

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: FIRE PREVENTION AND PROTECTION

Section

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§ 90.01 OPEN BURNING PROHIBITED.

(A) *Prohibition on open burning.* Open burning shall be prohibited within the City of Olivia, except as otherwise provided herein.

(B) The following are permissible exceptions to the prohibition on open burning:

(1) *Campfires.*

(a) For the purposes of section 90.01 (B)(1), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(b) **CAMPFIRE.** A campfire is a wood fire set for cooking, warming, recreational or ceremonial purposes, which is not more than 3 feet in diameter by 3 feet high and the ground surrounding the fire has been cleared of all combustible material for 5 feet from the base of the fire. Campfire shall have the same meaning as defined in M.S. § 88.01, subd. 25, as it may be amended from time to time.

(c) **WOOD.** Wood is dry, clean fuel only, such as twigs, branches, limbs, charcoal, cordwood, or untreated dimensional lumber. **WOOD** does not include wood that is green, with leaves or needles, rotted, wet, oil soaked, or treated with paint, glue, or preservatives.

(2) *Contained fires.* Fire contained in a charcoal grill, camp stoves, or other devices designed for the purpose of cooking or heating.

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(3) *Olivia firefighter personnel.* Fires purposely set for the instruction and training of firefighter personnel.

(4) *City public works personnel.* The burning by city employees of trees, brush, grass, and other vegetative matter for the maintenance of municipal property.

(5) *Burning of leaves in the fall.* The burning of leaves on private property is allowed only when a property owner is issued a burning permit from the City of Olivia under the following conditions.

(a) The burning of leaves will only be permitted from October 15 through November 15.

(b) A responsible person shall be in constant attendance until the fire is completely extinguished.

(c) Burning will only be allowed between the hours of 8:00 a.m. and 8:00 p.m. All fires are to be extinguished by 8:00 p.m.

(d) The fires shall not be less than 25 feet from any structure, wood fence, hedge, or brush and no less than 5 feet from any property line.

(e) The burning of leaves is prohibited on city streets, boulevards, or any public property by private citizens.

(f) No open burning of leaves shall take place during an air pollution alert, warning, or emergency declared by the Minnesota Environmental Protection Agency.

(g) No burning of leaves shall take place during a fire danger alert declared by the Fire Chief or by the Commissioner of the Minnesota Department of Natural Resources.

(h) Notice of any fire danger alert or of any air pollution alert, warning, or emergency shall be broadcast periodically on any day during which open burning of leaves would otherwise be permitted.

(C) *Additional provisions.*

(1) A competent person shall constantly attend any fire permitted by this section until the fire is extinguished. This person shall have a garden hose connected to the water supply, or other extinguishing equipment, readily available for use.

(2) Fires may not be used for the burning of litter, refuse, garbage, or paper, except as provided in this section.

(3) No person shall conduct, cause, or permit open burning during a burning ban put into effect by a local authority, county, or state agency.

(M.S. § 88.171, Subd. 9, as it may be amended from time to time)

(4) Exemption to conduct fire under this section does not excuse a person from the consequences, damages, or injuries which may result therefrom, nor does it exempt any person from regulations promulgated by the Minnesota Pollution Control Agency or any other governmental unit exercising jurisdiction in matters of pollution or fire hazard regulations.

(D) *Violations.* Any person who violates any provision of this section is guilty of a misdemeanor.

(E) *Effective date.* This section shall be effective upon adoption and a 1-time publication date, being 8-5-2004, in the official city newspaper.

(Ord. 279, passed 8-5-2004) Penalty, see § 10.99

§ 90.02 NEGLIGENT FIRES.

It is unlawful for any person to cause or permit a fire to get out of control and thereby create an unreasonable risk and high degree of probability of damage or injury to another and the property or person of another.

Penalty, see § 10.99

§ 90.03 OPEN BURNING OF LEAVES.

(A) Subject to applicable Minnesota Statutes and regulations the open burning of dried leaves only between October 15 and November 15 is hereby permitted subject to the stated limits and conditions of the city code.

(B) (1) The burning should be limited to areas of the city zoned and used for residential purposes only.

(2) Burning shall be permitted only between the hours of 2:00 p.m. and 8:00 p.m.

(3) All burning shall be conducted a minimum of 25 feet from all buildings, structures, flammable materials and tall grasses and weeds.

(4) No person shall kindle a fire on land of another without first obtaining permission of the owner or his or her agent.

(5) No burning is permitted in any public streets. Any burning that takes place on the in-drive of a property owned or occupied by the burner must be cleaned following the burning.

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(6) All fires shall be attended at all times by a person of suitable age and discretion.

(7) No burning shall take place during an air pollution alert, warning or emergency declared by the Pollution Control Agency or during a fire alert or warning declared by the City, and the Fire Chief may prohibit burning of leaves when atmospheric or local conditions make the burning hazardous.

(8) The burning of refuse is prohibited.

Penalty, see § 10.99

§ 90.04 CAMPFIRES.

Camp fires in a commercial recreational campground are permitted within a properly constructed fire ring, but limited to 1 fire ring per camp site.

§ 90.05 FOOD PREPARATION OR RECREATIONAL FIRES.

Fires set for food preparation or social purposes are allowed without a permit provided that only unpainted and untreated wood or charcoal is burned, and provided further the fire is contained within a grill, firebox made of metal, fireplace or other fire burning equipment designated for such purpose and further complies with all other state regulations pertaining to open burning.

§ 90.06 RECREATIONAL BURNING IN A PIT.

(A) The burn pit cannot exceed 3 feet in diameter and must be at least 18 inches deep.

(B) (1) Fires shall not be conducted within 25 feet of a building or combustible materials unless contained in a barbecue pit.

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

BUILDING. As defined in the 1997 Uniform Fire Code, adopted by the City Council.

(C) No materials other than untreated wood or charcoal may be burned for recreational purposes.

(D) The fire cannot be larger than 3 feet diameter and the flames cannot be higher than 3 feet.

(E) Buckets, shovels, garden hoses or fire extinguishers shall be readily available.

(F) Fires shall be constantly attended by a person knowledgeable in the use of extinguishing equipment.

(G) The fire shall be supervised by an adult until fully extinguished.

(H) The Fire Department or Police Department may require the fire to be extinguished if it becomes a hazardous situation or there are complaints about smoke from the neighbors.

CHAPTER 91: RIGHT-OF-WAY MANAGEMENT

Section

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Cross-reference:

- Administration, see Title III*
- Streets and Sidewalks, see Ch. 96*
- Traffic Code, see Title VII*

GENERAL PROVISIONS

§ 91.01 PURPOSE.

(A) The City of Olivia holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The city and other public entities have invested millions of dollars in public funds to build and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the city for goods and services delivered thereby, are using this property held for the public good. Although the services are often necessary or convenient for the citizens, the persons receive revenue and/or profit through their use of public property. Although the service delivery facilities are in most cases a necessary and proper use of right-of-way, the city hereby seeks to regulate and manage the uses pursuant to state law, and applicable rules of the State of Minnesota.

(B) To provide for the health, safety, and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the rights-of-way by all users, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the rights-of-way, one of the causes for the early and excessive deterioration of its rights-of-way is frequent excavation.

(C) This chapter imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons disturbing and obstructing the right-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this chapter provides for recovery of the city's cost associated with managing its rights-of-way.
(Ord. 268, passed 7-16-2001)

§ 91.02 DEFINITIONS.

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

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

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

CERTIFICATE OF INSURANCE. Proof of insurance from a company licensed to do business in the State of Minnesota against liability claims.

CITY. Olivia, Minnesota. **CITY** means its elected officials, officers, subdivisions, affiliates, employees, committees, and agents.

CITY COST or **MANAGEMENT COST.** The actual cost incurred by the city for the public rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; mapping of as built locations of facilities located in rights-of-way; and revoking right-of-way permits; and performing all other tasks required by this chapter, including other costs the city may incur in managing the provisions of this chapter.

COMMISSION. The State Public Utilities Commission.

CONGESTED RIGHT-OF-WAY. A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with M.S. § 216D.04, as it may be amended from time to time, over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND. A performance bond or other form of security posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in both a timely and quality manner. Any of the following forms of security can be provided at permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under M.S. § 15.73, subd. 3, as it may be amended from time to time;
- (4) Letter of credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city; and/or
- (6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

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

DEGRADATION COST. Money paid to the city to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation.

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

DEPARTMENT. The Department of Public Works of the city.

DEPARTMENT INSPECTOR. Any person authorized by the city to carry out inspections related to the provisions of this chapter.

DIRECTOR. The City Administrator, or his or her designee.

EMERGENCY. A condition that:

- (1) Poses a clear and immediate danger to life or health or of a significant loss of property; or
- (2) Requires immediate repair or replacement in order to restore service to a customer.

EQUIPMENT or FACILITIES. Any tangible thing in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.

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

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

EXCAVATION PERMIT FEE. Money paid to the city by an applicant to cover the costs.

GOPHER ONE CALL. Calling for a locate request of utilities. Persons are responsible to call for a permit prior to excavating or obstructing any rights-of-way within the city. Nothing herein relieves a person from complying with the provisions of the M.S. Chapter 216D, Excavation Notice System, also known as Gopher One Call Law, as it may be amended from time to time.

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

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

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

OBSTRUCTION PERMIT. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way. An **OBSTRUCTION PERMIT** allows the holder to obstruct that portion of the right-of-way described in the permit.

PATCH or **PATCHING.** A method of pavement replacement that is temporary in nature. A patch consists of:

- (1) The compaction of the sub-base and aggregate base; and
- (2) The replacement, in kind, of the existing pavement for a minimum of 2 feet beyond the edges of the excavation in all directions.

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

PERMIT. A permit issued pursuant to this chapter.

PERMITTEE/PERMIT HOLDER. Any person to whom a permit to excavate or place equipment or facilities in a right-of-way has been granted by the city under this chapter.

PERSON. Any natural or corporate person, business association, or other business entity, including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor, or assign of any of the foregoing, or any other legal entity (which has or seeks to have equipment in any right-of-way).

REGISTRANT. Any person who has fulfilled all requirements for registration under § 91.15 and any other applicable portions of this chapter.

RESTORATION COST. Money paid to the city by a permittee to cover the cost of restoration.

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

RIGHT-OF-WAY. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

RIGHT-OF-WAY PERMIT. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

RIGHT-OF-WAY USER. Means:

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(1) A telecommunications right-of-way user as defined by M.S. § 237.162, subd. 4, as it may be amended from time to time;

(2) A person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way; or

(3) Any person who in any way occupies, uses, or has or places its facilities or equipment in a right-of-way, or seeks to do so.

SERVICE or UTILITY SERVICE. Includes:

(1) Those services provided by a public utility as defined in M.S. § 216B.02, subds. 4, and 6 as they may be amended from time to time;

(2) Telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, natural gas, cooling energy, or power services;

(3) The services provided by a corporation organized for the purpose set forth in M.S. § 301B.01, as it may be amended from time to time;

(4) The services provided by a district heating or cooling system;

(5) Cable communications systems as defined in M.S. Chapter 238, as it may be amended from time to time; and

(6) Telecommunications rights-of-way user as defined below.

TELECOMMUNICATION RIGHT-OF-WAY USER. A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under M.S. Ch. 238, as it may be amended from time to time, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in M.S. § 216B.02, as it may be amended from time to time, a municipality, a municipal gas or power agency organized under M.S. Ch. 453 and 453A, as they may be amended from time to time, or a cooperative electric association organized under M.S. Ch. 308A, as it may be amended from time to time, are not telecommunications right-of-way users for purposes of this chapter.

TERM. Registrations issued pursuant to this chapter shall expire on December 31 of each calendar year.

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

(Ord. 268, passed 7-16-2001)

§ 91.03 ADMINISTRATION.

The City Administrator is the official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The city may delegate any or all of the duties hereunder.

