

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: ANIMALS

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§ 90.01 DEFINITIONS.

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

ANIMAL. Any dog, cat or farm animal.

CAT. Includes both male and female cats.

DOG. Includes both male and female dogs.

FARM ANIMAL. Includes any horse, mule, cattle, swine, sheep, goat or other beast, and any chicken, turkey, goose or other fowl or poultry.

OWNER. Any person owning, keeping, harboring or having custody of any animal.

PERSON. Any natural person, partnership, corporation or association.

RUNNING AT LARGE - DOGS AND CATS.

- (1) A dog or cat is deemed to be ***RUNNING AT LARGE*** unless it is:
- (a) On the premises of its owner;
 - (b) On a leash not exceeding six feet in length and accompanied by and under the control of its owner or other responsible person;
 - (c) Confined in a shipping receptacle or a closed vehicle; or
 - (d) Actually participating in a bona fide field trial, dog or cat show or exhibition, training school, obedience school or similar activity.
- (2) A dog or cat is also deemed to be ***RUNNING AT LARGE*** if it commits damage to the person or property of anyone other than the owner, or creates a nuisance upon the property of anyone other than the owner, except in defense of the owner, his or her family or his or her property. A female dog or cat in heat is also deemed to be ***RUNNING AT LARGE*** if it is off the premises of its owner, unless the dog or cat is confined and being transported to or from the premises of the owner.

RUNNING AT LARGE - FARM ANIMALS. A farm animal is deemed to be ***RUNNING AT LARGE*** if:

- (1) It is off the premises of the owner, unless accompanied by its owner or an agent or employee of its owner; or
 - (2) It is allowed to trespass upon or run over any lawn, garden, improved lot or fenced private grounds other than those of its owner.
- (Prior Code, § 501.01)

§ 90.02 RUNNING AT LARGE PROHIBITED.

No owner shall permit any animal to run at large.
(Prior Code, § 501.02) Penalty, see § 10.99

§ 90.03 INTERFERENCE WITH PERSONS.

No owner shall harbor or keep on a chain or otherwise any dog or cat which shall cause annoyance to or interfere with people passing upon any streets, sidewalks or other public place by physical interference with people.
(Prior Code, § 501.03) Penalty, see § 10.99

§ 90.04 HABITUAL BARKING, YELPING AND THE LIKE.

No person shall harbor or keep any dog or cat which, by loud and frequent or habitual barking, yelping, meowing, howling and the like shall cause annoyance to the neighborhood or to people passing upon the streets, sidewalks or other public places in the city.
(Prior Code, § 501.11) Penalty, see § 10.99

§ 90.05 PUBLIC NUISANCE ANIMALS.

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

PUBLIC NUISANCE ANIMAL. Includes any animals that:

- (a) Is repeatedly found at large as defined by this chapter;
- (b) Damages the property of anyone other than the owner;
- (c) Attacks without provocation;
- (d) Excessively makes disturbing noises including, but not limited to, continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors or others in close proximity; and
- (e) Creates unsanitary conditions or offensive and objectionable odor in enclosures or surroundings and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept.

(B) *Impoundment of public nuisance animals.* Any public nuisance animal may be impounded and the owner or possessor thereof charged as provided in this chapter for a violation thereof.

(Prior Code, § 501.13) Penalty, see § 10.99

§ 90.06 MUZZLING.

Whenever the prevalence of rabies or any other contagious disease affecting dogs or cats renders the action necessary to protect the public health and safety, the Council shall issue an order requiring every dog or cat to be confined or muzzled securely so it cannot bite. The order shall remain in effect for that time as the Council deems necessary for the protection of the public. The owner of every dog or cat shall comply with the order for the period of time as it remains in effect. Any dog or cat not muzzled or confined in compliance with the order shall be impounded pursuant to § 90.09.

(Prior Code, § 501.04) Penalty, see § 10.99

§ 90.07 DOG AND CAT LICENSES.

(A) *License required.* No person shall own, harbor or have custody of any dog or cat over the age of six months without obtaining a license for the dog or cat.

(B) *Application.* Every application for a dog or cat spayed or neutered license shall be made to the Police Department and shall state the name and address of the owner, and the sex, breed, age, color and marking of the dog or cat. Each application shall be accompanied by payment in full of the license fee. No application for a license shall be accepted without proof of current rabies vaccination for each dog or cat to be licensed. Further, the failure of any dog or cat owner, whether the animal is licensed or unlicensed, to keep any animal vaccinated against rabies shall be a petty misdemeanor.

In addition to any court fines, owners may post a deposit of an amount set by City Council from time to time by resolution for the animals which shall be refunded upon proof of vaccination.

(C) *Term and fee.* The annual fee for a dog or cat license shall be subject to the city schedule of charges and fees. Each license shall expire on January 1 of each year. The fee shall not be prorated for a partial year.

(D) *License tag.* The Police Department shall issue a numbered license bearing the description of the dog or cat and the owner's name and address, and a metal or plastic tag bearing the license number. The tag shall be fastened to the dog or cat's collar, and shall be worn by the dog or cat at all times. The Clerk-Treasurer shall maintain a record showing the owner's name and address, description of the dog or cat and the license number for each license issued. No person except the owner or his or her agent shall remove a license tag from a dog or cat collar or remove from a dog or cat any collar with a license tag attached. No person shall keep, harbor or have custody of a dog or cat bearing a fictitious, altered or invalid license tag, or a license tag not issued for the dog or cat wearing it. No person shall transfer a tag from one dog or cat to another.

(E) *Owner responsibility.* The owner of any licensed dog or cat, as recorded by the Clerk-Treasurer, shall be responsible for all fees and charges accruing by reason of owning, harboring or having custody of any dog or cat in the city. If the ownership of a dog or cat changes, it is the responsibility of the recorded licensee to notify the Clerk-Treasurer of the change.

(Prior Code, § 501.05) (Ord. 02-05, passed 4-4-2005) Penalty, see § 10.99

§ 90.08 POUND AND ANIMAL CONTROL OFFICER.

(A) *Pound established.* There is hereby established a city pound at a location as the Council may designate for the keeping of any animal impounded under this chapter. The Council shall provide suitable facilities for the well-being and humane care of impounded animals.

(B) *Animal Control Officer.* There is hereby created the office of Animal Control Officer. The Animal Control Officer and/or other designated employees of the City Police Department shall enforce the provisions of this chapter and shall have charge of the pound. The Animal Control Officer shall be paid a salary or fee established by the Council. The Animal Control Officer shall render a monthly statement to the Council of all fees, charges and moneys received by him or her. Upon the Council's approval, the bills will be paid. Council, as an alternative, may contract with any other government for Animal Control Officer services.

(C) *Interference.* No unauthorized person shall break open the pound, or attempt to do so, or assist in doing so. No unauthorized person shall take or let out any animal from the pound or take or attempt to take from the Animal Control Officer and/or other designated employees of the City Police Department any animal taken up by him or her as provided by this chapter. No person shall hinder, obstruct or interfere with the Animal Control Officer and/or other designated employees of the City Police Department in the performance of their duties.

(Prior Code, § 501.06) Penalty, see § 10.99

§ 90.09 IMPOUNDING.

(A) *Authorization.* The Animal Control Officer and/or other designated employees of the City Police Department shall seize and impound any unlicensed dog or cat, any animal running at large and any animal otherwise in violation of this chapter. The fact that a dog or cat is without a license tag attached to its collar shall be presumptive evidence that the dog or cat is unlicensed. Any police officer seizing a dog or cat shall immediately deliver the dog or cat to the Animal Control Officer. The Animal Control Officer and/or other designated employees of the City Police Department shall thereupon give notice of the impounding to the owner, or if the owner is unknown or cannot be found, he or she shall post notice at the City Hall and at the pound. The notice shall describe the impounded animal and the time and place of its taking.

(B) *Redemption.* Any impounded animal may be redeemed by the owner within five days from the date of impounding by payment of the impounding fee. No unlicensed dog or cat shall be released by the Animal Control Officer and/or other designated employees of the City Police Department unless a license is first obtained for the dog or cat. Any impounded animal found to be rabid or hopelessly crippled, and any dog or cat known to be treacherous or vicious, shall be destroyed immediately by the Animal Control Officer and/or other designated employees of the City Police Department.

(C) *Disposal - research.* When any hospital or reputable institution of learning shall apply to the Clerk-Treasurer for permission to use for research purposes on the study of prevention or cure of disease for the betterment of mankind any impounded animal remaining unclaimed after five days, the Animal Control Officer and/or other designated employees of the City Police Department upon direction of the Council shall surrender to the institution or hospital those unclaimed animals as are requested.

(D) *Disposal generally.* Any unclaimed impounded animal may be sold by the Animal Control Officer and/or other designated employees of the City Police Department and the proceeds remitted to the city treasury after deduction for the cost of care of the animal. Any impounded animal not redeemed, surrendered to a hospital or institution, or sold shall be humanely disposed of by the Animal Control Officer and/or other designated employees of the City Police Department at the direction of the Council. Costs of disposal shall be the responsibility of and be billed to the owner of the animal, if known.

(E) *Fees.* For every animal impounded, the owner shall pay, before release, an amount equal to the actual costs of the care, feeding and impounding of any animal; provided, that the owner of any animal found to be running at large or impounded for any reason under the terms of the chapter on more than one occasion shall be guilty of a petty misdemeanor punishable by a maximum fine subject to city administrative fine schedule. This fine shall be in addition to the costs of impoundment as set forth above. (Prior Code, § 501.07) (Ord. 02-05, passed 4-4-2005) Penalty, see § 10.99

§ 90.10 VOLUNTARY PICKUP.

Upon request of the owner, the Animal Control Officer and/or other designated employees of the City Police Department shall pick up and dispose of any animal, alive or dead. The owner or other person requesting the service shall, at the discretion of the Animal Control Officer and as recommended to the Chief of Police, pay all costs thereof. (Prior Code, § 501.08)

§ 90.11 DANGEROUS ANIMALS.

Notwithstanding any other provisions of this chapter, any animal which is diseased, vicious, dangerous, rabid, exposed to rabies or which has been bitten by another animal, including wild animals, and which cannot be impounded without serious risk to the persons attempting it, may be immediately destroyed by or under the direction of the Animal Control Officer and/or other designated employees of the City Police Department. (Prior Code, § 501.09)

§ 90.12 ADOPTION BY REFERENCE.

