

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: ANIMALS

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KEEP. To have physical custody, to otherwise exercise dominion and control, or to have the right to exercise dominion and control.

WILD ANIMAL. Antelope, bears, cougar, deer, elk, moose, mountain goats, bighorn sheep, and any other species of animal, whether or not indigenous to the state, which is not usually domesticated, regardless of docility and regardless of the familiarity of the individual animal with humans. (Ord. 230, passed 2-9-2000)

§ 90.01 PURPOSE.

The purpose of this chapter is to prohibit the keeping of dangerous, exotic and wild animals within the corporate boundaries of the city. (Ord. 230, passed 2-9-2000)

§ 90.03 KEEPING OF CERTAIN ANIMALS PROHIBITED.

No person, organization or other legal entity shall keep any exotic animal, dangerous animal or wild animal within the corporate boundaries of the city, except as part of a recognized circus. (Ord. 230, passed 2-9-2000) Penalty, see § 10.99

§ 90.02 DEFINITIONS.

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

DANGEROUS ANIMAL. Alligator, crocodile, poisonous reptiles and constricting snakes over five feet in length.

§ 90.04 DECLARATION OF PUBLIC NUISANCE.

The keeping of any dangerous animal, exotic animal or wild animal in violation of § 90.03 shall be a public nuisance. The provisions of §§ 93.07 and 93.08 shall apply to abatement of violations of this chapter. (Ord. 230, passed 2-9-2000) Penalty, see § 10.99

EXOTIC ANIMAL.

- (1) Any lion, tiger, leopard, cheetah, ocelot, cougar, bobcat, lynx and any other cat except the species *Felis Catus* (domestic cat);
- (2) Any monkey, ape, gorilla or other nonhuman primate;
- (3) Any wolf, coyote, hyena, dingo or other canine, except the species *Canis Familiaris* (domestic dog); and
- (4) Any bear.

CHAPTER 91: ABANDONED/DISABLED VEHICLES

Section

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upon any public roadway, alley, right-of-way or other public property within the city for more than 24 consecutive hours.

ROADWAY. Any portion of any public way that is improved, designed or ordinarily used for vehicular traffic and including the attending street right-of-way.

STORAGE. Failure to permanently remove any vehicle from any public roadway, alley, right-of-way or other public property after 72 consecutive hours.

VEHICLE. Any device in, upon or by which any person or property is or may be transported or drawn upon a roadway and includes trailers and vehicles that are propelled or powered by any means, and includes motor vehicles as defined by the State Vehicle Code.
(Ord. 196, passed 9-12-1995)

§ 91.01 PURPOSES.

This chapter authorizes the removal of disabled and abandoned vehicles from public property, roadways, alleys and rights-of-way located within the city and precludes storage of vehicles on all public property, roadways, rights-of-way and alleys located within the city.
(Ord. 196, passed 9-12-1995)

§ 91.02 DEFINITIONS.

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

ABANDONED VEHICLE. Any vehicle left, parked or placed upon any public roadway, right-of-way or other public property within the city for more than 72 hours without its removal within that time.

ALLEY. Any public roadway or other way of access primarily intended to provide access to the rear or side of lots or buildings.

DISABLED VEHICLE. Any temporarily or permanently inoperable vehicle left, placed, parked

§ 91.03 PROHIBITED ACTS.

(A) No vehicle shall be abandoned within the city, on any public roadway, alley, right-of-way or other public property.

(B) No disabled vehicle shall be left, placed or parked upon any public roadway, alley, right-of-way or other public property within the city, for more than 24 consecutive hours.

(C) No vehicle shall be stored on any public roadway, alley, right-of-way or other public property within the city.
(Ord. 196, passed 9-12-1995) Penalty, see § 10.99

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§ 91.04 REMOVAL OF VEHICLES.

The city may take custody of, remove or authorize removal of vehicles under the following circumstances:

(A) Abandoned, disabled and stored vehicles may be removed:

(1) If the city has reason to believe the vehicle is abandoned, disabled or stored; and

(2) If the vehicle has been parked, left or standing upon any public roadway, alley, right-of-way or other public property for a period in excess of 72 hours in the case of a stored or abandoned vehicle, or 24 hours in the case of a disabled vehicle.

(B) Vehicles constituting hazard or obstruction may be removed:

(1) If the city has reason to believe that a vehicle disabled, parked, abandoned, stored or left unattended on a public roadway, alley, right-of-way or other public property is in such a location as to constitute a hazard or obstruction to motor vehicle traffic;

(2) As used in this section, a hazard or obstruction includes, but is not necessarily limited to, any vehicle that is parked, left or standing so that any part of the vehicle extends within the paved portion of a vehicular travel lane or bicycle lane; or

(3) As used in this section, a hazard or obstruction does not include parking in a designated parking area along a roadway or parking temporarily on the shoulder of a roadway as indicated by a short passage of time and by operation of the hazard lights of the vehicle, the raised hood of the vehicle, or advance warning with emergency flares or emergency signs.

(C) The authority to take custody of and remove vehicles under any provisions of this section is in addition to all other provisions of this section.

(D) All removal and storage costs shall be the responsibility of the vehicle owner, lessor or security interest holder.

(Ord. 196, passed 9-12-1995)

§ 91.05 PROCEDURE TO REMOVE VEHICLES.

The city may remove or cause the removal of vehicles in accordance with the following procedures.

(A) *Abandoned and stored vehicles.*

(1) Before removal, the city shall provide written notice to the owners of the vehicle, and to any lessors or security interest holders having an interest in the vehicle that are listed in the records of the Department of Transportation, and an explanation of procedures available for obtaining a hearing under O.R.S. 819.190.

(2) Notice shall be given by both the following methods:

(a) By affixing the notice to the vehicle; and

(b) By mailing the notice by both first class and certified mail, at least three days before removing the vehicle, with the required information to the owners and to any lessors or security interest holders at the address shown by the records of the Department of Transportation. The three-day period under this division (A)(2)(b) does not include holidays, Saturdays or Sundays.