(Ord. 268, passed 7-16-2001)

§ 91.04 EFFECTIVE DATE.

This chapter shall take effect the day following publication in the city's official newspaper.

(Ord. 268, passed 7-16-2001)

REGULATIONS AND REQUIREMENTS

§ 91.15 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

(A) *Registration.* Each right-of-way user, and any person with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(B) *Exceptions.* The following are not subject to the requirements of this section:

- (1) Persons planting or maintaining boulevard planting or gardens;
- (2) Persons erecting fences, installing driveways, sidewalks, curbs and gutters, or parking lots;
- (3) Persons engaged in snow removal activities;
- (4) Federal, state, county, and city agencies;
- (5) Persons acting as agents, contractors, or subcontractors for a registrant who has properly registered in accordance with this section; and
- (6) Contractors furnishing services for sewer and water connections.

(C) *Information required.* The information provided to the city at the time of registration shall include, but not be limited to:

- (1) Each registrant's name, Gopher One Call registration certificate number, address, telephone and facsimile numbers;

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

(3) The agent for service of process;

(4) A certificate of insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota;

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

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

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

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

(f) Verifying that all agents, contractors, or subcontractors of the registrant are additional named insured under the policies; and

(g) The city may, in its discretion, resolve to accept self insurance, if it provides equivalent protection.

(5) The city will require a copy of the actual insurance policies;

(6) If the person is a corporation, a copy of the Articles required to be filed under M.S. Chapter 302A, as it may be amended from time to time, as recorded and certified by the Secretary of State; and

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

(D) *Security.* For companies not operating under a franchise with the city, a surety bond letter of credit or cash deposit in the amount determined by the city but not less than \$5,000, may be required from each applicant at the discretion of the city. A security bond shall be from a corporate security authorized to do business in the state. Security required pursuant to this division (D) shall be conditioned that the holder will perform the work in accordance with this chapter and applicable regulations, will pay to the city any costs incurred by the city in performing work pursuant to this chapter; and will indemnify and save the city and its officers, agents, and employees harmless against any and all claims, judgments, or other costs arising from any excavation and other work covered by the permit or for which City Council or any city officer may be liable by reason of any accident or injury to persons or property through the fault of the permit holder, either in improperly guarding the excavation or for any other injury resulting from the negligence of the permit holder. The bond, letter of credit, or cash deposit shall be released by the city upon completion of the work and compliance with all conditions imposed by the permit. For permits allowing excavations within public streets, the bond, letter of credit, or cash deposit shall be held for a period of 24 months to guarantee the adequacy of all restoration work.

(E) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes on which the registrant has knowledge of any change. (Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.16 PERMIT REQUIREMENT.

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

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

(C) *Exceptions.* No excavation/obstruction permit shall be required for the following:

- (1) Landscaping work;
- (2) Fences, driveways, sidewalks, curbs and gutters, and parking lots, street furnishings, bus stop benches, shelters posts and pillars;
- (3) Snow removal activities;

(4) Vending machines;

(5) Irrigation systems, provided that the system does not connect directly to water mains in the right-of-way;

(6) Activities of the city; or

(7) Installation and maintenance of sewer or water services, provided that no excavation or other work is done within a street, sidewalk, or alley and all work is confined to unimproved portions of rights-of-way or easements.

(Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.17 PERMIT APPLICATIONS.

(A) An application for a permit shall be made on forms provided by the city and shall be accompanied by the fees set forth. If the work is to be performed by an agent, a contractor, or subcontractor on behalf of a registrant, the application shall be signed by the registrant.

(B) Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(1) Scaled drawings showing the location of all facilities owned by the applicant and improvements proposed by the applicant;

(2) A description of the methods that will be used for installation;

(3) A proposed schedule for all work;

(4) The location of any public streets, sidewalks, or alleys that will be temporarily closed to traffic during the work;

(5) The location of any public streets, sidewalks, or alleys that will be disrupted by the work;

(6) A description of methods for restoring any public improvements disrupted by the work;

(7) Payment of money due the city for permit fees, estimated restoration costs, and other management cost; prior obstructions or excavations; any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; franchise fees, security deposit, or other charges, if applicable;

(8) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing. Exempt from this provision are individual property owners within the city limits of Olivia;

(9) Any other information reasonably required by the city;

(10) When an excavation permit is requested for the purpose of installing additional equipment, and the posting of a performance bond for the additional equipment is insufficient, the posting of an additional or larger performance bond of the additional equipment may be required;

(11) Provide a detailed construction schedule;

(12) Adequately notifying property owners affected, with a minimum of 48 hours of notification; and

(13) Except when acting as agent, contractor, or subcontractor of a registrant, applicant must comply with the insurance requirements of § 91.15.
(Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.18 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the city shall issue a permit, subject to compliance with the conditions imposed by this chapter.

(B) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the health, safety, and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

(C) *Diligence in performing work.* Work shall progress in an expeditious manner as reasonably permitted by weather conditions until completion in order to avoid unnecessary inconvenience to traffic. In the event that the work is not performed in accordance with applicable regulations pertaining to excavations and utility connections, or the work is not done in an expeditious manner, or shall cease or be abandoned without due cause, the city may, after a 72-hour notice to the permit holder, correct the work and fill the excavation or repair the street. The entire cost of the work shall be paid by the permit holder upon demand by the city. In the event the permittee fails to comply with the prescribed schedule as described in the permit, the city may impose a delay penalty in an amount prescribed in the fee schedule.

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(D) *Denial of permit.* The city may deny a permit due to the following:

- (1) Failure to register pursuant to this chapter;
- (2) A proposed excavation within a street or sidewalk surface that has been constructed or reconstructed within the preceding 5 years unless the city determines that no other locations are feasible or when necessitated by an emergency;
- (3) The applicant has failed to comply with or correct inadequacies of previous permits;
- (4) The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival, or any other similar event;
- (5) The right-of-way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right-of-way as provided in this chapter;
- (6) Businesses or residences in the vicinity will be unreasonably disrupted by the work;
- (7) The proposed schedule conflicts with scheduled total or partial reconstruction of the right-of-way; and/or
- (8) The applicant fails to comply with the requirements of this section or other sections of this chapter.

(E) *Permit limitations.* Permits issued pursuant to this chapter are valid only for the area of the right-of-way specified in the application and the permit, and only for the dates so specified. No work shall be extended beyond the permitted area or dates without a new permit being obtained. The city may extend the completion date of the work in accordance with this chapter.

(F) *Standards during construction or installation.* The permit holder shall comply with the following standards when engaging in the work:

- (1) Observe and comply with all laws, rules, and regulations of the state and city and take the precautions as are necessary to avoid creating unsanitary conditions;
- (2) Conduct the operations and perform the work in a manner as to ensure the least obstruction and interference to traffic;
- (3) Take adequate precautions to ensure the safety of the general public and those who require access to abutting property;
- (4) If required by the city, notify adjoining property owners prior to the commencement of work which may disrupt the use of and access to the adjoining properties;

(5) In all cases where construction work interferes with the normal use of the construction area, provide for closing the construction area to traffic or to afford it restricted use of the area and comply with MUTCD (Manual on Uniform Traffic Control Devices) traffic safety signing requirements;

(6) Exercise precaution at all times for the protection of person, including employees and property;

(7) Protect and identify excavations and work operations with barricades or flags as required, by a flagperson in the daytime, and by warning lights at night;

(8) Provide proper trench protection (as required by O.S.H.A.) when necessary and depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation;

(9) Protect the root growth of trees and shrubbery;

(10) Installation of pipe (utility conductors) under portland cement concrete, asphalt concrete, or other high-type bituminous pavements shall be done by jacking, auguring, boring, or tunneling as directed by the city, unless otherwise authorized. HDPE (High Density Polyethylene) sleeving shall be an acceptable casing or sleeving material for telecommunications installations;

(11) When removing pavement of portland cement concrete, asphalt concrete, or high-type built up bituminous surfacing, the pavement shall be removed on each side of the trench or excavation a distance of 9 inches beyond the trench width and length, in order to provide a shoulder and solid inundation for the surface restoration;

(12) To obtain a straight edge and neat-appearing opening in pavement surface, the following procedure is required.

(a) *Portland cement concrete pavement.* The surface shall be saw-cut scored 2 inches deep and the concrete broken out by sledge or pneumatic hammer chisel.

(b) *Asphalt concrete.* The surface shall be cut full depth by pneumatic hammer chisel.

(13) Excavations, trenches, and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability, and as directed by the city;

(14) Excavations, trenches, and jacking pits shall be protected when unattended to prevent entrance of surface drainage;

(15) All backfilling must be placed in 6-inch layers at optimum moisture compacted with the objective of attaining 100% of AASHTO (American Association of State Highway and Transportation Officials) density. Compaction shall be accomplished with hand, pneumatic or vibrating compactors as appropriate;

(16) Backfill material shall consist of the excavated soils that have been removed during excavation. The materials shall be segregated and backfilled in the same manner as removed, provided the

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material moisture is capable of obtaining optimum compaction. If the backfill material is too wet, then granular material may be substituted at the direction of the city. All backfill must replace in kind the materials removed. All organic materials must be replaced with granular material as directed by the city;

(17) Compacted backfill shall be brought to street grade and crowned at the center not more than 1 inch;

(18) Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit;

(19) No lugs damaging to roadway surfaces may be used;

(20) Dirt or debris must be periodically removed during construction; and

(21) Other reasonable standards and requirements of the city.

(Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.19 PERMIT FEES. (See Appendix A).

(A) *Excavation/obstruction permit fee.* The city shall establish a permit fee in an amount sufficient to recover the following costs:

(1) The city management costs; and

(2) Degradation costs, if applicable.

(B) *Payment of permit fees.* No obstruction permit shall be issued without a payment of the required fees.

(C) *Nonrefundable.* Permit fees that were paid for a permit that the city has revoked for a breach is not refundable.

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

(E) *City project permit fees.* No excavation permit or obstruction permit fee shall be charged for City of Olivia projects.

(Ord. 268, passed 7-16-2001)

§ 91.20 REPAIR AND RESTORATION.

(A) *Schedule.* The work to be done under the permit, and the repair 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 extraordinary circumstances beyond the control of the permit holder when work was prohibited as unseasonable or unreasonable or when extended by the city. In addition to repairing its own work, the permittee must restore the right-of-way and surrounding areas, including the pavement and its foundation, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for 24 months thereafter.

(B) *General standards.* The permit holder shall perform repairs and restoration according to the standards and with the materials specified by the city. The city shall have the authority to prescribe the manner and extent of the restoration, and may do so in verbal or written procedures of general application or on a case-by-case basis. The city in exercising this authority shall be guided by the following standards and consideration:

(1) The number, size, depth, and duration of the excavations, disruptions, or damage to the right-of-way;

(2) The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation;

(3) Whether the relative cost of the method of restoration to the permit holder is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance, or damage to the right-of-way; and

(4) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

(C) *City restoration.*

(1) *Generally.* If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, during the 24 months following the restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.

(2) *Patching, restoration, and degradation fees.* If the city patches or restores the right-of-way involved in a city project, fees shall not be charged for restoration or degradation.

(D) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents. Permittee upon notification from the city shall correct all restoration work to the extent necessary, using methods required by the city. The work shall be completed within 5 calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable.

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

(Ord. 268, passed 7-16-2001)

§ 91.21 JOINT APPLICATIONS.

(A) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

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

(C) *City projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by 2 or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

(Ord. 268, passed 7-16-2001)

§ 91.22 OTHER OBLIGATIONS.

(A) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permit, licenses, and authority and to pay all fees required by the city or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including M.S. § 216D.01-216D.09 (Gopher One Call, Excavation Notice System), as it may be amended from time to time. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(B) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for the work.

(C) *Interference with right-of-way.* A permittee shall not obstruct or interfere with a right-of-way that allows the natural free and clear passage of water through the gutters. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of the trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(D) *Emergency work.*

(1) (a) A registrant may proceed to take whatever actions are necessary to respond to an emergency.

