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Section 900: Health and Safety; Nuisances

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General Provision**900.01 Assessable Current Services****Subdivision 1 Definition.**

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

Current Service. Shall mean one or more of the following: snow, ice, or rubbish removal from sidewalks, weed elimination from street grass plots adjacent to sidewalks or from private property, removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in M.S. § 463.15 through 463.26 as they may amended from time to time, installation or repair of water service lines, street sprinkling, street flushing, light street oiling, or other dust treatment of streets, repair of sidewalks and alleys, trimming and care of trees and removal of unsound and insect infected trees from the public or private property, and the operation of a street lighting system.

Subdivision 2 Snow Ice, Dirt, and Rubbish.

- A. Duty of owners and occupants. The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep the walk safe for pedestrians. No owner or occupants shall allow snow, ice, dirt, or rubbish to remain on the walk longer than 24 hours after it's deposited thereon. Failure to comply with this section shall constitute a violation.
- B. Removal by City. The City Administrator or other personnel designated by the City Council may cause removal from all public sidewalks all snow, ice, dirt, and rubbish as soon as possible beginning 24 hours after any matter has been deposited thereon on or after the snow has ceased to fall. The City Administrator or other designated person shall keep a record showing the cost of removal adjacent to each separate lot and parcel.

Subdivision 3 Public Health and Safety Hazards.

When the City removes or eliminates public health or safety hazards from private property under the following provisions of this Chapter, the Administrative Officer responsible for doing work shall keep a record of the cost of the removal or elimination against each parcel of property affected and annually delivers that information to the City Administrator.

Subdivision 4 Zones.

- A. In the B1 and the B2 Business Districts sidewalks are a requirement; only those streets where a grade level has been established and curb and gutter installed. Non-conforming B1 and B2 area may be continued.
- B. Agricultural and Industrial no requirement for sidewalk exists
- C. Sidewalks in the R1 residential are optional.

Subdivision 5 Installation and repair of water service lines.

Whenever the City installs or repairs water service lines serving private property, the City Administrator shall keep a record of the total cost of the installation or repair against the property.

Subdivision 6 Repair of sidewalks and alleys

- A. Duty of owner. The owner of any property within the City abutting a public sidewalk or alley shall keep the sidewalk or alley in repair and safe for pedestrians. Repairs shall be made in accordance with the standard specifications approved by the City Council and on file in the office of the City Administrator.
- B. Inspections; Notice. The City Council or its designee may make inspections as are necessary to determine that public sidewalks and alleys within the City are kept in repair and safe for pedestrians or vehicles. If it is found that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the City Council may cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property, ordering the owner to have the sidewalk or alley repaired and made safe within thirty (30) days and stating that if the owner fails to do so, the City will do so and that the expense thereof must be paid by the owner, and if unpaid it will be made a special assessment against the property concerned.
- C. Repair by City. If the sidewalk or alley is not repaired within thirty (30) days after the receipt of the notice, the City Administrator shall report the facts to the City Council and the City Council may by Resolution order the work done by contract in accordance with law. The City Administrator shall keep a record of the total cost of the repair attributed to each lot or parcel of property.

Subdivision 7 Personal Liability.

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

Subdivision 8 Damage to Public Property.

Any person driving any vehicle, equipment, object, or contrivance upon any street, road, highway, or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of the vehicle, equipment, or object or contrivance; or as a result of operating, driving or moving of the vehicles, equipment, or object or contrivance weighing in excess of the maximum weight permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object or contrivance, but is operating, driving or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who acts or fails to exercise due care

and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. §514.67, as it may be amended from time to time.

Subdivision 9 Assessment.

On or before October 1 of each year, the City Administrator shall list the total unpaid charges for each type of current service and charges under this section against separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges against property benefited as a special assessment under the authority of M.S. §429.01 as it may be amended from time to time and other pertinent statutes for certification to the County Auditor and collection along with the current taxes the following year or in annual installments, not exceeding ten (10), as the City Council may determine in each case.

900.02 Tree Diseases

Subdivision 1 Trees constituting nuisance declared.

The following are public nuisances whenever they may be found within the City:

- A. Any living or standing elm tree or part thereof infected to any degree with Dutch Elm disease fungus *Ceratocystis Ulmi (Buisman) Moreau* or harbors any of the elm bark beetles *Scolytus Multristriatus (Eichh)* or *Hylungopinus Rufipes (Marsh)*;
- B. Any dead elm tree or part thereof, including branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle insecticide;
- C. Any living or standing or part thereof infected to any degree with Oak Wild fungus *Ceratocystis fagacearu*;
- D. Any dead oak tree or part thereof which in the opinion of the designed officer constitutes a hazard, including but not limited to logs, branches, stumps, roots, firewood, or other oak material which has not been stripped of its bark and burned or sprayed with an effective fungicide;
- E. Any other shade tree with an epidemic disease.

Subdivision 2 Abatement of nuisance.

It is unlawful for any person to permit any public nuisance as defined in Subdivision 1 of this section to remain on any premises the person owns or controls within the City. The City Council may by resolution order the nuisance abated. Before action is taken on that resolution, the City Council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to the affected property owner and published once no less than one (1) week prior to the meeting. The notice shall state the time and place of the meeting, the street affected, action proposed, the estimated cost

of the abatement, and the proposed basis of assessment, if any, of costs. At such hearing or adjournment thereof, the City Council shall hear any property owner with reference to the scope and desirability of the proposed project. The City Council shall thereafter adopt a resolution confirming the original resolution with modifications, as it considers desirable and provide for the doing of the work by day labor or by contract. Before the work is done, the city shall attempt to gain the permission of the property owner. If the owner refuses to permit the work to be done, the city shall obtain an administrative search warrant from the district court authorizing the work be done before doing the work.

Subdivision 3 Record of costs.

The City Administrator shall keep a record of costs of abatement done under this section for all work done for which assessments are to be made, stating and certifying the description of the land, lots, parcels involved, and the amount chargeable to each.

Subdivision 4 Unpaid charges.

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

Penalty see §900.99

Nuisances

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900.15 Public Nuisances

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 §900.16, 900.17, 900.18, or any other part of this code to be a public nuisance for which no sentence is specifically provided.

Penalty see §900.99

900.16 Public Nuisances Affecting Health

The following are hereby declared to be nuisances affecting health:

- A) Exposed accumulation of decayed or unwholesome food or vegetable matter.
- B) All diseased animals running at large.
- C) All ponds or pools of stagnant water.
- D) Carcasses of animals not buried or destroyed within twenty-four (24) hours after death.

- E) Accumulations of manure, refuse, or other debris;
- F) Privy vaults and garbage cans which are not rodent free or fly tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors.
- G) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances.
- H) All noxious weeds and other rank growths of vegetation upon public or private property.
- I) Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities.
- J) All public exposure of people having a contagious disease, and
- K) Any offensive trade or business as defined by statute not operating under local license.

900.17 Public Nuisances Affecting Morals and Decency

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

- A) All gambling devices, slot machines and punch boards, except as otherwise authorized by federal state or local law;
- B) Betting, bookmaking, and all apparatus used in those occupations;
- C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdy houses;
- D) All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor, or where intoxicating liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place;
- E) Any vehicle used for the unlawful transportation of intoxicating liquor, or for promiscuous sexual intercourse, or any other illegal or immoral purpose.