(3) The notice shall state all of the following:

(a) That the vehicle will be subject to being taken into custody and removed by the city if it is not removed after a stated date not less than six days from the date of the notice;

(b) The ordinance violated by the vehicle and under which it will be removed;

(c) The place where the vehicle will be held in custody or the telephone number and address of the city representative who will provide information;

give the location of the vehicle and describe procedures for release of the vehicle and for obtaining a hearing.

(d) The vehicle, if taken into custody and removed will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents;

(e) The vehicle will be sold to satisfy the costs of towing and storage if those charges are not paid;

(f) The owner, possessor or person having an interest in the vehicle is entitled to a hearing before the vehicle is impounded, to contest the proposed custody and removal if a hearing is requested within five days, not including holidays and weekends, from the mailing date of the notice;

(g) The owner, possessor or person having an interest in the vehicle may challenge the reasonableness of any towing and storage charges at the hearing; and

(h) The date by which the hearing must be requested and that the hearing must be requested in writing received by that date.

(B) *Vehicles posing hazard or obstruction.*

(1) In the case of vehicles posing a hazard or obstruction, the city may immediately take the vehicle into custody and remove or cause removal of the vehicle.

(2) Within 48 hours of removal the city shall send, by certified mail, written notice with an explanation of procedures for obtaining a hearing under O.R.S. 819.190 to owners of the vehicle and to any lessors or security interest holders as shown in the Department of Transportation records.

(a) The notice shall state that the vehicle has been taken into custody and shall

(b) The 48-hour period under this division (B)(2) does not include weekends or holidays.

(3) The notice given under this section after a vehicle is taken into custody and removed shall state all of the following:

(a) That the vehicle has been taken into custody and removed by the city and the ordinance under which the vehicle has been taken into custody and removed;

(b) The location of the vehicle or the telephone number and address of the city official that will provide the information;

(c) The vehicle is subject to towing and storage charges, the amount of charges that have accrued to the date of the notice and the daily storage charges;

(d) The vehicle and its contents are subject to a lien for payment of the towing and storage charges and that the vehicle and its contents will be sold to cover the charges if the charges are not paid by a date no earlier than six days following the mailing of the notice;

(e) The owner, possessor or person having an interest in the vehicle and its contents is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and removing it and to contest the reasonableness of the charges for towing and storage if a hearing is timely requested;

(f) The date by which a hearing must be requested in writing and the method for requesting such hearing; and

(g) The vehicle and its contents may be immediately reclaimed by presentation to the City Recorder/Manager of satisfactory proof of ownership or right to possession and either payment of the towing and storage charges or the deposit of cash security or a bond equal to the charges with the City Recorder/Manager.
(Ord. 196, passed 9-12-1995)

All hearings held pursuant to § 91.05 shall be held according to the provisions of O.R.S. 819.190 and with like effect.
(Ord. 196, passed 9-12-1995)

§ 91.07 ENFORCEMENT.

This chapter may be enforced by the state police or by the County Sheriff's office.
(Ord. 196, passed 9-12-1995)

CHAPTER 92: CITY CEMETERY

Section

92.01	Records	Lakeside City Hall, 915 North Lake Avenue, and will be available for inspection during normal business hours. (Ord. 166, passed 4-14-1994)
92.02	City Recorder/Manager duties	
92.03	Burial costs	
92.04	Selection of plots	
92.05	Cemetery regulations	
92.99	Penalty	§ 92.03 BURIAL COSTS.

Parties wishing to have a body buried in the Lakeside Cemetery are responsible for costs of

§ 92.01 RECORDS.

- (A) The city will keep appropriate records of burials in Lakeside Cemetery beginning with January 1, 1990.
- (B) State forms will be maintained as required.
- (C) A bound ledger shall list all burials beginning on January 1, 1990 in chronological order.
(Ord. 166, passed 4-14-1994)

§ 92.02 CITY RECORDER/MANAGER DUTIES.

The City Recorder/Manager shall be the sexton and maintain lists of burials and provide appropriate documentation of burials as required. The records of Lakeside Cemetery shall be kept at

opening and closing graves, and will provide the city with a waiver of responsibility.
(Ord. 166, passed 4-14-1994)

§ 92.04 SELECTION OF PLOTS.

The city may require burials to be made in uniform rows, but interested parties may choose the exact plot.
(Ord. 166, passed 4-14-1994)

§ 92.05 CEMETERY REGULATIONS.

(A) The business hours of operation of the cemetery shall be from 8:00 a.m. to 5:00 p.m., weekdays. In cases where death necessitates

discussion of burial on weekends, the Mayor and one City Council person are designated assistant sextons.

(B) No person shall be in the cemetery in the hours it is closed, except on lawful business.

(C) Motor vehicles attending a burial may be within the boundaries, as may vehicles on lawful business. All other vehicles are forbidden.
(Ord. 166, passed 4-14-1994) Penalty, see § 92.99

§ 92.99 PENALTY.

Violation of this chapter is punishable by a fine not to exceed \$100.
(Ord. 166, passed 4-14-1994)

CHAPTER 93: NUISANCES

Section

- 93.01 Definitions
- 93.02 Animals
- 93.03 Nuisances affecting public health
- 93.04 Nuisances affecting public safety
- 93.05 Nuisances affecting public peace
- 93.06 Non-enumerated nuisances
- 93.07 Abatement procedure
- 93.08 Abatement by the person responsible
- 93.09 Joint responsibility
- 93.10 Abatement by the city
- 93.11 Assessment of costs
- 93.12 Summary abatement

- 93.99 Penalty

wrecked, dismantled or partially dismantled. It also means unassembled or partially assembled vehicle parts, including, but not limited to, tires, batteries, engines, transmissions, vehicle bodies and frames.

NOISE SENSITIVE UNIT. Any building or portion thereof, vehicle, boat or other structure adapted or used for the overnight accommodation of persons, including, but not limited to, individual residential units, individual apartments, trailers, hospitals and nursing homes.