M.S. §§ 35.67 and 35.68, as they may be amended from time to time, are adopted by reference as if set out in full herein. (Prior Code, § 501.10)

§ 90.13 APPLICATION OF CHAPTER.

This chapter shall apply to any and all animals kept within the city and to all animals found within the city. The selection of the roadways to be posted shall be at the Council's discretion. (Prior Code, § 501.12)

§ 90.14 DANGEROUS ANIMAL REQUIREMENTS.

(A) *Requirements.* If city police personnel do not order the destruction of an animal that is dangerous, city police personnel may, as an alternative, order any or all of the following:

- (1) The owner provide and maintain a proper enclosure for the dangerous animal as defined in this chapter;
- (2) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property, which warning symbol shall be the same or similar to those specified in M.S. § 347.51, as it may be amended from time to time;

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(3) Provide and show proof annually of public liability insurance in the minimum amount of an amount set by City Council from time to time by resolution;

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

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

(6) All animals deemed dangerous by city police personnel shall be registered with the county in which this city is located within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to city police personnel;

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

(8) If there is more than one animal in a given household, the owner or possessor thereof may be required to reduce the number of animals for a period of time deemed appropriate by the city or its designee depending upon the severity of the offense or situation.

(B) *Seizure.* City police personnel shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to district court by serving a summons and petition upon the city and filing it with the district court.

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

(D) *Subsequent offenses.* If an owner of an animal has subsequently violated the provisions under this chapter with the same animal, the animal must be seized by city police personnel. If the owner is found to have violated the provisions for which the animal was seized, city police personnel shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of this chapter. If the animal is not yet reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under this chapter and the owner is liable to the city for the costs incurred in confining, impounding and disposing of the animal.

(Prior Code, § 501.14) Penalty, see § 10.99

§ 90.15 PET WASTE.

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(A) *Purpose.* The purpose of this section is to ensure pet waste on public and private properties in the City of Proctor is properly disposed of so as not to cause a nuisance to others and to protect surface waters.

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

ANIMAL. A dog, cat or other animal kept for amusement or companionship.

IMMEDIATELY. At once, without delay.

OWNER/CUSTODIAN. Any person who harbors, feeds, boards, possesses, keeps or has custody of an animal.

SOIL/DEFILE. To make unclean from excrement.

WASTE. Solid matter expelled from the bowels of the pet; excrement.

(C) *Owner/custodian responsibility.* No owner or custodian of any animal shall allow animal waste to remain on any public property or upon any street, sidewalk, public way, play area, or common grounds owned jointly by the members of a homeowners' or condominium association, or upon private property other than that of the owner. Waste produced by animals shall be immediately removed and disposed of in a sanitary manner.

(D) *Unlawful acts.*

(1) It is unlawful for any person owning, keeping, or harboring an animal to cause or permit said animal to be on any public or private property, if private property included is not owned or possessed by such person, without having in his or her immediate possession a device for the removal of feces and depository for the transmission of excrement to a proper receptacle.

(2) It is unlawful for any person in control of, causing or permitting any animal to be on any public or private property, if private property included is not owned or possessed by such person, to fail to remove feces left by such animal and dispose of it properly.

(E) *Proper disposal.*

(1) Proper disposal of animal waste shall be limited to bagging for disposal in the owner or keeper's waste receptacle, and bagging for disposal in a waste receptacle in a public park or park area.

(2) Disposal of animal waste in storm drains is prohibited.

(3) Disposal of animal waste in public compost is prohibited.

(F) *Exceptions.* The provisions of this section shall not apply to the ownership or use of dogs certified by the State of Minnesota as service dogs, seeing-eye dogs by blind persons, dogs when used in police activities by the city, or tracking dogs when used by or with the permission of the city.

(G) *Persons authorized to issue citations.* Any peace officer, animal control officer, park ranger, any duly authorized agent, or any person authorized by the animal control officer may issue citations for violations.

(H) *Penalty.* Any person violating this section shall be punished by a fine in an amount set by resolution of the Council. Any person who is found guilty of subsequent violations of this section shall be punished by a fine in an amount set by resolution of the Council.

(Ord. 06-22, passed 7-18-2022)

CHAPTER 91: NUISANCES AND OFFENSES

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NUISANCES

§ 91.001 PUBLIC NUISANCE DEFINED.

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

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

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

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

(Prior Code, § 901.01) Penalty, see § 91.999

§ 91.002 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 any other weeds growing to a height of more than 12 inches and any weeds which have gone or about to go to seed;
 - (I) Dense smoke, noxious fumes, gas, soot or cinders in unreasonable quantities;
 - (J) All public exposure of persons having a contagious disease; and
 - (K) Any offensive trade or business as defined by statute not operating under local license.
- (Prior Code, § 901.02) Penalty, see § 91.999

§ 91.003 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;
 - (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, house of ill fame, bawdy houses and housing kept for purposes of consumption or sale of illegal drugs and other intoxicating substances;
 - (D) All places where intoxicating liquor, illegal drugs or intoxicating substances are manufactured or disposed of in violation of law or where, in violation of law, persons are permitted to resort for the purpose of drinking or consuming intoxicating liquor, illegal drugs or intoxicating substances or where intoxicating liquor, illegal drugs or intoxicating substances are kept for sale or other disposition in violation of law and all other property used for maintaining such a place; and
 - (E) Any vehicle used for the illegal transportation of intoxicating liquor, illegal drugs or intoxicating substances or for promiscuous sexual intercourse or any other immoral or illegal purpose.
- (Prior Code, § 901.03) Penalty, see § 91.999

§ 91.004 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 by adjacent property owners 12 hours after the snow or other precipitation causing the conditions has ceased to fall;
- (B) All hedges, shrubs, bushes or other obstructions having a height greater than 30 inches and within 75 feet of any intersection or alleyway and all tree limbs which prevent persons from having a clear view of all traffic approaching an intersection.
- (C) All wires and limbs of trees which are less than 15 feet above the surface of a sidewalk, street or alley;
- (D) All tree limbs which touch or interfere with electrical power lines;
- (E) All unnecessary noises and annoying vibrations;

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

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

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

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

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

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

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

(M) Wastewater cast upon or permitted to flow upon streets or other public property;

(N) Accumulations of discarded or disused machinery, household appliances, motor vehicle parts and/or bodies to include wrecked, junked and abandoned vehicles incapable of operation as a motor vehicle without alteration or repair and/or motor vehicles without valid and current licenses, garbage or rubbish, or other materials in a manner which renders the premises or property to be unsightly, offensive, or in a manner conducive to the harboring of rats, mice, snakes or other vermin, the growth of vegetation, or in a manner creating fire, health or other safety hazards.

(1) The terms **GARBAGE** and **RUBBISH** shall be defined as follows.

GARBAGE. Animal and vegetable wastes and other wastes or putrescible matter including, but not limited to, grease, wrappings, shells, grounds, bones, entrails and similar materials resulting from the handling, preparation, cooking, service and consumption of food, and other animal wastes.

RUBBISH. Waste products which are composed wholly or partly of materials such as garbage, sweepings, swill, cleanings, trash, refuse or litter; industrial solid wastes or domestic solid wastes; organic wastes or residue of animals, fruit or other vegetable or animal matter from kitchen, dining room, market, food establishment or any place dealing or handling meat, fowl, fruit, grain or vegetables; offal, animal excreta or the carcass of animals; tree or shrub trimmings or grass clippings; brick, plaster, wood, metal, roofing materials, pipe or other waste matter resulting from the demolition, alteration or construction of buildings or structures; accumulated waste materials, cans, used containers, boxes and packing materials, junk vehicles, ashes, tires, junk, Christmas trees, rocks, sod, dirt, glass, jars, bottles, auto parts, cement, brick, leaves, burn barrels, household appliances, furniture, toys, floor coverings, fabric, drain oil, solvents and fluids, or other substances which may become a nuisance.

(2) The prohibition contained herein relative to motor vehicles shall not apply to short term storage, dismantling and/or repair of motor vehicles in commercial districts by persons engaged in motor vehicle repair.

- (O) Any racing car or stock car not in compliance with § 91.006;
 - (P) Any well, hole or similar excavation which is left uncovered or in other condition as to constitute a hazard to any child or other person coming on the premises where it is located;
 - (Q) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash or other materials;
 - (R) 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;
 - (S) The depositing of garbage or refuse on a public right-of-way or on adjacent private property;
 - (T) The use, possession or sale of items commonly referred to as smoke bombs, stink bombs, spray string or any and all similar products, in public or on public property; and
 - (U) All other conditions or things which are likely to cause injury to the person or property of anyone.
- (Prior Code, § 901.04) Penalty, see § 91.999

§ 91.005 ENFORCEMENT.

The Building Official and/or the Chief of Police (or his or her designee) shall enforce the provisions of this chapter. Absent circumstances where a search warrant is first required before a city official may enter private property or a private structure as determined by the City Attorney, the officials shall be authorized to enter any property or structure within the city for the purpose of enforcing and ensuring compliance with this nuisance chapter. An owner or authorized person in possession of a premises or property shall, at the request of the enforcement official, provide access to all interior portions of a building in order to permit the official to make a complete inspection.
(Prior Code, § 901.05)

§ 91.006 RACING CARS AND STOCK CARS.

Operating, parking, storing, repairing, servicing and maintaining of racing cars and stock cars shall be regulated as follows.

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

PERSON. A natural person, firm, association, partnership, corporation and any agent of any of the aforesaid.

RACING CAR. Any motor vehicle designed or intended for operation on a speedway, race track or other facility used or designated for high speed contests between two or more vehicles or for timing of speed.

STOCK CAR. Any motor vehicle of standard design and construction which is modified, adapted or altered in any manner to increase the speed or safety and

designed or intended for operation on a speedway, race track or other facility used or designed for high speed contests between two or more vehicles or for timing of speed.

(B) *Parking and storage.* No person shall park, keep, place, store or permit the parking or storage of a stock car or racing car on a public street or alley or on any private lands or premises which he or she owns, occupies or controls for more than 72 hours unless it shall be within a building on private premises.

(C) *Repair, service or maintaining.* No person shall service, repair, replace parts or do maintenance work on a stock car or racing car on a public street or on any private land or premises unless it shall be within a building on private premises.

(D) *Operation.* No person shall drive or operate a stock car or racing car upon the streets and alleys within the limits of the city.

(Prior Code, § 901.051; § 901.062) (Ord. 02-05, passed 4-4-2005; Ord. 08-05, passed 6-6-2005) Penalty, see § 91.999

§ 91.007 ABATEMENT.