(b) Within 2 business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency, the city shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. If a registrant or any of its agents creates or causes to create an emergency they shall notify any and all affected parties within a reasonable amount of time. In any event, the city may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities or equipment occasioned the emergency.

(Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.23 INSPECTION.

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

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

(C) *Authority of the city.*

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

(2) The city 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 10 days after issuance of the order, the permittee shall present proof to the city that the violation has been corrected. If the proof has not been presented within the required time, the city may revoke the permit pursuant to this chapter.

(Ord. 268, passed 7-16-2001)

§ 91.24 REVOCATION OF PERMITS.

(A) *Generally.* The city may revoke any permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, this chapter, rule, or regulation, or any condition of the permit which the substantial breach shall continue uncured for 10 calendar days after the issuance of a written order of the city. A substantial breach of a permit holder shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the permit;
- (2) An evasion or attempt to evade any material provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a permit;
- (4) The failure to maintain the required bonds and insurance;
- (5) The failure to complete the work in a timely manner; and
- (6) The failure to correct a condition indicated on an order issued by the city.

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

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. (Ord. 268, passed 7-16-2001)

§ 91.25 APPEAL.

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

(B) 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. (Ord. 268, passed 7-16-2001)

§ 91.26 LOCATION AND RELOCATION OF FACILITIES.

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

(B) Within 120 days following completion of any work pursuant to a permit, the registrant shall provide the city accurate maps and drawings certifying the as built location of all facilities and equipment installed, owned, and maintained by the registrant. The maps and drawings shall indicate both the horizontal and vertical location of all facilities and equipment and shall be provided in a format consistent with the city's mapping system.

(C) Failure to provide maps and drawings in accordance with this chapter shall be grounds for revoking the permit holder's registration. (Ord. 268, passed 7-16-2001)

§ 91.27 LOCATION OF FACILITIES AND EQUIPMENT.

(A) *Undergrounding by telecommunications right-of-way users.* Any new construction and the installation of new equipment and replacement of old equipment of telecommunications right-of-way users shall be underground or contained within buildings or other structures in conformity with applicable codes. Telecommunications right-of-way users may attach equipment and facilities to existing poles and structures maintained by a service or utility service with the owner's permission.

(B) *Corridors.* The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of equipment installation currently permitted or anticipated to be permitted in the future. All permits issued by the city involving the installation or replacement of equipment shall designate the proper corridor for the equipment at issue.

(C) *Limitation of space.* To protect health and safety, the city shall have the power to prohibit or limit the placement of new or additional equipment within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making the decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing equipment 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.

(D) *Preservation of corridor space in the right-of-way for future installations.* To adequately plan for future demand on the right-of-way by users, the city may reserve corridor space within the right-of-way for equipment to be installed at a point of time in the future even though it is not currently permitted.

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

(Ord. 268, passed 7-16-2001)

§ 91.28 PRE-EXCAVATION FACILITIES LOCATION.

In addition to complying with the requirements of M.S. § 216D.01-216D.09 (Gopher One Call, Excavation Notice System), as it may be amended from time to time, before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal placement of all the facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

(Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.29 RELOCATION.

(A) *Relocation for city purposes.* A registrant shall promptly but in no event more than 120 days of the city's request, permanently remove and relocate at no charge to the city, any facilities or equipment if and when made necessary by a change in the grade, alignment or width of any right-of-way, vacation of any right-of-way, by the construction, maintenance or operation of any city facilities or to protect the public health, safety, and welfare. The registrant shall restore any rights-of-way to the condition it was in prior to removal and relocation. No fees shall be required of the permittee for work done under this division (A).

(B) *Undergrounding of relocated telecommunications facilities.* A telecommunications right-of-way user shall relocate all above ground facilities and equipment to underground locations at its own cost and expense at the city's request when the city requires the relocation of all telecommunications facilities and equipment to underground locations or structures or poles to which the registrant's facilities or equipment is attached are abandoned or removed by the owner of the structures or poles.
(Ord. 268, passed 7-16-2001)

§ 91.30 RIGHT-OF-WAY VACATION.

(A) *Reservation of right.* If the city vacates a right-of-way which contains the equipment of a registrant, and the vacation does not require the relocation of registrant facilities and equipment, the city shall reserve, to and for itself and all registrants having facilities and equipment in the vacated right-of-way, the right to install, maintain, and operate any facilities and equipment in the vacated right-of-way and to enter upon the vacated right-of-way at any time for the purpose of reconstruction, inspecting, maintaining, or repairing the same.

(B) *Relocation of equipment.* If the vacation requires the relocation of registrant facilities and equipment, and if the vacation proceedings are initiated by the registrant, the registrant must pay the relocation costs or, if the vacation proceedings are initiated by the city, the registrant must pay the relocation costs unless otherwise agreed to by the city and the registrant or, if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, the other person or persons must pay the relocation costs.

(C) *Abandoned and unstable equipment.*

(1) *Discontinued operations.* A registrant who has determined to discontinue its operations in the city must either;

(a) Provide information satisfactory to the city that the registrant's obligations for its equipment in the right-of-way under this chapter have been lawfully assumed by another registrant; or

(b) Submit to the city an action plan for the removal or abandonment of equipment and facilities. The city shall require removal of the facilities and equipment if the city determines the removal is necessary to protect the public health, safety, and welfare. The city may require the registrant to post a bond in an amount sufficient to reimburse the city for reasonably anticipated costs to be incurred removing the facilities and equipment.

(2) *Abandoned facilities equipment.* Facilities and equipment of a registrant located on the surface of or above a right-of-way, or on city property which remains unused for a period of 2 years shall be deemed to be abandoned. The abandoned equipment is deemed to be a nuisance, or abating the nuisance, or requiring removal of the equipment or facilities by the registrant, or the registrant's successor.

(3) *Removal of underground equipment.* Any registrant who has unusable and abandoned underground facilities or equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, to the extent the facilities or equipment is uncovered by the excavation unless this requirement is waived by the city.

(Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.31 INDEMNIFICATION AND LIABILITY.

(A) *Limitation of liability.* By reason of the acceptance of a registration or the grant of a right-of-way permit, the city does not assume any liability for:

(1) Injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city; or

(2) Claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.

(B) *Indemnification.* By registering with the city, a registrant agrees, or by accepting a permit under this chapter, a permit holder agrees, to defend, indemnify, and hold the city whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, or operation of its equipment, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit, or other proceeding claiming damages, or seeking any other relief against the city for any claim nor for any award arising out of the presence, installation, maintenance, or operation of its equipment, or any activity undertaken in or near a right-of-way, whether or not the act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. The foregoing does not indemnify the city for its own negligence except for claims arising out of or alleging the city's negligence where the negligence arises out of or is primarily related to the presence, installation, construction,

operation, maintenance, or repair of the equipment by the registrant or on the registrant's behalf, including but not limited to, the issuance of permits and inspection of plans or work. This chapter is not as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the city; and the registrant, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf.

(C) *Franchise holder.* If there is a conflict in language between the franchise of a person holding a valid franchise agreement with the city and this chapter, the terms of the franchise shall prevail.

(D) *Violations.* Every person who violates a section, division, paragraph, item, clause, part, or any provision of this chapter when performing an act thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions thereof.

(Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.32 REMOVAL OF EXISTING CURB; JOINTS BETWEEN EXISTING CURB AND NEW ENTRANCE.

In making curb cuts, the existing curb shall be removed in complete whole sections. No cutting, sawing, or breaking of the existing curb shall be made except at the existing joints in the existing curb.

(Ord. 268, passed 7-16-2001) Penalty, see § 10.99

§ 91.33 REPAIR OF PAVEMENT DISTURBED BY CURB CUT WORK.

Any portions of the existing pavement structure disturbed during curb cut work shall be repaired with similar materials of equal or greater structural capacity. Repair limits shall be defined by right angle saw cuts so oriented to provide the least noticeable surface patch.

(Ord. 268, passed 7-16-2001)

§ 91.34 TIME LIMIT ON CURB CUT WORK.

On existing streets improved with curb and gutter, the period between removing the existing curb and constructing the new entrance shall not exceed 30 days.

(Ord. 268, passed 7-16-2001)

§ 91.35 UNDERGROUNDING OF FACILITIES IN THE RIGHT OF WAY BY USERS PROVIDING UTILITY SERVICE.

(A) *Purpose of Undergrounding.* The purpose of this section 91.35 is to promote the health, safety, and general welfare of the public, and is intended to foster (i) safe travel over the right of way, (ii) safety around homes and buildings where overhead feeds are connected, and (iii) orderly development in the city consistent with its Comprehensive Plan. Location and relocation, installation and

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reinstallation of facilities in the right of way or in or on other public ground must be made in accordance with this section 91.35 and is intended to be enforced consistently with state and federal law regulating right-of-way users, to the fullest extent of the city's statutory and common law authority.

(B) *Undergrounding of Facilities.* All facilities newly installed, constructed, or otherwise placed in the public right of way, or in other public property held in common for public use, must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of existing meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers, small wireless facilities and service connection pedestals shall be allowed, in addition to above-ground placement of new small wireless facilities in compliance with Minn. Stat. § 237.163 and properly permitted by the city. These requirements shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation, or comprehensive planning as may now or in the future be allowed by law.

(C) *Undergrounding of Permanent Replacement, Relocated, or Reconstructed Facilities.* If the city finds that one or more of the purposes set forth in section 91.35, subd. A would be promoted, the city may require a permanent replacement, relocation, or reconstruction of a facility to be located and maintained underground, with due regard for seasonal working conditions. For purposes of this subdivision, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding may be required, whether a replacement, relocation, or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the city in connection with (1) the present or future use by the city or other local government unit of the right of way or other public ground for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right of way. Subject to subd. 4 below, all relocations from previously placed underground facilities shall be to another underground location.

(D) *Exceptions to Undergrounding.* The following exceptions to the strict application of this subdivision shall be allowed upon the conditions stated:

(1) *Technical Feasibility; Promotion of Policy.* Above-ground installation, construction, or placement of facilities shall be allowed in residential, commercial, and industrial areas where the Council, following consideration and recommendation by staff finds that:

(a) Underground placement is not technically feasible due to topographical, subsoil, or other existing conditions which significantly and adversely affect underground facilities placement; or

(b) Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under Section 91.35, subd. A would be advanced by underground placement of facilities on the project in question, or the city determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.

(2) *Temporary Service.* Above-ground installation, construction, or placement of temporary service lines shall only be allowed:

(a) During new construction of any project for a period not to exceed three (3) months.

(b) During an emergency in order to safeguard lives or property within the city.

(c) For a period of not more than seven (7) months when soil conditions make excavation impractical.

(3) *Facilities Subject to Preemptive Public Utilities Commission Siting and Routing Jurisdiction.* Facilities that are subject to certificate of need and siting and routing requirements of the Minnesota Public Utilities Commission are exempted from this section 91.35, to the extent that the city's undergrounding authority is pre-empted by law.

(4) *Collocation of Small Cell Wireless Facilities.* Collocation of small wireless facilities and installation of wireless support structures, approved by the city and in compliance with Minn. Stat. §§ 237.162, 237.163, are exempted from this section.

(E) *Developer Responsibility.* All owners, platters, or developers are responsible for complying with the requirements of this subdivision, and prior to final approval of any plat or development plan, shall submit to the city written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such facilities have been made.

CHAPTER 92: HEALTH AND SAFETY; NUISANCES

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GENERAL PROVISIONS

§ 92.01 ASSESSABLE CURRENT SERVICES.

(A) *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 1 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 streets or private property; and the operation of a street lighting system.

(B) *Snow, ice, dirt, and rubbish.*

(1) *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 occupant shall allow snow, ice, dirt, or rubbish to remain on the walk longer than 24 hours after its deposit thereon. Failure to comply with this section shall constitute a violation.