900.18 Public Nuisances Affecting Peace and Safety

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

- A) All snow and ice not removed from public sidewalks twenty-four (24) hours after the snow or other precipitation causing the condition has ceased to fall;

- B) All trees, hedges, billboards, or other obstructions, which prevent people from having a clear view of all traffic approaching an intersection;
- C) All wires and limbs of trees which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;
- D) All obnoxious noises in violation of MN Rules Chapter 7030, as they may be amended from time to time which are thereby incorporated by reference into this code;
- E) The discharging of the exhaust or permitting the discharging of the exhaust of any stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;
- F) The using or operation or permitting the using or operating of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet and comfort of any person nearby. Operation of any device referred to above between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of fifty (50) feet if the source is located outside a structure or building shall be prima facie evidence of violation of this section;
- G) No person shall participate in any other gathering of people giving rise to noise, unreasonably disturbing the peace, quiet or repose of another person. When a police officer determines that a gathering is creating such a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a police officer to do so. Every owner or tenant of such premises who has knowledge of the disturbance shall make every effort to see that the disturbance is stopped;
- H) Obstructions and excavations affecting the ordinary public use of streets, alleys, sidewalks, or public grounds except under conditions as are permitted by this code or other applicable law;
- I) Radio aerials or television antennae erected or maintained in a dangerous manner;
- J) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds to gather, obstructing traffic and the free use of the street or sidewalk;
- K) All hanging signs, awnings, and other similar structures over streets and sidewalks, so situated also as to endanger public safety, or not constructed and maintained as provided by ordinance;

L) 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;

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

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

O) Wastewater cast upon or permitted to flow upon streets or other public properties;

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

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

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

S) 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;

T) The deposition of garbage or refuse on a public right-of-way or on adjacent private property;

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

V) (1) Noises prohibited.

a) General prohibition. No person shall make or cause to be made distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property's value. This general prohibition is not limited by the specific restrictions of this section.

b) Loading, unloading, unpacking. No person shall create loud or excessive noise in loading, unloading, or unpacking any vehicle.

c) Defective vehicles or loads. No person shall use any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise.

d) Radios, phonographs, paging systems, and the like. No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for the production or reproduction of sound in a distinct and loudly audible manner as to unreasonably disturb the peace, quiet, and comfort, of any person nearby. Operation of any such set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at the property line of the structure or building in which it is located, in the hallway or apartment adjacent, or at a distance of fifty (50) feet if the source is located outside a structure or building, shall be prima facie evidence of a violation of this section.

e) Schools, churches, hospitals, and the like. No person shall create any excessive noise on any street, alley, or public grounds adjacent to any school, institution of learning, church or hospital, when the noise unreasonably interferes with the working of the institution or disturbs or unduly annoys its occupants or residents and when conspicuous signs indicate the presence of such institution.

2) Hourly restriction of certain operations

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

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

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

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

W) Reflective glare or light from private exterior lighting exceeding 0.5 foot-candles as measured on the property line of the property where the lighting is located when abutting

any residential parcel, and one foot-candle when abutting any commercial or industrial parcel.

900.19 Nuisance parking and storage

Subdivision 1 Declaration of a nuisance.

The outside parking and storage on residentially-zoned property of large numbers of vehicles, materials, supplies or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because (a) it obstructs views on streets and/or private property, (b) creates cluttered and otherwise unsightly areas, (c) prevents the full use of residential streets for residential parking, (d) introduces commercial advertising signs that are otherwise prohibited, (e) decreases adjoining landowners and occupants enjoyment of their property and neighborhood, and (f) otherwise adversely affects property values and neighborhood patterns.

Subdivision 2 Unlawful parking and storage

- A. A person must not place, store, or allow the placement or storage of ice fish houses, skateboard ramps, playhouses, or other similar non-permanent structures outside continuously for longer than twenty-four (24) hours in the front yard area of residential property unless more than a hundred (100) feet back from the front property line.
- B. A person must not place, store or allow the placement of pipe, lumber, forms, steel machinery, or similar materials, including all materials used in connection with a business, outside on residential property, unless shielded from public view by an opaque cover or fence.
- C. A person must not cause, undertake, permit or allow the outside parking and storage of vehicles on residential property unless it complies with the following requirements:
 1. No more than four (4) vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the city because of nonresidential characteristics of the property. This maximum number does not include vehicles of occasional guests who do not reside on the property
 2. Vehicles that are parked or stored outside in the front yard area must be on a paved or graveled parking or driveway area.
 3. Vehicles, watercraft, and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away at school for periods of time but still claim the property as their legal residence will be considered residents on the property.

Penalty see §900.99

900.20 Inoperable Motor Vehicles

A) It shall be unlawful to keep, park, store, or abandon any motor vehicle which is not in operating condition, partially dismantled, used for repair of parts or as a source of repair or replacement parts for other vehicles, kept for scrapping, dismantling or salvage of any kind, or which is not properly licensed for operation with the state, pursuant to M.S. §168B.011 Sub 3, as it may be amended from time to time.

B) This section does not apply to a motor vehicle enclosed in a building and or kept out of view from any street, road, or alley, and which does not foster complaint from a resident of the city. A privacy fence is permissible.

C) Any motor vehicle described in this section constitutes a hazard to the health and welfare of the residents of the community in that such vehicles can harbor noxious diseases, furnish a shelter and breeding place for vermin and present physical danger to the safety and well-being of children and citizens, and vehicles containing fluids which, if released into the environment, can and do cause significant health risks to the community.

900.21 Building Maintenance and Appearance**Subdivision 1 Declaration of a nuisance.**

Building, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they (a) are unsightly, (b) decrease adjoining landowners and occupants enjoyment of their property and neighborhood, and (c) adversely affect property values and neighborhood patterns.

Subdivision 2 Standards.

A building, fence, or other structure is a public nuisance if it does not comply with the following requirements.

- A. No part of any exterior surface may have deterioration, holes, breaks, gaps, loose or rotting boards or timbers.
- B. Every exterior surface that has a surface finish such as paint applied must be maintained to avoid noticeable deterioration of the finish. No wall or other exterior surface may have peeling, cracked, chipped, or otherwise deteriorated surface finish on more than twenty percent (20%) of:
 1. Any one (1) wall or other flat surface; or
 2. All door and window moldings, eaves, gutters, and similar projections on any one (1) side or surface.
- C. No glass, including windows and exterior light fixtures, may be broken or cracked, and no screens may be torn or separated from moldings.

- D. Exterior doors and shutters must be hung properly and have an operable mechanism to keep them securely shut or in place.
- E. Cornices, moldings, lintels, sills, bay or dormer windows and similar projections must be kept in good repair and free from cracks and defects that make them hazardous or unsightly.
- F. Roof surfaces must be tight and have no defects that admit water. All roof drainage systems must be secured and hung properly.
- G. Chimneys, antennas, air vents, and other similar projections must be structurally sound and in good repair. These projections must be secured properly, where applicable, to an exterior wall or exterior roof.
- H. Foundations must be structurally sound and in good repair.

900.22 Clandestine Drug Labs Sites and Chemical Dumpsites

Subdivision 1 General Provisions.

- A. Purpose and Intent. The purpose of this Ordinance is to reduce public exposure to health risks where law enforcement officers have determined that hazardous chemicals from a suspected clandestine drug lab site or associated dumpsite may exist. The City Council finds that such sites may contain suspected chemicals and residues that place people, particularly children or adults of child bearing age, at risk when exposed through inhabiting or visiting the site, now and in the future.
- B. Interpretation and Application. In their interpretation and application, the provisions of this Article shall be construed to protect the public health, safety and welfare.
- C. Where the conditions imposed by any provision of this Ordinance are either more or less restrictive than comparable provisions imposed by any other law, ordinance, statute, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.
- D. Should any court of competent jurisdiction declare any section or subpart of this Article to be invalid, such decision shall not affect the validity of the Article as a whole or any part thereof, other than the provision declared invalid.
- E. Fees. Fees for the administration of this Ordinance may be established and amended periodically by resolution of the City Council.
- F. Definitions. For the purposes of this Ordinance, the following terms or words shall be interpreted as follows:
 - 1. Child shall mean any person less than 18 years of age.