(A) *General.*

(1) Whenever a Building Official's officer determines that a public nuisance is being maintained or exists on premises within the city, the officer shall notify in writing the owner or occupant of the premises of the fact and order that the nuisance be terminated and abated. The notice shall be served in person or by certified or registered mail. If the premises are not occupied and the owner is unknown, the notice shall be served by posting it on the premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding 30 days, within which the steps to abate the nuisance must be commenced. If steps to abate the nuisance have been commenced as required in the notice, the abatement must be completed no later than 30 days after the expiration of the initial notice period. If the notice is not complied with within the time specified, or if the abatement of the nuisance has not been completed as required herein, the officer shall report the fact forthwith to the Council. Thereafter the Council shall direct the City Attorney to institute civil suit regarding the nuisance following the procedures set forth in M.S. §§ 462.12 through 462.17 requiring the condemnation of hazardous buildings, if applicable.

(2) Additionally, the City Attorney may seek any or all of the following forms of relief in a civil suit:

(a) A judgement restraining the defendants from using for any purposes the place at or in which a nuisance has been maintained or permitted;

(b) A judgement perpetually restraining the defendants from maintaining or permitting any nuisance, as defined in the city code;

(c) An order permitting the removal from the place at or in which the nuisance has been maintained or permitted all fixtures and moveable property used in conducting or aiding or abetting the nuisance, and permitting the city or its designee to sell the fixtures and moveable property;

(d) An order directing the owner to provide relocation assistance to displaced tenants, if the tenants did not maintain, permit, contribute to, aid or abet the nuisance; and/or

(e) An order directing the owner to more effectively manage the owner's property, including, but not limited to, the following actions:

1. Make capital improvements to the owner's property;
2. Improve exterior or interior lighting;
3. Install surveillance cameras;
4. Employ security guards;
5. Post signs warning against illegal activity;
6. Participate in neighborhood or local merchants' associations; and
7. Screen prospective tenants.

(3) Criminal prosecution or action pursuant to Chapter 11 of this code of ordinances, at the discretion of the City Attorney, may also be instituted.

(B) *Emergency.* When the Building Official or police officer determines that a nuisance constitutes a serious and imminent danger to the public safety or health, the officer may summarily abate the nuisance after a reasonable attempt to notify the owner or occupant of the property. The officer shall immediately thereafter notify in writing the owner or occupant of the premises of the action taken. The notice shall be served in person or by registered or certified mail.

(C) *Costs of abatement.* The owner of premises on which a nuisance has been abated by the city shall be personally liable for the costs to the city of the abatement, including administrative costs. The Clerk-Treasurer shall prepare a bill for the cost and mail it to the owner. The charged for abatement of a public health nuisance as defined by § 91.002 or a public safety as defined by § 91.004 may, if unpaid, be certified to the County Auditor for collection as a special assessment, pursuant to M.S. § 429.101, as it may be amended from time to time. The proceeds of any sale pursuant to court order of fixtures and moveable property used in conducting or aiding or abetting the nuisance shall be applied to the payment of the costs of the proceeding.
(Prior Code, § 901.06) (Ord. 06-04, passed 6-7-2004)

BURNING OF SOLID FUELS

§ 91.020 DEFINITIONS.

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

PERSON. An individual, partnership, corporation, company or other association.

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, and which is also subject to Chapter 11 of this code of ordinances for treatment as an administrative offense.

SOLID FUEL-FIRED HEATING DEVICE. A device designed for solid fuel combustion so that usable heat is derived for the interior of the building, and includes solid fuel-fired stoves, solid fuel-fired cooking stoves and combination fuel furnaces or

boilers which burn solid fuel. **SOLID FUEL-FIRED HEATING DEVICES** do not include natural gas-fired fireplace logs or traditional indoor fireplaces.

STACKS or **CHIMNEYS**. Any vertical structure incorporated into a building and enclosing a flue or flues that carry off smoke or exhaust from a solid fuel-fired heating device; especially the part of a structure extending above a roof.
(Prior Code, § 901.41) (Ord. 05-05, passed 5-2-2005)

§ 91.021 PERMITS.

Any person installing a solid fuel-fired heating device must comply with all city code requirements pertaining to building permits.

(Prior Code, § 901.41) (Ord. 05-05, passed 5-2-2005) Penalty, see § 91.999

§ 91.022 OTHER REQUIREMENTS UPON EFFECTIVE DATE OF THIS SUBCHAPTER.

(A) All wood-burning units installed or purchased within the city limits are required to meet emission standards currently required by the Environmental Protection Agency (EPA) and Underwriters Laboratories (UL) listing.

(B) All outdoor wood burning units or solid fuel-fired heating devices are subject to the city's public nuisance ordinances as described in this Chapter 91 of the city code.

(C) Any dense smoke, noxious fumes, gas and soot or cinders, in unreasonable quantities, may be declared a public nuisance by a properly designated authority.

(D) Additionally, minimum stack height of any indoor or outdoor solid fuel-fired heating device shall have a minimum height of 23 feet from ground level. Construction of all stacks or chimneys must be of masonry or insulated metal with a minimum six-inch flue.

(E) Any existing stack height or irregularly installed stack shall be removed or replaced within a period of six months from date of notice.

(F) All stacks or chimneys must be so constructed to withstand high winds or other related elements, and shall have a screen affixed to the top to prevent debris from escaping.

(G) Structures located in "R-1a", "R-1b", "R-1c", "R-2" or "R-3" Districts shall have a minimum stack height of three feet above the roof of the adjoining properties highest roof elevation.

(Prior Code, § 901.41) (Ord. 05-05, passed 5-2-2005) Penalty, see § 91.999

§ 91.023 DUTIES OF CITY OFFICERS.

The City Building Official, Police Department or other designated official shall enforce the provisions of this chapter. Emission standards shall be enforced by the EPA.

(Prior Code, § 901.41) (Ord. 05-05, passed 5-2-2005)

HAZARDOUS BUILDINGS AND EXCAVATIONS

§ 91.035 ABATEMENT.

(A) Any building, structure or property erected, altered, maintained, repaired or used in violation of the laws of this state (M.S. §§ 462.12 through 462.17 and M.S. §§ 463.15 et seq., as they may be amended from time to time, and any amendments thereto) or any ordinance of the city shall be deemed a nuisance and may be abated as provided in § 91.007 or as provided in the Minnesota Hazardous and Substandard Buildings Act, M.S. §§ 463.15 et seq., as it may be amended from time to time.

(B) Any abandoned or hazardous building declared a nuisance under this chapter shall be subject to the notice requirements set forth in § 91.007(A) unless the nuisance constitutes an emergency threat to the health, safety and well-being of the citizens, in which case the nuisance may be abated pursuant to § 91.007(B).

(C) The provisions of § 91.007(C) shall also apply to abatement of hazardous or abandoned buildings and structures.

(D) Structures or buildings causing imminent danger to life, safety or health may be abated by the City Building Official and/or the Chief of Police (or his or her designee) as set forth at § 91.007(B).

(Prior Code, § 902.01)

ABANDONED PERSONAL PROPERTY

§ 91.050 DEFINITIONS.

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

ABANDONED PROPERTY. Wrecked or derelict property having no value other than nominal salvage value, if any, and which has been left unprotected from the elements and/or is visible from any other property and shall include wrecked, inoperative or partially dismantled trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furniture and any other similar articles which has no value other than nominal salvage value, if any. **ABANDONED PROPERTY** does not mean or include an abandoned motor vehicle.

ENFORCEMENT OFFICER. The Building Official of the City of Proctor and the Chief of Police of the City of Proctor or their designees or any member or members of

their staff authorized by the Building Official or Chief of Police to enforce the provisions of this subchapter.

PUBLIC PROPERTY. Lands and improvements owned by the United States government, the State of Minnesota, the County of St. Louis or the City of Proctor, lying within the city, and includes buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way and other similar property.
(Prior Code, § 904.01)

§ 91.051 UNLAWFUL STORAGE OF ABANDONED PROPERTIES.

No person shall place or leave or cause to be placed or left any abandoned property on public property within the city; nor shall any person place, leave, keep or store or cause or permit to be placed, left, kept or stored any abandoned property on private property within the city except as permitted by Chapter 155 of this code of ordinances.

(Prior Code, § 904.02) Penalty, see § 91.999

§ 91.052 PROCEDURE FOR REMOVAL OF ABANDONED PROPERTY FROM PUBLIC PROPERTY.

(A) Whenever the enforcement officer shall ascertain that an article or articles of abandoned property is present on public property within the city, he or she shall cause a notice and order to be placed upon the article in substantially the following form:

NOTICE AND ORDER TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY
This property, to-wit: <u>(setting forth brief description)</u> is unlawfully upon public property known as <u>(setting forth brief description of location)</u> in violation of <u>(setting forth the section violated)</u> of the Proctor City Code and must be removed within seven (7) days from the date of this notice, otherwise it shall be presumed to be abandoned property and will be removed and destroyed by order of the City of Proctor, and the salvage value of the article, if any, shall be retained by the City to cover the costs of removal and destruction.
Signed: <u>(setting forth name, title, address and telephone number of enforcement officer)</u> .
Dated: _____.

(B) The notice and order shall not be less than eight inches by ten inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the enforcement officer shall make reasonable effort to ascertain the name and address of the owner of the property, and if such is reasonably available to the enforcement officer, he or she shall, by first class mail, mail a copy of the notice to the owner on or before the date of posting.

(C) Following the notice and/or posting of the notice and order, the enforcement official shall prepare an affidavit which sets forth the date, time, place, manner and address of the notice and/or posting.

(D) If at the end of seven days after posting the notice and order the owner or any person interested in the abandoned article or articles described in the notice and order has not removed the article or articles from public property or shown reasonable cause for failure so to do, the enforcement officer may cause the article or articles of abandoned property to be removed and destroyed and the salvage value, if any, of the article or articles shall be retained by the city to be applied against the cost of removal and destruction thereof.
(Prior Code, § 904.03)

§ 91.053 PROCEDURE FOR REMOVAL OF ABANDONED PROPERTY FROM PRIVATE PROPERTY.