(2) *Removal by city.* The City Clerk or other person designated by the City Council may direct the 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 or after the snow has ceased to fall. The City Clerk or other designated person shall keep a record showing the cost of removal adjacent to each separate lot and parcel.

(C) *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 the work shall keep a record of the cost of the removal or elimination against each parcel of property affected and annually deliver that information to the City Clerk.

(D) *Installation and repair of water service lines.* Whenever the city installs or repairs water service lines serving private property under this code, the City Clerk shall keep a record of the total cost of the installation or repair against the property.

(E) *Repair of sidewalks and alleys.*

(1) *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 Clerk.

(2) *Inspections; notice.* The City Council or its designee shall 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 shall 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 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.

(3) *Repair by city.* If the sidewalk or alley is not repaired within 30 days after receipt of the notice, the City Clerk shall report the facts to the City Council and the City Council shall by resolution order the work done by contract in accordance with law. The City Clerk shall keep a record of the total cost of the repair attributable to each lot or parcel of property.

(F) *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 Clerk, 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 Clerk.

(G) *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 any vehicle, equipment, 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 the damage. Any person who willfully 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.

(H) *Assessment.* On or before September 1 of each year, the City Clerk shall list the total unpaid charges for each type of current service and charges under this section against each 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. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding 10, as the City Council may determine in each case.

Penalty, see § 10.99

§ 92.02 TREE DISEASES.

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

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

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

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

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

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

(B) *Abatement of nuisance.* It is unlawful for any person to permit any public nuisance as defined in division (A) of this section to remain on any premises the person owns or controls within the city. The 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 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 the 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.

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

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

Penalty, see § 10.99

§ 92.03 TREE REMOVAL CHARGE.

(A) *Declaration of intent.* The rates and charges hereby imposed are intended to help recover city costs for the removal of diseased trees on private property.

(B) *Removal charge.* (See Appendix A)

(1) A tree removal and hauling charge, in an amount set by the Council from time to time, is hereby imposed on all diseased trees removed by the city on private property as follows:

- (a) Tree removal charge per tree; and
- (b) Hauling tree debris away, per truck load or partial load.

(2) The Council may waive or change these fees from time to time by resolution.

(C) *Right of refusal.* The city shall have the right at all times to refuse to remove a tree on private property. The determination shall be made by the city. It shall be the obligation of the property owner to have the tree removed at the owner's expense, should the city elect not to remove it.

(D) *Liability.* Each property owner shall sign a statement prior to removal of a tree to hold the City of Olivia harmless for any and all damage done to property in the removal of any tree.
(Ord. 183, passed 5-3-1982)

§ 92.04 TREE TRIMMING AND REMOVAL.

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(A) The intent of this section is to set public policy regarding the removal and/or trimming of trees on public property (i.e. boulevards, alleys, parks, and other public facilities/buildings, and grounds.) Trees located on private property are addressed in § 92.03.

(B) It is the responsibility of the city to maintain trees located on public property.

(C) Maintenance includes trimming and/or removal because of disease, dying (aging), or damage from storms.

(D) The city is also responsible for the safety and well-being of its citizens, such as maintaining visible traffic signs, providing adequate street lighting, and limiting liability in the parks.

(E) The city also desires to protect the investment of equipment during such operations as snow removal, street sweeping, etc.

(F) The city owns and maintains an electrical distribution system and desires to keep distribution equipment (i.e. lines, transformers, etc.) clear of branches.

(G) The city recognizes that an employee of the city receives specialized training and education in the area of trees.

(H) From time to time, trees may need to be moved or trimmed.

(I) The City Tree Inspector is responsible for deciding which trees are in need of trimming and/or removal.

(J) The City Council desires to maintain a healthy tree inventory and provided that adequate funds are available will re-plant a new tree in place of one removed.
(Res. 2004-58, passed 10-7-2004)

NUISANCES

§ 92.15 PUBLIC NUISANCE.

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

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

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

(C) Is guilty of any other act or omission declared by law or § 92.16, 92.17, or 92.18, or any other part of this code to be a public nuisance and for which no sentence is specifically provided.
Penalty, see § 10.99

§ 92.16 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 24 hours after death;

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

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

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

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

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

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

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

§ 92.17 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; and

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

§ 92.18 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

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

(A) All snow and ice not removed from public sidewalks 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 Minn. Rules Ch. 7030, as it may be amended from time to time, which are hereby 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 operation 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 50 feet if the source is located outside a structure or building shall be prima facie evidence of violation of this section;

(G) The participation in a party or gathering of people giving rise to noise which disturbs the peace, quiet, or repose of the occupants of adjoining or other property;

(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 of people 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 so 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 6 feet above the ground and within 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) Waste water 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;

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

(U) All other conditions or things which are likely to cause injury to the person or property of anyone. Penalty, see § 10.99

§ 92.19 DUTIES OF CITY OFFICERS.

The Police Department or Sheriff, if the city has at the time no Police Department, shall 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.

§ 92.20 ABATEMENT.

(A) Any nuisance defined under sections 92.16, and 92.18, excluding any structure included under the provisions of Minn. Stats. §§ 463.15 through 463.26, may be removed, corrected, or eliminated from private property through summary abatement as set forth in the following subsections:

(1) Whenever the City Administrator or a City peace officer determines that a public nuisance is being maintained or exists on private property in the City, the City Administrator or peace officer shall notify in writing, the record owner and occupant, if any, of the real property of such fact and order the nuisance to be terminated and abated.

(2) The notice shall be served in person or by certified mail. If the property is unoccupied and the owner is unknown, the notice may be served by posting it on the property. The notice shall specify the steps necessary to abate the nuisance. The notice must also provide a reasonable deadline, not exceeding 20 days, for the nuisance to be abated.

(3) If the notice is not complied with, a report shall be submitted to the City Administrator, and a hearing by the City Council shall be set. The owner or occupant shall be provided with at least ten days notice of the hearing. The hearing notice shall be served on the owner or occupant in the same manner, as provided in subsection (A)(2) of this section. For posted notice of the hearing, 30 days must elapse between the day of posting and the hearing.

(4) At the hearing, the City Council shall provide the owner or occupant an opportunity to be heard. After hearing the evidence, the Council may issue Findings of Fact and an Order providing for the City to abate the nuisance. The abatement order shall be executed as soon as practicable thereafter under the supervision of a peace officer.

(5) Any abatement order issued by the council may be appealed to the Renville County District Court if the appeal is filed within ten days of the Order. Any properly filed appeal shall be limited to the issue of cost recovery by the City.

(6) Any motor vehicle removed from private property shall be impounded and disposed of in accordance with Minnesota Statutes Chapter 168B, as amended. Any other personal property removed from private property, which in the opinion of the supervising peace officer, has more than nominal fair market value, shall be photographed and inventoried, and written notice of the property removed shall be posted on the property. The property may be reclaimed by the record owner of the real property, within 30 days of removal, only after payment of the City's cost of removal and storage fees, which shall be the same as the vehicle impound fee per day. If any property remains unclaimed after 30 days, it may be sold or disposed of by the City without further notice.

(B) Any charges incurred by the City in abating, removing, correcting or eliminating from private property a nuisance as described in Code sections 92.16 and 92.18, may be collected as provided in Minn. Stat. section 429.101 and City Code section 92.21. Such charges may include any actual costs incurred by the City, including, but not limited to, administrative, legal, engineering, and inspection and monitoring expenses, in connection with the abatement of the nuisance.

(C) Emergency Procedure; Summary Enforcement.

(1) In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health, safety, or welfare, the City Council may order summary enforcement and abate the nuisance.

(2) To proceed with summary enforcement, a peace 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 attempt to notify in writing the occupant or owner of the premises of the nature of the nuisance and of the City's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement.

(3) The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) of this section, and may order that 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.

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

Penalty, see § 10.99

(Ord. 2015-3, passed 7-6-2015)

§ 92.21 RECOVERY OF COST.

(A) *Personal liability.* The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other 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 Clerk.

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

Penalty, see § 10.99

WEEDS

§ 92.35 SHORT TITLE.

This subchapter shall be cited as the Weed Ordinance.

§ 92.36 JURISDICTION.

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

§ 92.37 DEFINITIONS; EXCLUSIONS.

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

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

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

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

(1) Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip;

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

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

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

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

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

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

§ 92.38 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 12 inches in height.

Penalty, see § 10.99

§ 92.39 FILING COMPLAINT.

Any person, including the city, who believes there is property located within the corporate limits of the city which has growing plant matter in violation of this subchapter shall make a written complaint signed, dated, and filed with the City Clerk. 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.

§ 92.40 NOTICE OF VIOLATIONS.

(A) Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the City Council shall make an inspection and prepare a written report to the City Council regarding the condition. The City Council, upon concluding that there is a probable belief that this subchapter has been violated, shall forward written notification in the form of a Destruction Order to the property owner or the person occupying the property as that information is contained within the records of the City Clerk or any other city agency. The notice shall be served in writing by certified mail. The notice shall provide that within 7 regular business days after the receipt of the notice that the designated violation shall be removed by the property owner or person occupying the property.

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

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

§ 92.41 APPEALS.

(A) (1) The property owner may appeal by filing written notice of objections with the City Council within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the finding of the City Council.

(2) It is the property owner's responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants, or crops or is not otherwise in violation of this subchapter, and should not be subject to destruction under the subchapter.

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

§ 92.42 ABATEMENT BY CITY.

In the event that the property owner shall fail to comply with the Destruction Order within 7 regular business days and has not filed a notice within 48 hours to the City Clerk of an intent to appeal, the City Council may employ the services of city employees or outside contractors and remove the weeds to conform to this subchapter by all lawful means.

§ 92.43 LIABILITY.

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

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

(C) All sums payable by the property owner are to be paid to the City Clerk 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 M.S. § 429.101, as it may be amended from time to time.

EXCESSIVE NOISE

§ 92.55 GENERAL PROHIBITION.

No person shall make, or cause to be made, any distinct and loud audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare or any person, or precludes their enjoyment or diminishes their property values. This general prohibition is not limited by the specific restrictions of §§ 92.55 *et seq.*

(Ord. 266, passed 6-5-2000) Penalty, see § 10.99

§ 92.56 HORNS, AUDIBLE SIGNALING DEVICES, AND THE LIKE.

No person shall sound any audible signaling device except as a warning of danger as required by M.S. § 169.68, as it may be amended from time to time.

(Ord. 266, passed 6-5-2000) Penalty, see § 10.99

§ 92.57 MUFFLERS.

Every motor vehicle shall at all times be equipped with a muffler in good working order which blends the exhaust noise into the overall vehicle noise and is in constant operation to prevent excessive or unusual noise, and no person shall use a dynamic engine or transmission brake, muffler cutout, bypass, or similar device upon a motor vehicle on a street or highway. The exhaust system shall not emit or produce a sharp popping or crackling sound.

(Ord. 266, passed 6-5-2000) Penalty, see § 10.99

§ 92.58 RADIOS, TAPE AND DISC PLAYERS, AND THE LIKE.

(A) No person shall use, operate, or play any radio receiving set, tape or disc player, musical instrument, phonograph, loudspeaker, sound amplifier, or other device in such a manner as to disturb the peace, quiet, and repose of a person or persons of ordinary sensibilities, except as allowed by city license or permit for civic and/or charitable activities and events.

(B) The play, use, or operation of any radio, tape or disc players, musical instrument, phonograph, or other machine or device for the production or reproduction of sound in such a manner as to be plainly audible at a distance of one city block from the machine or device, or for the purpose of commercial advertising or attracting the attention of the public to any building structure, shall be prima facie evidence of a violation of this section.

(C) When sound violating this section is produced or reproduced by a machine or device that is located in or on a vehicle, the vehicle's owner(s) is guilty of the violation, provided, however, that if the vehicle's owner is not present at the time of the violation, the person in charge or control of the vehicle at the time of the violation is guilty of the violation.