NUISANCE. An unlawful act, an omission to perform a duty, or suffering or permitting any condition or thing to be or exist, which either:

- (a) Injures or endangers the welfare, health or safety of others;
- (b) Offends decency;
- (c) Creates offensive odors;
- (d) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
- (e) In any way renders other persons insecure in life or the use of property; or
- (f) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

§ 93.01 DEFINITIONS.

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

DISMANTLED. Inoperative without the addition or application of vital parts or mechanisms and the application of a substantial amount of labor to effect repairs.

ENFORCING OFFICER. The person authorized by the City Recorder/Manager to enforce nuisance abatement provisions. This shall include, but not be limited to, any compliance officer, police officer and Fire Marshal.

NEGLECTED OR DISCARDED VEHICLE. A vehicle, motorcycle or all-terrain vehicle (ATV) that is or appears to be inoperative,

OBNOXIOUS VEGETATION.

- (a) Includes:

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1. Weeds, grass or legumes above the height of ten inches. It does not include decorative grasses;

2. Poison Oak or Poison Ivy and Scotch broom;

3. Vegetation or blackberry vines or bushes that are a fire hazard because they are near combustibles; extend into a public way; or are used for habitation of trespassers; and

4. Vegetation which is a vision obstruction.

that is clearly distinguishable from other sounds, such as, but not limited to, sound for which the information content of that sound is unambiguously communicated to the listener, understandable spoken speech,

(b) OBNOXIOUS

VEGETATION does not include vegetation that constitutes agricultural crops, unless the vegetation is a health hazard, fire hazard or traffic hazard within the meaning of this chapter. It does not include natural areas of vegetation designated in their natural state that do not constitute a fire hazard as determined by the Fire Chief.

PERSON. A natural person, firm, partnership, association or corporation.

PERSON IN CHARGE OF

PROPERTY. An agent, occupant, lessee, tenant, contract purchaser or other person having possession or control of property or supervision of a construction project.

PERSON RESPONSIBLE. The person responsible for abating a nuisance means any and all of the following:

(a) The owner of the property;

(b) The person in charge of the property, as defined in this section; and/or

(c) The person who caused a nuisance, as defined in this chapter or another ordinance of the city, to come into or continue in existence.

PLAINLY AUDIBLE SOUND. Any sound

comprehension of whether a voice is raised or normal, or comprehensive musical rhythms.

PUBLIC PLACE. A building, way, place or accommodation, publicly or privately owned, open and available to the general public.

RODENT HABITAT. Any condition which attracts or is likely to attract, feed or harbor rats or mice; this applies to, but is not limited in application to, any building or other structure or part thereof which is not rodent-proof and is used to store or keep any substance on which rats or mice feed, or rubbish or other loose material that might serve as a harbor for rats or mice.

RODENT-PROOF. Any building, structure or part thereof is rodent-proof when it is constructed of concrete; metal or some equally impermeable material and in a manner that excludes rats and mice therefrom.

SOUND-PRODUCING DEVICE.

Includes, but is not limited to:

- (a) Loudspeakers, public address systems;
- (b) Radios, tape recorders and/or tape players, phonographs, television sets, mobile musical devices such as iPods, stereo systems, including those installed in a vehicle;
- (c) Musical instruments, amplified or unamplified;
- (d) Sirens, bells or steam whistles attached to a stationary device;
- (e) Vehicle engines or exhausts discharging into open air, when the vehicle is not on a public right-of-way, particularly when the engine is operated above idling speed;
- (f) Vehicle tires, when caused to squeal by excessive speed or acceleration;
- (g) Domestic tools, including electric drills, chainsaws, lawn mowers, leaf blowers, electric

(h) Heat pumps, air conditioning units and refrigeration units, including those mounted on vehicles.

UNOCCUPIED OR UNSECURED BUILDING. A building or structure that is not being used for lawful occupancy and/or lack of secure means of ingress and egress, thus allowing for occupancy or use of a building or structure by unauthorized persons.

VEHICLE. A device in or by which a person or property is or may be transported or drawn upon a public highway, excluding a device moved by human power or used exclusively upon station rails or tracks, and including, but not limited to, a vehicle body, engine, transmission, frame or other major part. Includes automobiles, motorcycles, motorbikes, trucks, buses and snowmobiles.

(B) The nuisances described in this chapter are considered to be nuisances affecting the public and shall be abated pursuant to §§ 93.02 through 93.12. In addition to the abatement costs, which may be charged against the property as described herein, persons responsible may also be charged with an offense or fine.
(Ord. 14-279, passed 6-12-2014)

§ 93.02 ANIMALS.

(A) *Removal of carcasses.* No person shall permit an animal carcass owned or controlled by that person to remain upon public property, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass. A reasonable period of time includes an amount of time up to the carcass creating an odor nuisance, the contamination of waterways, or health hazard to any person or surrounding property.

(B) *License required.* A dog shall be licensed according to county animal control regulations, and no person shall own or have custody of a dog within the city which is not licensed.

(C) *Animals at large.* Except for household pets, other than dogs, no owner or person in charge of an animal shall permit the animal to wander freely and unattended so that the animal is likely to cause a nuisance to other persons or property. **RUNNING AT LARGE** does not include the use of a dog under supervision of a person in order to legally hunt, chase or tree wildlife; or control or protect livestock, or a dog in field training, or a dog in an area designated as a dog-off-leash area, unless the dog causes personal injury or property damage off the premises of the owners.

(1) A dog is a public nuisance if it:

(a) Bites a person, except as provided in division (C)(3) below;

(b) Chases vehicles or persons;

(c) Damages or destroys property of persons other than the owner of the dog;

(d) Scatters garbage;

(e) Trespasses on private property of persons other than the owner of the dog;

(f) Is a female in heat, running at large;

(g) Injures or kills an animal or fowl belonging to a person other than the owner or custodian of the dog; or

(h) Is soiling, defiling or defecating on any public property, including, but not limited to, streets, sidewalks, parks, paths or upon any private property without permission of the owner of that property.

