its jurisdiction.

Sec. 1.03. Definitions.
The following definitions apply in this chapter of this code. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms, whether or not capitalized.

Abandoned Facility. A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right of way user.

Applicant. Any person requesting permission to excavate or obstruct a right of way.

City. The City of Hastings, Minnesota. For purposes of section 1.29, city also means the City's elected officials, officers, employees, and agents.

Collocate or Collocation. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.

Commission. The State Public Utilities Commission.

Congested Right of Way. A crowded condition in the subsurface of the public right of way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minn. Stat. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

Construction Performance Bond. Any of the following forms of security provided at permittee's option:

- Individual project bond;
- Cash deposit;
- Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
- Letter of Credit, in a form acceptable to the city;
- Self-insurance, in a form acceptable to the city;
- A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

Degradation. A decrease in the useful life of the right of way caused by excavation in or disturbance of the right of way, resulting in the need to reconstruct such right of way earlier than would be required if the excavation or disturbance did not occur.

Degradation Cost. Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.

Degradation Fee. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right of way caused by the excavation, and which equals the degradation cost.

Department. The department of public works of the city.

Director. The director of the department of public works of the city, or her or his designee.

Delay Penalty. The penalty imposed as a result of unreasonable delays in right of way excavation, obstruction, patching, or restoration as established by permit.

Emergency. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Equipment. Any tangible asset used to install, repair, or maintain facilities in any right of way.

Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right of way.

Excavation permit. The permit which, pursuant to this chapter, must be obtained before a person may excavate in a right of way. An Excavation permit allows the holder to excavate that part of the right of way described in such permit.

Excavation Permit Fee. Money paid to the city by an applicant to cover the costs as provided in Section 1.13.

Facility or Facilities. Any tangible asset in the right of way required to provide Utility Service.

Five-Year Project Plan. Shows projects being contemplated by the city for construction within the next five years.

High Density Corridor. A designated portion of the public right of way within which telecommunications right of way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

Hole. An excavation in the pavement, with the excavation having a length less than the width of the pavement.

Local Representative. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

Management Costs. The actual costs the city incurs in managing its rights of way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right of way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right of way work; determining the adequacy of right of way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right of way or small wireless facility permits. Management costs do not include payment by a telecommunications right of way user for the use of the right of way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 1.31 of this chapter.

Obstruct. To place any tangible object in a right of way so as to hinder free and open passage over that or any part of the right of way.

Obstruction Permit. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right of way, allowing the holder to hinder free and open passage over the specified portion of that right of way, for the duration specified therein.

Obstruction Permit Fee. Money paid to the city by a permittee to cover the costs as provided in Section 1.13.

Patch or Patching. A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

Pavement. Any type of improved surface that is within the public right of way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permit. Has the meaning given "right of way permit" in Minn. Stat. § 237.162.

Permittee. Any person to whom a permit to excavate or obstruct a right of way has been granted by the city under this chapter.

Person. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

Probation. The status of a person that has not complied with the conditions of this chapter.

Probationary Period. One year from the date that a person has been notified in writing that they have been put on probation.

Registrant. Any person who (1) has or seeks to have its equipment or facilities located in any right of way, or (2) in any way occupies or uses, or seeks to occupy or use, the right of way or place its facilities or equipment in the right of way.

Restore or Restoration. The process by which an excavated right of way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Restoration Cost. The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

Public Right of Way or Right of Way. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights of way for travel purposes and utility easements of the city. A right of way does not include the airwaves above a right of way with regard to cellular or other non-wire telecommunications or broadcast service. A right of way also does not include city park trails, sidewalks, or access roadways within the park boundary.

Right of Way Permit. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

Right of Way User. (1) A telecommunications right of way user as defined by Minn. Stat., § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right of way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right of way.

Service or Utility Service. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right of way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.

Service Lateral. An underground facility that is used to transmit, distribute or furnish 'gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

Small Wireless Facility. A wireless facility that meets both of the following qualifications:

(i) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

(ii) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

Supplementary Application. An application made to excavate or obstruct more of the right of way than allowed in, or to extend, a permit that had already been issued.

Temporary Surface. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

Trench. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

Telecommunications Right of Way User. A person owning or controlling a facility in the right of way, or seeking to own or control a facility in the right of way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right of way users for purposes of this chapter except to the extent such entity is offering wireless service.

Two Year Project Plan. Shows projects being contemplated by the city for construction within the next two years.

Utility Pole. A pole that is used in whole or in part to facilitate telecommunications or electric service.

Wireless Facility. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

Wireless Service. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

Wireless Support Structure. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

Sec. 1.04 Administration.
The director is the principal city official responsible for the administration of the rights of way, right of way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

Sec. 1.05. Utility Coordination Committee.
The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and, by making recommendations regarding use of the right of way, and to improve the process of performing construction work therein. The city may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

Sec. 1.06. Registration and Right of Way Occupancy.
Subd. 1. ***Registration.*** Each person who occupies or uses, or seeks to occupy or use, the right of way or place any equipment or facilities in or on the right of way, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration

will consist of providing application information.

Subd. 2. ***Registration Prior to Work.*** No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right of way without first being registered with the city.

Subd. 3. ***Exceptions.*** Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right of way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right of way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. ch. 216D, Gopher One Call Law.

Sec. 1.07. Registration Information.

Subd. 1. ***Information Required***. The information provided to the city at the time of registration shall include, but not be limited to:

(a) Each registrant's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.

(b) The name, address, and email 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.

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

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

(2) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right of way by the registrant, its officers, agents, employees, and permittees, and (ii) 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;

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

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

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

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

(7) If the person is a corporation, a copy of the certificate is required to be filed under state law as recorded and certified to by the secretary of state.

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

Subd. 2. ***Notice of Changes.*** The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

Sec. 1.08. Reporting Obligations.

Subd. 1. ***Operations***. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights of way.
The plan shall include, but not be limited to, the following information:

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

Subd. 2. ***Additional Next-Year Projects.*** Notwithstanding the foregoing, the city will not deny an application for a right of way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

Sec. 1.09. Permit Requirement.
Subd. 1. ***Permit Required.*** Except as otherwise provided in this code, no person may obstruct or excavate any right of way, or install or place facilities in the right of way, without first having obtained the appropriate right of way permit from the city to do so.

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

(b) *Obstruction Permit.* An obstruction permit is required by a registrant 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.

(c) *Small Wireless Facility Permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right of way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

Subd. 2. ***Permit Extensions.*** No person may excavate or obstruct the right of way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right of way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subd. 3. ***Delay Penalty.*** In accordance with Minn. Rule 7819.1000 subp. 3 and notwithstanding subd. 2 of this Section, the city shall establish and impose a delay penalty for unreasonable delays in right of

way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

Subd. 4. ***Permit Display.*** Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

Sec. 1.10. Permit Applications.
Application for a permit is made to the city. Right of way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

(a) Registration with the city pursuant to this chapter.
(b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
(c) 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 applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the city;
  (4) franchise fees or other charges, if applicable.
(d) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
(e) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

Sec. 1.11. Issuance of Permit; Conditions.
Subd. 1. ***Permit Issuance***. If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.
Subd. 2. ***Conditions.*** The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right of way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

Subd. 3. ***Small Wireless Facility Conditions***. In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

(a) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
(b) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
(c) No wireless facility may extend more than 10 feet above its wireless support structure.
(d) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
(e) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable

requirements to accommodate the particular design, appearance or intended purpose of such structure.

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

(g) Certification by the applicant's licensed engineer that the particular wireless support structure, in its existing condition, has sufficient structural integrity and strength to support the particular small wireless facility or facilities.

Subd. 4. *Small Wireless Facility Agreement*. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:

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

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

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

1. $73 per radio node less than or equal to 100 maximum watts;
2. $182 per radio node over 100 maximum watts; or
3. The actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant,

Sec. 1.12 Action on Small Wireless Facility Permit Applications.

Subd. 1. *Deadline for Action*. The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

Subd. 2. *Consolidated Applications*. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

(a) are located within a two-mile radius;

(b) consist of substantially similar equipment; and

(c) are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

Subd. 3. *Tolling of Deadline*. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

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

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

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

Sec. 1.13. Permit Fees.

Subd. 1. ***Excavation Permit Fee.*** The city shall impose an excavation permit fee in an amount sufficient to recover the following costs:

(a) the city management costs;
(b) degradation costs, if applicable.

Subd. 2. ***Obstruction Permit Fee.*** The city shall impose an obstruction permit fee in an amount sufficient to recover the city management costs.

Subd 3. ***Small Wireless Facility Permit Fee.*** The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

(a) management costs, and;
(b) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

Subd. 4. ***Payment of Permit Fees.*** No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.

Subd. 5. ***Non Refundable.*** Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 1.23 are not refundable.

Subd. 6. ***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.

Sec. 1.14. Right of Way Patching and Restoration.

Subd. 1. ***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 Section 1.17.

Subd. 2. ***Patch and Restoration.*** 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.

(a) ***City Restoration***. If the city restores the right of way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.
(b) ***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 Minn. Rule 7819.3000.
(c) ***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.

Subd. 3. ***Standards.*** The permittee shall perform excavation, backfilling, patching, and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rule 7819.1100.

Subd. 4. ***Duty to Correct Defects.*** The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be

completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 1.17.

Subd. *5. Failure to Restore*. If the permittee fails to restore the right of way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right of way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

Sec. 1.15. Joint Applications.
Subd. 1. *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right of way at the same place and time.

Subd. 2. *Shared fees*. Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3. *With city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

Sec. 1.16. Supplementary Applications.
Subd. *1. 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 (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

Subd. 2. *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.

Sec. 1.17. Other Obligations.
Subd. 1. *Compliance with Other Laws.* Obtaining a right of way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right of way pursuant to its permit, regardless of who does the work.

Subd. 2. *Prohibited Work.* Except in an emergency, and with the approval of the city, no right of way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3. *Interference with Right of Way.* A permittee shall not so obstruct a right of way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

Private vehicles of those doing work in the right of way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Subd. 4. ***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 Minn. Stat. ch. 216D and Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

Sec. 1.18. Denial or Revocation of Permit.
Subd. 1. ***Reasons for Denial.*** 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 of the public or when necessary to protect the right of way and its current use.

Subd. 2. ***Procedural Requirements.*** The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

Sec. 1.19. 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. R. 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat., §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 1.23 subd. 2 of this ordinance.

Sec. 1.20. Inspection.
Subd. 1. ***Notice of Completion.*** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300.

Subd. 2. ***Site Inspection***. Permittee shall make the work site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd 3. ***Authority of Director***.

(a) 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.

(b) The director may issue an order to the permittee for any work that 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 (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to Sec. 1.23.

Sec. 1.21. Work Done Without a Permit.
Subd. 1. ***Emergency Situations.*** Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever

actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the registrant 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.

If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant 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 registrant whose facilities occasioned the emergency.

Subd. 2. ***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 said permit, pay double all the other fees required by the city 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.

Sec. 1.22. Supplementary Notification.
If the obstruction or excavation of the right of way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

Sec. 1.23. Revocation of Permits.
Subd. 1. ***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 permittee shall include, but shall not be limited to, the following:

(a) The violation of any material provision of the right of way permit.
(b) 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.
(c) Any material misrepresentation of fact in the application for a right of way permit.
(d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control.
(e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.20.

Subd. 2. ***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 such 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.

Subd. ***3. Response to Notice of Breach.*** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year. Icon

Subd. 4. ***Cause for Probation***. From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as,

but not limited to, working out of the allotted time period or working on right of way grossly outside of the permit authorization.

Subd. *5. Automatic Revocation.* If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

Subd. 6. *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 such revocation.

Sec. 1.24. Mapping Data.
Subd. 1. *Information Required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. R. 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the "as-built" location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.

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

a) payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429, and

b) city approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462.

The director shall reasonably determine the appropriate method of providing such information to the city. 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 future permits to the offending permittee or its subcontractors.

Sec. 1.25. Location and Relocation of Facilities.
Subd. 1. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

Subd. 2. *Corridors.* The city may assign a specific area within the right of way, or any particular segment thereof as may be necessary, for each type of facility 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.

Any registrant who has facilities in the right of way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right of way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors

as the remaining economic life of the facilities, public safety, customer service needs, and hardship to the registrant.

Subd. 3. ***Nuisance.*** One year after the passage of this chapter, any facilities found in a right of way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right of way to a useable condition.

Subd. 4. ***Limitation of Space.*** To protect the health, safety, and welfare of the public, or when necessary to protect the right of way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right of way. In making such decisions, the city 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.