(Ord. 266, passed 6-5-2000) Penalty, see § 10.99

§ 92.59 BUILDINGS.

(A) No person shall engage in construction (including excavation), demolition, alteration, or repair of any building between the hours of 9:00 p.m. and 6:00 a.m. weekdays and all day Sunday, except where single individuals or families work on single-family residences for their own occupancy.

(B) City officials may, in case of emergency, grant permission to repair at any time when they find repair work will not affect the health and safety of the persons in the vicinity.

(Ord. 266, passed 6-5-2000) Penalty, see § 10.99

§ 92.60 PILE DRIVERS, HAMMERS, AND THE LIKE.

No person shall use or operate, between the hours of 9:00 p.m. and 6:00 a.m., any pile driver, power shovel, pneumatic hammer, derrick power, electrical hoist, or other appliance the use of which is accompanied by loud or unusual noise.

(Ord. 266, passed 6-5-2000)

§ 92.61 NOISY PARTIES AND GATHERINGS.

(A) *Prohibition.* No person shall congregate at, or participate in, any party or gathering from which noise emanates of a sufficient volume so as to disturb the peace, quiet, or repose of another person. No person shall knowingly remain at that noisy party or gathering.

(B) *Evidence.* The following is prima facie evidence of violation of this section:

(1) Noise of the volume as to be clearly heard at a distance of a one city block from the structure or building in which the party or gathering is occurring, or in the case of an apartment building, in the adjacent hallway or apartment; and/or

(2) Any complaint from a person that is verified by an officer.

(C) *Duty to disperse.* When an officer determines that a party or gathering is in violation of this section, the officer may order all persons present at the premises where the violation is occurring, other than the owner or tenants of the premises, to disperse immediately. No person shall knowingly remain at that party or gathering.

(D) *Exemption.* The following are exempt from violation of this section:

(1) Activities which are duly authorized, sponsored, or licensed by the city so long as the activity is conducted pursuant to the conditions of the license, permit, or contract;

(2) Person(s) who have gone to a party for the sole purpose of abating the violation;

(3) Church bells, chimes, or carillons;

(4) School bells;

(5) Anti-theft devices; and

(6) Machines or devices for the production of sound on or in authorized emergency vehicles.
(Ord. 266, passed 6-5-2000) Penalty, see § 10.99

§ 92.62 ANIMALS, BIRDS, AND THE LIKE.

No person shall keep, or allow to be kept, any animal which is causing long continued noise which disturbs the comfort or repose of any persons in the vicinity.

(Ord. 266, passed 6-5-2000) Penalty, see § 10.99

§ 92.63 EFFECTIVE DATE.

The effective date of §§ 92.55 *et seq.* shall be effective when passed, adopted, and published.

(Ord. 266, passed 6-5-2000)

§ 92.98 VIOLATIONS.

A violation of §§ 92.55 *et seq.* is a misdemeanor.

(Ord. 266, passed 6-5-2000) Penalty, see § 10.99

CHAPTER 93: ANIMALS

Section

Dogs and Cats

- 93.01 License requirements
- 93.02 Control of animal
- 93.03 Potentially Dangerous and Dangerous Animals
- 93.04 Attack by Animal
- 93.05 Vicious animals
- 93.06 Effective date

- 93.98 Violations

DOGS AND CATS

§ 93.01 LICENSE REQUIREMENTS.

The following regulations shall apply to all dogs and cats within the City of Olivia.

(A) A license shall be required for every dog and cat over the age of 6 months kept in the City of Olivia. This shall not apply to any dog or cat temporarily present within the City of Olivia for a period of less than 30 days.

(B) The owner, caretaker, or other person in possession of a dog or cat kept within the City of Olivia shall apply to the City Clerk for a license for the animal. The Clerk shall record the licenses issued and shall furnish the applicant with a tag for each license. The applicant shall attach the tag to a collar or chain around the neck of the animal in a secure manner.

(C) Licenses for dogs and cats shall be issued for the lifetime of the animal.

(D) The City Clerk shall not issue any license for a dog or cat until the applicant furnishes a certificate from a veterinarian indicating that the animal has been vaccinated for rabies within the preceding 2 years.

(E) License fees shall be set by the City Council of the City of Olivia by resolution and may be changed from time in the same manner. (See Appendix A).
(Ord. 250, passed 10-20-1997) Penalty, see § 10.99

§ 93.02 CONTROL OF ANIMAL.

(A) *Running at large prohibited.* It shall be unlawful for any person who owns, harbors, or keeps a dog to fail to prevent the same from running at large. A person who owns, harbors, or keeps a dog which runs at large shall be guilty of a misdemeanor. Dogs 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.

(B) *Nuisances.*

(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 3 minutes with less than 1 minute of interruption. The barking must also be audible off of the owner's or caretaker's premises.

(2) *Damage to property.* It shall be unlawful for any person to fail to prevent that person's dog or other animal to damage any lawn, garden, or other property, whether or not the owner has knowledge of the damage.

(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 of the feces in a sanitary manner whether on their own property, on the property of others, or on public property.

(4) *Other.* Any animals kept contrary to this section are subject to impoundment as provided in § 93.03.
Penalty, see § 10.99

§ 93.03 POTENTIALLY DANGEROUS AND DANGEROUS ANIMALS.

(A) Definitions.

(1) *Animal Control Officer.* The Chief Law Enforcement Officer, or an individual or employee of a business retained by the City for purposes of enforcing the provisions of this Chapter. In the latter case, the City may have them deputized with police powers for such enforcement, including authority to issue complaints for the violation of this Section.

(2) *Dangerous Animal.* A dangerous animal is an animal which has:

- (a) Caused bodily injury or disfigurement to any person on public or private property; or
- (b) Engaged in any attack on any person under circumstances, which would indicate danger to personal safety; or

- (c) Exhibited unusually aggressive behavior, such as an attack on another animal; or
- (d) Bitten one or more persons on two or more occasions; or
- (e) 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.

(3) Potentially Dangerous Animal. A potentially dangerous animal is an animal which has:

- (a) Bitten a human or a domestic animal on public or private property; or
- (b) When unprovoked, chased or approached a person upon the streets, sidewalks, or any public property in an apparent attitude of attack; or
- (c) Has engaged in unprovoked attacks causing injury or otherwise threatening the safety of humans or domestic animals.

(4) Proper Enclosure. Proper enclosure means securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal 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 prevent 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 a minimum overall floor size of 32 square feet.
- (b) Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be 1 1/4 inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground.
- (c) A cover over the entire pen or 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 inches.
- (d) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two 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.

(5) Unprovoked. Unprovoked shall mean the condition in which the animal is not purposely excited, stimulated, agitated or disturbed.

(B) Seizure of animals. Any police officer or Animal Control Officer may enter upon private property and seize any animal, provided that the following exist:

(1) There is an identified complainant other than the police officer or Animal Control Officer making a contemporaneous complaint about the animal;

(2) The officer reasonably believes that the animal meets either the barking dog criteria set out in § 93.02 (B)(1); the criteria for dangerous set out in § 93.03 (A)(2); the criteria for cruelty set out in M.S. § 343.20 Subd. 3; or the criteria for an at large animal set out in the definition of "at large" in § 93.02 (A);

(3) There is evidence that the animal is dangerous or the officer can demonstrate that there has been at least one 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;

(4) The officer has made a reasonable attempt to contact the owner of the property and those attempts have either failed or have been ignored;

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

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

(C) Impounding.

(1) 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 10 days, at the expense of the owner. The animal may be released at the end of such time if healthy and free from symptoms of rabies, and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for such confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, not outside of the county in which this City is located, and provide immediate proof of such confinement in such manner as may be required, the owner may do so. If, however, the animal has been or is being deemed a dangerous animal, then the animal shall be confined until such time as the owner complies with the requirements of M.S. § 347.51. The animal shall be confined until the order becomes final if the animal is ordered destroyed.

(D) Reclaiming.

(1) All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five regular business days, unless the animal is a dangerous animal as defined under § 93.03(A)(2), in which case it shall be kept for the times specified in §§ 93.03(C), (G) or (I), and except if the animal is a cruelly-treated animal in which case it shall be kept for 10 regular business days, unless sooner reclaimed by their owners or keepers as provided by this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required:

(a) Payment of the animal pick up fees, as established in the fine and fee schedule, and receipt of a release permission from the police;

(b) Payment of veterinary and maintenance costs, as provided by the pound, per day or any part of day while animal is in said pound; and

(c) If a dog is unlicensed, payment of a regular license fee and valid certificate of vaccination for rabies and distemper shots is required.

(E) Destruction or confinement of animals.

(1) 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 officer may immediately destroy the animal in a proper

and humane manner. Otherwise the person or officer may apprehend the animal and deliver it to the pound for confinement under this section. If the animal is destroyed, the actual cost to dispose of the animal is payable by the owner of the animal. If the animal is found not to be a danger to the health and safety of the City, it may be released to the owner or keeper in accordance with § 93.03(D).

(F) Designation as Potentially Dangerous Animal.

(1) The Animal Control Officer shall designate any animal as a potentially dangerous animal upon receiving such evidence that the animal meets the definition of “potentially dangerous” as defined in 93.03(A)(3). When an animal is declared potentially dangerous, the Animal Control Officer shall cause one owner of the potentially dangerous animal to be notified in writing that such animal is potentially dangerous.

(G) Appeal hearing procedures for Potentially Dangerous Animal. A potentially dangerous animal declaration appeal shall consist of a record review by the city administrator or his/her designee, using the designated appeal form supplied at the time of the written request. The appeal form must be completed and returned to the animal control officer or designee with written evidence and/or affidavits that dispute the declaration within 14 business days of notification. The owner/custodian of the dog shall be notified, in writing, of the record review results within ten calendar days of receipt. There shall be a fee for an appeal of a potentially dangerous animal declaration, as established in the Fine & Fee Schedule. The individual conducting the review shall have the authority to amend the declaration or order as appropriate and to establish specific requirements for the dog found to be potentially dangerous.

(H) Designation as Dangerous Animal. The Animal Control Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence that the animal meets the definition of “dangerous” as defined in 93.03(A)(2). When an animal is declared dangerous, the Animal Control Officer shall cause one owner of the dangerous animal to be notified in writing that such animal is deemed dangerous.

(I) Appeal hearing procedures for Dangerous Animal.

(1) The owner/custodian of an animal that has been declared dangerous may appeal the declaration and request a hearing. The appeal request is to be submitted in writing within 14 days of notification. If a hearing is requested, the animal control officer or the designee, shall schedule a hearing within 14 calendar days. A dangerous declaration appeal shall consist of an appearance before an independent city employee or hired representative. The hearing fee, as established in the Fine & Fee Schedule, must be paid prior to the hearing. The hearing officer may set limits on the evidence that may be submitted and the length of testimony offered. The hearing officer conducting the review shall have the authority to amend the declaration or order as appropriate and to establish specific requirements. Any time after a declaration has been issued, the animal control officer or designee may seize a declared animal. All applicable fees and costs shall be the responsibility of the owner/custodian of the animal. The animal shall not be released until all fees are paid in full and in compliance with the provisions of this Code is achieved.

(2) All animals seized pursuant to this subsection may be disposed of by animal control after 14 calendar days of notification of declaration when the animal is not properly registered or an appeal has not been properly submitted pursuant to this section.

(3) In the event the declaration is overturned, all fees will be reviewed by the hearing officer. The owner/custodian of the animal shall be notified of the hearing results within ten business days. All decisions may be appealed to the Minnesota Court of Appeals.

(4) The animal control officer, after having determined that an animal is dangerous, may proceed in the following manner: The animal control officer shall cause one owner/custodian of the animal to be notified in writing or in person that the animal is dangerous and may order the dog seized or make orders as deemed proper. This owner/custodian shall be notified as to dates, times, places and parties bitten, and shall be given 14 days to appeal this order.