(2) Any person owning or in charge of the dog shall be in violation of this chapter unless the person immediately removes and disposes of all feces deposited by the dog in a sanitary manner.

(3) A dog shall not be considered a public nuisance if the dog bites a person wrongfully assaulting the dog or the dog's owner, or if the dog

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bites a person trespassing upon the premises occupied by the dog's owner after being provoked by that person.

(D) *Impoundment of animals.* Animals at large may be disposed of in accordance with procedures provided by the city for the impoundment of dogs as implied herein.

(1) Any police officer may impound an animal that is in violation of this chapter if they have probable cause to believe that the animal is potentially dangerous. The officer shall hold the animal until a hearing is held or until the animal is reclaimed or disposed of.

(2) If any police officer has probable cause to believe that any animal in an unoccupied vehicle may be in danger of dying, they may enter the vehicle and impound the animal and leave notice in the vehicle where the animal may be reclaimed.

(3) If there is probable cause to believe any animal is subjected to abuse or mistreatment, after obtaining a search warrant in the manner prescribed by law, a police officer may enter the premises where the animal is being held and impound such animal. If after reasonable search the owner or person having custody cannot be found and notified of impoundment, such notice shall be sent certified mail to the address, if any, at which the animal was impounded.

(4) Any sick or injured animal found by a police officer or animal control officer off the premises of the owner may be delivered to its owner. Any such animal for which the owner is either unknown or cannot be reached, after reasonable attempts to do so, shall be delivered by the animal control officer to a veterinarian for medical treatment in accordance with state and county regulations.

(5) Any police officer or animal control officer may humanely destroy a domestic pet or other domestic animal that is too severely injured to move to impound and is not on the property of its owner, when the owner is either unknown or cannot be reached after reasonable attempts to do so.

(6) No person shall fail to surrender an animal to a person identifiable as a police officer or Code Compliance Officer upon demand, so that the animal can be impounded or quarantined.

(E) *Continuous annoyance.* No person shall permit any animal to cause annoyance, alarm or noise disturbance for more than 15 continuous minutes at any time of the day or night, be it repeated barking, whining, screeching, crowing, howling, braying or other like sounds produced by the animal which can be heard beyond the boundary of the owner's property.

(F) *Animal abandonment.* A person commits the offense of animal abandonment if the person leaves a domesticated animal at a location without providing for the animal's continued care. It is no defense to the offense defined in division (E) above that the defendant abandoned the animal at or near an animal shelter, veterinary clinic or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

(G) *Forfeiture of rights.* In addition to, and not in lieu of, any other penalty it may impose, the municipal court may require defendant convicted under division (E) above to forfeit any rights in the animal subject to abuse, neglect or abandonment, and to repay the reasonable costs incurred by any person or agency prior to judgment in caring for each animal subjected to abuse, neglect or abandonment. Also, when the court orders the defendant's rights in the animal to be forfeited, the court may further order those rights be given over to the animal regulation authority for further disposition. A transfer of rights under this division (G) constitutes a transfer of ownership.

(Ord. 14-279, passed 6-12-2014) Penalty, see § 93.99

§ 93.03 NUISANCES AFFECTING PUBLIC HEALTH.

(A) No person shall cause or permit a nuisance affecting public health on property owned or controlled by the person.

(B) The following are nuisances affecting public health and may be abated as provided in this chapter:

- (1) Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with State Department of Environmental Quality regulations;
 - (2) Drainage of liquid wastes from private premises;
 - (3) Cesspools or septic tanks that are in an unsanitary condition or that cause an offensive odor or are not connected to the public sewer system;
 - (4) Premises that are in such a state or condition as to cause an offensive odor or that are in unsanitary condition;
 - (5) Decayed or unwholesome food offered for human consumption;
 - (6) Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial waste, oils, grease, petroleum or other substances placed in or near the water in a manner that will cause harmful material to pollute the water;
 - (7) Stagnant water that affords a breeding place for mosquitoes and other insect pests;
 - (8) Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the city;
 - (9) Indoor or outdoor burning of any material which causes offensive odor or is unsanitary. No person responsible shall burn in woodstoves or fireplaces any household waste, garbage, plastic, styrofoam or other noxious material; or
 - (10) Drainage of animal feces off of private property.
- (Ord. 14-279, passed 6-12-2014) Penalty, see § 93.99

§ 93.04 NUISANCES AFFECTING PUBLIC SAFETY.

(A) *Creating a hazard.* No person shall create a hazard by:

- (1) Maintaining or leaving, in a place accessible to children, a container with a compartment of more than one and one-half cubic feet capacity and with a door or lid that locks or fastens automatically when closed and that cannot be easily opened from the inside. This includes refrigerators, freezers, dryers or any other similar appliance (this does not include iceboxes, refrigerators or other containers offered for sale by commercial establishments, provided that the same are kept within enclosures from which children are excluded at all times except during business hours);
- (2) Being the owner or otherwise having possession of property on which there is a well, cistern, cesspool, excavation or other hole of a depth four feet or more, and top width of 12 inches or more and failing to cover or fence it with a suitable protective construction; or
- (3) Being the owner of any refuse, abandoned inoperable materials or furniture which allows for children to be on or near that may break, tear apart or fail on them.

(B) *Attractive nuisance.* No owner or person in charge of property shall permit on the property:

- (1) Unguarded machinery, equipment or other devices that are attractive, dangerous and accessible to children; or
- (2) Lumber, logs or piling placed or stored in a manner so as to be attractive, dangerous and accessible to children.

(C) *Surface waters, drainage.* No owner or person responsible or in charge of a building or structure shall permit rainwater, ice or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk. The owner or

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person in charge or property shall install, and maintain in a proper state of repair, adequate drainpipes or a drainage system, so that overflow water accumulating on the roof or about the building is not carried across or on the sidewalk.

(D) *Snow and ice.*

(1) No owner or person in charge of property, improved or unimproved, abutting on a public sidewalk shall permit:

(a) Snow to remain on the sidewalk for a period longer than the first 24 hours after the snow has fallen; or

(b) Ice to remain on the sidewalk for more than two hours of daylight after the ice has formed, unless the ice is covered with sand, ashes or other suitable material to assure reasonably safe travel.