Sec. 1.26 Pre-Excavation Facilities Location.
In addition to complying with the requirements of Minn. Stat. 216D.01-.09 ("One Call Excavation Notice System") before the start date of any right of way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

Sec. 1.27. Damage to Other Facilities.
When the city does work in the right of way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right of way which it or its facilities damage. Each registrant 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 registrant's facilities.

Sec. 1.28. Right of Way Vacation.
Reservation of right. If the city vacates a right of way that contains the facilities of a registrant, the registrant's rights in the vacated right of way are governed by Minn. R. 7819.3200.

Sec. 1.29. Indemnification and Liability
By registering with the city, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rule 7819.1250.

Sec. 1.30. Abandoned and Unusable Facilities.
Subd. 1. ***Discontinued Operations.*** A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right of way under this chapter have been lawfully assumed by another registrant.

Subd. 2. ***Removal***. Any registrant who has abandoned facilities in any right of way shall remove it 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.

Sec. 1.31. Appeal.

A right of way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, subd. 6; or (5) disputes a determination of the director regarding Section 1.24, subd.2 of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right of way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Sec. 1.32 Reservation of Regulatory and Police Powers
A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances as necessary to protect the health, safety, and welfare of the public.

Sec. 1.33. Severability.
If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.
Ord. 2017-13, 3rd Series passed on 12-18-17

§ 90.08 VACATION OF STREETS; PROCEDURE.

(A) No public grounds or streets (as defined in Chapter 155) shall be vacated except upon the Council's own motion or upon the petition directed to the Council of a majority of the owners of property on the line of the public grounds or streets, and completion of the procedure hereinafter specified. The petition shall set forth the reasons for the desired vacation, accompanied by a plat of the public grounds or streets proposed to be vacated, and the petition shall be verified by the oath of a majority of the petitioners.

(B) If, in the discretion of the Council, it is expedient that the matter by proceeded with, it may order the petition filed for record with the City Clerk, order a hearing on the petition and fix the time and place of the hearing.

(C) The City Clerk shall give notice of the hearing by publication once at least 10 days in advance of the hearing, and by mail to the last known address of all of the owners of property on the line of the public grounds or streets proposed to be vacated at least ten days in advance of the hearing, the last known addresses to be obtained from the office of the County Auditor. The notice shall in brief state and object of the hearing, the time, place and purpose thereof, and the fact that the Council, Board, Commission, or person designated by them shall hear the testimony and examine the evidence of the parties interested.

(D) The Council, after hearing the same, or upon the report of the Board, Commission, or person designated to hold the hearing, may by resolution passed by majority vote of all members, declare the public grounds or streets vacated, or deny the petition. The resolution, if granting the position, shall be certified by the City Clerk and shall be filed for record and duly recorded in the office of the Register of Deeds for the county in which the property is located. (Prior Code, § 6.09)

§ 90.09 FIRES, SIGNS, OBSTRUCTIONS, AND REFUSE IN STREETS.

(A) *Obstructions.* It is unlawful for any person to place or deposit any fence or other obstruction upon any street without first having obtained a written permit to do so from the City Administrator, and then only in compliance in all respects with the terms and conditions of the permit, and taking precautionary measures for the protection of the public.

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

(C) *Dumping in streets.*

(1) For purposes of this section, the term ***REFUSE*** means and includes putrescible animal and vegetable waste resulting from handling, preparation, cooking and consumption of food; putrescible and non-putrescible solid wastes (except body wastes), ashes, street cleanings, dead animals, industrial wastes; combustible and non-combustible wastes such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery, dirt, metal scraps; and liquids such as water containing salt, injurious chemicals, or petroleum products.

(2) It is unlawful for any person to throw or deposit any refuse in a public street. (Prior Code, § 6.10) Penalty, see § 10.99

§ 90.10 LOAD LIMITS.

The Public Works Department may from time to time impose upon vehicular traffic on any part or all of the streets such 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 unlawful for any person to operate a vehicle on any street in violation of the limitation so posted. (Prior Code, § 6.15) Penalty, see § 10.99

§ 90.11 PRIVATE USE OF PUBLIC STREETS AND PARKING LOTS.

(A) The Council may, in its discretion, grant special permission whereby on-street parking or the use of city-owned parking lots or ramps on 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, sidewalk cafes, mobile food units, or display of merchandise on sidewalks) at the places, on the terms and for the 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, 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 10-days' notice in writing to applicant and complainant and published notice at least 10 days prior to the hearing. After the hearing, the Council may by resolution decide whether to terminate, continue, or redefine 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) Free and reserved on-street parking shall be limited to city-owned and operated vehicles.

(C) 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, § 6.16) Penalty, see § 10.99

§ 90.12 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 written application to the Council and obtaining a permit therefore.

(B) *Agreement required.* 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 agreement to demolish and remove the setback and reconstruct the areas 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. The agreement shall be recorded in the office of the Register of Deeds, 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 the 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 the angle parking is herein described and allowed.

(D) *Public rights reserved.* 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, § 6.17) Penalty, see § 10.99

§ 90.13 PARADES.

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

PARADE. Any movement of vehicles, persons, or animals, or any combination thereof, which either moves together and as a body so as to in some way impede or affect the free and unobstructed flow of traffic, or which moves so that some part thereof is in violation of one or more traffic laws or regulations, is such movement is without a permit hereunder.

(B) *Permit required.* It is unlawful to sponsor or participate in a parade for which no permit has been obtained from the city, and it is also unlawful to obtain a parade permit and not conduct the same in accordance with a permit granted by the city. Application for the permit shall be made to the City Clerk at least 14 days in advance of the date on which it is to occur and shall state the sponsoring organization or individuals, the route, the length, the estimated time of commencement and termination, the general composition, and the application shall be executed by the individuals applying therefore or the duly authorized agent or representative of the sponsoring organization.

(C) *Procedure and granting.* The City Clerk shall forthwith refer all applications for parades to the Chief of Police for his or her consideration which shall take no longer than 7 days. If any state trunk highways are in the route the Chief of Police shall make all necessary arrangements with the Minnesota Highway Department for alternate routes or whatever may be necessary. If the Chief of Police finds that such a parade will not cause a hazard to persons or property, and will cause no great inconvenience to the public, and if he or she is able to make arrangements for necessary direction and control of traffic, he or she shall endorse his or her acceptance and return the application to the City Clerk who shall then issue the permit. If the Chief of Police finds the parade described in the application to be a hazard, a substantial inconvenience, or if he or she is unable to make adequate arrangements for direction or control of traffic, he or she shall return the same to the City Clerk with his or her reasons for denial, and the permit shall not be granted unless all conditions and objections of the Chief of Police are met or removed by the applicant. (Prior Code, § 6.18) Penalty, see § 10.99

§ 90.14 SIDEWALK PAINTING OR COLORING.

It is unlawful for any person to paint, letter, or color any sidewalk for advertising purposes or to paint any letters, words, figures, or characters up on any sidewalk for any purpose. (Prior Code, § 6.19) Penalty, see § 10.99

§ 90.15 STREET, SIDEWALK, AND STORM SEWER IMPROVEMENT SPECIAL ASSESSMENT POLICY.

(A) *Generally.* Street, sidewalk, and storm sewer improvements shall be assessed as 1 combined project cost based on estimated benefit of the improvements to the property assessed. Benefit shall be defined as the increase in property value attributable to the public improvements.

(B) *Determination of benefit.* The estimated benefit of the public improvements shall be determined by the Public Works Director, subject to approval by the City Council, and based on an opinion of special benefit for atypical property prepared by a certified general real estate appraiser.

(C) *Street, sidewalk, and storm sewer improvements.* All street, sidewalk, and storm sewer improvements shall be classified into 2 categories; New Construction and Reconstruction or Rehabilitation, which shall be defined as follows:

(1) *New construction.* All public improvement construction where there is no existing platted right of way and improved, city maintained roadway prior to the commencement of construction; and

(2) *Reconstruction or rehabilitation.* All public improvements other than new construction.

(D) *New construction street, storm sewer, and sidewalk improvements.*

(1) A presumption will be made for new construction street, storm sewer, and sidewalk improvements that the project cost of the ordered improvements divided among the improved properties will be less than or equal to the special benefit of the improvements to the properties being assessed. However, the Public Works Director may order an opinion of special benefit if the Public Works Director questions whether the project cost may exceed special benefit, or if the property owner(s) to be assessed request(s) an opinion of special benefit and the City Council orders the opinion of special benefit to be prepared. Requests for an opinion of special benefit to be prepared should be made on or before the improvement hearing date.

(2) A per lot assessment basis shall be used for street, storm sewer, and sidewalk assessments for new construction improvements, except where inconsistencies in lot size, frontage, and/or development densities exist, in which case assessments based on abutting frontage may be used. In general, there should be no city participation for street, storm sewer, and sidewalk assessments for new construction improvements.

(E) *Reconstruction or rehabilitation.* All street, storm sewer, and sidewalk reconstruction improvements shall be classified into 2 categories; collector and municipal state aid streets, and non-collector and non-municipal state aid streets, which shall be defined as follows:

(1) *Collector and municipal state aid streets.* Collector streets are those streets which have an average daily traffic count of 2,000 or more vehicles per day. Municipal state aid streets are

those streets within the city on the Minnesota Department of Transportation Municipal State Aid System; and

(2) *Non-collector and non-municipal state aid streets.* All streets other than collector or municipal state aid streets.

(F) *Collector and municipal state aid streets.* All street storm sewer and sidewalk reconstruction improvements on collector or municipal state aid streets shall be constructed to Minnesota Department of Transportation State Aid standards. For reconstruction or rehabilitation of collector streets or state aid streets, a presumption will be made that 25% of the estimated project cost of the ordered street, storm sewer, and sidewalk improvements divided among the improved properties will be less than or equal to the special benefit of the improvements to the properties being assessed. The estimated project cost will be prepared by the Public Works Director and based on the low bids received for the improvement construction. However, the Public Works Director may order an opinion of special benefit if the Public Works Director questions whether 25% of the estimated project cost of the ordered street, storm sewer, and sidewalk improvements may exceed special benefit, or if the property owner(s) to be assessed request(s) an opinion of special benefit and the City Council orders the opinion of special benefit to be performed. The division of 25% of the estimated project costs shall be based on abutting frontage except as follows.

(1) *Corner lot assessments.*

(a) For corner lots with improvements along more than 1 side of abutting frontage, the assessed frontage shall be considered the entire length of the short side and 25% of the long side of the lot. The city shall pay the remaining 75% of the assessment on the long side of the corner lot.

(b) For corner lots with improvements along the abutting frontage of the long side, the assessment shall be 25% of the abutting frontage with the city paying the assessment on the remaining 75% of the abutting frontage.

(c) For corner lots with improvements along the abutting frontage of the short side, the assessment shall be 100% of the abutting frontage.

(d) For corner lots with 2 or more sides of equal length the short side frontage shall be defined as the side on which the house fronts or will front.

(2) *Irregular shaped lots.* For lots whose shapes are irregular, as in the case of curvilinear streets or cul-de-sacs, a per lot assessment basis may be used in lieu of the formulas in this section. The funds for the city's participation as described above for municipal state aid streets shall come from state aid funds, if available. Funding for the city's participation for collector streets shall come from the assumption of that portion of the improvement bond.

(G) *Non-collector and non-municipal state aid streets.* All street, storm sewer, and sidewalk reconstruction or rehabilitation improvements of non-collector streets or non-municipal state aid streets shall be assessed on a front foot basis at a rate determined by the Public Works Director. The front foot assessment rate shall be based on 90% of the estimated special benefit to the assessed properties accruing from the constructed improvements. Properties benefitting from the street, storm

sewer, and sidewalk improvements shall be assessed based on abutting frontage except as follows.

(H) *Sidewalk improvements.* All sidewalks shall be constructed a minimum of 5 feet in width. In general, where sidewalks are to be constructed in new developments, the sidewalks should be constructed one foot off the property line. Where sidewalks are to be constructed within existing developments, the walks should be constructed at least 15 feet from existing homes. However, except in commercial or industrial areas, all sidewalks shall be constructed with a minimum 5-foot boulevard.

(I) *Sidewalk assessments.*

(1) Where sidewalk improvements are constructed as part of a street and/or utility improvement project, assessments for sidewalks shall be included with street and/or utility assessments as 1 combined project cost. Assessment credit shall be given for properties whose existing sidewalk is in good condition and does not need to be replaced as determined by the Public Works Director. The sidewalk assessment credit shall be determined by the Public Works Director and based on the project sidewalk construction costs.