(A) Whenever the enforcement officer shall ascertain that an article or articles of abandoned property are present on private property within the city, the enforcement officer shall cause a notice and order to be posted upon a conspicuous place upon the property in substantially the following form:

NOTICE AND ORDER TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY

The following property, to-wit: (setting sufficient description for identification) located at (setting forth brief description of location) is improperly stored and is in violation of (setting forth section violated) of the Proctor City Code and must be removed within seven (7) days from date of this notice and order, otherwise it shall be presumed to be abandoned property and will be removed and destroyed by order of the City of Proctor and the salvage value of the article(s), if any, shall be retained by the city. The removal and destruction of the article(s) by the city shall occur unless a written appeal of this order and notice is filed with the Proctor City Administrator within seven (7) days from the date of this notice and order, in which case, you will be mailed written notice of the date, time and place of a public hearing before the City Planning and Zoning Commission where you will be given the opportunity to be heard and present evidence to support your appeal. Upon conclusion of the Planning and Zoning Commission Hearing, the Commission will prepare and forward a written recommendation to the Proctor City Council which may confirm, revoke, alter or cancel the order of the enforcement official.

Dated this: (setting forth of posing of order).

Signed: (setting forth name, title, address and telephone number of enforcement officer).

(B) The notice and order shall not be less than eight inches by ten inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the enforcement officer shall, by first class mail, serve a copy of the

notice and order to the owner of the real property upon which the abandoned property is located as reflected in the current County Auditor's records.

(C) The enforcement officer shall also prepare an affidavit which sets forth the date, time, place and manner of the posting and serving of the notice and order.

(D) If at the end of seven days after posting and serving the notice and order the owner or any person interested in the abandoned article or articles described in the notice and order has not removed the article or articles and complied with the regulation cited in the notice, and if a timely appeal has not be filed with the City Administrator, the enforcement officer may enter the applicable property and cause the article or articles of abandoned property to be removed or destroyed and the salvage value, if any, of the article or articles shall be retained by the city to be applied against the cost of removal and destruction thereof.

(Prior Code, § 904.04)

§ 91.054 HEARING PROCEDURE.

(A) In the event that a timely appeal is filed with the City Administrator, the City Administrator shall, within two weeks, schedule a date for a public hearing before the Board of Adjustment.

(B) The City Administrator shall, by first class mail, serve notice of the date, time, place and subject of the hearing to the appeal applicant at the address provided by the applicant in the appeal application.

(C) Thereafter, the Planning and Zoning Commission shall convene the public hearing as scheduled, at which time the owner or interested person in the subject real property or articles, and/or their counsel or designated representative, shall have the opportunity to present evidence and testimony to support the appeal of the enforcement official's notice and order. The Planning and Zoning Commission may receive evidence and testimony from the enforcement official and any other parties who wish to be heard. Upon receiving the evidence and testimony, the Planning and Zoning Commission shall make a written recommendation to the City Council.

(D) (1) The City Council shall review the recommendations of the Planning and Zoning Commission and may confirm, modify, revoke, alter or cancel the order of the enforcement official.

(2) If the City Council determines that removal or abatement of the abandoned property is required, the Council shall, by resolution, fix a reasonable time within which the abandoned property must be removed or abated and shall provide that if the abandoned property is not removed or abated within the time specified, the city shall enter the subject property, remove and destroy the abandoned property and retain the scrap value, if any, to cover the costs of the removal and destruction.

(3) The Council shall thereafter give a copy of the resolution to the enforcement official who shall cause the resolution to be posted on the affected real property and mailed to the property owner in the same manner as provided in § 91.053.
(Prior Code, § 904.05)

LOST, STOLEN OR ABANDONED PROPERTY

§ 91.065 SALE AT PUBLIC AUCTION AFTER 60 DAYS.

If the owner of any lost, stolen or abandoned property in the possession of the city cannot be found within 90 days after the date of its coming into the possession of the city, the Chief of Police or any duly authorized person acting under his or her discretion shall cause the property to be sold at public auction to the highest bidder. Notice of the time and place of the holding of the auction shall be published once a week for two consecutive weeks in the official newspaper of the city.
(Prior Code, § 508.01)

§ 91.066 CLAIM OF PROCEEDS OF THE SALE.

The owner may claim proceeds within six months of sale, disposition of unclaimed proceeds. If the owner of property sold under the provisions of this subchapter or his or her legal representatives shall, at any time within six months after the money has been deposited in the city treasury, furnish satisfactory evidence of his or her ownership thereof to the City Treasurer, the City Treasurer shall pay to the person the amount so deposited. If the money is unclaimed within that time, the same shall belong to the city and shall be credited to the Police Department Forfeited Funds Account in the General Fund.

(Prior Code, § 508.02)

Cross-reference:

Unclaimed property, see §§ 35.015 through 35.021

ABANDONED AND INOPERATIVE MOTOR VEHICLES

§ 91.080 DECLARATION OF PUBLIC NUISANCE.

The presence, accumulation or improper storage of abandoned and junk motor vehicles on real property and the public streets and highways of this city is hereby found to create an unsightly condition tending to reduce the value of real property, to invite plundering, to create fire and safety hazards and to constitute an attractive nuisance creating a hazard to the health and safety of minors. The accumulation and outside storage of the motor vehicles is further found to promote blight and deterioration in the community and may violate the zoning regulations of the city in many instances. It is further found that the abandoned and junk motor vehicles are often in the nature of rubbish, litter and unsightly debris. Therefore, the accumulation and storage of the motor vehicles on real property, except as hereinafter permitted, is hereby declared to constitute a public nuisance which may be abated as such, which remedy shall be in

addition to any other remedy provided in this or other ordinances of this city or by state law.

(Prior Code, § 905.01) (Ord. 05-08, passed 11-17-2008)

§ 91.081 DEFINITIONS.

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

ABANDONED VEHICLE. Any motor vehicle unattended in the same position 72 hours after being given notice (placard) and/or issued a traffic ticket or citation. Any vehicle left unattended for more than 72 hours on any public street or public ground or left unattended for more than 72 hours on a private property without the consent of the property owner is deemed abandoned and constitutes a public nuisance. A vehicle shall not be deemed **ABANDONED** under this definition if left unattended on private property completely outside of public view. A vehicle being held for storage by agreement or being held under police authority or pursuant to a writ or court order is not considered **ABANDONED**, nor may it be processed as abandoned while the police hold, writ or court order is in effect.

ENFORCEMENT OFFICER. The Building Official or the Building Official's designee or the Chief of Police or the Chief of Police designee or any police officer of the city.

JUNKED MOTOR VEHICLE. Any motor vehicle that is apparently inoperable; is partially dismantled, wrecked or discarded or any motor vehicle which is otherwise not in safe or legal condition for operation on public streets or highways due to missing or inoperative parts, flat or removed tires, expired or missing license plates or other defects, has an approximate fair market value equal only to the approximate value of the scrap in it.

MOTOR VEHICLE ACCESSORIES. Any part or parts of any motor vehicle.

PLACARD. A printed or handwritten poster for giving notice. See § 91.084(E).

PRIVATE PROPERTY. Any real property not owned by the federal government, state, county, city vocational school district, school district or other political subdivisions.

PUBLIC PROPERTY. Any real property owned by the federal government, state, county, city, vocational school district, school district or other political subdivision.

REMOVAL. The physical relocation of a motor vehicle from one location to another location.

STREET. Any public highway, road or alley and shall mean the entire width between the boundary lines of any public way where any part thereof is open to the public for purposes of vehicular travel.

UNATTENDED. Unmoved from its location with no obvious sign of continuous human use.

UNREGISTERED MOTOR VEHICLE. Any motor vehicle that is not currently registered with a state motor vehicle division, any motor vehicle on which registration is currently suspended, any motor vehicle which improperly displays license plates, any motor vehicle which displays license plates or any motor vehicle which displays false license plates.

VEHICLE. A motorized vehicle within the meaning of M.S. Ch. 168 and M.S. Ch. 168B, as they may be amended from time to time, whether or not the vehicle is registered under state law.

(Prior Code, § 905.02) (Ord. 05-08, passed 11-17-2008)

§ 91.082 ABANDONED VEHICLE.

(A) *Generally.* For purposes of this subchapter, the following irrefutable presumptions shall apply.

(1) A vehicle shall be presumed unattended if it is found in the same position 72 hours after being placarded and/or issued a traffic ticket or citation.

(2) Any vehicle left unattended for more than 72 hours on any public street or public ground or left unattended for more than 72 hours on private property without the consent of the property owner is deemed abandoned and constitutes a public nuisance. A vehicle shall not be deemed abandoned under this division (A) if left unattended on private property completely outside of public view.

(3) Any vehicle remaining unclaimed in any impound facility for more than ten days after certified mail notice has been sent to the owners and lien holders of record shall be deemed abandoned.

(B) *Abandonment of vehicles prohibited.* No person shall leave unattended any vehicle within the city for a time and under those circumstances as to cause the vehicle to reasonably appear to be abandoned.

(C) *Exception.* This section shall not apply to a vehicle stored in an enclosed building, stored on premises licensed for the storage of impounded and/or junked vehicles or parked in a paid parking lot or space where the required fee has been paid.

(D) *Enforcement officers.* This subchapter may be enforced by any or all of the following procedures.

(1) The Building Official or the Building Official's designee or the Chief of Police or the Chief of Police designee and any law enforcement officer may issue citations for violation of this section.

(2) An action for collection of a forfeiture may be commenced by issuance of a summons and complaint.

(3) Upon observing an abandoned vehicle, the Building Official or law enforcement officer shall cause a notice (placarded) pursuant to § 91.084(D) giving notice that the motor vehicle is abandoned. After the placard has remained on the abandoned motor vehicle for 72 hours, a directed tow may be ordered.

(Prior Code, § 905.03) (Ord. 05-07, passed 7-2-2007; Ord. 05-08, passed 11-17-2008) Penalty, see § 91.999

§ 91.083 UNREGISTERED VEHICLES.

(A) *Unregistered motor vehicles prohibited on streets.* No person shall cause any unregistered motor vehicle to be located upon any street within the city.

(B) *Enforcement officer.* Any law enforcement who discovers any unregistered motor vehicle located upon any street within the city may cause the motor vehicle to be removed to a suitable place of impoundment or immobilized. Upon removal or immobilization of the motor vehicle, the officer shall by first class mail on the day of impounding or immobilization notify the last registered owner of the vehicle of the impoundment or immobilization. The enforcement official shall also prepare an affidavit setting forth the date, time, place and reason for the impoundment or immobilization and the name and address of the persons so notified. The Chief of Police or his or her designee will be forwarded a copy of the report.

