

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: PARKS AND RECREATION

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§ 90.01 APPLICATION.

This chapter applies to all public parks, playgrounds, beaches, swimming areas, water accesses, and other municipal lands within the City of Avon.
(Ord. 112, passed 5-4-1992)

§ 90.02 PROHIBITED CONDUCT.

- (A) *Generally.* The following activities are prohibited and shall be punishable as provided by this chapter.
- (B) *Activities.*

(1) No person shall occupy, leave unattended, or park any motor vehicle or motorcycle in any park, playground, public beach, or roadway abutting thereon between the hours of 10:00 p.m. and 6:00 a.m.

(2) No person except a bona fide employee of the City of Avon shall pick, cut, or be in possession of any wild or cultivated flowers or vegetation of any kind. Further, no person shall cut, break, or in any way injure or deface any tree, shrub, plant, or vegetation of any kind within the limits of any park, playground, public beach, or upon any municipal real estate located within the City of Avon.

(3) No person shall bathe in or enter waters of or adjoining any park, playground, or public beach except at bathing places designated by action of the City Council and further, no person shall swim in any lakes in the City of Avon without proper attire, nude bathing being specifically prohibited hereby.

(4) No parent or guardian of child younger than 10 years of age shall knowingly allow the child to be on any public beach, except when the child is personally accompanied by the child's parent or guardian, or by a person authorized by the parent or guardian to accompany the child.

(5) No person shall permit any animals, including domestic animals or fowl, under the person's control to go onto any public beach or public lake access. This provision shall not apply to service dogs and other animals trained and used to be of service to a totally or partially blind, physically handicapped, or deaf person.

(6) No person shall frequent any public beach for the purpose of swimming, bathing or congregating with others to swim or bathe or congregate thereat between the hours of 10:00 p.m. and 6:00 a.m. daily.

(7) No person shall swim beyond the buoys marking the outer perimeters of the designated swimming area.

(8) No person shall throw mud or sand on any public beach or public access.

(9) No person shall leave unattended a motor boat or other watercraft at a public beach, lake access, dock, or park.

(10) For the protection of the public and orderly use of tennis courts, the following rules are established for public tennis amended to read as follows.

(a) No person shall be allowed on tennis courts in street shoes.

(b) No bicycle or other vehicles shall be allowed on tennis courts.

(c) No use shall be made of tennis courts except for the playing of tennis.

(d) No person shall use tennis courts when the courts are wet.

(e) No person shall climb upon, tamper with, or damage any net or fence located on or about the tennis courts.

(f) No person shall play tennis for more than 60 minutes at any 1 time if others are waiting to use the tennis courts.

(11) For the protection of the public and the orderly use of the municipal skating rinks, the following rules are established for the public skating rinks.

(a) Skating areas shall be posted for hockey or for free skating use and that use shall be the exclusive use of the rink. No hockey sticks or pucks shall be allowed in the areas posted for free skating.

(b) No vehicles shall be allowed on any skating rink or in the skating area except along the roadway adjacent to the skating area or in properly designated parking lots.

(c) No glass objects shall be allowed on any skating rink.

(12) There is hereby created a public access to Middle Spunk Lake located where First Street Southwest meets Middle Spunk Lake. This access shall be open to the public for the purpose of launching boats. Public access to Ochotto Lake is made by the ramp on Ochotto Lake.

(13) No person shall make, or cause to be made, any loud unnecessary or unusual noise, which either annoys, disturbs, or affects the comfort, repose, health, or peace of persons using the public beaches. The following acts are declared to be loud, disturbing, and unnecessary noises in violation of this chapter, but the acts shall not be deemed to be exclusive:

(a) The using, operating, or permitting to be played of any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in the manner as to disturb the peace, quiet, or comfort of other persons using the beach area at any time with louder volume than is reasonably necessary for convenient hearing of the person or persons who are using, operating, or permitting to be played such machine or device. The operation of the set, instrument, phonograph, machine, or device in such a manner as to be plainly audible at a distance of 50 feet from its location shall be prima facie evidence of a violation of this section; and

(b) Yelling, shouting, hooting, whistling, or singing so as to annoy or disturb the quiet, comfort, or repose of other persons using the beach area.

(14) No person shall obstruct any street or sidewalk in the city so as to interfere or cause any interference with the free passage of motor vehicles along the streets of pedestrians along the sidewalks or the free and unimpeded access to businesses residences or any other place or building or with any business lawfully conducted by anyone in upon or facing or fronting on any such public street public highway public sidewalk or any other public place or building.

(15) No person shall sit stand or climb against or upon or otherwise tamper with or enter into a motor vehicle without the consent of the owner.

(C) *Exceptions.* Activities which are duly authorized, sponsored, or licensed by the City of Avon, so long as the activity is conducted pursuant to the conditions of the license, permit, or contract authorizing the activity, shall not constitute violations of this section.

(Ord. 112, passed 5-4-1992; Am. Ord. 165, passed 6-5-2006) Penalty, see § 90.99

§ 90.03 PROHIBITED ACTS.

(A) *Generally.* The following activities are prohibited and shall be punishable as provided by this chapter.

(B) *Activities.*

(1) No person shall start any fire in any park, playground, public beach, or upon any municipal real estate except that small fires for culinary purposes may be made in any park as posted. Every person who starts the fire or fires before leaving the park in which the fire is located.

(2) Every person who starts any charcoal fire or other fire in any portable container or burner shall completely extinguish the fire or fires before leaving the area in which the fire has been burning and, further, the persons are strictly prohibited from depositing ashes from charcoal or any portable fire upon any park, playground, public access, or any municipal real estate except in containers provided for refuse and then only after the ashes or coals from the charcoal or portable fires are sufficiently cold to prevent damage to the receptacles where the same are deposited.

(3) (a) No person shall deposit or discard in the water or upon any public beach any lighted cigarettes or cigars or any glass bottles, mails, tacks, wire, crockery, cans, or other sharp or cutting objects of any kind. If any glass is broken, the person responsible for the breakage shall immediately pick up the pieces and place them in a suitable container so as to protect the general public from injury. No glass objects shall be allowed in any public beach area.

(b) No person shall place deposit or permit to be deposited any human or animal excrement garbage rubbish offal or the body of a dead animal or other litter in or upon any public street trail sidewalk parking lot public waters or the ice thereon shore land areas adjacent to rivers or streams public lands or without the consent of the owner private lands or water or ice thereon.

(Am. Ord. 165, passed 6-5-2006)

(4) No person shall knowingly use any public dock, raft, or other water equipment placed in the water for recreational or safety purposes in a manner which results in, or is likely to result in, injury to another person or damage to property owned by the City of Avon.