(2) Assessments for sidewalks constructed as a stand alone project shall be assessed on a front foot basis at a rate determined by the Public Works Director. The front foot assessment rate shall be based on 90% of the estimated special benefit to the assessed properties accruing from the constructed sidewalk. Corner lots and irregular shaped lots shall be assessed as described previously in division (G) above.

(J) *Trunk storm sewer improvements.* The assessment policy for trunk storm sewers shall be based on benefitted area. All lots contributing storm water runoff to the trunk storm sewer shall be assessed in the same proportion each lot has to the total area contributing storm water runoff to the trunk storm sewer.

(K) *Lateral storm sewer improvements.* Where lateral storm sewer improvements are constructed as part of a street and/or utility improvement project, assessments for storm sewer shall be included with street and/or utility assessments as 1 combined project cost. Assessments for storm sewer constructed as a stand alone project shall be assessed on a front foot basis at a rate determined by the Public Works Director. The front foot assessment rate shall be based on 90% of the estimated special benefit to the assessed properties accruing from the constructed storm sewer. Corner lots and irregular shaped lots shall be assessed as described previously in division (G) above.

(L) *Unusual conditions.* This assessment policy is intended to set guidelines for assessing improvements and yet to be general and flexible enough so that the most logical method may be chosen to fit individual circumstances. To meet extreme or unusual conditions, the city reserves the right to levy an assessment for an improvement in a manner not outlined in this policy without affecting or negating any portion of this policy for use in normal conditions. (Prior Code, § 6.20)

Cross-reference:

Assessment policy for sanitary sewer, water main and utility service improvements, see § 51.06

§ 90.16 SIDEWALK CAFES.

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

SIDEWALK CAFÉ. A grouping of tables, chairs and related items located wholly or partially within a public sidewalk or right-of-way for the purposes of service and consumption of food and beverages by patrons, when located immediately adjacent to a food and beverage service establishment having a common operator.

(B) *Sidewalk cafés authorized.* Sidewalk cafés with or without service of alcohol may be located on public sidewalks subject to a license issued by the City Council pursuant to this section.

(C) *Requirements.* Installation and operation of all sidewalk cafés are subject to the following requirements and sidewalk cafés serving intoxicating liquor, beer or wine are subject to the applicable requirements of Chapter 111.

(1) Sidewalk cafés may only be installed and operated from during the hours of operation of the food service establishment provided that no sidewalk café may be operated between the hours of 11:00 p.m. and 11:00 a.m. Tables, chairs, furnishings, planters, fences or other obstructions shall be immediately removed from public sidewalks when the license holder is no longer operating the Sidewalk Café due to changing seasons. Tables, chairs, furnishing, planters, fences or other obstructions shall not impede snow removal efforts. The City Council may further restrict the hours of operation of a sidewalk café based upon the proximity to residential dwelling units, and upon considerations relating to the safety, repose and welfare of residents, businesses and other uses near the establishment. Furniture and fixtures may be stored overnight within the sidewalk café area provided the licensee shall ensure all items are stored and secured in a neat and orderly manner.

(2) All sidewalk cafés must abut and be operated as part of the food service establishment operated by the applicant and shall have delineated limits separating the sidewalk café from the travelled portion of the sidewalk. Sidewalk cafés serving intoxicating liquor, beer or wine must have a visually appealing and continuous barrier made of fencing or planters surrounding the entire sidewalk café area which must be compact and contiguous with the enclosed portion of the licensed premises. No licensee shall expand a sidewalk café without first obtaining an amended sidewalk café license covering the additional space.

(3) Only food or beverages for immediate consumption may be offered for sale and no alcoholic beverages may be dispensed from within the sidewalk café. The licensee shall provide food service in all sidewalk café areas during all hours of operation. Food service may consist of less than a full menu, but shall at all times offer a substantial choice of main courses, other food items, and non-alcoholic beverages. An establishment that offers a regular menu to customers with food items delivered from other local good service establishment for purposes of this Chapter and those portions of Chapter 111 regulating sidewalk cafes provided that sidewalk café operations shall be allowed only during the times when food delivery if offered. Glassware may be used in the service of food and beverages but only to the extent such use does not create a safety hazard for patrons or the public in adjacent areas and the licensee is responsible to immediately remove any broken glass from the premises.

(4) No licensee shall allow entertainment within a sidewalk café, including non-live entertainment such as radio, taped music and television unless the same is expressly approved in writing by the City Council and in no event shall noise be generated that would unreasonably annoy or interfere with neighboring property

owners or occupants or the public.

(5) No sidewalk café may: (i) unduly restrict the safe usage of any roadway or the sidewalk by the public after taking into consideration the locations of obstructions, vehicular traffic and other impediments to the passage of vehicles and pedestrians; (ii) be located within ten (10) feet of any traffic signal, crosswalk or pedestrian curb cut; or (iii) adjoin any premises other than the applicant's food service establishment. All signs, including sandwich boards, must comply with Chapter 155 and no signs may be placed in a manner that would obstruct a pedestrian sidewalk the licensee is otherwise required to keep clear and unobstructed.

(6) Fencing and planters shall be visually appealing and constructed of high-quality, durable materials maintained in good condition and shall not be permanently attached to the sidewalk or right-of-way. Fences and planters shall not exceed three (3) feet in height provided live plants may extend to a height of not more than six (6) feet, all as measured from the surface of the sidewalk or right-of-way. Planters must include live plants and must be well maintained at all times.

(7) Sidewalk cafés shall be handicap accessible and shall be installed in a manner complying with all ADA requirements and shall provide for a minimum of four (4) feet of clear, unobstructed pedestrian walkway between all obstructions and the edge of the sidewalk café. No employee or server may obstruct pedestrian walkways at any time.

(8) Operation of a sidewalk café must comply with all provisions of the Minnesota Clean Indoor Air Act.

(9) No sidewalk café shall be installed or operated, and no license shall be issued, for any location where the same is prohibited by state or local law and the ownership, operation and maintenance of all sidewalk cafés shall be subject to all applicable laws, ordinances and regulations.

(10) The licensee shall maintain the sidewalk café in a clean and sanitary condition and shall be responsible to remove all trash and litter generated by the operation of the sidewalk café within a reasonable distance from the area. The licensee shall be responsible for all costs of repairing any damage to the sidewalk or other public property caused by the use of the sidewalk or public property as a sidewalk café. If the City Council approves any improvements to the sidewalk or right-of-way necessary for the licensee to operate a sidewalk café, the costs of such improvements plus any administrative costs shall be paid for in advance by the licensee.

(11) All sidewalk café licensees must at all times maintain commercial liability insurance covering the licensed premises and the sidewalk café area with minimum policy limits for bodily injury or death of not less than $1,000,000 per occurrence and $1,000,000 annual aggregate and for property damage of not less than $50,000. Proof of the required liability insurance shall be in the form of a certificate of insurance or some other form acceptable to the City Attorney and City Clerk. All liability insurance policies required herein shall name the city as any additional insured and shall provide that there shall be no cancellation of the policy for any cause, by the insured or by the insurance company, without first giving 10-days' written notice to the city, addressed to the City Clerk. Operation of a sidewalk café or liquor sales by a licensee without required liability insurance coverage shall be grounds for immediate suspension or revocation of the license. In addition, the licensee shall indemnify and hold harmless the city, the city's public officials, employees and agents from any loss, costs, damages and expenses arising out of the use, design, operation or maintenance of the sidewalk café. These insurance and indemnification requirements shall be memorialized in a license agreement signed by the licensee prior to the initial issuance of the sidewalk café license and upon any renewal thereof, but failure of the city and the licensee to execute such a license agreement shall not alleviate the licensee of its insurance and indemnification obligations hereunder.

(12) The city shall retain the right to remove or cause to be removed any tables, chairs, furnishings, planters, fences or other obstructions from the sidewalk or public right-of-way as necessary to access public utilities and facilities, during community civic festivals, celebrations and other events, or if the city reasonably determines any such item or items create an unreasonable risk to public health or safety. The city shall endeavor to give reasonable advance notice to the licensee that items need to be removed or relocated.

(D) *License Applications.*

(1) An applicant for a sidewalk café license shall file an application on forms provided by the City Clerk which shall include, in addition to any other information required by the City, the following:

(a) The business name, address, phone number and contact person.

(b) A site plan of the proposed sidewalk café drawn to scale covering the entire area between the curb and building showing locations of the property lines, curbs, all streets in front of and adjacent to the property, all sidewalk dimensions measured from the building face to the back of the curb, all existing facilities and obstructions within the right-of-way, the proposed location of all sidewalk café fixtures, including but not limited to tables, chairs, umbrellas, planters, fences, barricades, lighting, and heaters, and the proposed limits of the sidewalk café.

(c) Photographs and manufacturer specifications for all proposed sidewalk café furniture and fixtures.

(d) Description and locations of any sound, television or video systems proposed for the sidewalk café.

(e) Description of all food and beverages that will be served within the sidewalk café and the proposed hours of operation.

(f) Description of all points of access between the building and the sidewalk café and exterior areas.

(g) Description of ingress and egress arrangements including those necessary to provide handicap accessibility and control of persons entering and leaving the premises to prevent consumption of alcohol by minors and to ensure safety of moveable seating arrangements.

(h) Description of all physical improvements to be constructed to accommodate the sidewalk café.

(i) An insurance commitment or binder securing all insurance coverage required under this chapter and Chapter 111, if applicable, on the sidewalk café areas and meeting all requirements for naming the city as an additional insured.

(j) Any other information known to the applicant that may reasonably impact the issuance of the license including but not limited to objections to the proposed sidewalk café raised by neighboring property owners or the public, obstructions or other factors that may interfere with pedestrian travel on the affected sidewalk area, or conditions that may impact public health or safety if the sidewalk café license is issued.

(2) Upon submission of a complete application the City Clerk shall place the application upon the agenda of the next available City Council meeting for which proper notice as required by this section can be given. A public hearing on the application shall be required for all initial sidewalk café applications, all subsequent applications proposing modifications to a sidewalk café site plan, and whenever the City determines a public hearing is necessary to determine whether the criteria for granting a sidewalk café license are satisfied. When applicable, the City Clerk shall cause notice of the public hearing to be given in the same manner as prescribed for special use permits.

(E) *Granting of license.* Following the required public hearing, if any, the City Council may grant or deny the license or refer the matter to any commission or committee for further study.

(F) *Criteria for issuance and renewal.* No sidewalk café license may be issued or renewed if the results of the investigation or other evidence given to the City Council through any means, shows to the satisfaction of the Council, that the issuance or renewal would not be in the public's interest. The Council shall make written findings, certifying the sidewalk café will comply with the following criteria.

(1) The design and operation satisfy the applicable requirements of this chapter and will be in harmony with the purpose and intent of Chapter 155 and all rules applicable in any Heritage Preservation District within which the sidewalk café is located.

(2) The design and operation will not unreasonably interfere with or annoy users of neighboring residential, commercial or public property.

(3) The design and operation will not unreasonably interfere with pedestrian or vehicular traffic or access to any public street, utility or other facilities.

(4) Where liquor, wine or beer will be served, the licensed premises is compact and contiguous with the premises licensed under Chapter 111 and the design and operation will safeguard against consumption of alcohol by minors.

(G) *Conditions of license.* Every license issued pursuant to this chapter shall be subject to the conditions of this section and all other sections of this chapter and any other applicable ordinance of the city, state law, or federal law, and shall include the following conditions.

(1) *Posting.* The license shall be posted in a conspicuous place in the licensed establishment at all times.

(2) *Additional conditions.* The Council may, upon a finding of necessity, place the conditions and restrictions upon the license as it, at its discretion, may deem reasonable and justified to protect the public interest.

(3) *Licenses limited to certain areas.* All fixtures shall be placed, and all operations conducted, within the space described on the license.

(4) *Inspection by peace officers or health officers.* All sidewalk cafés shall be subject to compliance inspections and no licensee or employee of a licensee shall hinder or prevent a peace officer, health officer, building official, fire official, or any other employee so designated by the City Council or City Administrator from entering upon and inspecting the licensed premises during business hours, without a search warrant.

(5) *Responsibility of licensee.* Every licensee, whether actually present on the licensed premises or not, shall be responsible for the conduct of the licensed premises and shall maintain conditions of sobriety and order on the licensed premises.

(6) *Payment of WAC and SAC.* Licensees shall pay all additional WAC and SAC imposed as a result of additional seating offered within a sidewalk café.

