CHAPTER 92: NUISANCES

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PUBLIC NUISANCES

§ 92.01 PUBLIC NUISANCE PROHIBITION.

A person must not act, or fail to act, in a manner that is or causes a public nuisance or permit a public nuisance condition to be created or placed upon or to remain upon any private property owned, under the control of or occupied by that person, or any publicly-owned property. For purpose of this subchapter, a person that does any of the following is guilty of maintaining a public nuisance:

(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; or

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

(C) Does any other act or omission declared by law or this subchapter to be a public nuisance.

(Ord. 90, passed 6-12-23)

§ 92.02 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

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

(B) All diseased animals running at large;

(C) All ponds or pools of stagnant water;

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

(E) Accumulation 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, to include grass and weeds over 8 inches;

(I) Dense smoke, noxious fumes, gas, 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.

(Ord. 90, passed 6-12-23)

§ 92.03 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

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

(A) All gambling devices, slot machines, and punch boards, except otherwise authorized and permitted 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;

All places where intoxicating or 3.2 malt 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 or 3.2 malt liquor, or where intoxicating or 3.2 malt liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place; and

(D) Any vehicle used for the unlawful transportation of intoxicating or 3.2 malt liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose.

(Ord. 90, passed 6-12-23)

§ 92.04 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

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

(A) All snow (three inches or more) and ice that is not removed from public sidewalks within 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 that are so close to the surface of a sidewalk, street and alleys as to constitute a danger to pedestrians or vehicles.

(D) Any person participating in any party or other gathering that causes the unreasonable disturbing of the peace, quiet, or repose of another person in such a manner as to be plainly audible at the boundary of the real property, building, structure, or residence from which the noise originates, or at a distance of 50 feet from the source of the noise. ***PLAINLY AUDIBLE*** is defined as sound that can be detected by a person using their unaided hearing faculties.

(E) All unnecessary and annoying vibrations.

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

(G) Radio aerials or television antennae erected or maintained in a dangerous manner.

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

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

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

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

(L) Wastewater cast upon or permitted to flow upon streets or other public properties.

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

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

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

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

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

(R) Reflected glare or light from private exterior lighting exceeding 0.5 footcandles as measured on the property line of the property where the lighting is located when abutting any residential parcel, and one footcandle when abutting any commercial or industrial parcel.

(S) All other conditions or things that are likely to cause injury to the person or property of another.

(Ord. 90, passed 6-12-23)

§ 92.05 NOISE VIOLATIONS.

The following are declared to be nuisances affecting public health, safety, peace, or welfare:

(A) Any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person, or precludes their enjoyment of property, or affects their property's value in such a manner as to be plainly audible at the boundary of the real property, building, structure, or residence from which the noise originates, or at a distance of 50 feet from the source of the noise. (This general prohibition is not limited by any specific restrictions provided in this subchapter). ***PLAINLY AUDIBLE*** is defined as sound that can be detected by a person using their unaided hearing faculties.

(B) All obnoxious noises, motor vehicle or otherwise, in violation of Minn. Rules. Chapter 7030, as they may be amended from time to time, are hereby incorporated into this subchapter by reference.

(C) The use of any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise.

(D) The discharging of the exhaust or permitting the discharge of the exhaust of any statutory internal combustion engine, motorboat, motor vehicle, motorcycle, all-terrain vehicle (ATV), 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.

(E) Any loud or excessive noise in the loading, unloading, or unpacking of any vehicle.

(F) The use or operation, or permitting the use or operation, of any radio receiving set, television set, musical instrument,

music device, 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.

(G) *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 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.

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

(I) *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.

(J) *Radios, music devices, paging systems, and the like*. The operation of any device referred to in division (F) 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 50 feet if the source is located outside a structure or building shall be prima facie evidence of a violation of this section.

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

(Ord. 90, passed 6-12-23)

§ 92.06 NUISANCE PARKING AND STORAGE.