2. Chemical dumpsite shall mean any place or area where chemicals or other waste materials used in a clandestine drug lab have been located.
3. Clandestine drug lab shall mean the unlawful manufacture or attempt to manufacture controlled substances.
4. Clandestine drug lab site shall mean any place or area where law enforcement has determined that conditions associated with the operation of an unlawful clandestine drug lab exist. A clandestine drug lab site may include dwellings, accessory buildings, accessory structures, a chemical dumpsite or any land.
5. Controlled substance shall mean a drug, substance or immediate precursor in Schedules I through V of M.S. § 152.02. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.
6. Household hazardous wastes shall mean waste generated from a clandestine drug lab. Such wastes shall be treated, stored, transported or disposed of in a manner consistent with Minnesota Department of Health, Minnesota Pollution Control, and Beltrami County Health Department rules and regulations.
7. Manufacture, in places other than a pharmacy, shall mean and include the production, cultivation, quality control, and standardization, by mechanical, physical, chemical or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of drugs.
8. Owner shall mean any person, firm or corporation who owns, in whole or in part, the land, buildings or structures associated with a clandestine drug lab site or chemical dumpsite.
9. Public health nuisance. All dwellings, accessory structures and buildings or adjacent property associated with a clandestine drug lab site are potentially unsafe due to health hazards and are considered a public health nuisance.

Subdivision 2 Administration.

- A. Law Enforcement Notice to Other Authorities. Law enforcement authorities that identify conditions associated with a clandestine drug lab site or chemical dump site that places neighbors, visiting public, or present and future occupants of the dwelling at risk for exposure to harmful contaminants and other associated conditions must promptly notify the appropriate municipal, child protection, and public health authorities of the property location, property owner if known, and conditions found.
- B. Declaration of Property as a Public Health Nuisance. If law enforcement determines the existence of a clandestine drug lab site or chemical dumpsite, the property shall be declared a public health nuisance.
- C. Notice of Public Health Nuisance to Concerned Parties. Upon notification by law enforcement authorities, the City Administrator and/or respective designees and representatives shall promptly issue a Declaration of Public Health Notice for the

affected property and post a copy of the Declaration at the probable entrance to the dwelling or property. The City Administrator shall also notify the owner of the property by mail and notify the following parties:

1. Occupants of the property;
2. Neighbors at probable risk;
3. The City of Blackduck Police Department; and
4. Other state and local authorities, such as MPCA and MDH, which are known to have public and environmental protection responsibilities that are applicable to the situation.

D. Property Owner's Responsibility to Act. The City Administrator shall also issue an order to abate the public health nuisance, including the following:

1. Immediately vacate those portions of the property, including building or structure interiors, which may place the occupants or visitors at risk.
2. Promptly contract with appropriate environmental testing and cleaning firms to conduct an on-site assessment, complete clean-up and remediation testing and follow-up testing, and determine that the property risks are sufficiently reduced to allow safe human occupancy of the dwelling. The property owner shall notify the City of actions taken and reach an agreement with the City on the clean-up schedule. The City shall consider practical limitations and the availability of contractors in approving the schedule for clean-up.
3. Provide written documentation of the clean-up process, including a signed, written statement that the property is safe for human occupancy and that the clean-up was conducted in accordance with Minnesota Department of Health guidelines.

E. Property Owner's Responsibility for Costs. The property owner shall be responsible for all costs of vacation or clean-up of the site, including contractor's fees and public costs for services that were performed in association with a clandestine drug lab site or chemical dump site clean-up. Public costs may include, but are not limited to:

1. Posting of the site;
2. Notification of affected parties;
3. Expenses related to the recovery of costs, including the assessment process;
4. Laboratory fees;
5. Clean-up services;
6. Administrative fees; and
7. Other associated costs.

F. Recovery of Public Costs.

1. If, after service of notice of the Declaration of Public Health Nuisance, the property owner fails to arrange appropriate assessment and clean-up, the City

Administrator is authorized to proceed in a prompt manner to initiate the on-site assessment and clean-up.

2. If the City is unable to locate the property owner within ten days of the Declaration of Public Health Nuisance, the City is authorized to proceed in a prompt manner to initiate the on-site assessment and clean-up.
3. The City may abate the nuisance by removing the hazardous structure or building, or otherwise, according to Minnesota Statutes Chapter 463.
4. If the City abates the public health nuisance, in addition to any other legal remedy, the City shall be entitled to recover all costs plus an additional 25% of the costs for administration. The City may recover costs by civil action against the person or persons who own the property or by assessing such costs as a special tax against the property in the manner as taxes and special assessments are certified and collected pursuant to M.S. §429.101.

G. Authority to Modify or Remove Declaration of Public Health Nuisance.

1. The City Administrator is authorized to modify the Declaration conditions or remove the Declaration of Public Health Nuisance.
2. Such modifications or removal of the Declaration shall only occur after documentation from a qualified environmental or cleaning firm stating that the health and safety risks, including those to neighbors and potential dwelling occupants, are sufficiently abated or corrected to allow safe occupancy of the dwelling.

Penalty see §900.99 Violations and Penalties.

900.23 Duties of City Officers

The Police Department is authorized to enforce the provisions relating to nuisances. Any peace officer shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent danger to human life and safety, no police officer shall not enter private property for the purpose of inspecting public nuisances without the permission of the owner, resident or other person in control of the property, unless the officer has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

900.24 Abatement

Subdivision 1 Notice.

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

- A. Notice of violation. Written notice of violation shall be served by a peace officer on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.
- B. Notice of City Council hearing. Written notice of any City Council hearing to determine or abate a nuisance shall be served on the owner of record and occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of City Council hearing, notice of City Council hearing shall be served by posting it on the premises.
- C. Notice of City Council Order. Except for those cases determined by the City to require summary enforcement, written notice of any City Council order shall be made as provided in M.S. §463.17 (Hazardous and Substandard Building Act) as it may be amended from time to time.
- D. Notice of motion for summary enforcement. Written notice of any motion for summary enforcement shall be made as provided for in M.S. §463.17 (Hazardous and Substandard Building Act) as it may be amended from time to time.

Subdivision 2 Procedure.

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

Subdivision 3 Emergency procedure, summary enforcement.

In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in Subdivisions 1 and 2 of this section will permit a continuing nuisance to unreasonably endanger public health and safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the officer shall determine that a public nuisance exists or is being maintained on premises in the City and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and the of City's intentions to seek summary enforcement and the time and place of the City Council

meeting to consider the question of the summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety, or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in Subdivision 1 of this section, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

Subdivision 4 Immediate abatement.

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

Penalty see §900.99

900.24 Recovery of Cost

Subdivision 1 Personal liability.

The owner of premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the costs determined, the City Administrator or other official shall prepare a bill for the cost and mail it to the owner. Thereupon shall be immediately due and payable at the office of the City Administrator.

Subdivision 2 Assessment.

After notice and hearing as provided in M.S. §429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect infected trees, the City Administrator shall, on or before October 1, next following abatement of the nuisance, list the total unpaid charges along with all other charges for current service to be assessed under M.S. §429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the City Council may determine in each case.

Weeds

- 900.35 Short title
- 900.36 Jurisdiction
- 900.37 Definitions, exclusions
- 900.38 Owners responsible for trimming, removal and the like
- 900.39 Filing complaint
- 900.40 Liability

900.35 Short Title

This subchapter shall be cited as the “Weed Ordinance”

900.36 Jurisdiction

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

900.37 Definition, Exclusions

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

Destructive Order The notice served by the City Council or designated City Official in cases of appeal, on the property owner of the ordinance violation.