(H) *Transfer of license*. No license issued pursuant to this chapter shall be transferrable to another person or entity nor may any such license be transferred to a different location.

(I) *Expiration of license.* Every license issued under this chapter shall expire on December 31st of each year, regardless of when the license was issued.

(J) *Suspension or revocation of license.* The City Council may suspend, revoke or deny renewal of any sidewalk café license upon the violation of any license condition or of any provision or condition of this chapter, any other city ordinance, or of any state or federal law. Before the Council shall suspend or revoke any license issued under this chapter, the licensee shall be given at least 10-days' notice stating the time and place of the hearing and the charges against the licensee.

(Ord. 2015-07, 3rd Series, passed 6-1-15) (Ord. No. 2017-09, 3rd Series passed on 11-06-17)

CHAPTER 91: ANIMALS

Section

General Provisions

Dogs

GENERAL PROVISIONS

§ 91.01 DEFINITION.

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

ANIMALS. Cattle, horses, mules, sheep, goats, swine, ponies, ducks, geese, turkeys, chickens, guinea hens, and all other animals and feathered fowl except dogs and cats, unless the pets are specifically included in particular sections hereof, and this definition shall extend to this subchapter only. (Prior Code, § 9.29)

§ 91.02 KEEPING.

It is unlawful for any person to keep any animal, not in transit, in any part of the city not zoned for agricultural purposes.

(A) *Exceptions.*

(1) Chickens (Gallus gallus domesticus) subject to § 155.07.
(Prior Code, § 9.29) (Am. Ord. 2009-08, 3rd Series, passed 9-21-2009) Penalty, see § 10.99

(2) Temporary Keeping of Goats subject to §91.35.

§ 91.03 HOUSING.

It is unlawful for any person to keep any animals in any structure infested by rodents, vermin, flies, or insects. (Prior Code, § 9.29) Penalty, see § 10.99

§ 91.04 TREATMENT.

It is unlawful for any person to treat any animal or house pet in a cruel or inhuman manner. (Prior Code, § 9.29) Penalty, see § 10.99

§ 91.05 RESTRAINT AND CONFINEMENT.

It shall be unlawful for the dog or cat of any person who owns, harbors, or keeps a dog or cat, to run at large. A person, who owns, harbors, or keeps a dog or cat which runs at large shall be guilty of a misdemeanor. Dogs or cats on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person, so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land unless the city has posted an area with signs reading "Dogs or Cats Prohibited." Penalty, see § 10.99

§ 91.06 CAT REGULATION.

(A) It shall be unlawful for an owner or possessor of any cat to fail to obtain a rabies vaccination certificate and tag from a licensed veterinarian. The owner or possessor shall provide to the Hastings City Clerk a certificate by a veterinarian, duly licensed to practice veterinary medicine, which certificate shall state that the cat is immunized against rabies. The owner or possessor of the cat shall also retain a copy of the certificate and shall furnish same for inspection by any police officer so requesting. All cats shall wear a collar and have rabies tag firmly affixed thereto evidencing the rabies vaccine for the period set forth in division (C) below.

(B) It shall be the obligation and responsibility of the owner or possessor of any animal of this class to prevent the animal from molesting, defiling, or destroying any property, or to howl, screech, or make other noise so as to constitute a public nuisance.

(C) It shall be unlawful for any person to own, possess, or harbor a cat or animal of related genera which has not been vaccinated for rabies within the time required under standard veterinarian practices; once a year shall be deemed to be the longest period of time during which the animal may go between rabies vaccinations, while standard veterinarian practices may require more frequent vaccinations.

(D) If a cat or other animal is reasonably believed to be rabid or otherwise diseased, hurt, vicious, or dangerous and cannot be impounded after a reasonable effort, or without serious risk to the impounder or other person, the animal will immediately be killed. (Prior Code, § 9.32) Penalty, see § 10.99

§ 91.20 LICENSE REQUIRED.

It is unlawful for any owner or other possessor of a dog, when the dog reaches the age of 6 months, to fail to obtain a property city license therefore. (Prior Code, § 9.21) Penalty, see § 10.99

§ 91.21 APPLICATION.

Application for a dog license shall be upon a form supplied by the city containing a certificate by a veterinarian, duly licensed to practice veterinary medicine within the State of Minnesota, which certificate shall state that the dog for which application for a license is made, has been inoculated against rabies and the dog owner shall be responsible for keeping the dog inoculated against rabies for the entire term of the license. (Prior Code, § 9.21) (Ord. No. 2017-01 passed 1-3-17)

§ 91.22 LICENSE TERM AND FEE.

All dog licenses issued for a bi-annual term shall expire on July 31 of each odd-numbered year

following issuance of the license. All dog licenses issued for the lifetime of the dog shall have no expiration date. The license fee for dog licenses shall be established by ordinance of the City Council.
(Prior Code, § 9.21) (Am. Ord. 512, passed 4-5-2004; Am. Ord. 2009-05, 3rd Series, passed 4-20-2009)(Ord. No. 2017-01 passed 1-3-17)

§ 91.23 TAG REQUIRED.

All licensed dogs shall wear a collar and have a tag firmly affixed thereto evidencing the license for the term of the license. (Prior Code, § 9.21) Penalty, see § 10.99 (Ord. No. 2017-01 passed on 1-3-17)

§ 91.24 INSPECTION; RIGHT OF ENTRY.

To enforce this subchapter or state law, the Animal Control Officer or police may enter upon the private premises, except households, with consent or where it appears or where there is reasonable cause to believe that a dog is not licensed or is not being kept confined or restrained as required herein or in pursuit of a dog running at large. Any owner shall produce for the officer's inspection, the dog's license or receipt when requested to do so by the officer. (Prior Code, § 9.21)

§ 91.25 IMPOUNDING; RIGHT OF ENTRY.

The Animal Control Officer or police are empowered to and may take up and impound any dogs found anywhere, including dogs found on the private property of their owners, within the city, in violation of this subchapter. Dogcatchers are further empowered and instructed to enter any private premises, except households, where they have reasonable cause to believe there is an unlicensed dog or a dog involved in any violation of this code. (Prior Code, § 9.21)

§ 91.26 ANIMAL POUND.

Any dog found in the city without a license, or running at large shall be placed in an animal pound, and an accurate record of the time of the placement shall be kept on each dog. Every dog placed in the animal pound shall be retained for a period of 5 days, and if unclaimed shall become the property and responsibility of the animal pound. Notwithstanding the provisions of this section, if a dog is found at large in the city and its owner can be identified and located, that animal need not be impounded but may, at the discretion of a peace officer or animal control officer, be taken to its owner. In this event, the animal shall not be returned to its owner until the owner pays the impound fee provided for by § 91.27. (Prior Code, § 9.21)

§ 91.27 RELEASE FROM ANIMAL POUND.

Before the city will authorize the release of any impounded dog, the owner of the dog must first pay the city the following fees:

(A) Impound fee to be set by City Council resolution; and

(B) Dog license fee if the owner of the dog is a resident of the city and the dog was not previously licensed, together with any penalty established by City Council resolution for failing to timely license the dog. (Prior Code, § 9.21)

§ 91.28 DISTURBING THE PEACE.

(A) *Habitual barking.* It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least 5 minutes with less than 1 minute of interruption. The barking must also be audible off of the owner's or caretaker's premises.

(B) *Warrant required.* The Animal Control Officer or police officer shall not enter the property of the owner of an animal described in this section unless the officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in § 10.20, to search for and seize the animal. Penalty, see § 10.99

§ 91.29 IMMOBILIZATION OF DOGS.

For the purpose of enforcement of this subchapter, any peace officer, dogcatcher, or other person assisting a peace officer or dogcatcher may use a tranquilizer gun or other instrument for the purpose of immobilizing and catching a dog. (Prior Code, § 9.21)

§ 91.30 REGULATION OF DANGEROUS DOGS.

(A) *State Law Adopted.* The provisions of Minnesota Statutes 347.50 through 347.565 are adopted by reference and govern dangerous dogs in the City of Hastings.

(B) *Hearing Officer Decisions Final.* All decisions or impartial hearing officers appointed pursuant to M.S. 347.541 shall be final without any further right of administrative appeatl.

(C) *Quarantine.* Any dog that has bitten a person or is believed to have bitten a person shall immediately be impounded for at least 10 days and kept apart from other animals, under the supervision of a veterinarian, until it is determined whether the animal had or has a disease which might have been transmitted by the bite. The impounding may be done by the owner, under the supervision of a veterinarian, and need not be at a shelter designated by the city, but if it is not at the city designated shelter, the owner shall notify the City Animal Control Officer or the Police Department immediately and shall furnish proof in writing where the dog is being impounded. After

10 days, if it is determined the dog does not have a disease which might have been transmitted by the bite, it may be released upon approval of the Animal Control Officer or Police Department.

(1) Any dog which is not quarantined as required by this subdivision, is subject to immediate seizure by the city. Any person who fails to quarantine an animal as required by this section is guilty of a misdemeanor.

(2) Any dog which has been bitten or otherwise exposed by a rabid animal shall be humanely euthanized or quarantined for 6 months. A dog may be released from quarantine after 40 days if:

(a) The dog had been vaccinated for rabies at least 21 days and no longer than 1 year, before the bite;

(b) The dog has been re-vaccinated for rabies immediately after the bite. The 40-day period begins on the date of the re-vaccination;

(c) The required written report is sent to the Minnesota Board of Animal Health; and

(d) The owner of the dog notifies the city's animal control officer or Hastings Police Department before the dog is released from quarantine.

(3) The dog's owner is responsible for all costs incurred in confining, impounding, and disposing of any dog quarantined under this section. (Prior Code, § 9.21) Penalty, see § 10.99 (Ord. 2014-15, 3rd Series, Adopted 10-6-14)

§ 91.31 KENNELS.

No person, or combination of persons, shall keep or harbor more than 3 cats or dogs or combination thereof in excess of the age of 3 months on any parcel within the City of Hastings without first obtaining an annual kennel license from the City Clerk in accordance with this code. Provided, however, that this section shall not in any way limit or apply to small animal clinics holding a special use permit as provided for in Ordinance No. 23, Second Series. Violation of this section shall be deemed to be a misdemeanor, and in addition may be enforced by civil proceedings for a restraining order in a court of competent jurisdiction. (Prior Code, § 9.21) (Am. Ord. 499, passed 8-4-2003) Penalty, see § 10.99

Cross-reference:

Additional regulations on kennels, see § 110.17

§ 91.32 EUTHANASIA OF ANIMALS.

In the event it becomes necessary to destroy a dog or other animal under this subchapter or any other applicable law or regulation, the owner thereof shall be responsible for and pay to the city the

city's cost for storage and the euthanasia of the animal. This section may be enforced by the city by appropriate civil action. (Prior Code, § 9.21)

§ 91.33 CRUELTY TO ANIMALS.

(A) The word ***ANIMAL*** includes every living creature except the human race; the word ***TORTURE*** or ***CRUELTY*** meaning every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death shall be caused or permitted.

(B) No person shall overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when unfit for labor, whether belonging to himself or herself or another.

(C) No person shall deprive any animal of which he or she has charge or control of necessary food, water, or shelter.

(D) No person shall abandon any animal.

(E) No person shall allow any maimed, sick, infirm, or disabled animals to lie in any street, road, or other public place.

(F) No person shall willfully set on foot, instigate, or in any way further any active cruelty to any animal or animals, or any act tending to produce the cruelty. (Prior Code, § 9.21) Penalty, see § 10.99

(G) Tethering:

a). No person shall leave an animal unattended while chained, tied, fastened or otherwise tethered for a period of time or to the extent that the animal is deprived of adequate food, water, or shelter.

b). No person shall tether an animal as a primary means of confinement. Stationary confinement by tethering shall be considered cruel treatment.

c). A single animal may be attached to a cable line or trolley system if the system allows the animal adequate access to food, water, and shelter with freedom to move, lie down, and access shelter.

(Ord. 2014-02, 3rd Series, adopted 1-21-14)

§ 91.34 REMOVAL OF DOG WASTE.

(A) It is unlawful for any person to allow or permit a dog to be on any public property or private property, not owned or possessed by that person, unless that person is in immediate possession of

equipment to remove and carry dog feces to a proper receptacle located on property owned or possessed by that person.

(B) It is unlawful for any person having custody or control of a dog to fail to pick up any feces of the dog and dispose of them in a proper receptacle located on property owned or possessed by the person.