(A) *Declaration of nuisance*. The outside parking and storage on all properties 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 it:

(1) Obstructs views on streets and private property;

(2) Creates cluttered and otherwise unsightly areas;

(3) Prevents the full use of city streets for public parking;

(4) Introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited;

(5) Decreases adjoining landowners' and occupants' use and enjoyment of their property and neighborhood; and

(6) Otherwise adversely affects property values and neighborhood patterns.

(B) *Unlawful parking and storage*.

(1) A person must not place, store, or allow the placement or storage of ice fishing houses, skateboard ramps, playhouses, or other similar non-permanent structures outside continuously for longer than 24 hours in the front yard area of residential property unless more than 100 feet back from the front property line.

(2) A person must not place, store, or allow the placement or storage of pipe, lumber, forms, steel, machinery, or similar materials, including all materials used in conjunction with a business, outside on residential or in the Central Business District, unless shielded from public view by an opaque cover or fence.

(3) 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:

(a) No more than four 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. The maximum number does not include vehicles of occasional guests who do not reside on the property.

(b) Vehicles that are parked or stored outside in the front yard areas must be on a paved or graveled parking surface or driveway area.

(c) 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.

(d) No shipping containers will be allowed. Temporary use of shipping containers will be allowed when used in conjunction with an active land use permit, but no longer than 365 days. No extensions will be allowed. NOTE: Some areas of the city may have private development covenants that may prohibit their use, even temporarily. Please check your property documents for covenants prior to using shipping containers.

(Ord. 90, passed 6-12-23)

§ 92.07 INOPERABLE MOTOR VEHICLES.

(A) *Declaration of nuisance*. Any motor vehicle described in this section shall constitute a hazard to the health and welfare of the residents of the community as such vehicles can harbor noxious diseases, furnish a shelter and breeding ground for vermin, and present physical danger to the safety and well-being of children and citizens. Motor vehicles also contain various fluids which, if released into the environment, can and do cause significant health risks to the community.

(B) *Inoperable motor vehicles*. It shall be unlawful to keep, park, store, or abandon any motor vehicle that 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 within the state, pursuant to M.S. § 1688.011, subd. 3, as it may be amended from time to time.

(C) *Screening*. 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 a complaint from a resident of the city. Privacy fencing is permissible.

(Ord. 90, passed 6-12-23)

§ 92.08 DOMESTIC ANIMALS.

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

ANIMAL. Any mammal, reptile, amphibian, fish, bird (including fowl and poultry) or other member commonly accepted as part of the animal kingdom including, but not limited to, cattle, horses, mules, sheep, goats, swine, ponies, ducks, geese, turkeys, chickens, guinea hens, dogs, cats and feathered fowl. ***ANIMALS*** shall be classified as follows:

(a) ***DOMESTIC.*** Those animals commonly accepted as domesticated household pets. Unless otherwise defined, such animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.

(b) ***NON-DOMESTIC.*** 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, such animals shall include:

1. Any member of the large cat family (family *felidae*) including lions, cougars, bobcats, leopards and jaguars, but excluding accepted domesticated house cats.

2. Any naturally wild member of the canine family (family *canidae*) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.

3. Any crossbreeds such as the crossbreed between a wolf and a dog or a coyote and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.

4. Any member or relative of the rodent family including any skunk, raccoon, squirrel or ferret, but excluding those otherwise defined or commonly accepted as domesticated pets.

5. Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families, including rattlesnakes, boa constrictors, pit vipers, crocodiles, and alligators.

6. Any other animal which is not explicitly listed above, but which can be reasonably defined by these definitions, 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 direct control of the owner or other person, either by leash, cord, chain, or otherwise restrained or confined.

DANGEROUS ANIMAL and POTENTIALLY DANGEROUS ANIMAL. These terms shall be synonymous with the definitions of ***DANGEROUS DOG and POTENTIALLY DANGEROUS DOG*** and apply to any animal.

DANGEROUS DOG and POTENTIALLY DANGEROUS DOG. These terms have the same meanings as defined by M.S. § 347.50, included herein or as amended from time to time.