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

Weeds, Grass, and rank vegetation. Including but not limited to the following:

- A. Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Sponge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip.
- B. Grapevines when growing in groups of a hundred (100) or more and not pruned, sprayed, cultivated, or otherwise maintained for two consecutive years.
- C. Bushes of the species of tall, common, or European barberry, further known as *berberis vulgaris* or its horticulture varieties;

- D. Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding twelve (12) inches.
- E. Rank vegetation includes the uncontrolled, uncultivated growth of annuals and perennials plants.
- F. The term WEEDS does not include shrubs, trees, cultivated plants, or crops.

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

900.38 Owners responsible for Trimming, Removal, and the Like

All property owners shall be responsible for the removal, cutting, or disposal and elimination of weeds, grasses, and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of twelve (12) inches in height.

Penalty §900.99

900.39 Filing Complaint

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

900.40 Liability

- A) The property owner is liable for all costs of removal, cutting or destruction of weeds, as defined by this subchapter.
- B) The property owner is responsible for all collection costs associated with weed destruction, including but not limited to court costs, attorneys fees, and interest on any unpaid amounts incurred by the City. If the City uses municipal employees, it shall set and assign an appropriate per hour rate for employees, equipment, supplies, and chemicals, which may be used.
- C) All sums payable by the property owner are to be paid to the City Administrator and to be deposited in a general fund as compensation for expenses and costs incurred by the City.
- D) All sums payable by the property owner may be collected as a special assessment as provided by MS §429.101 as it may be amended from time to time.

Open Burning

- 900.60 Definitions
- 900.61 Prohibited materials
- 900.62 Permit required for open burning
- 900.63 Purposes allowed for open burning
- 900.64 Permit application for open burning, permit fees
- 900.65 Permit process for open burning
- 900.66 Permit holder responsibility
- 900.67 Revocation of open burning
- 900.68 Denial of open burning permit
- 900.69 Burning ban or air quality alert
- 900.70 Rules and laws adopted by reference

900.99Penalty

900.60 Definitions

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

Agricultural Fire. Open burning for the purpose of disposing of materials generated on ten (10) acres or larger parcels of land that is in “agricultural use” as defined in Minnesota Statutes Section 17.81.

Fire Chief. The Fire Chief, Fire Marshall, and Assistant Fire Marshall of the Fire Department, which provides fire protection services to the City.

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

Recreational Fire. A fire set with approved starter fuel no more than three (3) feet in height, contained within the border of a “recreational fire” using dry, clean wood, producing little detectable smoke, odor or soot beyond the property line, conducted with an adult tending to the fire at all times, for recreational, ceremonial, food preparation for social purposes, extinguished completely before quitting the occasion, and respecting weather conditions, neighbors, burning bans, and air quality so that nuisance health or safety hazards will not be created. No more than one (1) recreational fire is allowed on any property at one time.

Recreational Fire Site. An area of no more than three (3) foot diameter circle (measured from the inside of the fire ring or border) completely surrounded by non-combustible and

non smoke or odor producing material, either natural rock, cement, brick, tile, or blocks or ferrous metal on an area which is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a “recreational fire site” as defined herein. Recreational fires sites shall not be located closer than twenty-five (25) feet to any structure.

Running Fire. An open burn that is not confined to piled materials but is meant to consume materials over an unconfined area. Running fires include but are not limited to, open burning conducted to clear or maintain small areas of land surrounded by tilled agricultural land, open burning to maintain wildlife habitat in managed wildlife areas, and open burning conducted by a local government unit to maintain road rights of way.

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

Wood. Dry, clean fuel only such as twigs, branches, limbs, presto logs, charcoal, cordwood or untreated dimensional wood lumber. The term does not include wood that is green with leaves or needles, rotten, wet, oil soaked or treated with paint, glue, or preservatives. Clean pallets may be used for recreational fires when cut into three (3) foot lengths.

900.61 Prohibited Materials.

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

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

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

D) No person shall conduct, cause, or permit open burning of any leaves or grass clippings.

Penalty see §900.99

900.62 Permit required for open burning.

No person shall start or allow any open burning on any property in the City without first having obtained an open burning permit, except that a permit is not required for any fire which is a recreational fire as defined in §900.60.

Penalty, see §900.99

900.63 Purposes allowed for open burning.

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

- 1) Elimination of fire health hazard that cannot be abated by other practical means.
- 2) Ground thawing for utility repair and construction.
- 3) Disposal of vegetation matter for managing forest, prairie or wildlife habitat and in the development and maintenance of land and rights-of-way where chipping, composting, land spreading, or other alternative methods are not practical.
- 4) Disposal of diseased trees generated on site, diseased or infected nursery stock, and diseased beehives.
- 5) Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycled, reuse, removal or other alternative disposal methods are not practical.

B) Fire Training permits can only be issued by the Minnesota Department of Natural Resources.

C) A permit for a running fire may be issued for the purpose of maintaining wildlife habitat, establishing and/or maintaining a prairie, maintenance of road right-of-ways, and for maintenance of small areas of land surrounded by tilled agricultural land.

Penalty, see §900.99

900.64 Permit Applications for Open Burning, Permit Fees

A) Open Burning Permits shall be obtained by making application on a form prescribed the Department of Natural Resources (DNR) and adopted by the Fire Department. The permit application shall be presented to the Fire Chief for reviewing and processing those applications.

B) An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established in the Ordinances Establishing Fees and Charges, adopted by the City Council, as it may be amended from time to time.

Penalty, see §900.99.

900.65 Permit Process for Open Burning.

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

900.66 Permit Holder Responsibility

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

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

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

D) The permit holder is responsible for compliance and implementation of all general conditions and special conditions as established. The following safeguards must be followed:

1. Open burning shall not be conducted within 100 feet of any structure.
2. Open burning, excluding recreational fires and running fires, shall not be conducted within 50 feet of a stream, river, lake, or other water body.
3. An open burn shall not be allowed to smolder with no person present.

Penalty, see §900.99

900.67 Revocation of Open Burning Permit

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

900.68 Denial of Open Burning Permit.

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

900.69 Burning Ban or Air Quality

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

Penalty §900.99

900.70 Rules and Laws Adopted by Reference

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

900.99 Penalty

Violation of any provision of this Chapter, including maintaining a nuisance after being notified in writing by first class mail of a violation of any provision of this chapter, shall be a misdemeanor and punished as provided in §100.99.

Section 910 Abandoned Property

- 910.01 Abandoned Motor Vehicles
 910.02 Other Abandoned Property

910.01 Abandoned Motor Vehicles.

Subdivision 1 Impoundment and Sale.

The City police department shall take into custody and impound any abandoned motor vehicles as defined by M.S. § 168 B.02, Subdivision 2. It shall give notice of the taking as provided by law and if the owner or any lien holder does not reclaim the vehicle within the period provided by law, it shall be provide for the sale of the vehicle to the highest bidder at publication or sale following two (2) weeks published notice.

Subdivision 2 Disposition of proceeds

The proceeds of the sale of an abandoned motor vehicle shall be placed in the general fund of the city. If the former owner or entitled lien holder makes application and furnishes satisfactory proof of ownership or lien interest within ninety (90) days of the sale, he shall be paid the proceeds of the sale of the vehicle less the cost of towing, preserving, and storing the vehicle and all administrative, notice and publication costs incurred while in its handling.

910.02 Other abandoned property.

Subdivision 1 Procedure

All other property lawfully coming into the possession of the City shall be disposed of as provided in this section.

Subdivision 2 Storage

The department of the City acquiring possession of the property shall arrange for its storage. If the City's facilities for storage are unavailable or inadequate, the department may arrange for storage at privately owned facilities.