(5) No person shall operate, navigate, or otherwise use a motorboat or other watercraft within 100 feet of the buoys marking a designated public swimming area. For purposed of this division (B)(5), the term 'motorboat' means a water craft used or designed for navigation on water and propelled in any manner by machinery, including watercraft temporarily equipped with detachable motors.

(6) No person shall deposit, except in designated receptacles, garbage, rubbish, trash, organic waste, offal, the body of a dead animal, or other litter in or upon any park, public beach, waters, or the ice thereon, shoreland areas, or other public lands.

(7) No person shall possess or consume any alcoholic beverage nor shall any person smoke a cigarette, cigar, pipe, or other lighted smoking equipment on any public beach or any area adjacent to any public beach, which is used for beach related activities, including but not limited to access roads and parking lots. For the purposes of this division (B)(7), the term 'alcoholic beverage' means any beverage containing more than 1/2 of 1% alcohol by volume.

(Am. Ord. 139, passed 11-4-2002)

(8) Only fishing or sightseeing activities shall be allowed on the Department of Natural Resources pier located on Middle Spunk Lake. No person shall engage in any other activity, including but not limited to skiing, swimming, boat launching or docking, on the pier or on the waters within 100 feet of the pier.

(Ord. 112, passed 5-4-1992)

§ 90.99 PENALTY.

(A) A violation of this chapter shall be punishable as follows.

(B) (1) Any person may be expelled from the Avon City Beach area at the discretion of the Avon Police Department. The minimum expulsion times based on the number of times an individual has been expelled from the beach area are as follows:

<i>Number of Offenses</i>	<i>Minimum* Length of Expulsion</i>
First	1 Day
Second	3 Days
Third	1 Week
Fourth	Season
NOTES TO TABLE: * Higher penalties may be assessed at the discretion of the Avon Police Department depending on the individual's offense, attitude, and the like.	

(2) A violation of § 90.02 shall be a petty misdemeanor offense, punishable by a fine of not more than \$200. A violation of § 90.02 may also be punishable by administrative fine, at the officer's discretion, pursuant to Ch. 10, Appendix C. A violation of § 90.03 shall be a misdemeanor offense punishable by imprisonment for not more than 30 days or a fine of not more than \$700 or both. A violation of § 90.03 may also be punishable by administrative fine, at the discretion of the officer, pursuant to Ch. 10, Appendix C.

(Ord. 112, passed 5-4-1992; Am. Ord. 139, passed 11-4-2002; Am. Ord. 165, passed 6-5-2006)

CHAPTER 91: ANIMALS

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§ 91.01 DEFINITIONS.

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

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

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

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

(3) **NON-DOMESTIC ANIMALS.** Those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, non-domestic animals shall include:

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

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

(c) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.

(d) Any member or relative of the rodent family including any skunk (whether or not descended), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.

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

(f) Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to bears, deer, monkeys and game fish.

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

CAT. Both the male and female of the felidae species commonly accepted as domesticated household pets.

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

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

RELEASE PERMIT. A permit issued by the Animal Control Officer or other person in charge of the pound for the release of any animal that has been taken to the pound. A release permit may be obtained upon payment of a fee to the City Clerk/Administrator in accordance with the regular license requirement if the animal is unlicensed, payment of a release fee, and any maintenance costs incurred in capturing and impounding the animal as well as payment for any related citations including but not limited to running at large. The release fee shall be as established in the city's fee schedule.

§ 91.02 DOGS AND CATS.

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

(B) *License required.*

(1) All dogs over the age of 6 months kept, harbored, or maintained by their owners in the city, shall be licensed and registered with the city. Dog licenses shall be issued by the City Clerk/Administrator upon payment of the license fee as established by the city's fee schedule. The owner shall state, at the time application is made for the license and upon forms provided, his or her name and address and the name, breed, color, and sex of each dog owned or kept by him or her. No license shall be granted for a dog that has not been vaccinated against distemper and rabies, as evidenced by a certificate by a veterinarian qualified to practice in the state in which the dog is vaccinated.

(2) It shall be the duty of each owner of a dog subject to this section to pay to the City Clerk/Administrator the license fee established in the city's fee schedule.

(3) Upon payment of the license fee as established by the city's fee schedule, the Clerk/Administrator shall issue to the owner a license certificate and metallic tag for each dog licensed. The tag shall have stamped on it the year for which it is issued and the number corresponding with the number on the certificate. Every owner shall be required to provide each dog with a collar to which the license tag must be affixed, and shall see that the collar and tag are constantly worn. In case a dog tag is lost or destroyed, a duplicate shall be issued by the City Clerk/Administrator. A charge shall be made for each duplicate tag in an amount established in the city's fee schedule. Dog tags shall not be transferable from 1 dog to another and no refunds shall be made on any dog license fee or tag because of death of a dog or the owner's leaving the city before the expiration of the license period.

(4) The licensing provisions of this division (B) shall not apply to dogs whose owners are nonresidents temporarily within the city, nor to dogs brought into the city for the purpose of participating in any dog show. If the animal owned is a service animal which is capable of being properly identified as from a recognized school for seeing eye, hearing ear, service or guide animals, and the owner is a blind or deaf person, or a person with physical or sensory disabilities, then no license shall be required.

(5) The funds received by the City Clerk/Administrator from all dog licenses and metallic tags fees as established by the city's fee schedule, shall first be used to defray any costs incidental to the enforcement of this chapter; including, but not restricted to, the costs of licenses, metallic tags, and impounding and maintenance of the dogs.

(C) *Vaccination.*

(1) All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every 3 years by a licensed veterinarian for:

- (a) Rabies - with a live modified vaccine; and
- (b) Distemper.

(2) A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the City Clerk/Administrator, the Animal Control Officer or a police officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have 7 days in which to present the certificate(s) to the City Clerk/Administrator or officer. Failure to do so shall be deemed a violation of this section.

Penalty, see § 91.99

§ 91.03 NON-DOMESTIC ANIMALS.

It shall be illegal for any person to own, possess, harbor, or offer for sale, any non-domestic animal within the city. Any owner of a non-domestic animal at the time of adoption of this code shall have 30 days in which to remove the animal from the city after which time the city may impound the animal as provided for in this section.

An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled, and for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

Penalty, see § 91.99

§ 91.04 FARM ANIMALS.

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

§ 91.05 IMPOUNDING.

(A) *Running at large.* Any unlicensed animal running at large is hereby declared a public nuisance. Any Animal Control Officer or police officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog or other animal, if known. The Animal Control Officer or police officer shall not enter the property of the owner of an animal found running at large or the owner of an unlicensed animal unless the officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in § 10.20, to search for and seize the animal. In case the owner is unknown, the officer shall post notice at the city office that if the dog or other animal is not claimed within the time specified in division (C) of this section, it will be sold or otherwise disposed of. Except as otherwise provided in this section, it shall be unlawful to kill, destroy, or otherwise cause injury to any animal, including dogs and cats running at large.