(C) The provisions of this section shall not apply to the ownership or use of service dogs or dogs used in police or rescue activities. (Prior Code, § 9.21) Penalty, see § 10.99

§ 91.35 TEMPORARY KEEPING OF GOATS FOR CONTROL OF INVASIVE SPECIES AND OTHER WEED CONTROL PURPOSES

(A) *Purpose*: The purpose of this section is to establish conditions under which the temporary and periodic use of limited number of goats for invasive species and other weed control is permitted in the A – Agriculture, I -1 Industrial Park, and PI – Public Institution Zoning Districts, and to establish requirements for doing so to protect the health, safety, and welfare of the general population.

(B) *Requirements for Temporary Keeping of Goats for Invasive Species or Other Weed Control*

(1) Properties must be at least 1.5 acres in size.

(2) Goat containment fences shall be set back a minimum of 100 feet from any residence.

(3) Temporary Use of goats shall not exceed two thirty day periods in any 12-month period.

(4) The goats must be contained by an adequate containment fence at all times. If an electric fence is used it must display a warning that the fence is electric.

(5) All goat waste material must be removed so as to not cause a public nuisance.

(6) The property must be maintained in a clean, sanitary condition so as to be free from offensive odors, fly breeding, dust, and general nuisance conditions.

(7) Goats shall not be allowed on a vacant lot.

(8) Habitual Bleating. It shall unlawful for any person to keep or harbor a goat which habitually bleats. Habitual bleating is defined as bleating for repeated intervals of at least 5 minutes with less than 1 minute of interruption. The bleating must also be audible off of the owner's or caretaker's premises.

(9) The City shall have no liability for any damage that may be caused by goats kept on a property pursuant to this section. Property owners and permittees under this section shall be jointly and severally liable for any damage that may be cause by the goats kept pursuant to a permit issued under this section.

(C) *Permit Required*

(1) No person shall own, harbor, keep or maintain temporarily or otherwise goats on their property within the City without first obtaining a Temporary Goat Permit by the City of Hastings.

(2) The permit shall allow the permit-holder to temporarily have goats on their property for up to 30 days for the purpose of invasive species or other weed control on their property.

(3) A person may be issued no more than two such permits per property in any 12-month period.

(4) Applications shall be made to the Community Development Department for review and approval.

(5) Applicants shall provide the following information on the permit application:

(a) Name, address, and contact information of the permit applicant.

(b) Address and description of the property where the goats will be temporarily kept.

(c) Description of the type of invasive species or weed control problem on the property.

(d) Name, address, and contact information of the property owner and person or entity providing the goats.

(e) Site plan showing where on the property the goats will be temporarily kept, including a plan and description of the fencing that will be sued to keep the goats on the property.

(f) A plan to dispose of goat manure in a safe and adequate manner with removal of waste within 24 hours.

(g) Proposed number of goats. The number of goats allowed per permit shall be determined based on the size of the area where goats will be kept.

(6) No permit shall be issued until the City reviews the application and inspects the property and determines that the applicant has complied with the requirement of this section.

(7) The applicant shall be the property owner or tenant with written consent of the property owner.

(8) Written permission from a Homeowner's Association, if applicable or a statement by the applicant that keeping goats on the property is consistent with any Homeowner's Association Bylaws or Rules.

(9) The permit shall be issued if the applicant is delinquent in paying of any taxes, assessments, forfeitures, or fines for violations of City ordinances, utility bills, or other claims owed to the City.

(D) *Permit Fee.*

(1) Application and Permit fee shall be in the amount established by City fee schedule.

(2) Permit fees shall not be prorated or refundable.

(E) *Inspection and Enforcement*

(1) The Hastings Police Department, Animal Control Officer, or their designees shall have the power, whenever they may deem reasonably necessary, and consistent with the requirements of statutory and constitutional law, to enter a building, structure, or property related to a permit under this section to inspect and ascertain whether the license holder is in compliance with this chapter. The above listed departments may issue compliance orders and citations pursuant to the provisions of this chapter, this code and state law. The inspecting party shall have recourse to every remedy provided by law to secure entry, including the right to secure a proper inspection warrant.

(2) The City may revoke a permit at any time if the permittee does not follow the terms of the permit or this section, or if the City finds that the permit holder has not maintained the goats, fences, or outdoor enclosures in a clean and sanitary condition.

(F) *Other Methods Not Excluded.* The requirements and remedies provided under this section are not exclusive and may be used in combination with each other or with any other section of this code or applicable state statute.

(G) *Severability.* If any provision in this section, or portion thereof, is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

(I) *Violation and Penalty.* Every person who violates a section or division of this chapter by performing an act thereby prohibited or declared unlawful, or by failing to do an act hereby required, or when the person fails to act when the failure is thereby prohibited or declared unlawful, shall upon conviction be punished as for a misdemeanor.

CHAPTER 92: RENTAL HOUSING

Section

§ 92.01 CRIME FREE MULTI-HOUSING PROGRAM; PROSPECTIVE TENANT BACKGROUND CHECKS.

(A) Any owner or resident manager of rental property who has completed Phase 1 of the Minnesota Crime Free Multi-Housing training program and is actively working toward full certification, may request the Police Department to conduct a criminal history/background investigation of a prospective residential tenant as provided under division (B) below. The requests shall be on a form approved by or provided by the Police Department and shall be accompanied by the investigation fee established by resolution of the City Council.

(B) The Police Department may conduct criminal history/background investigations on prospective tenants of residential rental property within the City of Hastings upon request of the owner or resident manager of the property as provided in division (A). The landlord must present a consent/waiver signed by the perspective tenant on a form approved by the Police Department. No investigation shall be conducted and no information shall be disseminated unless the landlord presents the required signed consent/waiver. (Prior Code, § 9.09) (Ord. 2011-21, 3rd Series, adopted 9-19-11)

CHAPTER 93: FIRE PREVENTION AND PROTECTION

Section

Uniform Fire Code

Fire Alarm Systems and Installations

UNIFORM FIRE CODE

§ 93.01 ADOPTION OF THE MINNESOTA UNIFORM FIRE CODE.

The 2007 Edition of the Minnesota Uniform Fire Code is hereby adopted by the City of Hastings for the purpose of prescribing regulations governing conditions hazardous to life and property from fire and explosion, except those portions that are deleted or amended by § 93.06. One copy of the Minnesota Uniform Fire Code in effect within the City of Hastings shall be on file in the office of the City Clerk. (Prior Code, § 9.82) (Am. Ord. 2007-03, 3rd Series, passed 8-6-2007)

§ 93.02 ESTABLISHMENT OF DUTIES OF THE BUREAU OF FIRE PREVENTION.

(A) The Minnesota Uniform Fire Code shall be enforced by the Bureau of Fire Prevention in the Fire Department of the City of Hastings which is hereby established and which shall be operated under the supervision of the Fire Chief.

(B) The Fire Marshal in charge of the Bureau of Fire Prevention shall be appointed by the Hastings City Council on the basis of examination to determine his or her qualifications.

(C) The Fire Chief may appoint the members of the Fire Department as inspectors as shall from time to time be necessary. The Fire Chief shall recommend to the Hastings City Council the employment of technical inspectors, who, when the authorization is made, shall be selected through an examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the Fire Department, and appointments made after examination shall be for an indefinite term with removal only for cause. (Prior Code, § 9.82)

§ 93.03 DEFINITIONS.

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

CHIEF OF THE BUREAU OF FIRE PREVENTION. Fire Marshal.

CORPORATION COUNSEL. Whenever used in the Minnesota Uniform Fire Code, it shall be held to mean the attorney for the City of Hastings.

JURISDICTION. Whenever used in the Minnesota Uniform Fire Code, it shall be held to mean the City of Hastings. (Prior Code, § 9.82)

§ 93.04 ESTABLISHMENT OF LIMITS OF JURISDICTION IN WHICH STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS IN OUTSIDE, ABOVE-GROUND TANKS IS PROHIBITED.

(A) The storage of flammable or combustible liquids in outside above-ground storage tanks is prohibited in all areas within the city except for the following zoning districts: I-1 Industrial Park and I-2 Industrial Park Storage/Services. Allowed storage shall be limited to Class I, Class II, and Class III liquids as defined in the Minnesota State Fire Code (MSFC). Allowed storage shall be for the sole purpose of fleet fueling. Resale of product from allowed tanks is prohibited.

(B) Installation and maintenance of above-ground storage tanks shall comply with current editions of the Minnesota State Fire Code, National Fire Protection Agency (NFPA), and the Minnesota Pollution Control Agency rules and regulations.

(C) The maximum storage capacities for above-ground tanks shall not exceed 2,000 gallons for Class I liquids and 10,000 gallons for Class II and Class III liquids.

(D) No installation of outside above-ground storage tanks may occur without the prior approval of the Fire Chief and the Fire Marshal and issuance of a fire code permit issued by the Office of the Fire Marshal. (Prior Code, § 9.82) (Ord. 2008-14, 3rd Series, passed 10-20-2008) Penalty, see § 10.99

§ 93.05 ESTABLISHMENT OF LIMITS IN WHICH STORAGE OF LIQUEFIED PETROLEUM GASES ARE TO BE RESTRICTED.

(A) Liquefied petroleum gases may be stored in industrial parks for uses by industry located therein, but any such use shall comply with the following. The storage facility shall be diked, mounded, buried, or in the alternative protected with at least a 1-hour fire retardant material with the approval of the Fire Chief or Fire Marshal or his or her authorized representative. Any storage facilities that are mounded or buried shall be coated with an approved coating and shall have devices installed on the facility so that the tank or tanks can be tested periodically for corrosion and durability.

(B) Liquefied petroleum gases may be stored and dispensed in Zone C-4 according to the city's Zoning Code, for the purpose of resale, when approved by the Fire Chief or the Fire Marshal. Any such use shall comply with the Minnesota State Fire Code and the National Fire Protection Association (NFPA) Pamphlet 58. Additionally, any such use shall comply with the following:

(1) Liquefied petroleum storage containers having a water capacity of 2.7 pounds or greater shall be limited to 1 container.

(2) The liquefied petroleum storage container shall be no larger than 1,000 U.S. liquid gallons.

(3) The fill/transfer site shall be visible from a constantly attended location within the facility.

(4) There shall be a minimum of 2 certified operators on the property at any time the transfer of liquefied petroleum is in progress.

(5) A distance of not less than 75 feet shall be maintained from the storage and dispensing operation area to any adjacent structure or any public roadway.

(6) A distance of not less than 25 feet shall be maintained from the storage and dispensing operation area to any property line.

(7) Any storage of liquefied petroleum products must have written approval by the owner of said property.

(8) Containers to be filled shall not be left on site for filling at a later time.

(9) Sales of liquefied petroleum containers shall be restricted to new certified containers only.

(10) Transfer operators shall exercise precaution to ensure that the liquefied petroleum gases transferred are those for which the transfer system and the containers to be filled are designed.

(11) Injection of compressed air, oxygen, or any oxidizing gas into containers to transfer liquefied petroleum shall be prohibited.

(12) Containers shall be filled only after determination that they comply with the design, fabrication, inspection and marking for use with liquefied petroleum gas.

(13) Containers authorized as "single trip," "nonrefillable," or "disposable" containers shall not be refilled with liquefied petroleum gas.

(C) *Operation of transfer systems.*

(1) Sources of ignition shall be turned off during transfer operations, while connections or disconnections are made, or while liquefied petroleum gas is being vented to the atmosphere.

(2) Internal combustion engines within 15 feet of a point of transfer shall be shut down while such transfer operations are in progress.

(3) *Exception.* Engines of liquefied petroleum gas cargo tank vehicles constructed and operated for the purpose of driving transfer pumps or compressors on these vehicles to load and unload liquefied petroleum gases.

(4) Smoking, open flame, metal cutting or welding, portable electrical tools and/or appliances, and extension cords and or lighting capable of igniting liquefied petroleum gas shall not be permitted within 25 feet of a point of transfer while transfer operations are in progress. Materials that have been heated above the ignition temperature of liquefied petroleum gas shall be cooled before that transfer is started.

(5) Sources of ignition shall be turned off during the filling of any liquefied petroleum container on the vehicle.

(6) Transfer of liquefied petroleum gas shall only occur outdoors.

(D) *Venting liquefied petroleum gas to the atmosphere.*

(1) Liquefied petroleum gas, either liquid or vapor form, shall not be vented to the atmosphere.

(2) *Exception.* Venting of liquefied petroleum gas between shutoff valves before disconnecting the liquid transfer line from the container. Where necessary, bleeder valves shall be used.