(a) If no appeal is filed within the time allowed, the animal control officer may authorize the seizure and the destruction of the animal, unless the animal is already in custody or the owner/custodian consents to the seizure and destruction of the animal.

(b) If an appeal is filed within the time allowed, the animal control officer may, pending the outcome of the appeal, either authorize the continued impounding of the animal, or authorize the release of the animal to the owner if the owner proves compliance with all requirements for keeping a dangerous animal and the animal does not present an immediate danger to the health and safety of any person.

(J) Authority to order destruction.

(1) The Animal Control Officer, upon finding that an animal is dangerous hereunder, 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.

(2) The Animal Control Officer shall require a previously designated dangerous animal to be destroyed if:

(a) The dog afflicted substantial or great bodily harm on a human or a domestic animal on public or private property.

(b) The dog inflicted multiple bites on a human on public or private property without provocation.

(c) The dog bit multiple human victims on public or private property without provocation; or

(d) The dog bit a human on public or private property without provocation, in an attack where more than one dog participated in the attack.

(K) No person shall harbor an animal after it has been found to be dangerous and ordered into custody for destruction.

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

Penalty, see §10.99.

(Ord. 2016-03, passed 07-18-2016) (replaced part of Ord. 250, passed 10-20-1997)

§ 93.04 ATTACK BY ANIMAL.

(A) It shall be unlawful for any person who owns, harbors, or keeps any animal, or the parents or the guardians of any such person under 18 years of age, to negligently or intentionally permit or fail to prevent the animal from inflicting or attempting to inflict bodily injury upon any person or other animal, whether or not the owner is present. This section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home without permission.

(Ord. 2020-05, passed 06-01-2020)

§ 93.05 VICIOUS ANIMALS.

(A) No person shall keep a dog or cat within the City of Olivia if the animal, when unprovoked has shown a tendency to attack, bite, scratch, claw, or otherwise injure or attempt to injure any person.

(B) In addition to the penalties set forth below, the owner, caretaker, or person in possession of a vicious dog or cat shall either destroy the animal or remove it permanently to a location outside the City of Olivia.

(Ord. 250, passed 10-20-1997) Penalty, see § 10.99

§ 93.05 EFFECTIVE DATE.

Sections 93.01 *et seq.* shall be effective upon passage and publication.

(Ord. 250, passed 10-20-1997)

§ 93.98 VIOLATIONS.

(A) It shall be a petty misdemeanor for anyone, whether owner, caretaker, or person in possession of an animal, to violate the regulations set forth in § 93.01.

(B) It shall be a misdemeanor for anyone, whether owner, caretaker, or person in possession of an animal, to violate the regulations set forth in §§ 93.02, 93.04, and 93.05.

(C) In addition to the penalties set forth above, an owner, caretaker, or person in possession of a dog or cat convicted of a subsequent violation, excluding those provisions set forth in § 93.04(B), may be ordered by the court to either destroy the animal(s) or remove it (them) permanently to a location outside the City of Olivia.

(D) It shall be a misdemeanor to harass, abuse, threaten, or in any way interfere with a police officer who is enforcing or attempting to enforce the terms of §§ 93.01 *et seq.*

(Ord. 250, passed 10-20-1997, amended by Ord. 2020-05, passed 06-01-2020) Penalty, see § 10.99

CHAPTER 94: ABANDONED VEHICLES

Section

- 94.01 Nuisance
- 94.02 Definitions
- 94.03 Abandonment of vehicles
- 94.04 Leaving of wrecked, nonoperating vehicles on street
- 94.05 Wrecked or discarded vehicles; private property
- 94.06 Authority to remove
- 94.07 Prosecution
- 94.08 Claiming vehicle
- 94.09 Impoundment and sale
- 94.10 Proceeds of sale
- 94.11 Records

- 94.98 Violations

§ 94.01 NUISANCE.

The City Council of Olivia determines and declares that vehicles that are or may in the future be abandoned in the streets and other places within the city; and are or may in the future be dismantled, partially dismantled, wrecked, junked, nonoperating, or discarded in and about the city other than in junk yards or other appropriate places; and the conditions tend to impede traffic in the streets or interfere with the enjoyment of and reduce the value of private property, invite plundering, create fire hazards and other safety and health hazards to children, as well as adults, interfere with the comfort and well-being of the public and creates extends and aggravate area blight; and adequate protection of the public health safety and welfare requires that the conditions shall be regulated, abated, or prohibited.
(Ord. 248, passed 7-21-1997)

§ 94.02 DEFINITIONS.

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

ABANDONED VEHICLES. Shall have the definition given in M.S. § 168B.011, Subd. 2, as it may be amended from time to time.

JUNK VEHICLE. Shall have the definition given in M.S. § 168B.011, Subd. 3, as it may be amended from time to time.

PERSON. Any person, firm, partnership, associations, corporation, company, or organization of any kind.

PRIVATE PROPERTY. Any real property which is not a duly dedicated street or highway.

STREET or HIGHWAY. The dedicated traveled portion of any public way between the boundaries of private property, whenever the same is open to the use of the public for the purposes of travel.

UNAUTHORIZED VEHICLE. Shall have the definition given in M.S. § 168B.011, Subd. 4, as it may be amended from time to time.

VEHICLE. Any device or machine designed to travel along the ground by use of wheels, treads, runners, or slides and transport persons or property, and shall include, without limitation, automobiles, trucks, trailers, wagons, tractors, and motorcycles
(Ord. 248, passed 7-21-1997)

§ 94.03 ABANDONMENT OF VEHICLES.

No person shall abandon any vehicle within the city, and no person shall leave any vehicle at any place within the city for the time or under the circumstances as to cause the vehicle reasonably to appear to have been abandoned or so as to become unauthorized as set forth in M.S. § 168B.04, Subd. 2, as it may be amended from time to time.

(Ord. 248, passed 7-21-1997) Penalty, see § 10.99

§ 94.04 LEAVING OF WRECKED, NONOPERATING VEHICLES ON STREET.

No person shall leave on any street or highway within the city any partially dismantled, nonoperating, wrecked, or junked vehicle or any vehicle not properly and currently licensed by the State of Minnesota for operation within the State of Minnesota. This section shall not apply to a vehicle left

due to an emergency or accident provided that the vehicle shall not be allowed to remain for more than 24 hours or in a manner that unduly interferes with the flow of traffic or otherwise endangers the health, safety, or welfare of the public.

(Ord. 248, passed 7-21-1997) Penalty, see § 10.99

§ 94.05 WRECKED OR DISCARDED VEHICLES; PRIVATE PROPERTY.

No person in charge or control of any property within the city whether as owner, tenant, occupant, lessee, or otherwise shall permit or allow any partially dismantled, nonoperating, wrecked, junked, discarded, or abandoned vehicle, or any vehicle not properly licensed for operation within the State of Minnesota by the State of Minnesota, to remain on the property longer than 24 hours; and no person shall leave the vehicle on any property within the city for a longer period than 24 hours, except that this section shall not apply to vehicles within a closed building or to a vehicle on the premises of a business or enterprise operated in a lawful place and manner when necessary to the operation of the business or enterprise, and except that a vehicle may be considered unauthorized after the time limits set forth in M.S. § 168B.04, Subd. 2, as it may be amended from time to time.

(Ord. 248, passed 7-21-1997) Penalty, see § 10.99

§ 94.06 AUTHORITY TO REMOVE.

Any vehicle parked or stored in violation of any provision of this code or any ordinance of the city, or of the law of the State of Minnesota, shall be declared to be a public nuisance and the same may be abated by removing the vehicle by or under the direction of any police officer of the city by means of towing or otherwise as authorized by state law, and provided that notice that the vehicle has been impounded shall be given in compliance with M.S. § 168B.06, as it may be amended from time to time, and any other applicable statute.

(Ord. 248, passed 7-21-1997)

§ 94.07 PROSECUTION.

The impounding of any vehicle shall not prevent or preclude the institution or prosecution of any criminal proceedings against the owner or operator of the impounded vehicle.

(Ord. 248, passed 7-21-1997)

§ 94.08 CLAIMING VEHICLE.

Before the owner or his or her agent shall be permitted to remove a vehicle from the possession of the city, he or she shall:

(A) Furnish satisfactory evidence to the city of his or her identity and ownership of the vehicle; and

(B) Pay the expenses of towing and storage.

(Ord. 248, passed 7-21-1997)

§ 94.09 IMPOUNDMENT AND SALE.

(A) The city shall take into custody and impound any junked, abandoned, or unauthorized motor vehicle as defined by M.S. § 168.011, as it may be amended from time to time, and as regulated by this chapter.

(B) 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 provide for the sale of the vehicle to the highest bidder at auction or sale following 2-weeks§ published notice.

(Ord. 248, passed 7-21-1997)

§ 94.10 PROCEEDS OF SALE.

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

(Ord. 248, passed 7-21-1997)

§ 94.11 RECORDS.

The city shall keep a record of all vehicles impounded by manufacturer's trade name, motor vehicle license number, V.I.N. number, and the names and addresses of the owner and of all persons claiming the vehicle and the nature and circumstances of the impounding thereof together with the violation on account of which the vehicle was impounded.

(Ord. 248, passed 7-21-1997)

§ 94.98 VIOLATIONS.

Any person violating any of the provisions of this chapter shall be adjudged guilty of a misdemeanor. The costs of prosecution may be added as authorized by state law, the Rules of Court, and the Rules of Civil and Criminal Procedure.

(Ord. 248, passed 7-21-1997) Penalty, see § 10.99

CHAPTER 95: PARKS AND RECREATION

Section

- 95.01 Overnight use of city parks; camping
- 95.02 Picnic tables
- 95.03 Designation of city parks (with Exhibit A)

§ 95.01 OVERNIGHT USE OF CITY PARKS; CAMPING.

(A) The purpose of this section is to secure the quiet, orderly, and suitable use and enjoyment of city parks, public places, streets, and thoroughfares in the City of Olivia.

(B) The city parks of the City of Olivia are hereby closed to use from the hours of 10:00 p.m. to 6:00 a.m., and no person may be lawfully upon the premises of any public park during those hours, except as permitted within the provisions of this section.

(C) No person shall dwell, reside, live, camp, stay overnight, sleep overnight, or otherwise remain overnight in any city park, public place, street, or thoroughfare within the City of Olivia, except as authorized and permitted by the terms of the provisions of this section.

(D) Overnight camping shall be permitted in Memorial Park only and subject to the following specific terms and conditions.

(1) Overnight camping in vehicles, tents, and recreational equipment shall be permitted in the park.

(2) During the course of using Memorial Park as a camping facility, all persons shall allow no debris, litter, or waste to accumulate or to be left upon the grounds shall keep and leave the area in a neat, clean, and orderly fashion.

(3) No person or vehicle shall be allowed to camp for more than 3 consecutive nights without permission from City Administration or the Olivia Police Department.

(4) If the City Council determines that it is necessary to set fees for the park, they will be set by resolution.

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(5) The number of recreational vehicles in the park shall be limited to the number of pads constructed for camping use excluding tents. No parking will be allowed on the roadway.

(6) No vehicle that is partially dismantled, nonoperating, wrecked, junked, or discarded shall remain on any property for more than 72 hours. Violators will be towed at the owner's expense.

(7) Washing or drying of clothing is prohibited in all areas. No drying lines are allowed.

(8) Open burning is prohibited. Grills using propane gas or charcoal will be permitted.

(E) The City Council shall have the authority from time to time to waive the provisions of this section to permit camping in the city parks or other public places. The camping shall be done in conjunction with a recognized fair, exhibition, tournament, or other community activity, previously approved of by the City Council. Vehicles and recreational equipment used for visitation are permitted within the city for short periods of time.

(F) The Police Chief and all on-duty police officers are charged with the duty of removing and evicting any person from any city park, public place, street, or thoroughfare who is violating the terms and provisions of this section.

(G) Violation of this section shall constitute a petty misdemeanor.