Subdivision 3 Claim by Owner

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

Subdivision 4 Sale

If the property remains unclaimed in the possession of the City for sixty (60) days, the property shall be sold to the highest bidder at a public auction conducted by the Chief of

Police of the City after two (2) weeks published notice setting forth the time and place of the sale and the property to be sold.

Subdivision 5 Disposition of the Proceeds.

The proceeds of the sale shall be placed in the general fund of the city. If the former owner makes application and furnishes satisfactory proof of ownership within six (6) months of the sale, he shall be paid the proceeds of the property less the costs of storage and the proportionate part of the cost of published notice and other costs of the sale.

Section 920 Animals

920.01	Definitions
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920.01 Definitions

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

Animal. Any mammal, reptile, amphibian, fish, bird, (including all fowl and poultry) or other member commonly accepted as a part of the animal kingdom. Animals shall be classified as follows:

Domestic Animals. Those animals commonly accepted as domesticated household pets. Unless otherwise defined, domestic animals shall include all dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-contracting reptiles or amphibians, and other similar animals.

Farm animals. Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, farm animals shall include members of the equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (geese, ducks), swine (including Vietnamese pot-bellied pigs), goats, bees, and other animals associated with a farm, ranch, or stable.

Non-domesticated animals. Those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, non-domesticated animals shall include:

- A. Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards, and jaguars, but excluding commonly domesticated house cats.
- B. Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingos, and jackals, but excluding commonly accepted domesticated dogs.
- C. Any crossbreed such as the crossbreed between a wolf and a dog, unless the crossbred is commonly accepted as a domesticated house pet.
- D. Any member or relative of the rodent family including any skunk (whether or not descended), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.
- E. Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibious families including rattlesnakes, boa constructors, pit vipers, crocodiles or alligators.
- F. Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to, bears, deer, monkeys, and game fish.

At Large. Off the premises of the owner and not under the custody and control of the owner or other person, either by leash, cord, chain, or otherwise restrained or confined.

Cat. Both the male and female of the feliadae species commonly accepted as domesticated household pets.

Dogs. Both the male and female of the canine species, commonly accepted as domesticated household pets, and other domesticated animals of the dog kind.

Owner. Any person or persons, firm, association, or corporation owning, keeping, or harboring an animal.

Release permit. A permit issued by the Animal Control Officer or other person in charge of the pound for the release of any animal. A release permit may be obtained upon payment of a fee to the City Administrator in accordance with the regular license requirement if the animal is unlicensed, payment of a release fee, and any maintenance costs incurred in capturing and impounding the animal. The release fee shall be established in the Ordinance Establishing Fees and Charges as it may be amended from time to time.

Kennel. Any persons, partnership or corporation engaged in the business of breeding, buying, selling, or boarding dogs; provided that such a person, partnership or corporation customarily owns or boards more than three (3) dogs over six (6) months of age.

Pound. Any premises designated by the City Council for the purpose of impounding and caring for dogs held under the authority of the Ordinance.

Officer. The Police Chief, police officers or persons designated by the City Council to assist in the enforcement of the ordinance. Such persons shall have police powers insofar as is necessary to enforce this Ordinance, and no person shall interfere with, hinder or molest them in exercise of such powers.

Restraint. A dog shall be deemed to be under restraint if it is on the premises of its owner, or if accompanied by a reasonable person, leashed and under that person's effective control.

Vicious Dog. (1) Any dog with a propensity, tendency, or disposition to attack, cause injury or otherwise endanger the safety of people or other domestic animals as evidenced by its habitual or repeated chasing, snapping, or barking. (2) Any dog that attacks a human being or other domestic animal without provocation. (3) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

920.02 Dogs and Cats

Subdivision 1 Running at Large Prohibited.

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

Subdivision 2 License Required.

- A. All dogs over the age of six (6) months kept, harbored, or maintained by their owners in the city, shall be licensed and registered with the city. Dog licenses shall be issued by the City Administrator upon payment of the license fee as established by the Ordinance Establishing Fees and Charges, as that Ordinance may be amended from time to time. The owner shall state, at the time application is made for the license and upon forms provided, his or her name and address and the name, breed, color, and sex of each dog owned or kept by him or her. No license shall be granted for a dog that has not been vaccinated against distemper and rabies, as evidenced by a certificate by a veterinarian qualified to practice in the state in which the dog is vaccinated.
- B. It shall be the duty of each owner of a dog subject to this section to pay to the City Administrator, the license fee established in the Ordinance Establishing Fees and Charges, as it may be amended from time to time, on or before the 1st day of January in each year or upon acquiring ownership or possession of any unlicensed dog or upon establishing residence in the city.

- C. Upon payment of the license fee as established by the Ordinance Establishing Fees and Charges, as that Ordinance may be amended from time to time, the Administrator shall issue to the owner a license certificate and metallic tag for each dog licensed. The tag shall have stamped on it the year for which it is issued and the number corresponding with the number on the certificate. Every owner shall be required to provide each dog with a collar to which the license tag must be affixed, and shall see that the collar and tag are constantly worn. In case a dog tag is lost or destroyed, a duplicate shall be issued by the City Administrator. A charge shall be made for each duplicate tag in an amount established in the Ordinance Establishing Fees and Charges as it may be amended from time to time. Dog tags shall not be transferable from one dog to another and no refunds shall be made on any dog license fees or tag because of death of a dog or the owners leaving the city before the expiration of the license period.
- D. The licensing provisions of this Subdivision 2 shall not apply to dogs whose owners are non-residents temporarily within the city, nor to dogs brought into the city for the purpose of participating in any dog show, nor shall this provision apply to “seeing eye” dogs properly trained to assist blind persons for the purpose of aiding them in going place to place.
- E. The funds received by the City Administrator from all dogs licenses and metallic tag fees as established by the Ordinance Establishing Fees and Charges of this code, as that ordinance may be amended from time to time, shall first be used to defray any costs incidental to the enforcement of this chapter; including, but restricted to the costs of licenses, metallic tags, and impounding and maintenance of the dogs.

Subdivision 3 Cats.

Cats shall be included as controlled by this division insofar as running at large, pickup, impounding, boarding, and proof of any rabies vaccine is concerned. All other provisions of this section shall also apply to cats unless otherwise provided.

Subdivision 4 Vaccination

- A. All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every three (3) years by a licensed veterinarian for:
- a. Rabies- with alive modified vaccine; and
 - b. Distemper
- B. A certificate of vaccination must be kept on which is stated the date of vaccination, owner’s name and address, the animal name (if applicable), sex, description and weight, the type of animal and the veterinarian signature. Upon demand made by the City Administrator or the Officer, the owner shall present the certificate to the City Administrator or Officer. Failure to do so shall be deemed a violation of this section.

Penalty see § 920.99

920.03 Non-domestic animals

It shall be illegal for any person to own, possess, harbor, or offer for sale any non-domestic animal within the City. Any owner of a non domestic animal at the time of adoption of this code shall have thirty (30) days in which to remove the animal from the City after which time the City may impound the animal as provided for in this section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled, and for those animals brought into the City as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

Penalty see § 920.99

920.04 Farm animals

Farm animals shall only be kept in an agricultural district of the City, or on a residential lot of at least ten (10) acres in size provided that no animal shelter shall be within 300 feet of an adjoining piece of property. An exception shall be made to this section for these animals brought into the City as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show exhibition.

920.05 Impounding

Subdivision 1 Running at large.

Any licensed animal running at large is hereby declared a public nuisance. Any Officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog or other animal, if known. In case the owner is unknown, the officer shall post notice at the City office that if the dog or other animal is not claimed within the time specified in Subdivision 3 of this section, it will be sold or otherwise disposed of. Except as otherwise provided in this section, it shall be unlawful to kill, destroy, or otherwise cause injury to any animal, including dogs and cats running large.