(2) Any person injured due to the failure of an owner or person in charge of property to clear snow or ice from the sidewalk as required by this section shall have the right of action against such owner or person in charge of the property for damages. Such right of action is in lieu of any action against the city. In the event any action is filed against the city, the city shall have a right to indemnify from the owner or person in charge of the property for failure to comply with this section. The indemnity shall include not only damages awarded to the person injured but also all fees, costs and expenses in defending the action and the costs and fees for bringing an indemnity action.

(E) *Obnoxious vegetation.*

(1) Between May 15 and September 30 of any year, no owner or person in charge of property shall allow obnoxious vegetation to be on property or in the right-of-way of a public thoroughfare abutting on the property. An owner or person in charge of property shall cut down or destroy grass, shrubbery, brush, bushes, weeds or other obnoxious vegetation as often as needed to prevent them from becoming

unsightly, from becoming a fire hazard, or in the case of weeds or other obnoxious vegetation, from maturing or from going to seed.

(2) Between April and May 15 of each year, the City Recorder/Manager may cause to be published two times in a newspaper of general circulation in the city a copy of division (E)(1) above as a notice to all owners and persons in charge of property of the duty to keep their property free from obnoxious vegetation. The notice shall state that the city is willing to abate the nuisance on a particular parcel of property at the request of the owner or person in charge of the property for a fee sufficient to cover the city's abatement costs. The notice shall also state that, even in the absence of such requests, the city intends to abate all such nuisances ten or more days after the final publication of the notice and to charge the cost of doing so on a particular parcel of property to the owner or the person in charge of the property, or the property itself.

(3) If the notice provided for in division (E)(2) above is used, it shall be in lieu of the notice required by § 93.07.

(F) *Scattering rubbish.* No person shall deposit, on a public or a private property, rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property or would be likely to injure a person, animal or vehicle traveling on a public right-of-way.

(G) *Trees.* No owner or person in charge of property that abuts on a street or public sidewalk shall permit trees or bushes on the property to interfere with the street or sidewalk traffic. An owner or person in charge of the property that abuts on a street or sidewalk shall keep all trees and bushes on the premises, including the adjoining parking strip, trimmed to a height of not less than eight feet above the sidewalk and not less than ten feet above the roadway.

(1) No owner or person in charge of property shall allow a dead or decaying tree to stand

if it is a hazard to the public or to person(s) or property on or near the property.

(2) No owner or person in charge of property that abuts on a street or public sidewalk shall allow roots of a tree to interfere with the street or sidewalk.

(Ord. 14-279, passed 6-12-2014) Penalty, see § 93.99

§ 93.05 NUISANCES AFFECTING PUBLIC PEACE.

(A) *Radio and television interference.* No person shall operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design, between the hours of 10:00 p.m. and 5:00 a.m. unless such interference comes from an approved public festival or public indoor/outdoor event. (This section does not apply to devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.)

(B) *Junk.* No person shall keep junk outdoors on a street, lot or premises or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress.

(1) The term **JUNK**, as used in this section, includes all old motor vehicles and their parts, abandoned vehicles, wrecked, dismantled or inoperable vehicles, old boats and boat motors or parts, old machinery, old machinery parts, old iron or other metal, glass, paper, lumber, wood or waste or discarded material. For purposes of this division (B), the term **OLD** shall include, but not be limited to, a description of items which are dilapidated, abandoned, inoperable or otherwise in a state of disrepair.

(2) This section does not apply to junk kept in a licensed junkyard automobile wrecking house.

(3) Abatement of vehicles located on private property, which constitute a nuisance under

this section shall be done in accordance with the provisions of division (C) below.

(C) *Abandoned vehicles.* No person shall park, store, leave or permit the parking, storing or leaving of an abandoned vehicle, including motor vehicle, upon private property, or upon public property, including a public right-of-way. For purposes of this section, refer to definitions in § 93.01.

(1) For purposes of this section, a vehicle is considered to be an **ABANDONED VEHICLE** if it satisfies one of the following criteria:

(a) The vehicle is not currently licensed and registered for operation;

(b) The vehicle is being used to store junk, as defined in division (B) above, or rubbish, as defined in § 93.04(F); or

(c) The vehicle has parts which have been discarded, dismantled or partially dismantled, or stripped, or the vehicle is in a rusted, damaged, wrecked or other condition, which renders the vehicle inoperable.

(2) Upon determination by the city staff person in charge of enforcement regarding abandoned vehicles, which qualifies as a nuisance under this section, the city staff person may solicit voluntary compliance by affixing a notice to the abandoned vehicle. In the case of an abandoned vehicle on private property, permission to enter the property to affix the notice to the vehicle shall be obtained from the property owner, or shall be authorized by an inspection warrant. The notice shall provide the following information:

(a) The vehicle will be subject to being impounded by the city if the vehicle is not removed from the private property or public property within five days of the date of the notice. If the vehicle is to remain on private property, it must be stored within an enclosed structure or covered by an approved coverage device;

(b) The ordinance which has been violated and under which vehicle will be removed;

(c) The place where the vehicle will be impounded and the telephone number to find out information where the vehicle will be stored; and

(d) The vehicle, if impounded, will be subject to towing and storage charges and an administrative fee, and a lien will attach to the vehicle and its contents;

(e) The vehicle will be sold to satisfy the costs of towing and storage and administrative fees if these charges are not paid;

(f) The owner, possessor or person having an interest in the vehicle is entitled to a hearing, before the vehicle is impounded, to contest the proposed impoundment if a hearing is timely requested; and

(g) The time within which a hearing must be requested and the method for requesting a hearing.