(a) ***DANGEROUS DOG.*** Any dog that has, without provocation:

1. Inflicted substantial bodily harm on a human being on public or private property;

2. Killed a domestic animal without provocation while off the owner's property; or

3. Been found to be potentially dangerous, and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.

(b) ***POTENTIALLY DANGEROUS DOG.*** Any dog that:

1. When unprovoked, inflicts bites on a human or domestic animal on public or private property;

2. When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or

3. Has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

DOG KENNEL. Any place, building, tract of land, boat or vehicle wherein dogs are kept, congregated or confined.

ENFORCING OFFICER. The Council is hereby authorized to appoint city personnel, in addition to law enforcement officers, to enforce the provisions of this subchapter. In the appointed personnel or law enforcement officer's duty of enforcing the provisions of the subchapter, he or she may from time to time, with the consent of the City Council, designate assistants.

FARM ANIMAL. Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, such animals shall include members of the following families: equestrian (horses, mules); bovine (cows, bulls); sheep; poultry (chickens, turkeys); fowl (duck, geese); swine (including pot-bellied pigs); goats; bees; and other animals associated with a farm, ranch or stables.

OWNER. Any person who owns, harbors, feeds, boards, keeps or otherwise possesses an animal and is presumed to be the owner or tenant of the residence real estate at which the animal is normally kept, remains, or to which the animal returns; or the owner or manager in charge of the establishment or premises at which the animal is kept, remains or to which it returns. Any parent or guardian of any non-emancipated minor owner under the age of 18 years of age shall be presumed to be the actual owner of the animal and the responsible party for the animal's care, control, licensing and action.

PREMISES. Any building, structure, shelter or land whereon dogs or other animals are kept or confined.

UNDER RESTRAINT. Any animal on the premises of the owner or person harboring and keeping the animal and the owner or person harboring and keeping the animal must be outside with the animal and have the animal in sight and under control while the animal is loose on the premises. The animal is considered to be ***UNDER RESTRAINT*** if the animal is within a private motor vehicle or the animal is controlled by a leash, not to exceed ten feet in length. This provision also applies to an animal within a fenced in area on the owner's premises.

(B) *Number allowed*.

(1) No household within the city shall own or possess more than three adult dogs or three adult cats. An adult dog or cat shall be any dog or cat over the age of six months.

(2) (a) *Exception*. Any resident or household that has more than the number of cats allowable under this division (B), or more dogs and cats than the allowable combined limit under this division (B), shall be able to retain all animals properly licensed as of the date the subchapter is approved until which time the animal is no longer alive or residing at the property. At that time, the resident or household will become subject to the number of dogs and cats allowable herein.

(b) In the event a resident or household has more than the number of dogs or cats, or more than the combined limit, at the time this subchapter is approved and one or more of the animals is not properly licensed, the owner shall have 90 days from the enactment of the subchapter to either surrender or re-home the animal(s) humanely in order to comply with the limitations herein, or, contact the City Council, via an agenda request form available from the City Clerk, to request an exception for animals owned prior to the time of enactment. In order for the Council to consider approval of such a request, the owner must come into compliance with all other provisions of this subchapter including payment of all applicable fees and penalties.

(3) The keeping of farm animals will be allowed in accordance with Chapter 151 of this code.

(C) *Impounding*.

(1) Any animal declared a public nuisance may be subject to impound by any enforcing officer as appointed by the City Council.

(2) *Notice to owner and redemption*. The owner shall be notified within a reasonable time after the impound of any animal. The owner of any animal so impounded may reclaim the animal upon payment of applicable impound fees (as described below) as well as the license fee (if unlicensed) and late licensing penalties, if applicable.

(3) If the owner is unknown, a written notice shall be posted for five days at City Hall describing the animal and the place and time it was found. The notice shall also state the time and date on which the five-day redemption period shall expire. All rights of ownership shall strictly expire and be null and void for all animals unclaimed by the owner at the expiration of the five-day redemption period.

(4) *Impound fee*. Impound fees will be determined from time to time by the City Council. The fee will increase with each additional impoundment of the same animal in a calendar year. Additional charges for maintenance and keeping of the animal, as well as the cost of any needed rabies inoculation, shall be due and payable prior to the release of the animal.