(C) *Exemptions.* A person charged with violating this section may not be convicted if he or she produces in court or in the office of the arresting officer satisfactory evidence that, at the time of the issuance of the citation:

(1) A complete application for registration of the motor vehicle, under M.S. § 169.79, as it may be amended from time to time, when required, accompanied by the required fee had been delivered to the State Department of Transportation or deposited in the mail properly addressed with postage prepaid; or

(2) The motor vehicle was exempt from registration.

(D) *Responsibility for costs.* The owner of any unregistered motor vehicle is responsible for all costs of towing, storing and disposing of the motor vehicle. Costs not recovered from the sale of the motor vehicle may be recovered in a civil action by the city against the owner.

(Prior Code, § 905.04) (Ord. 07-06, passed 12-18-2006; Ord. 05-08, passed 11-17-2008)

§ 91.084 JUNKED VEHICLES.

(A) *Purpose; findings of fact.*

(1) The City Council finds that the storage of non-operating vehicles outside of licensed salvage yards or private garages is a public nuisance.

(2) The City Council finds that nonoperating vehicles are eyesores, damage property values, create attractive hazards to children and provide shelter for rats and other pests.

(B) *Storage prohibited.*

(1) No person owning or having custody of any junked motor vehicle or of any motor vehicle accessories shall store or allow any vehicle or accessories to remain on any private or public property within the city, and no person owning or leasing any private property in the city shall store or allow any vehicles or accessories to remain on his or her property.

(2) Junked motor vehicles and motor vehicle accessories which are stored or allowed to remain on private property or public property in violation of this section are hereby declared to be public nuisances and may be abated or removed as provided below.

(C) *Storage permitted.*

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(1) Division (B) above shall not apply to any motor vehicle or any motor vehicle accessories which are stored and kept entirely out of the public view in a building enclosed on all sides and roofed.

(2) This section shall also not apply to a duly licensed business or commercial enterprise operated and conducted pursuant to law when the parking or storing of vehicles is necessary to the operation of the business or commercial enterprise.

(D) *Enforcement officer.* This subchapter may be enforced by any or all of the following procedures.

(1) The Building Official or the Building Official's designee or the Chief of Police or the Chief of Police designee and any law enforcement officer may issue citations for violation of this section.

(2) An action for collection of a forfeiture may be commenced by issuance of a summons and complaint.

(3) Upon observing a junked vehicle, the enforcement officer shall provide notice that the vehicle is junked through the following methods.

(a) *Public property.*

1. The enforcement officer shall placard and/or issue a traffic ticket or citation to give notice that the motor vehicle is abandoned. In addition to the posting, the enforcement officers shall also serve, by first class mail on the day of posting or on the day immediately following, a copy of the written notice to the last registered owner of the vehicle. The enforcement official shall also prepare an affidavit setting forth the date, time, place and manner of the posting and service and the name and address of the persons so served. The return of a mailing shall not invalidate the notice unless due to error on the part of the enforcement officer.

2. After the placard has remained on the abandoned motor vehicle for 72 hours, a directed tow may be ordered.

(b) *Private property.*

1. The enforcement officer shall notify the owner of record and to the owner or persons in lawful possession of the real property upon which the vehicle is located, that the vehicle is deemed an abandoned vehicle by first class mail. If the vehicle remains an abandoned vehicle for a period of five days after the notice has been sent, the enforcement officer shall placard the motor vehicle as abandoned. The enforcement official shall also prepare an affidavit setting forth the date, time, place and manner of the posting and service and the name and address of the persons so served. The return of a mailing shall not invalidate the notice unless due to error on the part of the enforcement officer.

2. After the placard has remained on the abandoned motor vehicle for 72 hours, a directed tow may be ordered.

(E) *Notice to remove.*

(1) Whenever the enforcement officer ascertains that an abandoned or junked motor vehicle is present on real property within the city, he or she shall cause a notice (placarded) pursuant to division (D) above and order to be placed upon the abandoned or junked vehicle and upon a conspicuous place on the property where the vehicle is located using substantially the following words:

NOTICE AND ORDER TO THE OWNER AND ALL PERSONS INTERESTED IN THE

<p style="text-align: center;">ATTACHED MOTOR VEHICLE AND TO THE OWNER OR PERSON(S) IN LAWFUL POSSESSION OR CONTROL OF THIS LAND</p>
<p>This vehicle (<u>setting forth a brief description</u>), located at (<u>setting forth a brief description of the location</u>) is improperly stored, and its present storage will be in violation of § 91.084 of the Proctor City Code on (<u>setting forth 72 hours from the date of this notice and order</u>) unless the vehicle is removed and stored within a building pursuant to § 91.084(C).</p>
<p>Failure to remove or store the vehicle is a misdemeanor. In addition, if you fail to remove and store the vehicle as provided herein within 72 hours from the date of this notice and order, the vehicle shall be removed and disposed of by the city in accordance with the provisions of M.S. Ch. 168B, as it may be amended from time to time. The vehicle shall be removed and disposed of by the city in accordance with the provisions set forth in M.S. Ch. 168B unless a written appeal of this notice and order is filed with the Proctor City Administrator within 72 hours from the date of this notice, in which case, you will be mailed written notice of the date, time and place of a public hearing before the City Board of Adjustment where you will be given the opportunity to be heard and present evidence to support your appeal.</p>
<p>Upon conclusion of the Board of Adjustment Hearing, the Board will prepare and forward a written recommendation to the Proctor City Council which may confirm, revoke, alter or cancel the notice and order of the enforcement official.</p>
<p>Dated this: (<u>setting forth of posing of order</u>).</p>
<p>Signed: (<u>setting forth name, title, address and telephone number of enforcement officer</u>).</p>
<p>Dated: _____.</p>

(2) The notice set forth in division (E)(1) above shall not be less than eight inches by ten inches and shall be sufficiently weatherproofed to withstand normal exposure to the elements.

(Prior Code, § 905.05) (Ord. 05-08, passed 11-17-2008) Penalty, see § 91.999

§ 91.085 HEARING PROCEDURE.

(A) In the event that a timely appeal is filed with the City Administrator, the City Administrator shall, within four weeks schedule a date for a public hearing before the Board of Adjustment.

(B) The City Administrator shall, by first class mail, serve notice of the date, time, place and subject of the hearing to the appeal applicant at the address provided by the applicant in the appeal application. The notice shall also be published once in a newspaper of general circulation within the city at least one week prior to the hearing.

(C) (1) Thereafter, the Board of Adjustment shall convene a public hearing as scheduled, at which time the owner or any interested person in subject motor vehicle(s), and any person in lawful possession of the subject motor vehicle(s), and/or his or her counsel or designated representative, shall have the opportunity to present

evidence and testimony to support the appeal of the enforcement official's notice and order.

(2) The Board of Adjustment may receive evidence and testimony from the enforcement official and any other parties who wish to be heard. Upon receiving the evidence and testimony, the Board of Adjustment shall make a written recommendation to the City Council.

(D) The City Council shall review the recommendations of the Board of Adjustment and may confirm, modify, revoke, alter or cancel the order of the enforcement official. If the City Council determines that removal and proper storage of the subject motor vehicle(s) is required, the Council shall, by resolution, fix a reasonable time within which the motor vehicle(s) must be removed and stored in accordance with § 91.084(C), shall provide that if the motor vehicle(s) is not so removed and stored within the time specified, the city shall remove and dispose of the vehicle(s) in accordance with § 91.087 herein. The Council shall thereafter give a copy of the resolution to the enforcement official who shall cause the notice to be posted on the affected motor vehicle(s) and mailed to the last registered owner of the vehicle property and to the owner or persons in lawful possession of the real property upon which the vehicle(s) is located.

(Prior Code, § 905.06) (Ord. 08-06, passed 12-18-2006; Ord. 05-08, passed 11-17-2008)

§ 91.086 FAILURE TO REMOVE.

Failure by the owner of the motor vehicle or owner or person in lawful possession of the real property upon which the vehicle is located to remove or store the motor vehicle within the time specified in the notice or, if an appeal is timely filed, within the time specified in the City Council resolution, shall constitute a misdemeanor.

(Prior Code, § 905.07) (Ord. 05-08, passed 11-17-2008)

§ 91.087 ABATEMENT, REMOVAL AND DISPOSITION.

If the registered owner of any motor vehicle which is in violation of this subchapter, or if the owner or person in lawful possession or control of the property upon which the vehicle is located, shall fail, neglect or refuse to remove or house the vehicle in accordance with the notice of the enforcement officer or, if the notice was timely appealed, the resolution of the City Council, the motor vehicle shall be deemed abandoned and the enforcement officer may remove, impound and dispose of the vehicle in the manner, and according to the procedure that abandoned and junk vehicles may be removed, impounded and disposed of by the city as set forth in M.S. Ch. 168 and M.S. Ch. 168B, as they may be amended from time to time.

(Prior Code, § 905.08) (Ord. 05-08, passed 11-17-2008)

§ 91.088 ENTRY FOR REMOVAL OR ABATEMENT.

(A) Any person, at the direction of the enforcement officer, is hereby expressly authorized to enter upon private property for the purpose of enforcing the provisions of this subchapter, in accordance with § 10.20.

(B) It is unlawful for any person to interfere with or hinder the person so authorized to enter upon private property in the performance of these duties. (Prior Code, § 905.09) (Ord. 05-08, passed 11-17-2008) Penalty, see § 91.999

§ 91.089 PROHIBITION ON STREETS, HIGHWAYS OR RIGHTS-OF-WAY.

It is unlawful for any person to park or leave an inoperative vehicle in the right-of way of public streets, provided that a reasonable time, not to exceed 24 hours from the time of disability, is permitted for the removal or servicing of a disabled motor vehicle. Thereafter, the city may remove, impound and dispose of the vehicles in accordance with the procedures set forth in M.S. Ch. 168B, as it may be amended from time to time. (Prior Code, § 905.10) (Ord. 05-08, passed 11-17-2008) Penalty, see § 91.999

§ 91.090 RESTORATION OF VEHICLES.

Notwithstanding provisions of this subchapter to the contrary, one motor vehicle that is being kept for restoration purposes may be stored on each residential parcel of land if:

(A) The motor vehicle is kept under a tarp or is kept behind opaque visual screening; and

(B) Substantial and verifiable progress is made toward the restoration of the vehicle beginning within 30 days after it is parked on the lot and continuing thereafter until the restoration is completed.