(3) In the event the person responsible has not voluntarily complied by removing the vehicle from the private property or the public right-of-way or storing the vehicle within an enclosed structure or underneath an approved coverage device, the city staff person in charge of enforcement shall institute abatement proceedings to have the abandoned vehicle towed from the private property or the public right-of-way. The city staff person shall mail notice to the registered owner of the vehicle and to any lessor or security interest holders as shown in the Motor Vehicle Department records, and to the person responsible for creating the nuisance, if that person is not the registered owner of the vehicle and the city has been able to identify that person, that the vehicle has been impounded. The notice shall be sent by certified mail, return receipt requested, and be mailed within 48 hours of the impoundment. The notice shall include the following information:

(a) The location where the vehicle will be stored;

(b) That the vehicle and its contents are subject to a lien for the payment of storage and towing charges and an administrative fee of \$100,

the vehicle and its contents will be sold if those charges and administrative fee are not paid;

(c) The vehicle will not be released until the owner provides proof that the vehicle is currently licensed and registered, that the nuisance conditions will not be resumed, and all towing and storage fees and the \$100 administrative fee have been paid, and the city has authorized the release of the vehicle in writing;

(d) The person owning the vehicle or responsible for creating the nuisance may request a hearing before the City Council to contest the validity of the impoundment or the liability for storage and towing charges and the administrative fee. The request for a hearing must be made within five working days after the date that notice of impoundment is mailed, as evidenced by the postmark. The request for a hearing shall be made to the city staff person who issued the notice of impoundment;

(e) When a timely request for a hearing is made, a hearing shall be placed on the regular agenda at the next scheduled Council meeting, but may be postponed at the request of the person asking for the hearing; and

(f) The city shall have the burden of proving by a preponderance of the evidence that the vehicle, which was impounded, constituted a nuisance under this chapter. If the City Council finds that the impoundment of the vehicle was proper, the Council shall enter an order supporting the removal and shall find the owner of the vehicle or the person responsible for the nuisance is liable for the usual and customary towing and storage costs and administrative fee. If the City Council finds the impoundment of the vehicle was improper, the Council shall order the vehicle released to the person entitled to possession and shall enter a finding that the owner or the person responsible for creating the nuisance is not liable for any towing or storage costs resulting from the impoundment, and if there is a lien on the vehicle for towing and storage costs, the City Council shall order it paid by the city.

(4) Disposal of abandoned vehicles, which have been impounded under this section shall be done

in accordance with the applicable provisions of O.R.S. Chapter 819. The city shall be entitled to recover the costs of the nuisance abatement, including the \$100 administrative fee, in an appropriate action at law.

(5) Removal of an abandoned vehicle from one parcel of private property to another parcel of private property, or removal of an abandoned vehicle from private property onto a public right-of-way, or removal of an abandoned vehicle from one location to another location on a public right-of-way, after a notice has been affixed to the vehicle under division (C)(2) above, shall not prevent the city from proceeding with the process to have the vehicle towed from a parcel of private property or the public right-of-way and impounded under the provisions of division (C)(3) above.

(D) *Prohibited noise.* It shall be deemed a nuisance whenever any person produces or permits to be produced, with a sound-producing device, sound which either:

(1) When measured at or within the boundary of the property on which a noise-sensitive unit which is not the source of the sound is located, or, within a noise-sensitive unit that is not the source of the sound, exceeds: 50 dBA at any time between 10:00 p.m. and 7:00 a.m. of the following day; or 60 dBA at anytime between 7:00 a.m. and 10:00 p.m. of the same day; or

(2) Is plainly audible at any time between 10:00 p.m. and 7:00 a.m. of the following day:

(a) Within a noise-sensitive unit that is not the source of the sound; or

(b) On a public right-of-way at a distance of 50 feet or more from the source of the sound.

(3) If sound measurements are made, they shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this section, a sound level

meter shall contain at least an A-weighted and C-weighted scale and both fast and slow meter response capability and the capability to perform time average sound measurement.

(a) Personnel making sound measurements shall have completed training in the techniques of sound measurement and the use of the sound level meter from the State Department of Environmental Quality personnel or other competent training personnel. Measurement procedures consistent with that training shall be followed.

(b) Sound measurements may be made at or within the boundary of the property on which a noise sensitive unit that is not the source of the sound is located, or within a noise sensitive unit that is not the source of the sound.

(4) Notwithstanding divisions (D)(1) and (D)(2) above, the following exceptions from this section are permitted when the following conditions are present:

(a) Sounds caused by organized athletic, religious, educational, civic or other group activities, when such activities are conducted on property generally used for such purposes, including stadiums, parks, schools, churches, athletic fields, race tracks, airports and waterways, between the hours of 7:00 a.m. and 11:00 p.m. of the same day; provided that this exception shall not impair the City Manager's power to declare that such events or activities violate other applicable laws, ordinances or regulations;

(b) Sound caused by emergency work reasonably necessary to prevent injury to persons or property, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, whether or not such work is performed by a public or private agency, upon public or private property;

(c) Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft or commercially licensed watercraft operations;

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(d) Sound caused by bona fide use of emergency warning devices and alarm systems authorized by law;

(e) Sound caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9:00 a.m. and 4:00 p.m. of the same day, excluding weekends, unless such permit expressly authorized otherwise;

(f) Sounds caused by commercial, industrial, agricultural, timber harvesting, utility or construction organizations or workers during their normal operations;

(g) Sounds caused by motor vehicles operated on any highway and subject to O.R.S. 815.250; and

(h) Sounds caused by a sound-producing device that may violate any provision of this division (D) may apply to the City Recorder/Manager for a variance from such provision. The application for a variance shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought and any other supporting information that the City Recorder/Manager may reasonably require.

(5) Within ten days of receiving the application, the City Recorder/Manager shall deny it, approve it or approve it subject to conditions. A variance may be granted for a specific time interval only.

(6) In reviewing an application for a variance, the City Recorder/Manager shall consider:

(a) The nature and duration of the sound emitted;

(b) Whether the public health, safety or welfare would be endangered by approving the variance;

(c) Whether compliance with the provision would produce no benefit to the public; and

(d) Whether previous permits have been issued and the applicant's record of compliance.