(B) *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 the 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 the 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 confinement in the manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.

(C) *Reclaiming.* All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least 5 regular business days, unless the animal is a dangerous animal as defined under § 91.11 in which case it shall be kept for 7 regular business days or the times specified in § 91.11, 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, unless otherwise provided for in this code or established from time to time by ordinance of the City Council:

- (1) Payment of the release fee and receipt of a release permit as established by the city's fee schedule.
- (2) Payment of maintenance costs, as provided by the pound, per day or any part of day while animal is in the pound; and
- (3) If a dog is unlicensed, payment of a regular license fee as established by the city's fee schedule, and valid certificate of vaccination for rabies and distemper shots is required. If the owner must remove the dog from the pound in order to obtain certificate of vaccination for rabies and distemper, along with payment of all other fees in Section 91.05 \$100 CASH deposit must be made with the City Clerk's office in order for the animal to be released. If within 5 days of releasing the dog, the owner does not provide the city with valid certificate of vaccination for rabies and distemper shots, the owner will be issued administrative citations on a daily basis, until said certificate is presented and all fees have been paid. In the event the owner does not pay the fees described herein, whenever possible, through due process, the fees will be certified to the property owner's taxes.

(D) *Unclaimed animals.* At the expiration of the times established in division (C) of this section, if the animal has not been reclaimed in accordance with the provisions of this section, the officer appointed to enforce this section may let any person claim the animal by complying with all provisions in this section, or the officer may sell the animal to the University of Minnesota, or cause the animal to be destroyed in a proper and humane manner and shall properly dispose of the remains thereof. Any money collected under this section shall be payable to the City Clerk/Administrator.

Penalty, see § 91.99

§ 91.06 KENNELS.

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

(B) *Kennel as a nuisance.* Because the keeping of 3 or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of 3 or more dogs on the premises is hereby declared to be a nuisance and no person shall keep or maintain a kennel within the city. Penalty, see § 91.99

§ 91.07 NUISANCES.

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

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

(C) *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.

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

(E) *Other.* Any animals kept contrary to this section are subject to impoundment as provided in § 91.05. Penalty, see § 91.99

§ 91.08 SEIZURE OF ANIMALS.

Any police officer or Animal Control Officer may enter upon private property and seize any animal with the permission of the owner of the property, if that person is also the owner of the animal, provided that the following exist:

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

(B) The officer reasonably believes that the animal meets either the barking dog criteria set out in § 91.07(A); the criteria for cruelty set out in § 91.13; or the criteria for an at large animal set out in § 91.01(E);

(C) The officer can demonstrate that there has been at least 1 previous complaint of a barking dog; inhumane treatment of the animal; or that the animal was at large at this address on a prior date;

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

(E) The Animal Control Officer or police officer shall not enter the property of the owner of an animal described in this section unless the officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in § 10.20, to search for and seize the animal. If the officer has the permission of the owner, a property manager, landlord, innkeeper, or other authorized person to enter the property or has obtained a pass key from a property manager, landlord, innkeeper, or other authorized person to have that key shall not be considered unauthorized entry, and a warrant to search for and seize the animal need not be obtained; and

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

§ 91.09 ANIMALS PRESENTING A DANGER TO HEALTH AND SAFETY OF CITY.

If, in the reasonable belief of any person or the Animal Control Officer or police officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the person or officer may destroy the animal in a proper and humane manner whether or not the animal is on the property of its owner. Otherwise, the person or officer may apprehend the animal and deliver it to the pound for confinement under § 91.05. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to the health and safety of the city, it may be released to the owner or keeper in accordance with § 91.05(C).

§ 91.10 DISEASED ANIMALS.

(A) *Running at large.* No person shall keep or allow to be kept on his or her premises, or on premises occupied by them, nor permit to run at large in the city, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal be properly licensed under this section, and a warrant to search for and seize the animal is not required.

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

(C) *Release.* If the animal, upon examination, is not found to be diseased the animal shall be released to the owner or keeper free of charge.
Penalty, see § 91.99

§ 91.11 DANGEROUS ANIMALS.

(A) *Attack by an animal.* It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal whether or not the owner is present. 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 with criminal intent.

(B) *Destruction of dangerous animal.* The Animal Control Officer shall have the authority to order the destruction of dangerous animals in accordance with the terms established by this chapter.

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

(1) ***DANGEROUS ANIMAL.*** An animal which has:

- (a) Caused bodily injury or disfigurement to any person on public or private property;
- (b) Engaged in any attack on any person under circumstances which would indicate danger to personal safety;
- (c) Exhibited unusually aggressive behavior, such as an attack on another animal;
- (d) Bitten 1 or more persons on 2 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.

(2) ***POTENTIALLY DANGEROUS ANIMAL.*** An animal which has:

- (a) Bitten a human or a domestic animal on public or private property;
- (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.

(3) ***PROPER ENCLOSURE.*** Securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the 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 5 feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed 2 inches, support posts shall be 1 3/4-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 2 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 2 inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

(4) ***UNPROVOKED.*** The condition in which the animal is not purposely excited, stimulated, agitated or disturbed.

(D) *Designation as potentially dangerous animal.* The Animal Control Officer shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, then bitten, attacked, or threatened the safety of a person or a domestic animal as stated in division (C)(2). When an animal is declared potentially dangerous, the Animal Control Officer shall cause 1 owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.

(E) *Evidence justifying designation.* The Animal Control Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:

(1) That the animal has, when unprovoked, bitten, attacked, or threatened the safety of a person or domestic animal as stated in division (C)(1).

(2) That the animal has been declared potentially dangerous and the animal has then bitten, attacked, or threatened the safety of a person or domestic animal as stated in division (C)(1).

(F) *Authority to order destruction.* 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 1 or more of the following findings of fact:

(1) The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or

(2) 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.

(G) *Procedure.* The Animal Control Officer, after having determined that an animal is dangerous, may proceed in the following manner: The Animal Control Officer shall cause 1 owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten, and shall be given 14 days to appeal this order by requesting a hearing before the City Council for a review of this determination.

(1) If no appeal is filed, the Animal Control Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction, unless the animal is already in custody or the owner consents to the seizure and destruction of the animal.

(2) If an owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than 3 weeks after demand for the hearing. The records of the Animal Control or City Clerk/Administrator's office shall be admissible for consideration by the Animal Control Officer without further foundation. After considering all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order that the Animal Control Officer take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Animal Control Officer. If the owner does not immediately make the animal available, the Animal Control Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction.