(Prior Code, § 905.11) (Ord. 05-08, passed 11-17-2008)

INTRUSIVE LIGHTING

§ 91.105 IN GENERAL.

No use or structure shall be operated or occupied as to create light or glare in an amount or to a degree or intensity as to constitute a hazardous condition, or as to unreasonably interfere with the use and enjoyment of property by any person of normal sensitivities, or otherwise as to create a public nuisance.

(Ord. 01-16, passed 2-1-2016) Penalty, see § 91.999

§ 91.106 SPECIFIC STANDARDS.

All uses shall comply with the following standards except as otherwise provided in this section.

(A) Lighting fixtures shall be effectively arranged so as not to directly or indirectly cause illumination or glare in excess of one-half footcandle measured at the closest property line of any residential zones, and five footcandles measured at the street curb line or nonresidential property line nearest the light source.

(B) Lighting fixtures shall not exceed 2,000 lumens (equivalent to a 150 watt incandescent bulb) unless cutoff type shields the light source from an observer at the closest property line of a residential zone.

(C) Lighting shall not create a sensation of brightness that is substantially greater than ambient lighting conditions as to cause annoyance, discomfort or decreased visual performance or visibility to a person of normal sensitivities when viewed from any permitted or conditional residential use.

(D) Lighting shall not create a hazard for vehicular or pedestrian traffic.

(E) Lighting of building facades or roofs shall be located, aimed and shielded so that light is directed only onto the facade or roof.

(Ord. 01-16, passed 2-1-2016) Penalty, see § 91.999

§ 91.107 EXCEPTIONS.

The uses listed below shall be exempt from the provisions of this subchapter as follows.

(A) Publicly controlled or maintained street lighting and warning, emergency or traffic signals shall be exempt from the requirements of this subchapter.

(B) Athletic fields and outdoor recreation facilities serving or operated by an institutional or public use that otherwise meet all of the requirements of this subchapter shall be exempt from the requirements of § 91.106(A), (B) and (C) between the hours of 7:00 a.m. and 10:00 p.m., because of their unique requirements for nighttime visibility and limited hours of operations.

(Ord. 01-16, passed 2-1-2016)

USER CHARGE FOR EXCESSIVE CONSUMPTION OF POLICE SERVICES

§ 91.120 PURPOSE.

It is the intent of the City Council by the adoption of this subchapter to impose on and collect a fee from the person or persons in charge of or responsible for nuisance events or activities that generate extraordinary cost to the city over and above the cost of providing normal law enforcement services and police protection citywide.

(Ord. 02-14, passed 6-2-2014)

§ 91.121 DEFINITIONS.

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

NUISANCE EVENT.

- (1) An event requiring special security assignment in order to protect the public peace, health, safety and welfare.
- (2) A **NUISANCE EVENT** includes, but is not limited to, the following:
 - (a) Unlawful sale, possession, storage, delivering, giving, manufacture, cultivation or use of controlled substance;
 - (b) Prostitution or prostitution-related activity;
 - (c) Illegal gambling or gambling-related activity;
 - (d) Unlicensed sales of alcoholic beverages or unlawful sales or gifts of alcoholic beverages by an unlicensed person or underage consumption at a specific location;
 - (e) Loud and boisterous conduct, noises and activities that disturb the peace;
 - (f) Events between 11:00 p.m. and sunrise which disturb the peace and tranquility of the neighborhood;
 - (g) Congregating in a tumultuous, noisy or rowdy crowd;
 - (h) Fighting or use of obscene or inflammatory language;
 - (i) Loud music constituting a nuisance or disturbing the peace;
 - (j) Activities causing excessive pedestrian or vehicular traffic and parking problems and congestion; and
 - (k) Indecent exposure or lewd conduct.

(3) For the purposes of this subchapter, the term **NUISANCE EVENT** shall not include an event of domestic abuse as that term is defined in M.S. § 518B.01, subd. 2(a).

OWNER. A person or persons shown to be owner or owners of property on the property tax records of St. Louis County, Minnesota.

PERSONAL SERVICE. Service by personally handing a copy to the intended recipient or by leaving a copy at the intended recipient's residence or place of business with a person of suitable age and discretion.

POLICE SERVICES FEE. A fee imposed for law enforcement services associated with a special security assignment. The fee shall be set in the administrative fine schedule and may be based on, but not limited to, salaries of police officers while responding to or remaining at the nuisance event, the pro rata cost of equipment, the cost of repairing city equipment and property and the cost of any medical treatment of injured police officers.

RESPONSIBLE PERSON. A person who owns the property where the nuisance event takes place, and/or a person in charge of the premises, and/or a person who organized or served as a host of the nuisance event. If the responsible person is a minor, then the parents or guardians of that minor will also be considered

RESPONSIBLE PERSONS.

SPECIAL SECURITY ASSIGNMENT. The assignment of police officers, services and/or equipment during a second or subsequent response to a nuisance

event at a particular location after the service of a written notice to the responsible persons that a police services fee may be imposed for costs incurred by the city for any subsequent police response at the location.

(Ord. 02-14, passed 6-2-2014)

§ 91.122 INITIAL POLICE RESPONSE TO NUISANCE EVENT.

When any police officer responds to any nuisance event and determines that there is a threat to the public peace, health, safety or general welfare, the police officer may serve a written notice by mail or personal services to the responsible person or persons that any subsequent police response to that same location or address within a 90-day period shall be deemed a special security assignment and that the responsible person or persons may be liable for a police services fee.

(Ord. 02-14, passed 6-2-2014)

§ 91.123 SUBSEQUENT POLICE RESPONSES; LIABILITY.

If, after a written notice is served pursuant to this subchapter, a subsequent police response or responses are necessary to the same location or address within a 90-day period, then each subsequent response or responses shall be deemed a special security assignment. Responsible persons who had previously received a notice of warning shall be jointly and severally liable for a police services fee for a special security assignment. The city reserves its rights to seek reimbursement for actual costs and damages exceeding an amount set by City Council from time to time by resolution through other legal remedies or procedures.

(Ord. 02-14, passed 6-2-2014)

§ 91.124 COST; COLLECTION.

The Chief of Police shall notify the City Administrator's office in writing of the performance of each special security assignment, of the name and address of the responsible person or persons, the date and time of the incident, the services performed and the amount of the police services fee. If the police services fee is in excess of an amount set by City Council from time to time by resolution, the Chief of Police shall provide documentation to support the additional amount. The City Administrator's office shall thereafter cause appropriate billings to be made and be responsible for the collection of the police services fee.

(Ord. 02-14, passed 6-2-2014)

§ 91.125 ADMINISTRATIVE APPEAL.

(A) An administrative appeal of a police services fee may be made to the Chief of Police or his or her designee within ten days from the date of mailing of the billing.

(B) The request for a hearing shall be in writing and addressed to the Chief of Police and shall include a copy of the billing and grounds for the appeal.

(C) The Chief of Police or his or her designee may excuse or modify the service fee upon a finding that the responsible person or persons had made a good faith effort to remedy the situation or that the nuisance event was not the fault of the person or persons filing the appeal.

(Ord. 02-14, passed 6-2-2014)

§ 91.126 APPLICABILITY OF SUBCHAPTER.

This subchapter shall not be deemed to authorize the imposition of a police services fee against a landlord for a police response initiated by a call from a tenant for police or emergency assistance in response to domestic abuse or any other conduct.

(Ord. 02-14, passed 6-2-2014)

§ 91.999 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Any person violating the provisions of § 91.006 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine subject to the city administrative fine schedule. Each day of noncompliance shall constitute a separate violation. In addition, the civil abatement procedures set forth in § 91.007 and Chapter 151 of this code of ordinances may also be applicable to this section.

(Prior Code, § 901.062)

(C) Any violation of §§ 91.020 through 91.023 shall be considered a misdemeanor and be punishable by existing laws, including, but not limited to, Chapter 11 of this code of ordinances for treatment as an administrative offense.

(Prior Code, § 901.41)

(Ord. 02-05, passed 4-4-2005; Ord. 05-05, passed 5-2-2005)

CHAPTER 92: PUBLIC PROPERTY AND IMPROVEMENTS

Section

92.01	Definition
92.02	Weed elimination
92.03	Sidewalk repair
92.04	Street sprinkling, flushing, tree care and the like
92.05	Personal liability

- 92.06 Assessment
- 92.07 Depositing of snow
- 92.08 Storage and transportation of deicing material

§ 92.01 DEFINITION.

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

CURRENT SERVICES. One or more of the following: weed elimination from street grass plots adjacent to sidewalks or from private property; street flushing; light street oiling or other dust treatment of streets; repair of sidewalks; trimming and care of trees and removal of unsound trees from the public streets; and abatement of health or safety nuisances pursuant to Chapter 91 of this code of ordinances.

(Prior Code, § 301.01)

§ 92.02 WEED ELIMINATION.

On or before June 1 of each year, the Clerk-Treasurer shall publish once in the official newspaper a notice directing owners and occupants of property within the city to destroy all weeds defined to be a nuisance by § 91.002(H). In the event that any owner or occupant shall fail to abate a weed nuisance after published notice, the city may cause the nuisance to be abated pursuant to Chapter 91 of this code of ordinances.

(Prior Code, § 301.02)

§ 92.03 SIDEWALK REPAIR.

(A) *Owner responsibility.*

(1) The owner of any property in the city abutting a public sidewalk shall keep the sidewalk in repair and safe for pedestrians. Repairs shall be made in accordance with standard specifications approved by the Council and filed with the Clerk-Treasurer. Before commencing the repair work, the property owner shall obtain a permit from the Clerk-Treasurer. No fee shall be charged for the permit.

(2) In addition, all snow, ice, dirt and rubbish remaining on a public sidewalk more than 12 hours after its deposit thereon is a public nuisance. The owner and the occupant of any property adjacent to a public sidewalk shall use due diligence to keep the walk safe for pedestrians. No owner or occupant shall allow snow, ice, dirt or rubbish to remain on the walk longer than 12 hours after its deposit thereon. Violation of this division (A) relative to snow, ice, dirt and rubbish removal shall constitute a petty misdemeanor punishable for a fine subject to the city administrative fine schedule.

(B) *Enforcement.* The Clerk-Treasurer or any other person as the Council may designate may inspect sidewalks to determine if they are in good repair and safe for pedestrians. If he or she finds that any sidewalk is in need of repair, he or she shall cause a notice to be served, by registered or certified mail, by personal service, upon

the owner of the property and the occupant if the owner does not reside in the city or cannot be found therein ordering the owner to have the sidewalk repaired and made safe within 30 days and stating that if the owner fails to do so, the repairs will be made by the city, that the expense thereof must be paid by the owner, and that if unpaid it will be made a special assessment against the property concerned.