(H) The effective date of this section shall be 1-1-1992.
(Ord. 231, passed 9-23-1991) Penalty, see § 10.99

§ 95.02 PICNIC TABLES.

The city picnic tables will no longer be rented. They shall remain in the parks for the general public to use.

Editor=s note:

This provision was passed by Council during a regularly meeting

§ 95.03 DESIGNATION OF CITY PARKS.

(A) The City of Olivia hereby designates the following as official City Parks:

(1) Dirks Park. (Includes: Soccer Fields, and Little League Baseball Field with Bleachers);

(2) Dowling Park. (Includes: Downtown park area with Gazebo, Picnic Tables, and Decorative Flower Boxes);

(3) Henton Park. (Includes: Baseball Field, Bleachers, Drinking Fountain, Playground Equipment,

Basketball Court, Shelter/Gazebo, Picnic Tables, Warming House, and Winter Skating Rink);

- (4) Kubesh Park. (Includes: Shelter, Picnic Tables, Drinking Fountain, Playground Equipment, Restrooms, and Horseshoe Pits);
- (5) Memorial Park. (Includes: Picnic Shelter, Picnic Tables, Drinking Fountain, Six Primitive Camp Sites, and Restrooms);
- (6) Nester Park. (Includes: Shelter with Picnic Tables, Playground Equipment, Tennis Court, Restrooms, and Drinking Fountain);
- (7) Pond Park. (Includes: picnic tables, benches, dock, possible future Warming House & Winter Skating, and Fishing);
- (8) Rainbow Park. (Nature park area);
- (9) Softball Park. (Includes: Softball Fields, Bleachers, Concessions and Restrooms);
- (10) Sunrise Park. (Includes: Shelter with Picnic Tables, Drinking Fountain, Restrooms, Playground Equipment, and Volleyball Court Area); and
- (11) West Park. (Includes: Playground Equipment).

(B) The legal descriptions for the parks named in section (A) above are attached hereto as Exhibit A, and incorporated herein by reference.

(C) This Ordinance shall be incorporated into Olivia City Code as Section 95.03.

(Ord. 2015-02, passed 6-01-2015)
(Ord. 2016-04, passed 09-06-2016)

Exhibit A to Olivia Code Section 95.03

- (1) Dirks Park.
Lot D, except the South 50' thereof and except that part of the East 16 rods of said Lot D which lies south of the North 267' thereof, of Peterson's 4th Addition to the Village (now City) of Olivia. Parcel #35-00160-00.
- (2) Dowling Park.
The West 37 feet of Lot 11, Block 7, Original Plat of the City of Olivia, in Renville County, Minnesota. Parcel #35-00740-00.
- (3) Henton Park.

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Henton Park, formerly a part of Windhorst's Addition to the Village, now City, of Olivia according to the Plat thereof approved by the Council of the Village, now City, of Olivia on March 1st, 1935, and to be recorded in the Office of the Register of Deeds of Renville County, Minnesota. Parcel #35-03836-00.

(4) Kubesh Park.

Lot 14, except the east 105 feet thereof, and Lot 17 and the West 25 feet of Lot 16 of Block 1 of Heins First Addition to the Village, now City, of Olivia. Parcel #35-02076-00. AND

East 105 feet of Lot 14, Block 1, Heins First Addition, City of Olivia, except the North 20 feet thereof. Parcel #35-02077-00.

(5) Memorial Park.

The East 288 feet of the Southwest Quarter of Section 12, Township 115, Range 35, lying between the south section line and the south right of way line of U.S. Highway 212. Parcel #35-00125-00.

(6) Nester Park.

All of Block 18 (Park), as dedicated on Plat of Nester's Addition to the City of Olivia, Renville County, Minnesota. Parcel #35-01302-00.

(7) Pond Park.

Part of the Northeast Quarter of the Northeast Quarter of Section 13, Township 115 North, Range 35 West, City of Olivia, Renville County, Minnesota, described as follows:

Commencing at the Southeast Corner of Lot 4 in the Northeast Quarter of the Northeast Quarter of said Section 13, according to the recorded plat thereof; thence Westerly, on the south line of said Lot 4, a distance of 75.00 feet to the west right-of-way line of U.S. Trunk Highway 71; thence Southerly along said west right-of-way line, 370.00 feet to the point of beginning; thence westerly, parallel with the south line of said Lot 4, a distance of 450.00 feet; thence Southerly parallel with said west right-of-way line of U.S. Trunk Highway 71 to the south line of said Northeast Quarter of the Northeast Quarter; thence Easterly to said west right-of-way line of U.S. Trunk Highway 71; thence Northerly, along said west right-of-way line to the point of beginning; Renville County, Minnesota. Parcel # 35-00251-00 - South of West Court; AND

Part of the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northeast Quarter of Section 13, Township 115 North, Range 35 West, Renville County, Minnesota, described as follows:

Commencing at the North Quarter Corner of said Section 13; thence North 89 degrees 44 minutes 28 seconds East (bearings based on Renville County Coordinates, NAD 83, 2007 adjustment), on the north line of said Northeast Quarter of Section 13, a distance of 1208.27 feet to a point on the west line of a parcel of land recorded as Document No. 351835; thence South 00 degrees 28 minutes 22 seconds East on the west line of a parcel of land recorded as Document No. 351835, a distance of 625.98 feet to the point of beginning; thence South 89

degrees 41 minutes 29 seconds West on the west line of a parcel of land recorded as Document No. 351835, a distance of 465.00 feet; thence South 00 degrees 28 minutes 22 seconds East on said west line of a parcel of land recorded as Document No. 351835, a distance of 700.00 feet to the south line of the Northwest Quarter of the Northeast Quarter, thence North 89 degrees 41 minutes 29 seconds East on said south line of the Northwest Quarter of the Northeast Quarter, a distance of 465.00 feet to the west line of a parcel of land recorded as Document No. 261641; thence North 00 degrees 28 minutes 22 seconds West on said west line of parcel of land recorded as Document No. 261641, a distance of 109.77 feet to the north line of a parcel of land recorded as Document No. 261641; thence North 89 degrees 41 minutes 38 seconds East on said North line of a parcel of land recorded as Document No. 261641, a distance of 903.45 feet to the east line of a parcel of land recorded as Document No. 348181; thence North 00 degrees 28 minutes 53 seconds West on said east line of a parcel of land recorded as Document No. 348181, a distance of 163.00 feet; thence South 89 degrees 41 minutes 38 seconds West, a distance of 639.00 feet; thence North 32 degrees 10 minutes 52 seconds West, a distance of 503.09 feet to the point of beginning. Parcel contains 12.15 acres of land; Parcel #35-00132-00 - Storm Pond.

(8) Rainbow Park.

Park, as dedicated on the plat of Rainbow Park Addition to the City of Olivia, Renville County, Minnesota. Parcel #35-00127-00.

(9) Softball Park.

Beginning at Northwest corner of Lot D of Peterson's 4th Addition to the Village, now City, of Olivia, thence North 480 feet, thence East along South line of Lot E of said Peterson's 4th Addition, 720 feet, thence South to Northeast corner of said Lot D thence West along North line of said Lot D 720 feet to place of beginning, being in the North $\frac{1}{2}$ of Southeast $\frac{1}{4}$ of Section number 7 in Township number 115 North of Range number 34 (said tract sometimes described as Outlot 4 in North $\frac{1}{2}$ of Southeast $\frac{1}{4}$ of said Section 7). Parcel #35-00050-00.

(10) Sunrise Park.

Park, as dedicated on the plat of Peavy's Third Sunrise Addition to the City of Olivia, Renville County, Minnesota. Parcel #35-05371-00.

(11) West Park.

Dedicated for Playground Area, Block 3, West Park Addition to the City of Olivia, Renville County, Minnesota. Parcel #35-05515-00.

CHAPTER 96: STREETS AND SIDEWALKS

Section

- 96.02 Sidewalks, driveway approaches, curbs, and gutters
- 96.03 Street name designation
- 96.04 Street grades; Datum
- 96.06 Curbs
- 96.07 Sidewalk, curb and gutter inspection
- 96.08 Removal of ice and snow from sidewalks

§ 96.02 SIDEWALKS, DRIVEWAY APPROACHES, CURBS, AND GUTTERS.

(A) *Regulation established.* No sidewalks, driveway approaches, or curbs and gutters will be installed, constructed, altered, or repaired on any public property within the corporate limits of the City of Olivia except in conformity with the provisions of this section.

(1957 Code, § 1010:01)

(B) *Permit required.* No work on any sidewalk, driveway approaches, or curb and gutter shall be commenced unless permission is first obtained from the City Council. This provision shall not apply, however, to ordinary repairs or removal of obstructions or hazards, but shall apply to all changes in the location or complete replacement of old work.

(1957 Code, § 1010:02)

(C) *Zones.*

(1) The commercial and industrial zone, as referred to in this section, shall include all sidewalks, driveway approaches, and curbs and gutters constructed along the streets in the commercial and industrial zones as established in the city zoning ordinance.

(2) The residential zone shall consist of all sidewalks and curbs and gutters on streets not included in the commercial and industrial zone.

(1957 Code, § 1010:03)

(D) *Size and location of sidewalks, and driveway approaches.*

(1) All sidewalks constructed or replaced in the commercial zone shall not be less than 72 feet wide, 4 inches thick, and have 4 inches of gravel filling directly underneath, and shall abutt on the property line adjacent thereto. Private driveway approaches within the City-owned boulevard areas shall be as above except to be 6 inches thick.

(2) (a) All sidewalks constructed or replaced in the residential zone shall be not less than 4 feet wide, 4 inches thick, and have 4 inches of gravel filling directly underneath, and shall be placed 1 foot from the property line adjacent thereto.

(b) Private driveway approaches within the City-owned boulevard areas shall be as above except to be 6 inches thick.

(3) Width of sidewalks to be constructed in both zones shall be determined by the City Council at the time of application for permission but in no case less than the minimums established by divisions (D)(1) and (D)(2) above.

(1957 Code, § 1010:04)

(E) *Size and location of curb and gutter.*

(1) Curb and gutter constructed in the commercial zone shall be built according to the specifications on file in the office of the City Administrator and shall be placed as determined by the City Council at the time of application for permission and not less than 72 feet from the property line.

(2) Curb and gutter constructed in the residential zone shall be built according to the specifications on file in the office of the City Administrator and shall be centered within the platted right of way.

(1957 Code, § 1010:05)

(F) *Special cases.* Where existing conditions make the adherence to these regulations impractical, the matter shall be brought before the City Council who may allow the modification thereof in any particular case as may be deemed necessary and proper.

(1957 Code, § 1010:06)

Penalty, see § 10.99

§ 96.03 STREET NAME DESIGNATION.

(A) *East and west designated.* All avenues and parts of avenues lying and being east of 9th street shall be, and they hereby are, designated as avenues east, and that all avenues and parts of avenues lying and being west of 9th Street shall be, and they hereby are, designated as avenues west.

(1957 Code, § 1025:02)

(B) *North and south designated.* All streets lying and being south of Lincoln Avenue, formerly Lincoln Street, shall be and they are hereby designated as streets south, and that all streets lying and being north of Lincoln Avenue, formerly Lincoln Street, shall be and they hereby are designated as streets north.

(1957 Code, § 1025:03)

(C) *Generally.* For the purpose of uniformity and systematizing the naming and numbering of the public streets and highways situated in and within the incorporate limits of the City of Olivia, as appears of record now on file in the office of the Renville County Recorder, that all public streets and highways within the corporate limits of the city together with all public streets and highways that may hereafter be laid out, platted, and dedicated as provided by law, running in and through the incorporated City of Olivia, from west to east, or from east to west, shall be named, called, and known by and with the name of any person or place to be designated and determined by resolution or ordinance of the City Council of Olivia, duly passed as provided by law.