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

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

(I) *Notification of new address.* The owner of an animal which has been identified as dangerous or potentially dangerous shall 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 shall be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address, and the name of the new owner, if any.
Penalty, see § 91.99

§ 91.12 DANGEROUS ANIMAL REQUIREMENTS.

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

- (1) That the owner provide and maintain a proper enclosure for the dangerous animal as specified in § 91.11(C)(3);
- (2) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property as specified in M.S. § 347.51 as may be amended from time to time;
- (3) Provide and show proof annually of public liability insurance in the minimum amount of \$300,000;
- (4) If the animal is a dog and is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash (not to exceed 6 feet in length) and under the physical restraint of a person 16 years of age or older. The muzzle must be of a design as to prevent the dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration;
- (5) If the animal is a dog, it must have an easily identifiable, standardized tag identifying the dog as dangerous affixed to its collar at all times as specified in M.S. § 347.51 as it may be amended from time to time, and shall have a microchip implant as provided by M.S. § 347.151, as it may be amended from time to time;
- (6) All animals deemed dangerous by the Animal Control Officer shall be registered with the county in which this city is located within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the Animal Control Officer.
- (7) If the animal is a dog, the dog must be licensed and up to date on rabies vaccination. If the animal is a cat or ferret, it must be up to date with rabies vaccination.

(B) *Seizure.* As authorized by M.S. § 347.54, as it may be amended from time to time, the Animal Control Officer shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to district court by serving a summons and petition upon the city and filing it with the district court.

(C) *Reclaiming animals.* A dangerous animal seized under § 91.12(B), may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to animal control that each of the requirements under § 91.12(B), is fulfilled. An animal not reclaimed under this section within 14 days may be disposed of as provided under § 91.11(F), and the owner is liable to the city for costs incurred in confining and impounding the animal.

(D) *Subsequent offenses.* If an owner of an animal has subsequently violated the provisions under § 91.11 with the same animal, the animal must be seized by animal control. The owner may request a hearing as defined in § 91.11(F). If the owner is found to have violated the provisions for which the animal was seized, the Animal Control Officer shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs

of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of § 91.12(C). If the animal is not yet reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under § 91.11(F) and the owner is liable to the animal control for the costs incurred in confining, impounding and disposing of the animal.

§ 91.13 BASIC CARE.

All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. Any person not treating their pet in a humane manner will be subject to the penalties provided in this section.

§ 91.14 BREEDING MORATORIUM.

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

§ 91.15 ENFORCING OFFICER.

The Council is hereby authorized to appoint an animal control officer(s) to enforce the provisions of this section. In the officer's duty of enforcing the provisions of this section, he or she may from time to time, with the consent of the City Council, designate assistants.

§ 91.16 POUND.

Every year the Council shall designate an official pound to which animals found in violation of this chapter shall be taken for safe treatment, and if necessary, for destruction.

§ 91.17 INTERFERENCE WITH OFFICERS.

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

Penalty, see § 91.99

§ 91.99 PENALTY.

(A) *Separate offenses.* Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.

(B) *Misdemeanor.* Unless otherwise provided, violation of this chapter shall constitute a misdemeanor punishable as provided in § 10.99.

(C) *Petty misdemeanor.* Violations of §§ 91.02, 91.07, 91.13 and 91.14 are petty misdemeanors punishable as provided in § 10.99.

CHAPTER 92: FIRE PREVENTION AND PROTECTION

Section

Volunteer Fire Department

- 92.01 Establishment
- 92.02 Chief and Assistant Chief
- 92.03 Companies
- 92.04 Duties of the Chief
- 92.05 Foreman or Captain of each Company
- 92.06 Suspension or expulsion
- 92.07 Fire house and apparatus
- 92.08 Appeals
- 92.09 Drills and training
- 92.10 Offenses; neglect of duty; insubordination
- 92.11 Prohibited acts
- 92.12 Fire alarms
- 92.13 Social Officers

VOLUNTEER FIRE DEPARTMENT

§ 92.01 ESTABLISHMENT.

(A) The Fire Department shall consist of a Chief, and 1 Assistant Chief and as many firefighters of the age of 21 years and not more than 35 years old at the time of their election to membership, and who are or may be elected and be approved by the Council of the City of Avon.

(B) The names of all persons elected to membership in the several companies and proposed as members of the Department shall be presented, through a Board of Fire Officers, in writing, to be approved by the Board of Fire Officers previous to being presented, and no name not so approved shall be presented to the membership and the Council of the City of Avon for conformation. All resignations from the Department shall take the same course as elections and propositions to membership as above provided for.

(C) The Chief and Assistant Chief shall constitute a Board of Fire Officers, who shall meet monthly or more frequently for the transaction of all business of the Department, which board shall have entire and absolute control over and management of the Department and its government, when the Department is not upon active duty, subject to the approval of the membership and the Council of the City of Avon to which approval the acts of the Board of Fire Officers shall only be subject as herein particularly and specifically provided.

(D) (1) Any member of the Department who has arrived at the age of 50 years may be retired from service by the Board of Fire Officers, by and with the consent of the Council of the City of Avon, and in like manner any member who shall become physically unfit for active service.

(2) Those who reach the age of 60 after 1-1-1973 shall retire upon reaching the age of 60.

(3) If more time is needed for an employee of the Fire Department to accrue better benefits from his or her retirement association that the City Council may extend his or her retirement age for at least 2 years but no longer.

(4) The compulsory retirement shall not apply to members of any board, commission, or committee appointed by the City Council.
(Am. Ord. passed 8-7-1972)

(E) The Board of Fire Officers is hereby authorized, empowered and required, from time to time to adopt a code of bylaws and rules for the control, management, and government of the Department and for the regulation of the proceedings and business of the Board, which code or codes of bylaws and rules after adoption by the Board shall not become effective and operative until presented to and approved by membership of the Department and the Council of the City of Avon.

(F) The Board of Fire Officers is hereby authorized, empowered, and required to inspect from time to time, but at least twice annually, all buildings and premises where accumulations of combustible materials or other hazardous conditions are liable to exist, and to order the changes or removals as in their opinion are necessary to safety from fire. For purposes of inspection, they are hereby empowered to enter any and all buildings and premises at any reasonable hour.

(G) The Board of Officers is required to devise forms or methods of keeping records and shall see that records are kept of all alarms of fire, fire losses methods of extinguishment, drills, hose apparatus, minor equipment and condition of hydrants.
(Ord. 49, passed 4-1-1963)

§ 92.02 CHIEF AND ASSISTANT CHIEF.