(3) Venting of liquefied petroleum gas indoors shall be prohibited.

(4) *Exception.* Structures designed and constructed for liquefied petroleum gas transfer.

(E) *Vehicle impact protection.*

(1) Guard posts shall comply with all of the following requirements:

(a) Constructed of steel not less than 4 inches in diameter and concrete filled.

(b) Spaced not more than 4 feet between posts on center.

(c) Set not less than 3 feet deep in a concrete footing of not less than a 15-inch diameter.

(d) Set with the top of the posts not less than 3 feet above ground.

(e) Located not less than 3 feet from the protected object.

(2) Physical barriers shall be a minimum of 36 inches in height and shall resist a force of 12,000 pounds applied 36 inches above the adjacent ground surface.

(F) *Fire protection.* The liquefied petroleum transfer station shall be provided with at least one approved portable fire extinguisher having a minimum rating of 4A 60BC. The required fire extinguisher shall be located no more than 50 feet from the storage area. This required fire extinguisher shall be accessible at all times.

(G) Liquefied petroleum gases may not be stored in any area other than industrial parks and Zone C-4 (as provided by division (A) above) except that in non-dense residential areas where natural gas is not available, with approval of the Fire Chief or his or her designate, liquefied

petroleum gas storage may be used as is necessary to service a residence or commercial operation. Under no circumstances may liquefied petroleum gases be stored in densely populated residential areas. Whenever allowed in sparsely populated residential areas because of the unavailability of natural gas, the storage facility shall be diked, mounded, buried or protected with at least 1-hour fire retardant material with the approval of the Fire Chief or his or her authorized representative. Any storage facilities that are mounded or buried shall be coated with an approved coating and shall have devices installed on them so the tank or tanks can be treated periodically for corrosion and durability.

(H) Temporary use of liquefied petroleum as an energy source during construction shall be allowed only when approved by the Fire Chief or Fire Marshal and then in accordance with the restrictions as may be imposed by the Fire Chief or Fire Marshal or his or her representative to assure safe operation. (Prior Code, § 9.82) (Am. Ord. 564, 2nd Series, passed 5-7-2007) Penalty, see § 10.99

§ 93.06 AMENDMENTS MADE IN THE MINNESOTA UNIFORM FIRE CODE.

(A) It is unlawful to park any vehicle or to locate any obstruction in an area designated as a fire lane, whether the fire lane is adjacent to a public or private structure or property.

(B) The Fire Chief or his or her representative may review all building plans, except plans for single- or 2-family residences to assure compliance with the provisions of the Minnesota Uniform Fire Code and he or she shall note any violations discovered in connection with the proposed structures to the persons as may be charged with the responsibility for review of the plans.

(C) Section 10.402(c) of the Minnesota Uniform Fire Code shall be amended to read as follows:

FIRE DOOR
DO NOT OBSTRUCT
or
FIRE DOOR
KEEP CLOSED

(D) Article 4 of the Uniform Fire Code, 1982 Edition, titled "Permits and Certificates" is adopted in its entirety and incorporated as fully as if set out herein, as it may be amended from time to time.

(E) Each permit issued by the Fire Department, pursuant to the Minnesota Uniform Fire Code, shall be issued for a 1-year period unless otherwise provided in this section. The yearly permit fee for the permit shall be $20, provided, however, that if more than 1 permit is required for the establishment, the maximum permit fee shall be $30 per year. Further provided that tank installation permits shall be valid until revoked by the Fire Chief or his or her designee and the permit fee shall be $25 per installation, (not per tank). Permits issued for a period of less than 10 days shall require a fee of $10. Permit fees may be reviewed and until otherwise directed by the Council by resolution, the permit year shall be the calendar year. Pro rata adjustments, on a monthly basis, shall be made for permits for less than 1 full year. Except for tank installation permits and short term permits for less than 10 days, all permits shall expire on the last day of December of each calendar year. The

Fire Chief shall establish procedures and forms to carry out the intent of this section.

(F) The Chief and members of the Fire Prevention Bureau shall have the powers of a police officer in performing their duties under this code. (Prior Code, § 9.82) Penalty, see § 10.99

§ 93.07 ESTABLISHMENT OF RESTRICTIONS ON THE USE OF BARBECUES.

(A) In any structure containing 3 or more dwelling units, no person shall kindle, maintain, or cause any fire or open flame on any balcony above ground level, or on any ground floor patio within 15 feet of any structure.

Exceptions:

1. Residential occupancies where all units have private direct ingress and egress to exterior of the structure and no use of common means of egress (examples hallways or stairways used by separate occupancies).

(B) No person shall store or use any fuel, barbecue, torch, or other similar heating or lighting chemicals or devices in the locations designated in § 93.07 (A).

(C) Electric grills or gas-fired barbecue grills which are permanently mounted, wired, or plumbed to the building's gas supply or electrical system and maintaining a minimum clearance of 18 inches on all sides may be installed on balconies and patios when approved by the Fire Chief. (Prior Code, § 9.82) Penalty, see § 10.99, (Ord. No. 2013-03, 3rd Series, passed on 6-3-13)

§ 93.08 NEW MATERIALS, PROCESSES, OR OCCUPANCIES WHICH MAY REQUIRE PERMITS.

The City Administrator, the Chief, and the Chief of the Bureau of Fire Prevention shall act as a committee to determine and specify, and for giving affected persons an opportunity to be heard, any new materials, processes, or occupancies for which permits are required in addition to those now enumerated in the code. The Chief of the Bureau of Fire Prevention shall post the list in a conspicuous place in his or her office, and distribute copies thereof to interested persons. (Prior Code, § 9.82)

§ 93.09 ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH STORAGE OF EXPLOSIVE AND BLASTING AGENTS IS TO BE PROHIBITED.

It is the intent of this subchapter to prohibit storage of explosives and blasting agents in the city and to require that any such explosive and blasting agents to be removed from the city for storage. (Prior Code, § 9.82)

§ 93.10 APPEALS.

Whenever the Chief 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 to the Board of Appeals established pursuant to the State Building Code and a provision of the City Code regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, and maintenance of all buildings and/or structures in the city. (Prior Code, § 9.82)

§ 93.11 EFFECTIVE DATE.

This subchapter shall take effect upon its passage and publication. (Prior Code, § 9.82)

§ 93.20 PURPOSE.

The purpose of this subchapter shall address the application, installation, performance and maintenance of fire alarm systems in new and existing buildings and structures not required by other codes as adopted by the city. (Ord. 565, 2nd Series, passed 5-7-2007)

§ 93.21 DEFINITION.

For the purpose of this subchapter, ***FIRE ALARM SYSTEM*** will have the same definition as contained in Minnesota State Fire Code (MSFC) 2000 Edition [National Fire Protection Association (NFPA) Standard 72]. (Ord. 565, 2nd Series, passed 5-7-2007)

§ 93.22 WHEN REQUIRED.

(A) A fire alarm system shall be installed in the following:

(1) Any building, which has mixed occupancies when one of the occupancies is residential.

(2) *Exception.*

(a) A building where all required components of egress are on the level of exit discharge and acceptable occupancy separation exists which complies with the Minnesota State Fire Code.

(b) A building protected throughout by a supervised automatic fire suppression system, as approved by the Fire Marshal.

(c) A home occupation business where the business owner is also the primary resident.

(B) Any building when required under the International Building Code or the International Fire Code. (Ord. 565, 2nd Series, passed 5-7-2007) Penalty, see § 10.99

§ 93.23 PERMIT REQUIRED.

No person shall install a Fire Alarm System, as defined in this section, without first obtaining a permit from the City of Hastings.

(B) *Exception.* Individual R-3 (one and two family residential dwellings) occupancies, as stated in the Minnesota State Fire Code. Residential occupancies where the occupants are primarily permanent in nature and there is no mixed-use classification of the building. (Ord. 565, 2nd Series, passed 5-7-2007) Penalty, see § 10.99

§ 93.24 PERMIT APPLICATION.

The application for a permit for the installation of a Fire Alarm System shall be made on a form approved by the City Council to the city's Department of Building Safety and shall include:

(A) The name, address and phone number of the applicant;

(B) The address of the proposed location for the Fire Alarm System to be installed;

(C) The name, address and phone number of the architect/designer and installer of the proposed fire alarm system;

(D) Site plan showing location of detection and audio/visual alarm device;

(E) Floor plan showing alarm control panel and trouble signaling equipment location;

(F) Manufacturers, model numbers and listing information for equipment, devices and materials;

(G) Any other information deemed necessary by the Hastings City Council. (Ord. 565, 2nd Series, passed 5-7-2007) Penalty, see § 10.99

§ 93.25 INSTALLATION.

Automatic fire detectors shall be installed in common laundry rooms, boiler and furnace rooms, mechanical and electrical rooms, commercial and retail spaces, storage spaces, trash-collection rooms,

workshops, locker rooms and basements. In addition, all components of egress such as corridors, common areas, hallways and stairways shall also be protected by installation of automatic fire detectors.

(A) All automatic fire detectors shall be connected to the building fire alarm system and shall sound the fire alarm signal when activated.

(B) Single station smoke detectors as required by the International Fire Code shall be used in dwelling spaces and sleeping rooms.

(C) Horn/strobe annunciation devices shall be provided in all dwelling spaces, retail spaces, basements and all egress areas.

(D) Fire alarm control panels shall be located in an area accessible to Fire Department personnel.

(E) Access to building and dwelling spaces shall be provided to Fire Department personnel by keys installed in an approved key box.

(F) Fire alarm systems required by this section shall be monitored by an approved central, proprietary or remote station service.

(G) *Maintenance, repair and testing.* Maintenance, repair and testing shall be conducted and performed as outlined in the Minnesota State Fire Code. (Ord. 565, 2nd Series, passed 5-7-2007) Penalty, see § 10.99

§ 93.26 FIRE DEPARTMENT KEY BOX.

Any building with a fire alarm system as required by this section shall be equipped with an approved key box. This key box shall be installed in a location approved by the Fire Marshal. This key box shall contain keys providing access to all areas of the building. An application to purchase a key box can be obtained through the Hastings Fire Marshal. (Ord. 565, 2nd Series, passed 5-7-2007) Penalty, see § 10.99

§ 93.27 KEY HOLDER.

The Hastings Fire Department shall maintain a list of key holders. This list shall contain a minimum of 3 valid key holders that can respond to the building when requested by the Fire Department. This list of key holders will be shared with the following agencies: the Hastings Police Department and the Dakota County Sheriff's Office. This key holder list will not be shared with any other agencies or individuals. Once the fire alarm system is operable, it shall be the responsibility of the building owner to inform the Fire Department of any key holder changes. (Ord. 565, 2nd Series, passed 5-7-2007) Penalty, see § 10.99

§ 93.28 EFFECTIVE DATE.

(A) All new construction structures that meet the intent of this ordinance where building permits were issued on or after May 31, 2007.

(B) All existing structures that meet the intent of this ordinance effective May 31, 2011. (Ord. 565, 2nd Series, passed 5-7-2007; Am. Ord. 2008-15, 3rd Series, passed 12-1-2008)

§ 93.30 PROPANE CYLINDER EXCHANGE OPERATIONS

(A) Propane cylinder exchange operations shall be allowed subject to the following requirements:

(1) The sale of propane exchange cylinders shall be allowed only within areas of the C-3 Zoning District located south of 10th Street and all areas of the C-4 Zoning District of the City.

(2) A site plan shall be submitted to the Fire Marshal for approval, indicating size of cage, location as well as separation distances.

(3) Only one exchange cabinet per business/property with a maximum capacity of 18 20-pound propane cylinders.

(4) Exchange cabinet must be stored outdoors and on property owned/leased by occupant.

(5) If the property is leased, written authorization from property owner must be obtained prior to approval.

(6) No smoking signs shall be posted on the exchange cage and within 25 feet of the surrounding area.

(7) Propane cage shall not be located within 20 feet of any doorway or opening in a building, within 20 feet of a motor vehicle fuel dispenser or within 20 feet of any combustible material.

(8) The propane cage shall be designed so that containers cannot be stacked on top of each other and designed so that containers are positioned upright with the pressure-relief valve in direct communication with the vapor space of the container.

(9) Cylinder outlet valves shall be closed and plugged when in storage.

(10) Defective containers or containers showing denting, bulging or excessive corrosion shall be immediately removed from service and properly disposed.

(11) Exchange cabinets are not allowed on public property.

(12) Exchange cabinet is the only place acceptable for the storage of propane cylinders.