(7) The City Recorder/Manager may at any time before or during the operation of a variance revoke the variance for good cause. (Ord. 14-279, passed 6-12-2014) Penalty, see § 93.99

§ 93.06 NON-ENUMERATED NUISANCES.

The acts, conditions or objects specifically enumerated and defined in §§ 93.02 through 93.05 are declared public nuisances and may be abated by the procedures set forth in §§ 93.07 through 93.12. In addition to the nuisances specifically enumerated in this chapter, every other thing, substance or act that is determined by the Council to be injurious or detrimental to the public health, safety or welfare of the city is declared a nuisance and may be abated as provided in this chapter. (Ord. 14-279, passed 6-12-2014)

§ 93.07 ABATEMENT PROCEDURE.

(A) *Notice.* On determination by the City Recorder/Manager that a nuisance exists, the City Recorder/Manager shall cause a notice to be posted on the premises or at the site of the nuisance, ordering the person responsible to abate the nuisance.

(1) At the time of posting, the City Recorder/Manager shall cause a copy of the notice to be forwarded by registered or certified mail to the person responsible at the person's last known address.

(2) The notice to abate shall contain:

(a) A description of the real property, by street address or otherwise, on which the nuisance exists;

(b) A direction to abate the nuisance within ten days from the date of the notice;

(c) A description of the nuisance;

(d) A statement that unless the nuisance is removed, the city may abate the nuisance and the cost of abatement will be charged to the person responsible;

(e) A statement that failure to abate a nuisance may warrant imposition of a fine;

(f) A statement that the person responsible may appeal the order to abate by giving notice to the City Recorder/Manager within ten days from the date of the notice; and

(g) A statement that the city will destroy, sell, auction or do whatever it takes to be reimbursed for abatement and administrative costs. The owner or person responsible for the nuisance causing such abatement can retain the property within ten days if they pay all fees associated with the abatement.

(3) If the person responsible is not the owner, an additional notice shall be sent to the owner, stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.

(4) Upon completion of the posting and mailing, the persons posting and mailing shall execute and file certificates stating the date and place of the mailing and the posting.

(5) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

(B) *Appeal procedure.*

(1) Appeals to an order to abate shall be heard by the City Council. The City Council shall conduct a hearing on the appeal within 45 days of the filing of the appeal.

(2) The city must prove the existence of the nuisance by a preponderance of the evidence. The hearing shall be limited to admissible evidence. The City Council may prescribe by rule or regulation the procedures for the conduct of the hearings in conformity with applicable state statutes and may

consult with its legal counsel regarding the interpretation and application of this chapter.

(3) The City Council has the authority to administer oaths and take testimony of witnesses.

(4) The person alleged to be responsible for the nuisance shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence on his or her behalf, but cannot be compelled to do so.

(5) After due consideration of the evidence and arguments, the City Council shall determine whether a nuisance has been established. If the nuisance has not been established, an order dismissing the same shall be entered. When the determination is that the nuisance has been established, an appropriate order shall be entered in the records. A copy of the order shall be delivered to the person named in the order personally or by mail or to their attorney of record.

(6) The determination by the City Council shall be in writing and shall contain findings of fact and conclusions of law. The determination shall be issued within 30 days of the hearing and shall be final. The City Council's decision may be appealed to the Circuit Court with proper jurisdiction through the writ of review process.

(7) A tape recording shall be made of the hearing, which tape shall be retained for at least 90 days following the City Council's final judgment. (Ord. 14-279, passed 6-12-2014)

§ 93.08 ABATEMENT BY THE PERSON RESPONSIBLE.

Within ten days after the posting and mailing of the notice as provided in § 93.07, the person responsible shall remove the nuisance or show that no nuisance exists.

(A) A person responsible, protesting that no nuisance exists, shall file a written statement that specifies the basis for the protest with the City Recorder/Manager.

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(B) The statement shall be referred to the Council as part of its regular agenda at its next scheduled meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council. The Council shall determine whether a nuisance in fact exists, and the determination shall be entered in the official minutes of the Council. Council determination shall be required only in cases where a written statement has been filed as provided.

(C) If the Council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within ten days after the Council determination.
(Ord. 14-279, passed 6-12-2014)

§ 93.09 JOINT RESPONSIBILITY.

If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.
(Ord. 14-279, passed 6-12-2014) Penalty, see § 93.99

§ 93.10 ABATEMENT BY THE CITY.

If the person responsible has not abated the nuisance within the time allowed, the Council may cause the nuisance to be abated.

(A) The officer charged with abatement of the nuisance shall only have the right to enter into or upon the property with the owner's permission or in accordance with the law. If the owner refuses, the officer may not enter a dwelling or abate nuisance not affecting public health or safety until a warrant has been issued allowing entry. Where a nuisance affecting public health or safety has been found to exist, the officer may enter the property to abate the nuisance in accordance with this section.

(B) The City Recorder/Manager shall keep an accurate record of the expense incurred by the city in physically abating the nuisance, and shall include a

charge of \$100 or 10% of those expenses, whichever is greater, for administrative costs.
(Ord. 14-279, passed 6-12-2014)

§ 93.11 ASSESSMENT OF COSTS.

The City Recorder/Manager shall forward to the owner and the person responsible, by registered or certified mail, a notice stating:

(A) The total cost of abatement, including the administrative costs;

(B) The costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice; and

(C) If the owner or the person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the City Recorder/Manager not more than ten days from the date of the notice.
(Ord. 14-279, passed 6-12-2014)

§ 93.12 SUMMARY ABATEMENT.

The procedure provided by this chapter is not exclusive, but is an addition to procedures provided by other ordinances. Any city official may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property.
(Ord. 14-279, passed 6-12-2014)

§ 93.99 PENALTY.

(A) *Generally.* Any person in violation of any provision of this chapter shall, upon conviction thereof, be imposed a fine not to exceed the amount of \$750 per violation.

(B) *Separate violations.*

(1) Each day's violation of a provision of this chapter constitutes a separate offense.