(1957 Code, § 1025:04)

(D) *Arabic system.* All streets and highways heretofore dedicated for public use, including any and all streets and highways that may hereafter be laid out, platted, and dedicated for public use in any and all additions or subdivisions attached to and incorporated within the incorporated limits of the City of Olivia, running in and through the incorporated limits from south to north, or from north to south, shall be named and be known by Arabic numbers only.

(1957 Code, § 1025:05)

§ 96.04 STREET GRADES.

(A) *Datum established.* According to MnDOT.

§ 96.06 CURBS

(A) *Curb, driveway approach, and sidewalk repair.*

(1) Any curb and/or gutter removal or replacement to add a driveway is done at 100% cost to the property owner. Cost of the apron, radius, and curb replacement is 100% property owner.

(2) Driveway aprons shall be separate from street curb and gutter. Aprons shall be designed and approved by appropriate city staff.

(B) *Utility hookups, curb and gutter replacement and driveway approaches.* Citizens installing water or sewer hookups into city streets who find it necessary to remove curb and gutter, sidewalk, and driveway approaches will be responsible for the replacement of the same at their cost.

Editor=s note:

This provision was passed by Council at a Council meeting

§ 96.07 SIDEWALK, DRIVEWAY APPROACH, CURB AND GUTTER INSPECTION.

(A) *Frequency.* All sidewalks, curbs and gutters located in the community shall be inspected on a regular annual basis. The inspections shall be completed in the spring months of the year, which will allow time for the contractor to be contacted and scheduled for repair and/or replacement for that year.

(B) *Responsible for inspections.* The Maintenance Supervisor shall be responsible for coordinating the annual inspection efforts. The Maintenance Supervisor may require additional assistance from other city staff in order to complete the inspection.

(C) *Criteria for repair and/or replacement.* Sidewalks, curbs and gutters should be considered for repair and/or replacement if one of the following criteria is met:

(1) One-half inch difference or more in elevation.

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- (2) Excessive broken pieces.
- (3) Excessive cracks, deterioration, or alligating.

(D) *Records.* The person completing the inspection should document all areas that were inspected. If an area(s) of sidewalk, driveway approach, curb and gutter meets that above criteria for repair or replacement, then the area affected, date of inspection, and signature of the person inspection should be recorded. This will reveal what areas have been inspected and what problems were found.

(E) *Areas to be repaired/replaced first.* Once the community has been inspected by the Street Superintendent or other city staff, the appropriate documentation should be submitted to the Street Superintendent. The Street Superintendent will prioritize what area(s) will be repaired and/or replaced first. The area(s) that will be considered first priority will be those located along the designated sidewalk route. (See 1997 sidewalk map.) After these areas have been identified as first priority, then the remaining areas will be prioritized according to severity of cracks, deterioration, etc.

(F) *Procedure for notification of property owner.* Once an area has been identified as a priority and is scheduled for either repair or replacement in a given year, the correct procedure to follow is stated in the Special Assessment Policy (Resolution 99-14; Project Initiation/Review: AProjects may be initiated by petition of affected property owners or City Council).

(G) *Responsibility for payment of sidewalks.* The city budgets money on an annual basis to assist in the repair and/or replacement of the sidewalks. Once these budget funds have been exhausted, those sidewalks that were not either repaired or replaced and were on the list will be again inspected the next year and assigned a priority. The assessment and portion of payment between the city and the property owner is defined by the Special Assessment Policy, Resolution 99-14 (see resolution for further explanation.)

(H) *Obstacles on sidewalks and/or curb and gutter.* Obstacles may include trees, water valves, newspaper stands, etc. The Maintenance Supervisor will decide if the obstacle should be removed. The cost of removing the obstacle should be the expense of the city; unless the obstacle is located on private property.

(I) *Duty of the property owner.* It shall be the duty of the property owner and/or occupant of any abutting city sidewalk or driveway approach to use diligence so as to remove snow, dirt, or rubbish from such walk.

(J) *Construction or repairs or sidewalks or removal of public sidewalks.* No construction, repair, or removal of sidewalks, boulevard, service walks, or curb and gutter in the city shall be conducted without prior approval from the City Council or City Administrator. (See Resolution 99-14 for correct procedure.)

(K) *Guidelines for construction of sidewalks.* The following guidelines shall be used in the construction of sidewalks:

- (1) Sidewalks may be required by the City Council in such areas that are necessary to adequately provide for the safety and welfare of pedestrians.

(2) All sidewalk widths shall conform to the following minimum standards:

<i>Classification</i>	<i>Width</i>
Single-family Zone (R-1)	5 feet
Multi-family Zone (R-2)	4 feet
Commercial Zone	determined by Maintenance Supervisor
Industrial Zone	determined by Maintenance Supervisor

(3) All sidewalks shall have a traverse/cross slope 1/4 inch per foot away from the property line and the profile grade shall not exceed 6%.

(4) Sidewalks shall be placed in the public right-of-way, one foot from the property line, or as determined otherwise by the City Council or City Administrator.

(5) Required sidewalks shall be concrete of 4-inch thickness and placed on a 4-inch gravel base.

(6) The City Council shall designate the head of the City Street Department, City Engineer or such person to approve all sidewalks.

(L) *Guidelines for construction of curb and gutter.* The following guidelines shall be used in the construction of sidewalks: All curb and gutter shall be approved by the City Engineer before installation. (Res. 99-79, passed 10-18-1999)

§ 96.08 REMOVAL OF ICE AND SNOW FROM CITY SIDEWALKS.

(A) *City.* The city will remove the snow from city property as determined by the public works superintendent when he determines it is necessary.

(B) *Property owner.* Property owners with property which abuts a sidewalk will be responsible for removing the snow within 24 hours from the end of the snowfall or as otherwise required in the city code.

CHAPTER 97: E-911 UNIFORM ADDRESSING

Section

- 97.01 Purpose
- 97.02 Definitions
- 97.03 Uniform addressing system requirements
- 97.04 Multiple dwelling/business numbering
- 97.05 Exceptions and practical alternatives
- 97.06 Maintenance of numbers
- 97.07 Compliance

§ 97.01 PURPOSE.

The purpose of this chapter is to provide a system by which the owners of all primary structures located in the city shall be required to maintain the address number assigned to his, her or their primary structure in specified locations in accordance with this section. This chapter shall be intended to promote the public health, safety and general welfare and to further the implementation of the Emergency Telephone Services Act, M.S. Ch. 403, as it may be amended from time to time.

§ 97.02 DEFINITIONS.

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

ADDRESS NUMBER. The number for each primary structure as assigned by the city. The minimum size for numbers shall be three inches. Numbers shall be reflective or of a color contrasting with background color. Numbers shall be numeric, and not alphabetic.

ADDRESS SIGN. A two-sided sign, which contains an address number in reflective or high contrast colored numbers, on both sides of the sign that are at least three (3) inches tall and that are positioned horizontally on the sign.

DRIVEWAY. A private road serving only one primary structure.

PRIMARY STRUCTURE. A building which shall be used for the principal lot or parcel in, which it is located.

PRIVATE DRIVE. A private road serving more than one primary structure.

ROAD. A public or private way, no matter how designated, which affords primary means of access by vehicles to adjacent property. A public or private way which is accessible only by foot or off-road vehicle shall not be a **ROAD**, as defined in this section.

SIGNPOST. A post, permanently affixed in the ground, used solely for display of an address number or an address sign.

§ 97.03 UNIFORM ADDRESSING SYSTEM REQUIREMENTS.

(A) Assignment and display. The City shall assign an address number to each primary structure located inside the corporate limits of the City. All owners of the primary structures shall cause the address number assigned to his, her or their primary structure to continuously be displayed in conformity with this Chapter.

(B) Display location.

(1) All owners of primary structures shall display the address number assigned to his, her or their primary structure on the primary structure on or near the door facing the nearest street.

(2) Where the primary structure is not visible from the street or private road, or is located more than 100 feet from such street or road, an additional set of numbers shall be placed on an address sign on a signpost, or address numbers on a mailbox at the driveway apron or entrance with the address numbers visible in both directions of travel on the street. The signpost shall conform to the following standards:

(a) The signpost shall be located within five feet of the driveway, at a location which shall be clearly visible year round from the road. The signpost shall be placed in a location which is at least five feet from the edge of the surface of the road and not farther from the road than the outward edge of the right-of-way.

(b) In the event there is no driveway, the signpost shall be located in the public right-of-way in front of the primary structure to clearly indicate the location of the primary structure, no farther from the public road than the outward edge of the right-of-way.

(c) An address sign with the address number assigned to the primary structure shall be placed on the signpost. The address sign shall be placed perpendicular to the road. The bottom of the address sign shall be placed at a height which shall be between four and five feet above the level of the surface of the road.

(C) Temporary address numbers. No building permit may be obtained for a primary structure unless the applicant for the building permit places a temporary post with a sign displaying the address numbers for the primary structure until the numbers can be placed on the primary structure or an address sign, as applicable. When the building permit expires, this paragraph shall not apply and the property owner must comply with the remaining provisions of this Chapter.

(D) Multiple houses or primary structures. Where more than one house or structure is served by the same private driveway or unnamed private road, each individual property owner on the private driveway or road shall be responsible for including his or her address number on a single, common identification sign in the public right-of-way near the public roadway entrance, consistent with the signpost requirements above, that contains all of the address signs for the addresses on the private road.

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Alternatively, the single common identification sign may list the range of address numbers located on the driveway or road, for example “1300-1308”. The identification numbers on the signpost shall be in numerical order, and shall contain the numbers of primary structures on the private drive with the address number for the farthest primary structure on the bottom of the identification sign. Consistent with paragraphs (B)(1) and (2) above, additional sets of numbers shall be placed at every fork or other driveway as necessary to direct traffic to every house, including the house farthest from the street. Numbers placed on mailboxes are insufficient to satisfy the provisions except when a mailbox stands on the subject property, not across a public street, and not in a group of mailboxes more than one in number.

(E) E-911 address change. Following the adoption by the city of an E-911 addressing system, the City Administrator or Address Coordinator will notify residents and/or owners of any address change. It is the responsibility of the owner/occupant to notify the United States Postal Service of his or her address change.

§ 97.04 MULTIPLE DWELLING/BUSINESS NUMBERING.

(A) Structures with more than one dwelling unit or more than one business (apartments, retail centers and the like) shall be assigned one address number for each building and shall use unit, suite or apartment numbers for each residential or business tenant.

(B) It shall be the duty of the owner of every building containing more than one dwelling unit or more than one business and the owner or occupant of every individually owned dwelling unit or business in any multiple-unit building to properly identify each dwelling unit or business by attaching identification numbers on or adjacent to each entrance and to provide signs, including directional arrows, easily identifying the location of each dwelling unit or business in the building which is accessed from that entrance. The signs shall be placed in an obvious location inside each entrance to the building as approved by the Fire Chief.

§ 97.05 EXCEPTIONS AND PRACTICAL ALTERNATIVES.

(A) If the locatable primary structure is in or within five feet of the road right-of-way, such as in a commercial district, the assigned address number shall be displayed on the outside of the primary structure, near the front door, for emergency purposes. The address number must face the public road, be clearly visible and shall be no smaller than three inches tall, and must be colors in high contrast to the primary structure.

(B) Practical alternatives to the application of the provisions of this Chapter may be granted by the Council where following the applications create undue difficulties created by the unique characteristics of the property.

§ 97.06 MAINTENANCE OF NUMBERS.

(A) The owner of the primary structure shall be responsible for keeping his, her or their address numbers in good repair and clear of snow, dirt, debris or other obstructions.

§ 97.07 COMPLIANCE.

(A) All owners of primary structures in the city shall comply with this chapter after its passage and publication. It is a misdemeanor for any person to fail to comply with the provisions of this Chapter or to post numbers other than the correct city-assigned numbers.

(B) If the property owner fails to comply with the requirements of this section, the City may erect a sign adjacent to the street on which the number is stated or affixed, and upon completion ascertain the cost and certify the cost to the county auditor to be collected as any other special assessment.

(Ord. 2015-04, passed 10-05-2015)