(C) *Repair.* If the sidewalk is not repaired within 30 days after receipt of the notice, the Clerk- Treasurer shall report that fact to the Council. The Council shall, by resolution, order the Street Department to repair the sidewalk or order the work done by contract. The Clerk-Treasurer shall keep a record of the total cost of repair attributable to each lot or parcel of property.

(Prior Code, § 301.03) (Ord. 02-05, passed 4-4-2005) Penalty, see § 10.99

§ 92.04 STREET SPRINKLING, FLUSHING, TREE CARE AND THE LIKE.

(A) *Notice.* The Council shall each year determine what streets and alleys shall be sprinkled, flushed, oiled or given other dust treatment during the year and the kind of work to be done on each. The Council shall also determine from time to time the streets on which trees shall be trimmed and cared for and what unsound trees shall be removed. Before any work is done, the Clerk-Treasurer shall, under the Council's direction, publish notice that the Council will meet to consider the projects. The notice shall be published in the official newspaper at least once no less than two weeks prior to the meeting the streets affected, the particular projects proposed, and the estimated cost of each project, either in total or on the basis of the proposed assessment per front foot or otherwise.

(B) *Hearing.* At the hearing or any adjournment thereof, the Council shall hear property owners with reference to the scope and desirability of the proposed projects. The Council shall thereupon adopt a resolution confirming the original projects with a modification as it deems desirable and shall provide for the doing of the work by day labor through the Street Department or by contract. The Clerk- Treasurer shall keep a record of the cost and the portion of the cost properly attributable to each lot and parcel of property abutting on the street or alley on which the work is done.

(Prior Code, § 301.04)

§ 92.05 PERSONAL LIABILITY.

The owner of property on or adjacent to which a current service has been performed shall be personally liable for the cost of the service. As soon as the service is completed and the cost determined, the Clerk-Treasurer shall prepare a bill and mail it to the owner. Thereupon, the amount shall be immediately due and payable at the Clerk-Treasurer's office.

(Prior Code, § 301.05)

§ 92.06 ASSESSMENT.

On or before September 1 of each year, the Clerk-Treasurer shall list the total unpaid charges for each type of current service against each separate lot or parcel to which they are attributable under this chapter. After notice and hearing as provided in M.S. § 429.061, as it may be amended from time to time, the Council may spread the charges against the property benefitted as a special assessment pursuant to 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 along with current taxes for the following year or in annual installments, not exceeding ten, as the Council may determine in each case.
(Prior Code, § 301.06)

§ 92.07 DEPOSITING OF SNOW.

(A) *Depositing snow.* The depositing, placing or throwing, upon any of the public sidewalks, streets, alleys, highways or other public grounds within the city of snow or accumulations thereof for the purpose of removing the snow or accumulations thereof from any lot, tract or parcel of land is hereby prohibited.

(B) *Directing the depositing of snow.* No person as owner, lessee, occupant, tenant or agent of any lot, parcel or tract of land shall allow, authorize, direct or permit another to do or cause to be done any of the things forbidden by this section.
(Prior Code, § 301.07) Penalty, see § 10.99

§ 92.08 STORAGE AND TRANSPORTATION OF DEICING MATERIAL.

(A) *Purpose.* The purpose of this section is to ensure proper operation of permanent and temporary bulk deicer facilities and operations within the City of Proctor to prevent chloride transmission into lakes, streams, groundwater, drinking water supplies as well as to protect freshwater fish and other aquatic life.

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

BULK STORAGE. Storage of any material used for deicing and/or traction during winter conditions that is more than five tons solid or 1,000 gallons liquid and includes salt piles, salt bag storage and sand piles.

BULK STORAGE FACILITIES. Storage site, snow piles, salt truck wash water and transfer of materials.

(C) *General requirements.*

(1) Indoor operations for the storage of deicing materials must be provided wherever possible to prevent such materials from being affected by rain, snow and melt water.

(2) All salt, sand and other deicing materials stored outdoors must be always covered.

(a) When not using a permanent roof, a waterproof impermeable, flexible cover must be placed over all storage piles (to protect against precipitation and surface water runoff). The cover must be secured to prevent removal

by wind or other storm events. Piles must be formed in a conical shape and covered as necessary to prevent leaching.

(b) Any roof leaks, tears or damage should be temporarily repaired during winter to reduce the entrance of precipitation. Permanent repairs must be completed prior to the next winter season.

(D) *Facility site.*

(1) The bulk storage facility must be near the area in which the deicing materials are to be used, if practical.

(2) Each bulk storage facility must be located outside of floodplains and 200 feet from lakes, rivers, streams, ditches, storm drains, manholes, catch basins, wetlands, and any other areas likely to absorb runoff. A facility must not be located in close proximity to surface water features, water supplies, wells or drywells.

(3) A bulk storage facility must be located on impermeable surfaces.

(4) The property slope must be away from the facility's salt, deicer, and sand storage area.

(5) Salt vulnerable/intolerant natural areas should be avoided as storage facilities to the extent possible. Where they cannot be avoided, specific measures should be instituted to protect vulnerable areas. Salt vulnerable/intolerant natural areas include, but are not limited to:

(a) Areas with salt sensitive vegetation;

(b) Areas serving as a source of drinking water (surface water and ground water);

(c) Areas with bodies of water with low dilution, low volume or salt sensitive species;

(d) Areas associated with ground water recharge zones or shallow water table, with medium to high permeable soils.

(E) *Snow piles.* Snow piles must be located downslope from salt and deicer storage areas to prevent the snow melt from flowing through storage areas and carrying material to the nearest drainage system or waterway.

(F) *Deicer truck wash water.* Deicer- and salt-containing truck wash water must be captured, treated, and recycled for use as salt-brine in pre-wetting and anti-icing activities.

(G) *Transfer of materials.* Practices must be implemented in order to reduce exposure (e.g., sweeping, diversions, and/or containment) when transferring salt or other deicing material.

(H) *Penalty.* Any person violating the provisions of this section shall be punished by a fine in an amount set by resolution of the Council.
(Ord. 04-22, passed 7-18-2022)

CHAPTER 93: FAIR HOUSING

Section

93.01 Purpose and intent

93.02 Definitions

93.03	Prohibited acts in regards to housing
93.04	Exemptions and exceptions
93.05	Enforcement procedures
93.06	Statute of limitations
93.07	Civil enforcement procedure
93.99	Penalty

§ 93.01 PURPOSE AND INTENT.

It is the intent of this chapter to secure in each citizen and resident of the city an opportunity to obtain quality housing without adverse discrimination on the basis of race, sex, creed, religion, marital status and disability. It is also the policy of the city to protect all persons from unfair and unfounded charges of discrimination.

(Prior Code, § 1005.01)

§ 93.02 DEFINITIONS.

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

DISABILITY. A mental or physical condition which constitutes a handicap. Nothing in this section shall be construed to prohibit any program, service, facility or privilege afforded to a person with a **DISABILITY** which is intended to habitat, rehabilitate or accommodate that person.

DISCRIMINATE or **DISCRIMINATION.** Include segregate or separate.

MARITAL STATUS. The standing, state or condition of one as single or married person.

(Prior Code, § 1005.01)

§ 93.03 PROHIBITED ACTS IN REGARDS TO HOUSING.

(A) It is unlawful:

(1) For any person to discriminate on grounds of race, creed, religion, color, sex, marital status, status with regard to public assistance, national origin, age or disability in the sale, lease or rental of any housing unit or units;

(2) For any broker, salesperson or other person acting in behalf of another to so discriminate in the sale, lease or rental of any housing unit or units belonging to any other person;

(3) For any person engaged in the business of financing the purchase, rehabilitation, remodeling or repair of housing units or in the business of selling insurance with respect to housing units to refuse to provide the financing or insurance or to discriminate with regard to the terms or conditions thereof by reason of the race, color, sex, religion, creed, national origin, marital status, status with regard to public

assistance, age or disability of the applicant or because of the location of the unit or units in areas of the city occupied by persons of a particular race, color, sex, religion, creed, national origin, marital status, status with regard to public assistance, age or disability; or to discriminate by treating differently any person or group of persons who desire to purchase, lease, acquire, construct, rehabilitate, repair or maintain real property in a specific urban area because of social, economic or environmental conditions of the area in the granting, withholding, extending, modifying or renewing, or in the rates, terms, conditions or privileges of any financial assistance or in the extension of services in connection therewith. The bona fide programs of federal, state or local governmental units or agencies, however structured or authorized to upgrade or improve in any manner a specific urban area, shall not be deemed to be a violation of this division (A)(3);

(4) For any person, having sold, leased or rented a housing unit or units to any person, to discriminate with respect to facilities, services or privileges of occupancy by reason of race, color, sex, creed, religion, national origin, age, disability, marital status or status with regard to public assistance;

(5) For any person to make or publish any statement evidencing an intent to discriminate on grounds of race, creed, religion, color, sex, national origin or ancestry, marital status, status with regard to public assistance, age or disability in the sale, lease or rental of a housing unit or units;

(6) For any person to make any inquiry regarding race, color, sex, creed, religion, national origin, marital status, status with regard to public assistance, age or disability or to keep any record or use any form of application designed to elicit information in connection with the sale, lease, rental or financing of a housing unit or units; and

(7) For any person, including real estate agents or brokers, for the purpose of inducing a real estate transaction from which he or she may benefit financially:

(a) To represent that a change has occurred or will or may occur in the composition of the block, neighborhood or area in which the property is located in respect of the race, color, sex, creed, religion, national origin, marital status, status with regard to public assistance, age or disability of those living there; or

(b) To represent that this change will or may result in the lowering of property values, an increase in crime or anti-social behavior, or a decline in the quality of schools in the block, neighborhood or area concerned.

(B) Nothing in this section shall be construed to require any person or group of persons selling, renting or leasing property to modify the property in any way or exercising a higher degree of care for a person having a disability than for a person who does not have a disability; nor shall this section be construed to relieve any person or persons regardless of any disability in a written lease, rental agreement or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations of the lease, agreement or contract.

(Prior Code, § 1005.01) Penalty, see § 93.99

§ 93.04 EXEMPTIONS AND EXCEPTIONS.