(A) The Chief and Assistant Chief shall be elected by the membership of the Department for an indefinite term. They shall be removable only for cause after hearing before the membership and City Council. Chief officers shall be elected from the membership of the Department, no 2 being members of the same company, nor may they retain membership in any company during their term of office.

(B) No member of the Department shall be eligible for the appointment of Chief or Assistant Chief whose entire time, both day and night, is not spent within the city limits, and, except for the initial appointments, has not been a member of the Department for at least 2 years.
(Ord. 49, passed 4-1-1963)

§ 92.03 COMPANIES.

(A) The fire force shall be divided into Companies, each to consist of not more than 20 members, of which not less than 10 must be employed in town.

(B) Any member desiring to transfer his or her membership from 1 Company to another shall present to the Board of Fire Officers a certificate in writing, signed by the Foreman or Captain of both Companies, showing the consent of each Company to transfer. Upon receipt of the certificate, the Board of Fire Officers shall permit or deny the transfer. Upon receipt of the certificate the Board of Fire Officers shall permit or deny the transfer, their decision being final and conclusive.

(C) (1) Each of the Companies of the Department shall and may choose from their own number a Foreman or Captain in the manner and at the time or times as the Board of Fire Officers may in its rules and bylaws for the government of the Department provide and prescribe.

(2) It shall be the duty of the Companies so often as any fire shall break out to repair immediately upon the alarm thereof to their respective fire houses and to convey their apparatus to the place where the fire shall happen, unless otherwise directed by the Chief or other officer who may be in charge, and upon the direction they shall return their apparatus, well washed and cleaned, to their several places of deposit.
(Ord. 49, passed 4-1-1963)

§ 92.04 DUTIES OF THE CHIEF.

(A) The Chief shall have the general supervision of the Department which supervision shall be subject to and not conflict with the rules and bylaws for the government and management of the Department as may from time to time be adopted by the Board of Fire Officers as herein provided.

(B) In all cases of fire the Chief or, in his or her absence, an Assistant, shall have full power and absolute control and command, and cause the several pieces of apparatus to be worked in the most advantageous manner.

(C) Should the Chief and the Assistant Chief be absent from a fire, the person having charge of the apparatus first arriving at the fire shall assume the duties of the Chief until the arrival of his or her superior officer.

(D) It shall be the duty of the Chief to report monthly to the Council of the City of Avon the condition of the various pieces of apparatus and appurtenances, the number of hydrants and the condition of same, the number of fires during the month, their location and cause, and date of same and loss occasioned thereby, the number of members in each Company and the total number of active members in the Department, and resignations and expulsions passes upon by the Board of Fire Officers.

(E) The Chief and his or her assistant or officers in command at any fire are hereby vested with full and complete police authority, and are hereby authorized and directed to require and secure the removal of any and all obstructions from in front of and around fire hydrants, and for the purpose are hereby authorized to call upon the head of any of the municipal departments for aid and assistance in securing the removal of obstructions.

(F) It shall be the duty of the Chief to see that Company officers have all hose thoroughly washed and dried after use at fires and drills and that no wet or dirty hose is placed on the apparatus.

(G) It shall be the duty of the Chief to see that Company officers have all hose on apparatus changed every 30 days, if not otherwise used and have water run through it every 60 days.

(H) It shall be the duty of the Chief to see that the Company officers have fire houses heated during the winter season.

(I) It shall be the duty of the Chief to see that all hose is tested annually at a hydrodynamic pressure of 250 pounds.

(J) It shall be the duty of the Company officer in charge of his or her Company at a fire or drill to report to the Chief all fire hydrants that are found frozen, out of order, leaky, or that are set in such a manner as to make it difficult to connect thereto.

(K) It shall be the duty of the Chief to make a permanent record of all reports of defective, inoperative or improperly set fire hydrants, and he or she shall submit a report to the Mayor and Common Council giving the location of the hydrant, name of the marker, with a specification of the troubles.

(L) It shall be the duty of the Foreman or Captain of each Company to keep a permanent record of the fire and drill service of each member of his or her company. A copy of this record shall be submitted to the Board of Officers at the close of each year.

(M) It shall be the duty of the Board of Officers to appoint 5 or more drivers for the apparatus, who shall be thoroughly instructed in the operation of the apparatus to which they are assigned.

(N) It shall be the duty of the Board of Officers to appoint 2 mechanics to each Company, who shall be charged with the duty of maintaining all the apparatus of the Company in good condition and ready for immediate service.

(O) No member of any company shall be permitted to tamper with, or fix, or repair any of the apparatus unless so directed by the Chief or, in his or her absence, the Assistant Chief.

(P) No member of any Company shall drive the apparatus except the regularly appointed drivers unless directed to do so by the Company officer or one of the Chiefs.
(Ord. 49, passed 4-1-1963)

§ 92.05 FOREMAN OR CAPTAIN OF EACH COMPANY.

(A) It shall be the duty of the Foreman or Captain of each Company in the Department to make a report once each month to the Board of Fire Officers in accordance with the rules and regulations as may be established by the Board.

(B) If the Foreman or Captain of any Company neglects or refuses to make the report the Board of Fire Officers shall immediately prefer charges against the delinquent officer, in accordance with the rules and regulations of the Board of Fire Officers.

(C) All requests for repairs or supplies for various Companies of the Department shall be presented to the Board of Fire Officers for the approval or recommendation of the Board by the Foreman or Captain of the Companies at the time the monthly report mentioned in division (A) above is presented, but in case any apparatus shall become so disabled that immediate repairs are necessary, the Foreman or Captain of the Company operating the apparatus shall immediately report the condition of same to the Chief, who is hereby empowered to have the same repaired at once.
(Ord. 49, passed 4-1-1963)

§ 92.06 SUSPENSION OR EXPULSION.

(A) Any Foreman or Captain, or the member having charge of any fire company, while on fire duty, who shall refuse or voluntarily neglect to obey or execute any orders from the officer in charge of any fire, shall, for the offense, be subject to suspension or expulsion from the department by the Board of Fire Officers in the manner and upon the hearing the trial as may be prescribed or provided by the bylaws and rules of the Board of Fire Officers.

(B) Any officer or member of the Department or any Company or Companies of the Department who shall refuse or voluntarily neglect to obey or execute any orders from the officer in charge of any fire, or who shall violate or willfully neglect for refuse to be controlled, governed or managed by any of the rules and bylaws of the Board of Fire Officers, that may be adopted from time to time as herein provided, shall be subject to suspension or expulsion from the Department by the Board of Fire Officers in the manner and upon the hearing or trial as may be prescribed or provided by the bylaws and rules of the Board of Fire Officers; the suspension or expulsion of any Company being subject to the approval of the membership of the Department and the Council of the City of Avon.
(Ord. 49, passed 4-1-1963)

§ 92.07 FIRE HOUSE AND APPARATUS.