(5) *Permissible return of unrestrained animals*. If an animal is found unrestrained and its owner can be identified and located, such animal need not be impounded but may, instead, be taken to the owner. In such cases, however, proceedings may be taken against the owner for violation of this subchapter.

(6) *Immobilization*. For the purposes of enforcement, any enforcement officer or law enforcement officer or assistant may use a so-called tranquilizer gun or other instrument for the purpose of immobilizing a dog or any other animal when the animal is a threat to the health, safety, or general welfare of any member of the public.

(7) *Bites*. Whenever the owner of any animal learns that the animal has bitten a human being, the owner shall immediately provide for impoundment of the animal for a period of ten days. The animal shall be kept apart from other animals until it is determined whether the animal has or has had rabies. Impounding may be by the owner if the animal has a current rabies vaccination at the time the bite occurred and if approved by the Police Department. If the animal did not have a current rabies vaccination at the time the bite occurred, the animal shall be impounded at the city or by a licensed

veterinarian. In either case, impounding shall be at the owner's expense.

(8) *Rabies*. Any animal found to have rabies shall be handled pursuant to the shelter/humane society/veterinary hospital's rules and regulations.

(D) *Miscellaneous provisions*.

(1) *Implied consent*. Any owner of an animal shall be deemed to have given implied consent to entry on his or her premises by animal control officer or a police officer for the purpose of enforcing this subchapter.

(2) *Cruelty*. In accordance with M.S. § 343.21, no owner shall fail to provide animals with sufficient good and wholesome food and water, proper shelter and protection from the weather, and veterinary care when needed to prevent suffering. No owner shall fail to provide humane care and treatment to animals. No person shall beat, cruelly ill-treat, torment, overload, overwork, or otherwise abuse any animal, or cause or permit any fight or other combat between animals and humans.

(3) *Abandonment*. In accordance with M.S. § 343.21, no person shall abandon any animal.

(4) *Exception*. Any person relinquishing ownership to a shelter, humane society or veterinary hospital shall not be considered in violation.

(Ord. 90, passed 6-12-23)

§ 92.09 DUTIES OF CITY OFFICERS.

(A) Any peace officer or other designated city official are authorized to act as the enforcing officer to enforce any provision of this subchapter relating to public nuisances and to issue notices and orders to correct for violations under this subchapter.

(B) Any enforcing officer or city contracted agent shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. No peace officer or designated city official will enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident, or other person in control of the property, unless the officer or person designated has obtained a warrant or order from a court of competent jurisdiction authorizing entry..

(C) Nothing in this section shall be construed to limit the authority of the city to enter private property in urgent emergency situations where there is an imminent danger in order to protect the public health, safety, and welfare.

(Ord. 90, passed 6-12-23)

§ 92.10 ABATEMENT PROCEDURE.

(A) *Standard Abatement Procedure*. Unless a different procedure is specifically authorized under a section of the city code or other applicable law, and except as otherwise provided under divisions (E) and (F) of this section, the following abatement procedure applies to all public nuisances in the city.

(B) *Notice and order to correct.* Whenever the enforcing officers authorized to issue notices and orders for correction under § 92.09(A) of the city code determines that a public nuisance is being maintained or exists on property in violation of city code, the city official must give written notification to the property owner and occupant or other responsible party of that fact and order that the nuisance be terminated and abated. Notice must be served in person or by U.S. mail. Failure of the party to receive the notice by U.S. mail does not invalidate the service of the notice. Notice to the owner will be satisfied by notice to the person listed as the taxpayer on the county's tax records. If the property is not occupied, the owner is unknown, or no other responsible party can be reasonably identified, notice may be served by posting it on the property for a period of at least 72 hours. The notice must state:

(1) Date, time, location, and nature of the public nuisance;

(2) Citation of the relevant portion of the city code allegedly violated;

(3) The corrective actions that must be taken to abate the nuisance and a reasonable amount of time within which the nuisance is to be abated;

(4) That if the owner, occupant, or other responsible party does not comply with the notice within the time specified in the notice, the city may provide for abating the nuisance itself by entering upon the property and taking the corrective actions identified in the notice following the appeal period;

(5) That the owner, occupant, or other responsible party has the right to appeal the designation as a public nuisance by submitting a request in writing to the city Administrator/Clerk/Treasurer before the earlier of (i) the date by which abatement of the identified nuisance must be completed, or (ii) ten (10) calendar days after service of the notice; and

(6) That the city may assess its costs incurred in abating the nuisance against the property in accordance with this section and applicable law.