Subdivision 2 Biting animals.

Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the City pound for a period of not less than ten (10) days, at the expenses of the owner. The animal may be released at the end of the time if healthy and free from symptoms of rabies, and by payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinarian hospital of the owner's choosing, not outside of the county in which the city is located, and provide immediate proof of confinement in the manner as may be required, the owner may do so. If however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination

by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.

Subdivision 3 Reclaimed.

All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five (5) regular business days, and except if the animal is a cruelly treated animal in which case it shall be kept for ten (10) regular business days, unless sooner reclaimed by the owners or keepers as provided in this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required, unless otherwise provided for in this Code or establishment from time to time by resolution of the City Council:

- A. Payment of the release fee and receipt of a release permit as established by the Ordinance Establishing Fees and Charges, as that Ordinance may be amended from time to time.
- B. Payment of maintenance costs, as provided by the pound, per day or any part of day while animal is in the pound; and
- C. If a dog is unlicensed, payment of a regular license fee as established by the Ordinance Establishing Fees and Charges as that ordinance may be amended from time to time, and valid certificate if vaccinated for rabies and distemper shots is required.

Subdivision 4 Unclaimed animals.

At the expiration of the time established in Subdivision 3 of this section, if the animal has not been reclaimed in accordance with the provisions of this section, the officer appointed to enforce this section may let any person claim the animal by complying with all provisions in this section, or the officer may sell the animal to the University of Minnesota, or cause the animal to be destroyed in a proper and humane manner and shall properly dispose of the remains thereof. Any money collected under this section shall be made payable to the City Administrator.

Penalty § 920.99

920.06 Kennels

Subdivision 1. Definition of Kennel.

The keeping of four (4) or more dogs on the same premises, whether owned by the same person or not and for whatever purpose kept, shall constitute a "kennel" except that a fresh litter of pups may be kept for a period of three (3) months before keeping shall be deemed to be a "kennel."

Subdivision 2. Kennel as a nuisance.

Because the keeping of four (4) or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard and general aesthetic depreciation, the keeping of four (4) or more dogs on the premises is

herby declared to be a nuisance and no person shall keep or maintain a kennel within the City of Blackduck without securing a license from the city and a conditional use permit, which is only allowable within areas zoned agricultural (A-1).

920.07 Nuisances

Subdivision 1 Habitual Barking.

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

Subdivision 2 Damage to property.

It shall be unlawful for any person's dog or other animal to damage any lawn, garden, or other property, whether or not the owner has knowledge of the damage.

Subdivision 3 Cleaning up litter.

The owner of any animal or person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing the feces in a sanitary manner whether on their own property, on the property of others, or on public property.

Subdivision 4 Other.

Any animals kept contrary to this section are subject to impoundment as provided in § 920.05.

Penalty, see 920.99

920.07.1 Seizure of Animals

Any police officer or Animal Control Officer may enter upon private property and seize any animal provided that the following exist:

- A. There is an identified complainant other than the police officer making a contemporaneous complaint about the animal.
- B. The officer reasonably believes that the animal meets either the barking dog criteria set out in § 920.07, the criteria for cruelty set out in § 920.13 or the criteria for an at-large animal set out in § 920.02.
- C. The officer can demonstrate that there has been at least one (1) previous complaint of a barking dog, inhumane treatment of the animal, or that the animal was at large at this address on a prior date.
- D. The officer and those attempts have either failed or have been ignored;

E. The seizure will not involve the forced entry into a private entrance. Use of a pass key obtained from a property manager, landlord, innkeeper, or other authorized person to have that key shall not be considered unauthorized entry; and

F. Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the dog is not possible.

920.08 Animals Presenting a Danger to Health and Safety of City

If, in the reasonable belief of any person or Police Officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the person or officer may destroy the animal in proper and humane treatment in a proper and humane manner. Otherwise, the person or officer may apprehend the animal and deliver it to the pound for confinement under § 920.05. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the City for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be in danger to the health and safety of the City it may be released to the owner or keeper in accordance with § 920.05 C.

**920.09 Diseased Animal
Subdivision 1 Running at large.**

No person shall keep or allow to be kept on his or her premises, or on premises occupied by them, nor permit to run at large in the City, any animal which is diseased so as to be a danger to the health and safety of the City, even though the animal is properly licensed under this section.

Subdivision 2 Confinement.

Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the pound by any person or police officer. The officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the City, the officer shall cause the animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animals killed under this section shall be liable to the City for the cost of maintaining and disposing of the animal, plus costs of any veterinarian examinations.

Subdivision 3 Release.

If the animal, upon examination is not found to be diseased the animal shall be released to the owner or keeper free of charge.

Penalty see § 920.99

**920.10 Dangerous Animals
Subdivision 1 Attack by an Animal.**

It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal whether or not the owner is present. The section shall not

apply to attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder in the owner's home with criminal intent

Subdivision 2 Destruction of dangerous animal.

The Officer shall have the authority to order the destruction of dangerous animals in accordance with the terms established by this chapter.

Subdivision 3 Definitions.

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

Dangerous Animal. An animal, which has: (1) Caused bodily injury or disfigurement to any person on public or private property; (2) Engaged in any attack on any person under circumstances which would indicate danger to personal safety; (3) Exhibited unusually aggressive behavior such as an attack on another animal; (4) Bitten one or more persons on two or more occasions; (5) Been found to be potentially dangerous and/or the owner has personal knowledge of the same, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals; or (6) Exhibited unusually aggressively behavior, such as an attack on another animal.

Potentially Dangerous Animals. An animal which has: (1) Bitten a human or a domestic animal on public or private property; (2) When unprovoked, chased or approached a person upon the streets, sidewalks, or any public property in an apparent attitude of attack; or (3) Has engaged in unprovoked attacks causing injury or otherwise threatened the safety of humans or domestic animals.

Proper Enclosure. Securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animals from the elements. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only barriers which prevents the animal from exiting. The enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

- A. Have minimum overall floor space of thirty-two square feet.
- B. Sidewalls shall have a minimum height of five feet and be constructed of 11 (eleven) gauge or heavier wire. Openings in the wire shall not exceed 2 (two) inches, support posts shall be 1.25 inches or larger steel pipes buried in the ground eighteen inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of eighteen inches in the ground.
- C. A cover over the entire pen and kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two (2) inches.

- D. An entrance/exit gate shall be provided and be constructed of the same material as the sidewalks and shall also have no openings in the wire greater than two (2) inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

Unprovoked. The conditions in which the animal is not purposely excited, stimulated, agitated, or disturbed.

Subdivision 4 Designated as potentially dangerous animal.

The officer shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, bitten, attacked, or threatened the safety of a person or a domestic animal as stated in Subdivision 3. When an animal is declared potentially dangerous, the officer shall cause one owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.

Subdivision 5 Evidence Justifying Designation.

The Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:

- A. That the animal has, when unprovoked, bitten, or threatened the safety of a person or domestic animal as stated in Subdivision 3.
- B. That the animal has been declared potentially dangerous and the animal has then been bitten, attacked, or threatened the safety of a person or domestic animal as stated in Subdivision 3.

Subdivision 6 Authority to order destruction.

The Officer, upon finding that an animal is dangerous, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing one or more of the following findings of fact:

- A. The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks, or
- B. The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.

Subdivision 7 Procedure.

The Officer, after having determined that an animal is dangerous, may proceed in the following manner: The officer shall cause one owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten, and shall be given fourteen (14) days to appeal this order by requesting a hearing before the City Council for a review of this determination.