(A) No person shall be allowed to enter any fire house or handle any apparatus or implements belonging to the Department unless accompanied by an active member of the Department.

(B) No fire apparatus during any fire or the report of any fire shall be taken or moved out of its house unless the Foreman or Captain or at least 1 member of the Company to which the same shall belong shall be present and assent thereto.

(C) No apparatus shall be let out for hire, or let in any case, except upon consent of the City Council, and of the Chief.

(Ord. 49, passed 4-1-1963)

§ 92.08 APPEALS.

(A) If any of the Companies shall vote for expulsion or suspension of any of its members, the result of the vote shall be reported to the Board of Fire Officers and Membership at their next meeting.

(B) The expelled or suspended member shall have the right to appear before the Board of Fire Officers and Membership and state cause (if any) why the penalty should not be confirmed, and in case of the non-appearance, or in case his or her appeal is not sustained, the Chief shall report his or her name to the Council of the City of Avon as expelled or suspended, as the case may be.

(Ord. 49, passed 4-1-1963)

§ 92.09 DRILLS AND TRAINING.

(A) It shall be the duty of the Chief to call out for practice drill, 1 or more Companies of the Department, and the Chief may, whenever he or she deems it necessary, call out any or all such Company or Companies for the drills when and where he or she may think advisable, but each Company shall be drilled and trained not less than once each month, except during the winter season. Any Company, officer, or member being reported to the Board of Fire Officers for refusal or failure to respond to any such order, the Company, officer, or member shall be liable to suspension or expulsion as provided for by the rules and regulations of the Board of Fire Officers.

(B) It shall be the duty of the Chief to arrange the drills and training so that they will include the proper and efficient use of all appliances and apparatus, the quick handling, laying and raising of hose, handling of seams, use of shut-off nozzles, forcible entry tools, salvage work, ladder work, life saving and modern methods of extinguishment.

(Ord. 49, passed 4-1-1963)

§ 92.10 OFFENSES; NEGLECT OF DUTY; INSUBORDINATION.

(A) All charges for offenses or neglect of duty or insubordination while on duty at a fire that may be preferred against any Company, officer, or member of the Department shall be tried and determined by the Board of Fire Officers, subject, however, to an appeal from the decision to the Council of the City of Avon, who shall either confirm the action of the Board of Fire Officers or refer to same back to them for retrial.

(B) In the event of a retrial being ordered by the Council, the decision arrived at by the Board of Fire Officers at the retrial shall be final, conclusive and not subject to appeal.

(Ord. 49, passed 4-1-1963)

§ 92.11 PROHIBITED ACTS.

(A) No person shall drive any vehicle over a fire hose except upon specific orders from the Chief of Department, and then only with due caution.

(B) All personal cars of Fire Department members when responding to a fire alarm shall be operated with complete regard for safety and in full compliance with local and state traffic regulations.

(C) No person shall park any vehicle of any description or place any material or obstruction within 20 feet of the entrance to any fire station, or within 15 feet of any fire hydrant or fire cistern, nor park any vehicle within 300 feet of a fire.

(D) No person shall maliciously sound a false fire alarm.

(E) No authorized person shall ride upon, race with, trail or follow within 600 feet, any apparatus belonging to the Fire Department when actively responding to a fire alarm.

(F) All regularly appointed members of the Fire Department are hereby given the necessary special powers for the purpose of enforcing the provisions of this subchapter.
(Ord. 49, passed 4-1-1963)

§ 92.12 FIRE ALARMS.

It is hereby made the special duty of the Chief of Police, police officers, and the other peace officers as are on duty at the time, to respond to all fire alarms and assist the Fire Department in the protection of life and property of the Fire Department, and in controlling and regulating traffic and maintaining order.
(Ord. 49, passed 4-1-1963)

§ 92.13 SOCIAL OFFICERS.

The Department, if it so desires, may elect a President, Vice President, Secretary, and Treasurer, to be known as Social Officers. The officers may be elected in any manner and for any term the membership may decide upon, and their duties shall be to arrange for and manage any or all social functions, sponsored by the department. However, the functions and duties of the Social Officers shall in nowise overlap or interfere with those of the Operation Officers, who are charged with responsibility for all fire service activities of the Department.
(Ord. 49, passed 4-1-1963)

CHAPTER 93: STREETS AND SIDEWALKS

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GENERAL PROVISIONS

§ 93.01 UNLOADING ON STREET OR SIDEWALK.

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

Penalty, see § 10.99

§ 93.02 STREET AND SIDEWALK OBSTRUCTION.

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

Penalty, see § 10.99

§ 93.03 MATERIALS ON STREET OR SIDEWALK.

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

Penalty, see § 10.99

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

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

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

§ 93.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in Minn. Rules part 7819.0100 subs. 1 through 23, as it may be amended from time to time, are the definitions of the terms used in the following provisions of this subchapter.

§ 93.22 PERMIT REQUIREMENT.

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

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

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

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

(C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subp. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the city's fee schedule.

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Clerk/Administrator, Utilities Superintendent or other person designated by the Council.
Penalty, see § 10.99

§ 93.23 PERMIT APPLICATIONS.

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

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

(1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

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

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

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the Clerk/Administrator, Utilities Superintendent or other person designated by the Council;

(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 officers, agents, employees, and permittees, including, but not limited to, protection against

liability arising from completed operations, damage of underground facilities, and collapse of property;

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

(d) Requiring that the Clerk/ Administrator, Utilities Superintendent or other person designated by the Council 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 Clerk/Administrator, Utilities Superintendent or other person designated by the Council in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

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

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

(6) 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.

(B) Payment of money due the city for:

(1) Permit fees as established by the city's fee schedule, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

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

(4) Franchise fees or other charges as established by the city's fee schedule, if applicable.

§ 93.24 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the Clerk/Administrator, Utilities Superintendent or other person designated by the Council shall issue a permit.

(B) *Conditions.* The Clerk/Administrator, Utilities Superintendent or other person designated by the Council may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

§ 93.25 PERMIT FEES.

Permit fees shall be in an amount established in the city's fee schedule.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee as established by the city's fee schedule, in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(B) *Obstruction Permit Fee.* The city shall establish the obstruction permit fee as established by the city's fee schedule, and shall be in an amount sufficient to recover the city management costs.

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

(D) *Non-refundable.* Permit fees as established by the city's fee schedule, that were paid for a permit that the Clerk/Administrator, Utilities Superintendent or other person designated by the Council has revoked for a breach as stated in § 93.33 are not refundable.