(13) Business owner shall supply the city a key holder list with a minimum of three individuals who can respond 24/7 within 20 minutes of being contacted. It shall be the owner's responsibility to maintain this key holder list and provide any updates to the city in a timely manner. In

addition, a sign listing exchange procedures, company name and a 24 hour emergency phone number shall be posted within 10 feet of the cage.

(14) Signs requiring that customers leave LPG containers outside the building shall be posted on the building entrance(s). The signs shall read "DO NOT BRING LP-GAS CYLINDERS INTO THE BUILDING." The lettering must be a minimum 1" in height with a minimum stroke of 1/4 inch.

(15) All employees with access to the exchange cage shall be trained in the proper handling and operating procedures, including the procedure for handling defective containers. Documentation of this training shall be provided to a fire department representative upon request.

(16) A minimum of one 2A20BC fire extinguisher shall be located within 50 feet, but not less than 25 feet from the propane cage.

(17) An approved NFPA 704 hazard identification sign/placard shall be posted on the cage. This sign/placard shall be a minimum one foot square.

(18) The Fire Marshal has the authority to require vehicular barrier protection.

(Ord. No. 2015-03, 3rd Series, passed 2-17-15)

§ 93.98 VIOLATIONS.

Every person violates a section, subdivision, paragraph or provision of this chapter when he or she perform an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor.
(Ord. 565, 2nd Series, passed 5-7-2007) Penalty, see § 10.99

CHAPTER 94: PARKS AND RECREATION

Section

§ 94.01 DEFINITION.

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

PARK. A park, playground, swimming pool, lake, pond, stream, trail, nature area, open space area, or recreational center, including adjacent parking areas, owned or operated by the city. (Prior Code, § 9.84)

§ 94.02 PARK CURFEW.

It is unlawful for unauthorized persons or vehicles to enter or remain in parks between the hours of 10:00 p.m. and 6:00 a.m. except for Veterans Athletic Complex, where it is unlawful for unauthorized persons or vehicles to enter or remain in the complex between the hours of 11:00 p.m. and 6:00 a.m. (Prior Code, § 9.84) Penalty, see § 10.99 (Ord. No. 2014-08, 3rd Series Adopted 4-21-14)

§ 94.03 AUTHORIZED PERSONS.

All persons are authorized persons if:

(A) A participant in, or bona fide spectator at, an activity at an indoor ice arena, lighted tennis court, or a city-sponsored and supervised activity;

(B) Participating in an activity sponsored by an individual or group association to whom the city has issued a written permit;

(C) Custodial or maintenance personnel performing their official duties. (Prior Code, § 9.84)

§ 94.04 GLASS BEVERAGE CONTAINERS PROHIBITED.

It is unlawful for any person to bring into, use, or discard, in any city park, any glass beverage containers, including but not limited to pop, beer, and water bottles, drinking glasses, and drinking cups. (Ord. 486, passed 2-3-2003) Penalty, see § 10.99

§ 94.05 ADDITIONAL UNLAWFUL ACTS.

It is unlawful in any park for any person to:

(A) Build or maintain a recreational fire in any park except in places or facilities provided;

(B) Drive or operate any motorized vehicle of any type whatsoever in any area of a park other than parking lots and designated roadways, it being specifically prohibited hereby to operate any motorized vehicles on any bicycle path, hiking trail, or walkway;

(C) It is unlawful for any person to consume or be in possession of intoxicating liquor in any City park at any time. It is unlawful for any person to consume or be in possession of intoxicating malt liquor, wine or 3.2% malt liquor, wine or 3.2% malt liquor in any City park between the hours of 10:00 p.m. and 8:00 a.m.; the following provisions also apply:

(1) Veterans Athletic Complex where possession or consumption of intoxicating liquor is prohibited at all times, however; wine or intoxicating malt liquor shall be permitted between the hours of 8:00 a.m. and 11:00 p.m.

(2) Special Events in any City park; sales, possession or consumption of intoxicating liquor is prohibited at all times, however; wine or intoxicating malt liquor shall be permitted between 8:00 a.m. and 11:00 p.m. when such sales, possession and consumption are in conjunction with the issuance of a temporary on-sale wine and beer liquor license issued to a qualified entity as part of a community wide festival; such sale, possession and consumption is in a confined area approved by the City Council; and in compliance with all other conditions the council reasonably deems necessary to protect the public health, safety and welfare. (Ord. 2012-04, 3rd Series, passed 4-16-2012) (Ord. 2014-09, 3rd Series, passes on 4-21-14)

(D) Commit any nuisance or any offense against decency or public morals;

(E) Paste, affix, or inscribe any handbill or poster on any structure or property on any place, square, or roadway surrounding a park;

(F) Disturb or interfere with any birds, animals, animal habitat, or nesting area in a park;

(G) Sell or offer for sale any articles, food, or beverage without a permit, lease, or concession granted by the city;

(H) Allow his or her unleashed cat or dog to be in any city park or field to pick up animal waste as required by § 91.34;

(I) Write upon or mark or deface in any manner, or use in any improper way any property or thing pertaining to or in a park;

(J) Refuse to obey all orders or directions of authorized city personnel;

(K) Break, cut, mutilate, injure, remove, or carry away any tree, plant, flower, shrub, rock, soil, sand, fence, benches, tables, or any other city property;

(L) Schedule and hold large gatherings without a written permit from the city;

(M) Be in possession of any explosive, bow and arrow, or other similar device; provided, however, that nothing herein contained shall prohibit the discharge of fireworks by an organization

or group of organizations authorized in writing by the City Council; or Ord. No. 2011-12, 3rd Series, passed 06-06-11

(N) Engage in any on-sale 3.2% intoxicating malt liquor, 3.2% malt liquor or wine in the Veterans Park Athletic Complex without first obtaining the necessary license from the City. (Prior Code, § 9.84)

(O) Set up any tent, temporary shelter, camp trailer, concession wagon or horse trailer without written permission from the Director of Parks and Recreation.

(P) Discharge any pollutants into any body of water in any park. Penalty, see § 10.99

§ 94.06 SPECIAL REGULATIONS FOR LAKE REBECCA PARK.

Notwithstanding anything herein contained to the contrary, it shall be unlawful for any person to do any of the following acts or things in Lake Rebecca Park:

(A) Operate any type of motor powered boat upon Lake Rebecca except that electric powered boats shall be allowed;

(B) Suffer or permit any dog, cat, or other pet whatsoever within the beach area of Lake Rebecca;

(C) Bring into, be in possession of, or use any glass beverage containers, whatsoever; and/or

(D) The feeding of waterfowl within Lake Rebecca Park is prohibited. (Prior Code, § 9.84) Penalty, see § 10.99 (Ord. No. 2014-09 3rd Series, Adopted 4-21-14)

§ 94.98 VIOLATIONS.

Every person who violates a section or division of this chapter by performing thereby prohibited or declared unlawful, or by failing to do an act hereby required, or when the person fails to act when the failure is thereby prohibited or declared unlawful, shall upon conviction be punished as for a misdemeanor. (Prior Code, § 9.84) (Am. Ord. 554, 2nd Series, passed 5-15-2006) Penalty, see § 10.99

CHAPTER 95: HEALTH AND SAFETY; NUISANCES

Section

§ 95.01 OBSTRUCTION.

It is unlawful for any person to oppose or obstruct any health officer or physician charged with the enforcement of health laws, in performing any legal duty, or obstruct or hinder the entry of the health officers upon premises or into buildings or other places where contagion, infection, filth, or other source or cause of preventable disease exists or is reasonable suspected to exist. (Prior Code, § 9.02) Penalty, see § 10.99

§ 95.02 TOILET INSTALLATION REQUIRED.

It is the duty of every owner or occupant of any property within the city, having a dwelling house or business building situated thereon, which property is within 500 feet of any municipal water and sewer mains, to install a toilet in the dwelling or business building and make connection thereof with the water and sewer mains. Whenever the non-compliance of the owner or occupant of the property is reported to the Building Official, he or she shall forthwith make the investigation as he or she deems necessary or proper and report his or her findings to the Council. If the Building Official or designee finds and reports that in his or her opinion the lack of toilet facilities is an unhealthful or unsanitary condition, the city shall forthwith serve written notice upon the owner or occupant requiring the installation of toilet facilities upon premises described in the notice, and connection thereof with the sewer and water mains, all of which shall be done within 30 days after service of the written notice. Whenever any owner or occupant shall default in compliance with the written notice, the Council may by resolution direct that a toilet be installed and connection made with the water and sewer mains and that the actual cost of the installation be paid in the first instance out of the General Revenue Fund, and assessed against the property so benefitted. After the installation and connection is completed by order of the Council, the city shall serve a written notice of intention to make an assessment therefore. If the assessment is not paid within 10 days the city shall certify the amount thereof to the County Auditor in the same manner as with other special assessments, provided that the Council may be resolution provide that the assessment be spread over a term of 3 years upon written request by the owner of the property. (Prior Code, § 9.08) Penalty, see § 10.99

§ 95.03 DISPLAY OF ADDRESS IDENTIFICATION NUMBERS.

(A) *Purpose.* It is determined by the City Council that the general welfare and public safety will be served by requiring assigned address identification numbers to be placed on all residential, commercial, and industrial buildings in the city.

(B) *Requirements.* The owners of all residential, commercial, or industrial buildings in the city shall affix the assigned address identification numbers to the front of the building. When a building is occupied by more than 1 dwelling unit, business, or industry, each entrance shall display the address identification number.

(C) *Placement.* All assigned address identification numbers shall be affixed to the building so as

to be clearly visible at all times from the public street in front of the building when traveling in either direction.

(D) *Specifications.* Address identification numbers shall be at least 4 inches high, at least 1/2-inch wide and in Arabic numeral form. The color of the address identification numbers shall contrast with the color of the principal building.

(E) *Compliance.* All buildings existing on the effective date of this section shall be in compliance by 7-1-1989. All buildings presently under construction or constructed after the effective date of this section shall comply with this section before a certificate of occupancy is issued by the city.

(F) *Violations.* No property owner will be subject to prosecution for violating this section until after 2 written warnings, at least 1 week apart, have been sent to the owner by the city. Thereafter, any violations of this section shall be a petty misdemeanor. (Prior Code, § 9.33) Penalty, see § 10.99

§ 95.04 TREE DISEASES AND TREE THREATENING PESTS.

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

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

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

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

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

(5) Any other shade tree with an epidemic pest or disease. Pests include Emerald Ash Borer (*Agrilus Planipennix*) or other insect or microorganism that is harmful to trees; and

(6) All wood from shade trees with an epidemic pest, such as Emerald Ash Borer, shall be stored and/or moved only in accordance with state and federal guidelines.

(B) *Abatement of nuisance.* 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. The nuisance may be abated as provided in § 95.24.

(C) *Record of costs.* The City Clerk 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.

(D) *Unpaid charges.* On or before September 1 of each year, the City Clerk 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. (Am. Ord. 2010-07, 3rd Series, passed 4-5-2010) Penalty, see § 10.99

§ 95.06 ALARM SYSTEM PERMIT.

(A) *Purpose*. The City of Hastings supports the use of alarm systems to protect life and property. It is the purpose of this ordinance to provide incentive to owners of alarm systems to have properly working systems to effectively perform as intended; to reduce the number of false alarms which result in city services being used to respond to unnecessary alarms; and to provide added benefit to property owners by maintaining up to date information relating to alarm systems.

(B) *Definitions*. For the purposes of this section, the following words and phrases shall have the meanings set forth in this subsection except where the context clearly indicates that a different meaning is intended:

ALARM COMPANY. The business of any individual, partnership, corporation, or other entity involved in the selling, leasing, maintaining, servicing; repairing, altering, replacing, moving, monitoring, or installing any alarm system at an alarm site located within the city or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved, or installed any alarm system in or on any building, structure, facility, or other alarm site located within the city.

ALARM REGISTRATION PERMIT. A permit issued by the Hastings Police Department to an alarm system owner as defined in this ordinance.

ALARM SYSTEM. Any assembly of equipment devices, including but not limited to systems interconnected with a radio frequency method such as cellular or private radio signal, arranged to emit or transmit a remote or local audible, visual or electronic signal, indicating an alarm condition to which the police or fire-fighting personnel are intended to respond, including but not limited to, burglary, holdup, panic, and fire alarm systems.

ALARM SYSTEM USER. A person, employee, firm, partnership, association, corporation, company, or other entity, which uses or is in control of an alarm system at an alarm site, regardless of whether the user owns or leases the alarm system.