(C) *Appeal*. The owner, occupant, or other responsible party served with a notice under division (C) of this section may appeal the nuisance designation to the City Council within the time provided in the notice. If a timely appeal is submitted, the matter must be scheduled for a hearing before the City Council. A notice of the hearing must state the date, time, and location of the City Council hearing, must be served in the same manner as the abatement notice, and must be given at least ten (10) days before the City Council hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance consistent with division (D) of this section. Failure to timely appeal constitutes waiver of such right to appeal and hearing upon the nuisance designation.

(D) *Abatement.* If the City Council, after hearing an appeal under subdivision (C) of this section, orders abatement of the nuisance, or if no timely appeal is submitted and the nuisance is not abated within the deadline given, then the City may enter onto the property on which the nuisance exists and cause the same to be abated or removed by the City in any other manner it deems appropriate. Abatement may include, but shall not be limited to, removal, cleaning, painting of exterior surfaces, extermination, cutting, mowing, grading, sewer repairs, draining, securing, boarding unoccupied structures, barricading or fencing, removing dangerous portions of structures and demolition of dangerous structures or abandoned buildings. If deemed necessary by the City Administrator/Clerk/Treasurer or City Attorney, the City may seek summary enforcement of the City Council's abatement order in the district court by causing a copy of the abatement order and notice of motion for summary enforcement to be served on the owner and occupant in the manner provided for service of a summons in a civil action, or alternatively obtain an administrative search and seizure warrant and abate the nuisance.

(E) *Emergency procedure; Summary abatement*.

(1) The City Council or the enforcing officer may provide for abating a public nuisance pursuant to division (D) of this section without following the standard abatement procedure required in divisions (B) and (C) when either:

(a) There is an immediate threat to the public health or safety;

(b) There is an immediate threat of serious property damage;

(c) A public nuisance has been caused by private parties on public property; or

(d) There is a violation of division 92.04(A) – ice and snow or division 92.02(H) – weeds and tall grasses.

(2) To proceed with summary abatement, the enforcing officer shall determine that a public nuisance exists or is being maintained on-premises/property in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety, or welfare. If the city summarily abates the nuisance under this division (E), the enforcing officer must reasonably attempt to notify the owner, occupant, or other responsible party of the intended summary abatement action in advance of such action. The summary abatement notice shall state:

(a) The property location of the public nuisance;

(b) The nature of the public nuisance, with reference to the appropriate code provision(s);

(c) Notice of the owner's right to appeal the cost recovery for such summary abatement, within ten (10) calendar days of the receipt of an invoice for the cost of the abatement; and

(d) Notice that failure to appeal the cost recovery or pay the full amount of the invoice within thirty (30) calendar days of the date of the city's invoice will result in recovery of costs pursuant to § 92.11.

(3) An appeal under this section shall be limited to the issue of cost recovery by the city and shall be heard by the City Council as set forth in division (C) of this section.

(4) Cost recovery shall occur pursuant to § 92.11 after thirty (30) calendar days unless the invoiced party appeals within ten (10) calendar days to the City Administrator/Clerk/Treasurer.

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

(F) *Major Abatement.* Whenever an enforcing officer under section § 92.09(A) of the city code determines that the cost of abating a nuisance will exceed $5,000 based on a reasonable, good faith estimate determined by the city, the standard abatement procedure provided in divisions (B) through (D) shall apply, as altered in the following manner:

(1) The abatement notice must provide that if the noticed party does not abate the nuisance as provided in the notice within the time specified in the notice, the matter will be referred to the City Council for a hearing.

(2) The abatement notice must specify the date, time, and location of the hearing before the City Council.

(3) The city must cause notice of the date, time, and location of the hearing before the City Council to be published at least ten (10) days before the hearing and allow any parties who wish to be heard an opportunity to address the City Council during the hearing.