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

(F) All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.100, as it may be amended from time to time.
Penalty, see § 10.99

§ 93.26 RIGHT-OF-WAY PATCHING AND RESTORATION.

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

(B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

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

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

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The Clerk/Administrator, Utilities Superintendent or other person designated by the Council shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

(D) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the Clerk/Administrator, Utilities Superintendent or other person designated by the Council, shall correct all restoration work to the extent necessary, using the method required by the Clerk/Administrator, Utilities Superintendent or other person designated by the Council. The work shall be completed within 5 calendar days of the receipt of the notice from the Clerk/Administrator, Utilities Superintendent or other person designated by the Council, 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 under this subchapter.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the Clerk/Administrator, Utilities Superintendent or other person designated by the Council, or fails to satisfactorily and timely complete all restoration required by the Clerk/ Administrator, Utilities Superintendent or other person designated by the Council, the Clerk/ Administrator, Utilities Superintendent or other person designated by the Council at his or her option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(F) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the city's fee schedule. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

§ 93.27 SUPPLEMENTARY APPLICATIONS.

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

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

§ 93.28 DENIAL OF PERMIT.

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

§ 93.29 INSTALLATION REQUIREMENTS.

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

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

(C) *Authority of Clerk/Administrator, Utilities Superintendent or other person designated by the Council.*

(1) At the time of inspection, the Clerk/Administrator, Utilities Superintendent or other person designated by the Council 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 Clerk/Administrator, Utilities Superintendent or other person designated by the Council 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 Clerk/ Administrator, Utilities Superintendent or other person designated by the Council that the violation has been corrected. If proof has not been presented within the required time, the Clerk/Administrator, Utilities Superintendent or other person designated by the Council may revoke the permit pursuant to § 93.33.

§ 93.31 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within 2 business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

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

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

§ 93.32 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Clerk/ Administrator, Utilities Superintendent or other person designated by the Council of the accurate information as soon as this information is known.

§ 93.33 REVOCATION OF PERMITS.

(A) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 93.30.

(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 that violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

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

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

§ 93.34 MAPPING DATA; INFORMATION REQUIRED.

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

§ 93.35 LOCATION OF FACILITIES.

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

(C) *Limitation of space.* To protect the health, safety, and welfare or when necessary to protect the right-of-

way and its current use, the Clerk/ Administrator, Utilities Superintendent or other person designated by the Council shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Clerk/Administrator, Utilities Superintendent or other person designated by the Council shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

§ 93.36 DAMAGE TO OTHER FACILITIES.

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

§ 93.37 RIGHT-OF-WAY VACATION.

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

§ 93.38 INDEMNIFICATION AND LIABILITY.

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

§ 93.39 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Clerk/Administrator, Utilities Superintendent or other person designated by the Council.

§ 93.40 APPEAL.

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

§ 93.41 RESERVATION OF REGULATORY AND POLICE POWERS.

A permittees or registrants rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

NAMING STREETS AND NUMBERING PROPERTIES

§ 93.50 ASSIGNMENT OF NAMES AND NUMBERS.

(A) All properties or parcels of land within the city shall hereafter be identified by reference to the uniform numbering system adopted herein, provided; all existing numbers of properties and buildings now not in conformity with provisions of this subchapter shall be changed to conform to the system herein adopted within 3 months from the date of passage of this subchapter. The names of all streets in the city shall be as designated by the City Council.

(B) Each principal building shall bear the number assigned to the frontage on which the front entrance is located (front entry/front of house). In case a principal building is occupied by more than 1 business or family dwelling unit, each separate front entrance of the principal building shall bear a separate number.

(C) Numerals indicating the official numbers for each principal building or each front entrance to the building shall be posted and shall be reflectorized and shall be posted in a manner as to be visible from the street on which the property is located.

(Ord. 58, passed 3-5-1971) Penalty, see § 10.99

§ 93.51 ADMINISTRATION.

(A) The City Council shall be responsible for maintaining the numbering system. In the performance of this responsibility, the Council shall be guided by the provisions of § 93.50.

(B) The City Council shall keep a record of all numbers assigned under this subchapter.

(C) The City Council shall assign to any property owner in the city upon request of a number for each principal building or separate front entrance to the building. In doing so, it shall assign only the numbers assigned to the building under the provisions of this subchapter, provided, however, that the recorder may assign additional numbers in accord with the official numbering system whenever a property has been subdivided, a new front entrance opened, or undue hardship has been worked on any property owner.

(D) Street names in existence prior to the passage of this subchapter may be retained subject to approval by the City Council. For the purposes of this subchapter, the effective date for numbers on principal building in existence is 5-1-1971.

(Ord. 58, passed 3-5-1971)

§ 93.52 VIOLATIONS.

Each separate day the violation is continued shall constitute a separate offense.

(Ord. 58, passed 3-5-1971) Penalty, see § 10.99

§ 93.53 EFFECTIVE DATE.

This subchapter shall be in full force and effect from and after its passage and published, according to law.

(Ord. 58, passed 3-5-1971)

OBSTRUCTIONS AND OCCUPATIONS

§ 93.65 DEFINITION.

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

PERSON. One or more persons, a corporation, partnership, association, joint stock company, society or other entity capable of being sued.

(Ord. 38, passed 12-2-1946)

§ 93.66 OBSTRUCTION, OCCUPANCY, OR USE OF THOROUGHFARES.

It shall be unlawful for any person to obstruct, occupy, or use any public thoroughfare, street, sidewalk, alley, or other public place for the purpose of erecting, wrecking, cleaning, remodeling, or repairing any building or other property, without first having applied for a permit in writing to the city, accompanied by a bond as hereinafter defined.

(Ord. 38, passed 12-2-1946) Penalty, see § 10.99

§ 93.67 APPLICATION AND PERMIT AND BOND.

The application for the above mentioned permit must be filled out in full in writing on a form supplied by the city and must be accompanied by a bond in sufficient amount to hold the city harmless forever against any claim or claims resulting from damages or liability of any nature that may arise due to the obstruction, occupancy, or use of the public property applied for, and when approved by the city a written permit will be issued the applicant.

(Ord. 38, passed 12-2-1946)

§ 93.68 GUARD RAILS, FENCING, AND DANGER SIGNALS REQUIRED.

Applicant must at all times furnish protection to the public by posting danger signals ahead and to the rear or any side that the public passes and red lights at night in the same manner, and fence or rail in the property so used.

(Ord. 38, passed 12-2-1946) Penalty, see § 10.99

CHAPTER 94: HEALTH AND SAFETY; NUISANCES

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GENERAL PROVISIONS

§ 94.01 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

(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.

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

Penalty, see § 10.99

NUISANCES

§ 94.15 PUBLIC NUISANCE DEFINED.