ANNUNCIATOR. The instrumentality in or on the premises of an alarm system through which audible, visual and/or electric signals are communicated to any person.

AUTOMATIC DIALING DEVICE. A device which utilizes the public primary telephone trunk lines or other dedicated lines to select a predetermined or assigned telephone number and which

transmits, by a prerecorded voice message or code signal, to the Hastings Police Department or Hastings Fire Department, a message that an incident of the kind noted in the definition of "alarm system" has occurred.

DESIGNATED CONTACT PERSON. A person designated by the alarm system user as contact person for the purpose of alarm-related matters and who can provide for twenty four-hours-per-day availability and has the ability to control the alarm system.

FALSE ALARM, The activation of an alarm system which is intended to summon a police response or fire response by the alarm system, through intentional misuse; mechanical failure *or* malfunction; improper installation, maintenance or supervision; or negligence. The term does not include alarms caused by force majeure, or other conditions which are clearly beyond the control of the alarm user. Alarm systems must be equipped with a working battery backup system that will power the system in the event of a power outage. Alarms caused by a power outage lasting long enough to exhaust the battery back up will be reviewed on a case by case basis.

(C) Alarm system registration.

(1) *Permit required,. term.* Upon the effective date of this section, every alarm system user shall register each alarm system with the City of Hastings. Upon proper registration, an alarm registration permit will be issued which shall be valid for a one (1) year period and which will expire on December 31 annually provided a new permit issued on or after July 1 of any year shall be valid for the remainder of the current year plus the following year and shall expire on December 31 of the following year. Any alarm system user requesting renewal of a permit must apply for renewal at least thirty (30) days before the existing alarm permit expires.

(2) Permit; exemption.

(a) *Alarm registration; renewal.* Alarm system users operating alarm systems existing on the effective date of this section shall obtain an alarm registration permit within thirty (30) days after the effective date of this section. Alarm system users operating newly installed alarm systems shall obtain an alarm registration permit within thirty (30) days after the new alarm system is operational. Alarm system users more than sixty (60) days delinquent in renewing an existing alarm registration permit, and alarm system users more than ninety (90) days delinquent in obtaining a new alarm registration permit shall be charged and shall pay a late fee as set by ordinance,

(b) *Exemption.* An alarm system user which is a political subdivision of the federal or state government, including the County, City and school districts, shall not be subject to the provisions of this ordinance.

(3) *Application; requirements,* Any alarm system user registering an alarm system shall complete a registration application form which shall include, at a minimum, the following

information:

(a) Accurate and complete contact information for the alarm system user(s), designated contact person(s), and designated alarm company(ies), including names, addresses, and phone numbers;
(b) The physical address and location within the building where the alarm system is installed and maintained;
(c) The type and brand name of the alarm system installed and/or used;

(4) *Registration and issuance of permit.* Upon its receipt of a complete application and determination that all requirements of this section are met, the Hastings Police Department will issue an alarm registration permit to the alarm system user.

(5) Denial of registration permit. In the event an application for grant, issuance or renewal does not meet all the requirements of this section, the alarm registration permit shall not be issued. An alarm system user that is denied a permit may appeal the decision to the Board of Adjustment and Appeals as provided in § 30.02(C) of the City Code. The appeal must be in writing, must specify the grounds for the appeal, and must be submitted to the city clerk within ten business days of the decision that is the basis of the appeal.

(6) Alarm registration permit to be displayed. The alarm registration permit shall be conspicuously displayed upon the premises where the alarm system is located, and readily visible from the exterior thereof.

(D) Public nuisance; false alarms; operating without a permit; penalty.

(1) *Public nuisance.* It is hereby deemed to be a public nuisance for any alarm system user to maintain or have actual physical control over any alarm system that:

(a) Emits, by an annunciator, an audible or visual alarm system signal with more than twenty (20) minutes of continuous duration;
(b) Emits, through the reactivation of an annunciator of an alarm system, an audible or visual signal which occurs more than twice in a one-hour period; or
(c) Signals a false alarm.

(2) False alarms; fee schedule. An alarm system user operating an alarm system in violation of Subsections D(1)(a) or (b) by permitting a public nuisance shall immediately modify the alarm system components to abate the public nuisance. Any alarm system user found to be in violation of Subsection D(1)(c) by permitting a public nuisance shall be issued a warning for the first two (2) of such violations thereof within any calendar year. For each false alarm in excess of two (2) per calendar year, a fee shall be imposed on the alarm system user and immediately paid by the alarm system user to the City of Hastings. The fee shall be set by ordinance. Any fees not paid by the alarm system user within 30 days after a notice of delinquency is sent to the alarm system user may be certified to the county auditor in the county in which the alarm system user owns real property as provided in Minnesota Statutes §

366.012, or any amendments thereto, and the fees shall then be collected together with property taxes levied against the property owned by the alarm system user.

(3) Use of alarm system without an alarm registration permit; penalty. It shall be unlawful for an alarm system user to operate an alarm system without a current alarm registration permit issued for the alarm system under this section. When the Police or Fire Department respond to an alarm signal from an alarm system at a location for which there is no current alarm registration permit issued by the Police Department, the Hastings Police or Fire Department may issue a citation to the alarm system user for violation of this section. Alarm systems users who are more than sixty (60) days delinquent in renewing their alarm system registration permit shall be considered to be using an alarm system without an alarm system registration permit in violation of this section. Any person or responsible party who violates any provision of this ordinance is subject to the penalty as provided under § 10.99 of the City Code. Ord. 2011-6, 3rd Series, passed 4-18-11

§ 95.20 PUBLIC NUISANCE.

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

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

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

(C) Is guilty of any other act or omission declared by law or §§ 95.20, 95.21, or 95.22, or any other part of this code to be a public nuisance and for which no sentence is specifically provided. Penalty, see § 10.99

§ 95.21 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

(A) Exposed accumulation of decayed or unwholesome food or vegetable matter;

(B) All diseased animals running at large;

(C) All ponds or pools of stagnant water;

(D) Carcasses of animals not buried or destroyed within 24 hours after death;

(E) Accumulations of manure, refuse, or other debris;

(F) Privy vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;

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

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

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

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

(K) Any offensive trade or business as defined by statute not operating under local license. Penalty, see § 10.99

§ 95.22 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

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

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

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

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

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

(E) Any vehicle used for the unlawful transportation of intoxicating liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose. Penalty, see § 10.99

§ 95.23 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 48 hours after the snow or other precipitation causing the condition has ceased to fall;(2011-04, 3rd Series, passed 2-7-11)

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

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

(F) 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;

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

(H) 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;

(I) Any barbed wire fence less than 6 feet above the ground and within 3 feet of a public sidewalk or way;

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

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

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

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

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

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

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

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

(R) (1) *Prohibited Noises.*

(a) *General Prohibition.* No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property's value. This general prohibition is not limited by the specific restrictions of this section. All noises in violation of the Minnesota Pollution Control Agency Rules, Chapter 7030, as they may be amended from time to time, which are hereby incorporated by reference into this code, are prohibited.

(b) *Nuisance Factors-Noises.* The characteristics and conditions which shall be considered in determining whether a noise unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property's value for the purposes of paragraph (a) of this subsection, shall include, without limitation, the following:

(i) The time of day or night when the noise occurs;
(ii) The duration of the noise;
(iii) The proximity of the noise to a sleeping facility, residential area, church, school,
institution of learning or hospital
(iv) The land use, nature and zoning of the area from which the noise emanates and the area where it is perceived;
(v) The number of people and their activities that are affected or are likely to be affected by the noise; and
(vi) The sound peak pressure level of the noise, in comparison to the level of ambient noise.

(c) *Noisy Assembly.*

(i) *Defined.* The term "noisy assembly" shall mean a gathering of more than one person in a residentially zoned or used area or building that would be likely to cause significant discomfort or annoyance to a reasonable person of ordinary sensitivities present in the area, considering the time of day and the residential character of the area, due to loud, disturbing or excessive noise.
(ii) *Permitting Noisy Assembly.* It shall be a violation of this section for any person
having dominion, care or control of a residentially zoned or used area or building knowingly to permit a noisy assembly.
(iii) *Remaining at a Noisy Assembly.* It shall be a violation of this section to participate in, visit or remain at a gathering knowing or having reason to know that the gathering is a noisy assembly, except any person(s) who has/ have come to the gathering for the sole purpose of abating the noisy assembly.

(d) *Animals.* It shall be a violation of this section to own, keep, have in possession or harbor any animal or animals which make any noise to the reasonable annoyance of another person or persons. The phrase "to the reasonable annoyance of another person or persons" shall include, but is not limited to, the creation of any noise by any animal or animals which can be heard by any person, including the animal control officer or a law enforcement officer, from a location outside of the premises where the animal or animals are located and which animal noise occurs repeatedly over at least a five-minute period of time with no more than a one-minute lapse of time between each animal noise during the five-minute period.

(e) *Amplified Sound.* It shall be a violation of this section to play, operate or permit the playing, use or operation of any radio, tape player, disc player, loud speaker or other electronic device used for the amplification of sound, unless otherwise permitted by law, located inside or outside, the sound of which carries to points of habitation or adjacent properties, and is audible above the level of conversational speech at a distance of fifty (50) feet or more from the point of origin of the amplified sound.

(f) *Motor Vehicles*.

(i) *Generally.* It shall be a violation of this section to use any automobile, truck, motorcycle, motorboat, all terrain vehicle, snowmobile, recreational vehicle, other vehicle, or stationary internal combustion engine which causes or would be likely to cause significant discomfort or annoyance to a reasonable person of ordinary sensitivities present in the area due to loud, disturbing or excessive noise.

(ii) *Amplified Sound from Motor Vehicles.* It shall be a violation of this section to play, operate or permit the playing, use or operation of any radio, tape player, disc player, loud speaker or other electronic device used for the amplification of music or other entertainment, which is located within a motor vehicle on a public street or alley, or in a commercial or residential parking facility, which is audible by any person from a distance of fifty (50) feet or more from the motor vehicle. When sound violating this section is produced or reproduced by any such device that is located in a motor vehicle, the motor vehicle's owner, if present when the violation occurs, is guilty of the violation. If the motor vehicle's owner is not present at the time of the violation, the person who has dominion, care or control of the motor vehicle at the time of the violation is guilty of the violation. In addition to an owner or a driver, any person who controls or assists with the production, reproduction, or amplification of sound in violation at this section is guilty of the violation.

(iii) *Horns and Other Signals.* It shall be a violation of this section to sound any horn or signal device on an automobile, motorcycle, bus or other vehicle, except as a danger signal or traffic warning, which would be likely to cause significant discomfort or annoyance to a reasonable person of ordinary sensitivities in the area.

(iv) *Application of the MPCA Rules.* No person shall operate a motor vehicle in the City in violation of the motor vehicle noise limits of the Minnesota Pollution Control Agency Rules, Sections 7030.1000 through 7030.1060.

(2) *Hourly restriction of certain operations.*

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

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

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

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

§ 95.24 DUTIES OF CITY OFFICERS.

For purposes of § 95.24, the Police Department, or Sheriff or person designated by the City Council under § 10.20, if the city has at the time no Police Department, may enforce the provisions relating to nuisances. Any peace officer or designated person shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent danger to human life and safety, no police officer or designated person shall enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident, or other person in control of the property, unless the officer or person designated has obtained a warrant or order from a court of competent jurisdiction authorizing the entry, as provided in § 10.20.

OPEN BURNING

§ 95.40 DEFINITIONS.

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

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

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

RECREATIONAL FIRE. A fire set with approved starter fuel no more than three feet in height, contained within the border of a ***RECREATIONAL FIRE SITE*** using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality so that nuisance, health, or safety hazards will not be created. No more than 1 recreational fire is allowed on any property at 1 time.

RECREATIONAL FIRE SITE. An area of no more than a 3-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 3-foot lengths.

§ 95.41 PROHIBITED MATERIALS.

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

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

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

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

§ 95.42 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 § 95.40. Penalty, see § 10.99

§ 95.43 PURPOSES ALLOWED FOR OPEN BURNING.

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

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

(2) Ground thawing for utility repair and construction;

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

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

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

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

§ 95.44 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 those applications.

(B) An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established by the City Council from time to time. Penalty, see § 10.99

§ 95.45 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.

§ 95.46 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

§ 95.47 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

§ 95.48 DENIAL OF OPEN BURNING PERMIT.

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

§ 95.49 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

§ 95.50 RULES AND LAWS ADOPTED BY REFERENCE.

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