(G) *Storage of property.* If the city removes any personal property during abatement of nuisance conditions, the city shall provide written notice to the owner, lessee, and occupant of the property subject to abatement by the city of the fact that personal property is being held by the city. Upon payment of all storage costs, the owner of the personal property may retrieve the personal property; provided, that the personal property is not returned in such a manner to any location within city limits so as to constitute a nuisance as defined by this subchapter. If the owner of the personal property fails to reclaim the personal property as provided for herein, the city may sell or dispose of the personal property in the manner set forth under § MN 471.195. Any proceeds obtained from the sale of the personal property shall be used to offset the abatement costs. The city shall be under no obligation to sell the personal property.

(H) *Remedy not exclusive*. Abatement action under this section does not preclude any other criminal or civil enforcement procedure, including seeking injunctive relief. Following the service of the notice and order to correct under division (B), the city may also elect to seek compliance through the use of administrative citations and civil penalties under the process contained in § 10.98 of the city code, and the use of such administrative citations shall not preclude abatement action authorized under this section.

(Ord. 90, passed 6-12-23)

§ 92.11 RECOVERY OF COST.

(A) Personal liability. The owner of the premises on which a nuisance has been abated by the city, or a person who has caused a public nuisance on property not owned by that person, shall be personally liable for the cost to the city of the abatement, including, without limitation, administrative costs, employee costs, court fees and costs, consultant and/or contractor services fees and expenses, and attorneys' fees, if applicable . As soon as the work has been completed and the

cost determined, the City Administrator/Clerk/Treasurer or other city official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Administrator/Clerk/Treasurer within thirty (30) days of the date of the city's invoice .

(B) Assessment. If a public nuisance is not corrected and the city must abate it — including public health or safety hazards on private property, snow and ice on public sidewalks, weeds on private property or in the street area the owner is responsible for, or unsafe or insect-infested trees — and the property owner does not pay the resulting charges, the city may assess the unpaid costs against the property.

After providing notice and a hearing as required by Minn. Stat. § 429.061, the City Administrator/Clerk/Treasurer shall, by December 1 (or as required by the County Auditor), list the unpaid charges to be assessed under Minn. Stat. § 429.101. The City Council may then certify these charges to the County Auditor to be collected with the following year’s property taxes, either in full or in annual installments of up to ten years, as determined by the City Council.

(Ord. 90, passed 6-12-23)

§ 92.12 PUBLIC NUISANCES PENALTY.

Any person convicted of violating any provision of this subchapter is guilty of a misdemeanor and shall be punished by a fine not to exceed $2,000 or imprisonment for not more than 90 days, or both, plus the costs of prosecution in either case.

(Ord. 90, passed 6-12-23)

OPEN BURNING

§ 92.60 PURPOSE.

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

§ 92.61 DEFINITIONS.

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

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

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

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

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

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

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

§ 92.62 PROHIBITED MATERIALS.

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

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

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

Penalty, see § 10.99

§ 92.63 PERMIT REQUIRED FOR OPEN BURNING.

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire, as defined in § 92.61.

Penalty, see § 10.99

§ 92.64 PURPOSES ALLOWED FOR OPEN BURNING.

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

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

(2) Ground thawing for utility repair and construction;

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

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

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

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

Penalty, see § 10.99

§ 92.65 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

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

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

Penalty, see § 10.99

§ 92.66 PERMIT PROCESS FOR OPEN BURNING.

Upon receipt of the completed open burning permit application and permit fee, the Fire Chief, Fire Marshal or Assistant Fire Marshal 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.

§ 92.67 PERMIT HOLDER RESPONSIBILITY.

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

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

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

Penalty, see § 10.99

§ 92.68 REVOCATION OF OPEN BURNING PERMIT.

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

Penalty, see § 10.99

§ 92.69 DENIAL OF OPEN BURNING PERMIT.

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

§ 92.70 BURNING BAN OR AIR QUALITY ALERT.

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

Penalty, see § 10.99

§ 92.71 RULES ADOPTED BY REFERENCE.

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