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

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

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

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

(Ord. 137, passed 4-7-2003)

§ 94.16 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 or 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 on public or private property. Also all vegetation exceeding an average height of 6 inches except where the lot size is larger than 2 acres and where it contains a natural environment area and the grasses, weeds and/or vegetation within the natural environment area are not noxious; in this case the standard "lawn" area would still need to be kept under 6 inches;

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

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

(K) Any offensive trade or business as defined by statute not licensed by the County Board of Health as defined by law.

(Ord. 137, passed 4-7-2003; Am. Ord. 164, passed 6-5-2006) Penalty, see § 10.99

§ 94.17 PUBLIC NUISANCES AFFECTING PEACE, SAFETY, OR GENERAL WELFARE.

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

(A) All snow and ice not removed from public sidewalks 12 hours after the snow or other precipitation causing the condition has ceased to fall; placing snow on a public street after the snowplow has cleared the street is prohibited;

(Am. Ord. 143, passed 4-7-2003)

(B) All trees, billboards, or other obstructions which prevent persons 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 unnecessary noises and annoying vibrations; including but not limited to jake braking;

(Am. Ord. 143, passed 4-7-2003; Am. Ord. 164, passed 6-5-2006)

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

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

(G) 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 uses of the streets or sidewalks;

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

(I) 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;

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

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

(L) Wastewater casts upon or permitted to flow upon the streets or other public property;

(M) Accumulations in the open of discarded or disused machinery, household appliances and furniture, automobiles lacking current registration or which are in junked or inoperable condition, structures or vehicles containing broken windows, and structures in a state of disrepair or other material or circumstance left in such a manner as to be conducive to the harboring of rats, mice, snakes, or vermin, or to fire, health, or safety hazards from such accumulation or from the rank growth of vegetation among the items so accumulated;
(Am. Ord. 93, passed 5-3-1982; Am. Ord. 164, passed 6-5-2006)

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

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

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

(Q) The depositing of garbage, compost or refuse on a public right-of-way or private property;
(Am. Ord. 164, passed 6-5-2006)

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

(S) Vehicles, machinery, or equipment for sale, shall be under the registered ownership of the owner or occupant of the property on which the vehicle, machinery, or equipment is located;

(T) Public urination on any property within the City of Avon is prohibited; and
(Am. Ord. 143, passed 4-7-2003)

(U) Public consumption of alcohol other than in designated areas is prohibited.
(Am. Ord. 143, passed 4-7-2003) (Ord. 137, passed 4-7-2003) Penalty, see § 10.99

§ 94.18 ABATEMENT.

(A) It is unlawful for any person to permit any public nuisance as defined in this subchapter to remain on any premises owned or controlled by him or her within the city.

(B) The nuisances may be abated in the following manner.

(1) If any person causes or permits a public nuisance as is herein defined to occur, then the City

Clerk/Administrator shall notify the person or in the alternative the owner of real estate of which the public nuisance is allowed to occur or caused by certified mail that the nuisance shall be abated within a specified time, not less than 5 days from the date of mailing of the notice. If the nuisance is not abated within the time specified in the notice herein provided for, then and in the event the City Council of the City of Avon shall, by resolution, order the nuisance abated. Before action is taken on the resolution, the 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 owners and published once no less than 1 week prior to the meeting. The notice shall state the time and place of the meeting, the property affected, the proposed action, the estimated cost of abatement, and the proposed basis of assessment, if any of cost. At the hearing or adjournment thereof, the Council shall hear property owners with reference to the scope and desirability of the proposed project. The Council shall thereafter adopt a resolution confirming the original resolution with the modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

(2) The City Clerk/Administrator shall keep a record of the cost of abatements done under this section and shall report monthly to the City Council 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.

(3) On or before September 1 of each year, the Clerk/Administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this subchapter. The Council may then spread the charges or any portion thereof against the property involved as a special assessment under 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 current taxes.
(Ord. 137, passed 4-7-2003) Penalty, see § 10.99

§ 94.19 USE OF WEAPONS.

No person except a police officer of the performance of duty shall, within the city, discharge and gun, pistol, or firearm of any description or carry any such weapon unless it is dismounted or broken apart or carried in a case in such a manner that it cannot be discharged. This section does not prevent the carrying of a handgun within the city under a permit subject to the restrictions imposed by law.
(Ord. 137, passed 4-7-2003) Penalty, see § 10.99

§ 94.20 AIR RIFLES; SLING SHOTS.

No person shall use or discharge any air rifle, sling shot, BB gun, splatball/paintball or similar gun within the City of Avon.
(Ord. 137, passed 4-7-2003; Am. Ord. 143, passed 4-7-2003) Penalty, see § 10.99

§ 94.21 OFFENSES BY PARENTS, GUARDIANS.

It is unlawful for any parent or guardian of any person under the age of 18 years knowingly to permit the person to violate any provision of this subchapter.
(Ord. 137, passed 4-7-2003) Penalty, see § 10.99

§ 94.22 EFFECTIVE DATE.

This subchapter shall become effective from and after its passage and publication according to law.
(Ord. 137, passed 4-7-2003)

OPEN BURNING

§ 94.35 DEFINITIONS.

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

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

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

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

RECREATIONAL FIRE SITE. An area of no more than a 3-foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or blocks or ferrous metal only an which area is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a recreation fire site@ as defined herein. Recreational fire sites shall not be located closer than 25 feet to any structure.

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

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

§ 94.36 PROHIBITED MATERIALS.

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

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

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

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

§ 94.37 PERMIT REQUIRED FOR OPEN BURNING.

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in § 94.35.
Penalty, see § 10.99

§ 94.38 PURPOSES ALLOWED FOR OPEN BURNING.

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

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

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

§ 94.39 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

(A) Any City resident in the Avon city limits will need to obtain a burning permit from the Avon Fire Chief. Open burning permits shall be obtained by making application on a form prescribed the Department of Natural Resources (DNR) and adopted by the Fire Department. The permit application shall be presented to the Fire Chief, Fire Marshal, and Assistant Fire Marshals for reviewing and processing those applications.

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

§ 94.40 PERMIT PROCESS FOR OPEN BURNING.

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

§ 94.41 PERMIT HOLDER RESPONSIBILITY.

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

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

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

Penalty, see § 10.99

§ 94.42 REVOCATION OF OPEN BURNING PERMIT.

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

Penalty, see § 10.99

§ 94.43 DENIAL OF OPEN BURNING PERMIT.

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

§ 94.44 BURNING BAN OR AIR QUALITY ALERT.

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

Penalty, see § 10.99

§ 94.45 RULES AND LAWS ADOPTED BY REFERENCE.

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