- A. If no appeal is filed, the ordered issued will stand or the Officer may order the animal destroyed.
- B. If an owner requests a hearing for determination, as to the dangerous nature of the animal the hearing shall be held before the City Council, which shall set a date for hearing not more than three (3) weeks after the demand for the hearing. The records of the Police Department or City Administrator's office shall be admissible for consideration by the Officer without further foundation. After consideration of all evidence pertaining to the temperament of the animal, the City Council shall make an order, as it deems proper. The City Council may order that the officer take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Officer.
- C. No person shall harbor an animal after it has been found to be dangerous and ordered into custody for destruction.

Subdivision 8 Stopping an attack.

If any police officer is witness to an attack by an animal upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to a victim.

Subdivision 9 Notification of new address.

The owner of an animal which has been identified as dangerous or potentially dangerous shall notify the officer in writing if the animal is to be relocated from its current address or given or sold to another person. The notifications shall be given in writing at least fourteen (14) days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address, and the name of the new owner, if applicable.

Penalty, see § 920.99

920.11 Dangerous Animals Requirements

Subdivision 1 Requirements.

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

- A. That the owner provides and maintains a proper enclosure for the dangerous animal as specified in § 920.11 Subdivision 3.
- B. Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property as specified in M.S. § 347.15 as may be amended from time to time.

- C. Provide and show proof annually of public liability insurance in the minimum amount of \$300.00.
- D. 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 (6) feet in length. And under the physical restraint of a person sixteen (16) years of age or older. The muzzle must be of 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.
- E. 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. § 347.15 as it may be amended from time to time.
- F. All animals deemed by the officer shall be registered with the county in which this city is located within fourteen (14) days after the date the animal was so deemed and provide satisfactory proof thereof to the officer.
- G. If the animal is a dog, the dog must be licensed and up to date on rabies vaccinations. If the animal is a cat or ferret, it must be up to date with rabies vaccinations.

Subdivision 2 Seizure.

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

Subdivision 3 Reclaiming animals.

A dangerous animal seized under § 920.12, may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof that each of the requirements under §920.12 Subdivision 2 is fulfilled. An animal not reclaimed under this section within fourteen (14) days may be disposed of as provided under § 920.11 and the owner is liable to the City for costs incurred in confining and impounding the animal.

Subdivision 4. Subsequent offenses.

If an owner of an animal has subsequently violated the provisions under § 920.11 with the same animal, the animal must be seized by animal control. The owner may request a hearing as defined in § 920.11 Subdivision 7. If the owner is found to have violated the provisions for which the animal was seized, the Officer shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner under § 920.11 Subdivision 3, may reclaim the animal. If the animal is not yet reclaimed by the owner within fourteen (14) days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as

provided under § 920.10 Subdivision 6 and the owner is liable to the animal control for costs incurred in confining, impounding and disposing of the animals.

920.12 Basic Care

All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. No persons shall beat, treat cruelly, torment or otherwise abuse any animal or cause or permit any dogfight, no owner shall abandon such animal. Any persons not treating their pet in a humane manner will be subject to the penalties provided in this section.

920.13 Breeding Moratorium.

Every female dog or female cat in heat shall be confined in a building or other enclosure in a manner that it cannot come in contact with another dog or cat except for planned breeding. Upon capture and failure to reclaim the animal, every dog or cat shall be neutered or spayed prior to being transferred to a new owner.

920.14 Interference with officers

No person shall in any manner molest, hinder, or interfere with any person authorized by the City Council to capture dogs, cats, or other animals and convey them to the pound while engaged in that operation. Nor shall unauthorized persons break open the pound, or attempt to do so, or take or attempt to take from any agent any animal taken up by him or her in compliance with this chapter, or in any other manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter.

920.99 Penalty

Subdivision 1 Separate Offenses.

Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.

Subdivision 2 Misdemeanor.

Unless otherwise provided, violation of this chapter shall constitute a misdemeanor punishable as provided in § 920.99.

Subdivision 3 Petty misdemeanor.

Violations of §920.02, § 920.07, § 920.13§ 920.14, are petty misdemeanors and are punishable as provided in § 100.99.

Section 930 Streets and Sidewalks

General Provisions

- 930.01 Unloading on street or sidewalk
- 930.02 Street and sidewalk obstruction
- 930.03 Materials on street or sidewalk

Right-of-Way Construction Regulations

- 930.20 Election to manage the public right-of-way
- 930.21 Definition and adoption of rules by reference
- 930.22 Permit requirements
- 930.23 Permits applications
- 930.24 Issuance of permit; conditions
- 930.25 Permit fees
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- 930.27 Supplementary applications
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- 930.35 Location of facilities
- 930.36 Damage to other facilities
- 930.37 Right-of-way vacation
- 930.38 Indemnification and liability
- 930.39 Abandoned facilities; removal of abandoned facilities
- 930.40 Appeal
- 930.41 Reservation of regulatory and police powers

Cross-Reference:

Assessable current services, see § 900.01

General Provisions

930.01 Unloading on Street or Sidewalk

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

Penalty see § 100.99

930.02 Street and Sidewalk Obstruction

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

Penalty § 100.99

930.03 Materials on Street or Sidewalk

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

Penalty § 100.99

Right-of-Way Construction Regulations**930.20 Election to Manage the Public Right-of-Way**

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

930.21 Definitions and Adoption of Rules by Reference.

MN Rules Chapter 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full.

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

The definition of abandoned facility in this chapter is not meant to affect the treatment of the term abandoned facility under any other rules.

City means a statutory or home rule charter city.

Commission means the state Public Utilities Commission

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

Construction Performance Bond as referenced in MN Statutes, § 237.162, Subd. 8, clause 2, means any of the following forms of security provided at the permittees option:

- A. Individual project bond,
- B. Cash deposit
- C. Security of a form listed or approved under MN Statutes, § 15.73, Sudb 3.
- D. Letter of credit, in a form acceptable to the local government unit; and
- E. Self insurance, in a form acceptable to the local government unit; and
- F. A blanket bond for projects within the local government unit, or other form of construction bond, for a time specified and in a form acceptable to the local government unit.

Degradation cost means the cost to achieve a level of restoration as determined by the local government unit at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, which are set forth in parts 7819.9900 to 7819.9950.

Degradation fee means the estimated fee established at the time of permitting by the local government unit to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation costs.

Facility means any tangible asset in the public right-of-way required to provide utility services.

Five-year project plan shows projects adopted by the local government unit for construction within the next five (5) years.

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

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

Local government unit has meaning given it in Minnesota statutes, § 237.162

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

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

Permit has the meaning given "right-of-way" in MN Statutes, § 237.162

Permittee means a person to whom a permit to excavate or obstruct a right-of-way has been granted by a local government under this chapter.

Person means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domesticated or foreign, whether for profit or non profit, and whether natural, corporate, or political. Examples include:

- A. A business or commercial enterprise organized as any type of combination of corporation, limited liability, company, partnership, limited liability partnership, proprietorship, association, cooperative, joint venture, carrier or utility, and any successor or assignee of any of them.
- B. A social or charitable organization and,
- C. Any type or combination or political subdivision, which includes the executive, judicial, or legislative branch of the state, a local government unit, or a combination of any of them.

Public right-of-way means the area on, below, or above a public roadway, highway, street, cart way, bicycle lanes, and public sidewalk in which the local government unit has an interest, including other dedicated rights of way for travel purposes and utility easements of local government units.

A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunication or broadcast service.

Restoration means the process by which an excavated public right-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before excavation.

Right-of-way user means: (1) a telecommunications right-of-way user as defined by Minnesota Statutes, § 237.162, subd. 4; or (2) a person owning or controlling a facility in the public right-of-way that is used or is intended to be used for providing utility services, and who has a right under law, franchise, or ordinance to use the public right-of-way.