- (A) The unlawful acts described above in § 93.03 shall not be unlawful where:
- (1) The rental unit or dwelling unit in question has accommodations for no more than four families; provided, that the fee owner of the rental units or dwelling units physically occupies one of the available units;
 - (2) The rental units or dwelling units are solely owned by a religious organization, association or society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society “which limits the sale, rental or occupancy of dwelling which it owns or operates for other than commercial purposes to persons of the same religion or which gives preference to those persons, unless membership in such a religion is restricted on account of race, color, sex or national origin”;
 - (3) The sale or rental of the owner-occupied single-family housing involves a circumstance where the owner does not utilize the services of a real estate broker or real estate salesperson; provided, however, that the sale or rental is not accomplished through the use of discriminatory advertising; or
 - (4) The facilities or units involved are solely owned by a private club not in fact open to the public which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose and which limits the rental or occupancy of the lodgings to its members or gives preference to its members.
- (B) Nothing in this section shall be construed to require any person or group or persons selling, renting or leasing property to modify the property in any way or exercise a higher degree of care for a person having a disability than for a person who does not have a disability; nor shall this section be construed to relieve any person or persons or any obligations generally imposed on all persons regardless of any disability in a written lease, rental agreement or contract of purchase or sale or to forbid distinctions based on the inability to fulfill their terms and conditions, including financial obligations of the lease, agreement or contract.
(Prior Code, § 1005.01)

§ 93.05 ENFORCEMENT PROCEDURES.

The city is designated as the enforcement agency for this section and shall have the power to receive, hear and determine complaints as provided herein. The city shall promptly investigate, upon complaint or upon its own motion, any violations of this section. If after investigation it shall have reason to believe a violation has occurred, it may refer the matter to the City Attorney for criminal prosecution, initiate civil enforcement procedures as herein provided, or enter into a settlement agreement which, when approved by the city, shall have the same force as a city order.
(Prior Code, § 1005.01)

§ 93.06 STATUTE OF LIMITATIONS.

No action may be brought for civil enforcement or criminal prosecution unless the charge of alleged discriminatory practice was filed with the city within 180 days from the occurrence of the practice.

(Prior Code, § 1005.01)

§ 93.07 CIVIL ENFORCEMENT PROCEDURE.

Civil enforcement procedures shall be prosecuted by the city before the Council in the following manner.

(A) The city shall serve upon respondent by certified mail a complaint, signed by it, which shall set forth a clear and concise statement of the facts constituting the violation, set a time and place for hearing, and advise the respondent of his or her right to file an answer, to appear in person or by an attorney and to examine and cross-examine witnesses.

(B) The hearing shall not be less than 20 days after service of the complaint. At any time prior to the hearing the respondent may file an answer. Facts not denied by answer shall be deemed admitted. If the answer sets out new matter, it shall be deemed denied by the city.

(C) The complaint or answer may be amended at any given time prior to the hearing with the consent of the opposing party.

(D) Hearings shall be before the Council.

(E) The city may obtain subpoenas from the District Court to compel the attendance of witnesses and the production of documents at any hearing.

(F) If, after hearing, the panel shall conclude that a violation has occurred, it shall prepare an order which may contain any provision deemed desirable to do justice to the complainant or to prevent further violations. It may include provisions which require the respondent to rent, sell or lease particular housing to the complainant or to do any other thing as may be just. The panel's findings of fact and order shall be served on the respondent and each member of the Council by mail, shall become the findings and order of the city unless, within ten days after mailing of the findings and order, the city shall revoke or amend the order, but any order of a panel may be modified by the city at any time.

(Prior Code, § 1005.01)

§ 93.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful or fails to act when the failure is prohibited or declared unlawful by a code adopted by reference by this chapter and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

(Prior Code, § 1005.01)

CHAPTER 94: TREES

Section

94.01	Purpose
94.02	Authority and power
94.03	Applicability
94.04	Landscaping
94.05	Tree planting, maintenance and removal
94.06	Tree protection
94.07	Private trees
94.99	Penalty

§ 94.01 PURPOSE.

It is the purpose of this chapter to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, maintenance and removal of trees, shrubs and other plants within the city.
(Prior Code, § 1003A)

§ 94.02 AUTHORITY AND POWER.

(A) *City Tree Board.* There is hereby created and established a City Tree Board for the city, which shall consist of the members of the Proctor Beautification and Tree Committee.

(B) *City Tree Inspector.* The Foreman of the City Street Department, or his or her designee, shall serve as the City Tree Inspector and shall report to the City Tree Board.
(Prior Code, § 1003A)

§ 94.03 APPLICABILITY.

This chapter provides full power and authority over all trees, plants and shrubs located within street rights-of-way, parks and public places of the city; and to trees, plants and shrubs located on private property that constitute a hazard or threat as described herein.
(Prior Code, § 1003A)

§ 94.04 LANDSCAPING.

In new subdivisions or when the development of commercial property occurs, the City Tree Inspector will review landscaping plans and may require trees to be planted in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided.

(Prior Code, § 1003A)

§ 94.05 TREE PLANTING, MAINTENANCE AND REMOVAL.

(A) *Utilities.* No street trees may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.

(B) *Topping.* It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree or other tree on public property.

TOPPING is defined as the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this chapter at the determination of the Beautification and Tree Committee. No person shall plant, remove, cut above the ground or disturb any trees on any park, or other public place without first filing an application and procuring a permit from the City Tree Inspector. The person receiving the permit shall abide by the standards set forth in this chapter.

(Prior Code, § 1003A) Penalty, see § 94.99

§ 94.06 TREE PROTECTION.

(A) Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, or threatens to spread disease or insect infestations, the City Tree Inspector shall at once cause written notice to be served upon the owner of the property upon which the diseased or infested tree is situated, and the notice shall require the property owner to eradicate, remove or otherwise control the condition within reasonable time to be specified in the notice.

(B) (1) The City Tree Inspector shall have as one of his or her duties the location, selection and identification of any trees which qualify as "landmark trees".

(2) A tree may qualify for a landmark tree if it meets one or more of the following criteria:

- (a) Species rarity;
- (b) Old age;
- (c) Association with a historical event or person; and/or
- (d) Scenic enhancement.

(Prior Code, § 1003A)

§ 94.07 PRIVATE TREES.

The City Tree Inspector or his or her official designee has the authority to enter onto private property whereon there is located a tree, shrub, plant or plant part that is suspected to be a public nuisance.

(Prior Code, § 1003A)

§ 94.99 PENALTY.

(A) *Violations.* Any person who violates any provision of this chapter or who fails to comply with any notice issued pursuant to provisions of this chapter, upon being found guilty of violations, shall be subject to a fine based on the city administrative fine schedule for each separate offense. Each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense. If, as a result of the violation of any provision of this chapter, the injury, mutilation or death of a tree, shrub or other plant located on city-owned property is caused, the cost of repair or replacement of the tree, shrub or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of *A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens*, as published by the International Society of Arboriculture.

(B) *Assessment of claim.* In the event that a nuisance is not abated by the date specified in the notice, the City Tree Inspector is authorized to cause the abatement of the nuisance. The reasonable cost of the abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.
(Prior Code, § 1003A) (Ord. 02-05, passed 4-4-2005)

CHAPTER 95: RIGHT-OF-WAY MANAGEMENT

Section

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

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

§ 95.02 DEFINITIONS.

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

§ 95.03 PERMIT REQUIREMENT.

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

(1) *Excavation permit.* An excavation permit is required to excavate that part of the right-of-way described in 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.

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

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

(C) *Delay penalty.* In accordance with Minnesota Rule 7819.1000 subp. 3, as it may be amended from time to time, and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in

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

(D) *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 director.

§ 95.04 PERMIT APPLICATIONS.

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

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

(1) Each permittee's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers;

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

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

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

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

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

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

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

(f) The city may require a copy of the actual insurance policies;

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

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

(B) Payment of money due the city for:

(1) Permit fees, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

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

(4) Franchise fees or other charges, if applicable.

§ 95.05 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the director shall issue a permit.

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

(C) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in M.S. Ch. 216D and Minnesota Rules Ch. 7560, as they may be amended from time to time, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city.

§ 95.06 PERMIT FEES.

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

(1) The city management costs; and

(2) Degradation costs, if applicable.

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

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

(D) *Non-refundable.* Permit fees that were paid for a permit that the director has revoked for a breach as stated in § 95.21 of this section are not refundable.

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

(F) *Consistent with state statute.* All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.100, as it may be amended from time to time.

§ 95.07 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required in this chapter, 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 unseasonable or unreasonable under § 95.15 of this chapter.

(B) *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.

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

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

(3) *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.

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100, as it may be amended from time to time.

(D) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the director, correct all restoration work to the extent necessary, using the method required by the director. Said work shall be completed within five calendar days of the receipt of the notice from the director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under § 95.15 of this chapter.

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

of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

§ 95.08 SUPPLEMENTARY APPLICATIONS.

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

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

§ 95.09 DENIAL OF PERMIT.

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

§ 95.10 INSTALLATION REQUIREMENTS.

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

§ 95.11 INSPECTION.

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

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

(C) *Authority of director.*

(1) At the time of inspection, the director may order the immediate cessation of any work, which poses a serious threat to the life, health, safety or well-being of the public.

(2) The director may issue an order to the permittee for any work 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 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 § 95.21 of this chapter.

§ 95.12 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

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

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

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

§ 95.13 SUPPLEMENTARY NOTIFICATION.

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

§ 95.14 REVOCATION OF PERMITS.

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

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

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 95.18 of this chapter.

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

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

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

§ 95.15 MAPPING DATA.

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

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

contractors working on a public improvement project including those under M.S. Ch. 429, as it may be amended from time to time, and city approval of performance under development agreements, or other subdivision or site plan approval under M.S. Ch. 462, as it may be amended from time to time. The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

§ 95.16 LOCATION OF FACILITIES.

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

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

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

§ 95.17 DAMAGE TO OTHER FACILITIES.

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

§ 95.18 RIGHT-OF-WAY VACATION.

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

§ 95.19 INDEMNIFICATION AND LIABILITY.

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

§ 95.20 ABANDONED FACILITIES.

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

§ 95.21 APPEAL.

A right-of-way user that: has been denied registration; has been denied a permit; has had permit revoked; believes that the fees imposed are invalid; or disputes a determination of the city, 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. A decision by the City Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

§ 95.22 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 necessary to protect the health, safety and welfare of the public.