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

930.22 Permit Requirement
Subdivision 1 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.

- A. Excavation permit. An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the

specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

- B. Obstruction permit. An obstruction permit is required to hinder free and open passage over the specified portion of the 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 object.
- C. Permit excavations. No persons may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.
- D. Delay penalty. In accordance with MN Rules 7819.1000 Subd. 3, as it may be amended from time to time and withstanding division in the right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.
- E. Permit Display. Permits issued under this Subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Supervisor of Public Works.

Penalty see § 100.99

930.23 Permit Applications

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

Subdivision 1 Submission

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

- A. Each permittee's name, gopher one-call registration certificate number, address and email address if applicable, and telephone and facsimile numbers.
- B. The name, address and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designees shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- C. A certificate of insurance or self-insurance:

1. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self insurance acceptable to the Supervisor of Public Works.
 2. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and placement and use of facilities, and equipment in the right-of-way and the registrant its offices, agents, employees, and permittees, including but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;
 3. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;
 4. Requiring that the Supervisor of Public Works be notified in thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 5. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Supervisor of Public Works in amounts sufficient to protect the city and the public and to carry out the policies of this chapter.
- D. The city may require a copy of the actual insurance policies.
- E. If the person is a corporation, a copy of the certificate required to be filed under the M.S. § 300.06, as it may be amended from time to time as recorded and certified to by the Secretary of State.
- F. Copy of the person's order granting a certificate of authority from the MN Public Utilities Commission or other applicable state or federal agency where the person is lawfully required to have the certificate from the Commission or other state or federal agency.

Subdivision 2. Payment

Payment of money due the city for:

- A. Permit fees as established by the Ordinance Establishing Fees and Charges as that ordinance may be amended from time to time, estimated restoration costs and the management costs.
- B. Prior obstructions or excavations.

- C. Any undisputed loss, damage, or expense suffered by the City because of the applicants prior excavations or obstructions of the right-of-way or any other emergency actions taken by the city.

930.24 Issuance of Permit, Conditions

Subdivision 1 Permit issuance.

If the applicant has satisfied the requirements of the chapter, the City Administrator or Supervisor of Public Works shall issue a permit.

Subdivision 2 Conditions.

In consideration of the granting of the permit, the applicant agrees to:

- A. To leave at least one-half of the street clear for the passage of vehicles and to provide safe bridgeways on sidewalks for foot traffic.
- B. Barricades, Warning Lights: Any person so opening any trench/ditch must keep the same guarded with a fence by day plus warning lights by night together with additional warning for traffic as required by the city Public Works Supervisor.
- C. To refill the excavations as soon as possible and replace paving, sidewalks and all appurtenance in at least as good condition as before installation.
- D. Any trench/ditch dug into a gravel street or alleyway must be restored to its original condition by the contractor responsible for the excavation. Materials must be compacted every 6 inches with a mechanical compactor so as to prevent any future settlement. A minimum of 6 inches of class 5 gravel must be laid on top of trench/ditch and properly graded so as to prevent any erosion.
- E. Any trench/ditch dug onto a paved street or alleyway must be restored to its original condition by the contractor responsible for the excavation. Materials must be compacted every 6 inches with a mechanical compactor so as to prevent any future settlement. Asphalt must be restored to its original depth before the excavation.

Subdivision 3 Additional Conditions

The Supervisor of Public Works may impose additional 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.

930.25 Permit Fees

Permit fees shall be in an amount established in the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

Subdivision 1 Excavation Permit Fee.

The city shall establish an excavation permit fee established by the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time, in an amount sufficient to recover the following costs:

- A. The city management costs; and
- B. Degradation costs, if applicable.

Subdivision 2 Obstruction Permit Fee.

The City shall establish the obstruction permit fee as established by the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time, and shall be in an amount sufficient to recover the City management costs.

Subdivision 3 Payment of Permit Fees.

No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The City may allow applicant to pay those fees within thirty (30) days of the billing.

Subdivision 4 Non-refundable.

Permit fees as established by the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time, that were paid for a permit that the Supervisor of Public Works has revoked for a breach as stated in § 930.33 are not refundable.

Subdivision 5 Consistent with MN Rules.

All permit fees shall be established consistent with the provisions of MN Rules part 7819.10, as it may be amended from time to time.

Penalty, see § 100.99

930.26 Right-of-Way Patching and Restoration**Subdivision 1 Timing.**

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

Subdivision 2 Patch and restoration.

The permittee shall patch its own work. The city may choose either to have the city restore the right-of-way or to restore the right-of-way itself.

- A. City restoration. If the City restores the right-of-way, the permittee shall pay the costs thereof within thirty (30) days of the billing. If following the restoration, the

pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of the billing, all costs associated with having to correct the defective work.

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

Subdivision 3 Standards.

The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with MN Rules 7819.1100, as it may be amended from time to time. The Supervisor of Public Works shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

Subdivision 4 Duty to correct defects.

The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the Supervisor of Public Works shall correct all restoration work to the extent necessary, using a method required by the Supervisor of Public Works. The work shall be completed within five (5) calendar days of the receipt of the notice from the Supervisor of Public Works, 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 this subchapter.

Subdivision 5 Failure to restore.

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

Subdivision 6 Degradation fee in lieu of restoration.

In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

930.27 Supplementary Applications

Subdivision 1 Limitation on area.

A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee, which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in the greater area

make application for a permit extension and pay additional fees required thereby, and be granted a new permit or permit extension.

Subdivision 2 Limitations 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 record. This supplementary application must be submitted before the permit end date.

930.28 Denial of permit.

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

930.29 Installation Requirements.

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

930.30 Inspection

Subdivision 1 Notice of completion.

When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance to MN Rule part 7819.1300, as it may be amended from time to time.

Subdivision 2 Site inspection.

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

Subdivision 3 Authority of the Supervisor of Public Works

- A. At the time of inspection, the Supervisor of Public Works may order the immediate cessation of any work which possess a serious threat to the life, safety, and well being of the public.
- B. The Supervisor of Public Works may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the Supervisor of Public Works that the violation has been corrected. If proof has not been presented within the required time, the Supervisor of Public Works may revoke the permit pursuant to § 930.33.

930.31 Work done without a permit.**Subdivision 1 Emergency situations**

- A. Each person with facilities in the right-of-way shall immediately notify the City of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) 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.
- B. If the city becomes aware of the 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.

Subdivision 2 Non-emergency situations.

Except in an emergency, any persons who, without first having obtained the necessary permit obstructs or excavates a right-of-way must subsequently obtain a permit, and as penalty pay double the normal fee for the permit, pay double all 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 other requirements of this chapter.

930.32 Supplementary notification

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

930.33 Revocation of Permits**Subdivision 1 Substantial Breach.**

The city reserves the 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. Substantial breach by the permittee shall include, but not be limited to the following:

- A. The violation of any material provisions of the right-of-way permit;
- B. Any evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- C. Any material misrepresentation of fact in the application for a right-of-way permit;

- D. The failure to complete the work in a timely manner unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control or,
- E. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 930.30.

Subdivision 2 Written notice of breach.

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

Subdivision 3 Response to notice of breach.

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

Subdivision 4 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 attorney's fees incurred in connection with the revocation.

930.34 Mapping data, information required

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

930.35 Location of facilities

Subdivision 1 Compliance required.

Placement, location, and relocation of facilities must comply with applicable laws, and with MN Rules part 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.

Subdivision 2 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 facility that is, or pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Subdivision 3 Limitations of space.

To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Supervisor of Public Works, shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Supervisor of Public Works shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by consideration of the public interest, the public's need 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.

930.36 Damage to other facilities.

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

930.37 Right-of-Way Vacation

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

930.38 Indemnification and liability

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

930.39 Abandoned facilities, removal of abandoned facilities.

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

930.40 Appeal

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

930.41 Reservation of Regulatory and Police Powers

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