(2) The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement of a nuisance within ten days of the date of notice to abate, or if a written protest has been filed, then abatement within ten days of Council determination that a nuisance exists, will relieve the person responsible from the imposition of a fine under division (A) above.

(Ord. 14-279, passed 6-12-2014)

CHAPTER 94: STREETS AND SIDEWALKS

Section

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GENERAL PROVISIONS

§ 94.01 PURPOSE.

(A) *Generally.* The purpose of this subchapter is to establish specific responsibilities, use and maintenance for the captioned property. This subchapter is undertaken for the general welfare, safety and quality of life of the citizens of the city.

The further purpose of this subchapter is to place sole liability and responsibility for maintenance of public sidewalks, rights-of-way and alleys upon the adjoining property owners and to absolve the city of all liability and obligations relating to same.

(B) *Jurisdiction.* The city has jurisdiction and exercises regulatory control over all public rights-of-way within the city under the authority of the City Charter and state law.

(C) *Scope of regulatory control.* The city has jurisdiction and exercises regulatory control over each public right-of-way whether the city has a fee, easement or other legal interest in the right-of-way. The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

(D) *Obligations of city.* The exercise of jurisdiction and regulatory control over a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way. (Ord. 154, passed 3-17-1993; Ord. 11-271, passed - - 2011)

§ 94.02 DEFINITIONS.

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

ACTIVITIES. The use of the public right-of-way for events which are limited to specific

times, including, but not limited to, sidewalk sales, outdoor commercial displays, food and merchandise vending and other special events.

ADJACENT OF ADJOINING LANDOWNER.

Any person, person or entity owning land with a sidewalk, right-of-way or alley constructed or existing in front of, along or abutting said land within the city of jurisdiction of the city.

ALLEY. A public thoroughfare or easement through a block or any portion thereof generally giving access to the rear of lots or buildings.

PERMANENT IMPROVEMENT. A fixture of construction in the public right-of-way which is intended to become an integral part of the public infrastructure, including but not limited to streets, sidewalks, walkways, bicycle pathways, improved parking areas, driveway approaches, storm drainage facilities, electric power lines and hardware, streetlights, water lines and sanitary sewer lines.

PERSON. An individual, corporation, association, firm, partnership, joint stock company and similar entities.

PUBLIC RIGHTS-OF-WAY. Includes, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

SIDEWALK. A pedestrian way, usually paved, where vehicular traffic is excluded.

TEMPORARY IMPROVEMENT. A fixture of construction in the public right-of-way which is not intended to become an integral part of the public infrastructure, including but not limited to landscaping fences, signs, canopies, irrigation systems and private or quasi-private parking areas.

WITHIN THE CITY. Territory over which the city now has or acquires jurisdiction for the exercise of its powers.

(Ord. 154, passed 3-17-1993; Ord. 11-271, passed - - 2011)

§ 94.03 SIDEWALKS.

Sidewalks shall be maintained in a safe condition by the adjacent property owner. Sidewalks shall remain free of hazards, debris, ice and snow and shall be kept in a good repair. Repairs and maintenance are the sole responsibility of the adjacent property owner and shall be promptly made. Pedestrian traffic shall be unimpeded except for reasonable periods for repairs and maintenance. (Ord. 154, passed 3-17-1993)

§ 94.04 RIGHT-OF-WAY.

It shall be the sole responsibility of the adjacent property owner(s) to maintain the right-of-way in a safe condition. Placement of any item or structure, excluding mail or newspaper boxes, in a right-of-way is prohibited. Weeds and grasses shall be controlled or cut to eliminate fire and other hazards. Unless otherwise posted, temporary automobile/motorcycle parking is allowed in the right-of-way. In no case, however, will motor homes, trailers or disabled vehicles or objects be parked or placed in the right-of-way except for a reasonable time for loading or unloading same.

(Ord. 154, passed 3-17-1993; Ord. 16-288, passed 10-13-2016)

§ 94.05 ALLEYS.

(A) Adjacent property owners shall be solely responsible to maintain alleyways in a safe and clean condition. Where an alley runs between land owned by separate owners, each adjacent owner shall be responsible for one-half of the alley's width for so far as the alley adjoins the owner's land. Weeds and grasses shall be controlled or cut to eliminate fire and other hazards. Alleys shall not be used for storage. Nor shall pets or animals be maintained therein. Out-buildings or intrusions of adjacent buildings is expressly prohibited.

(B) The city hereby grants a one year grace period, from enactment of this subchapter, for enforcement of this section of the ordinance. (Ord. 154, passed 3-17-1993)

§ 94.06 REMEDIAL ACTION.

Where noncompliance with this subchapter is brought to the attention of the city, the noncompliance may be treated as a nuisance. The provisions of §§ 93.07 through 93.12 shall apply to abatement of violations of this section. As provided in §§ 93.07 through 93.12, remedial action may, in the city's discretion, be initiated without the city assuming any liability for the noncomplying condition. The city may undertake such remediation as is necessary to alleviate the noncomplying condition, and the responsible party owner shall pay the city for all reasonable expenses incurred in remediation of the noncomplying condition. (Ord. 154, passed 3-17-1993; Ord. 16-288, passed 10-13-2016)

§ 94.07 LANDOWNER LIABILITY, CITY EXONERATION, INDEMNIFICATION.

(A) It is not only the duty of all owners of land within the city to keep in good repair and to so maintain all sidewalks, rights-of-way and alleys constructed or existing in front of, along or abutting their respective lots, but all such owners are hereby declared to be liable for all damages to any person or entity for any damage sustained as a result of any condition of or existing within or on any sidewalk, right-of-way or alley within the city's jurisdiction.

(B) Said liability rests solely with the property owner(s) whose land adjoins the condition giving rise to the particular cause of action or hazard, and not with the city, regardless of whether or not the city has notice of noncomplying condition or hazard. (Ord. 154, passed 3-17-1993)

§ 94.08 ACCESS.

The city retains full access to the areas defined and may at any time use the aforementioned land for the general benefit of the city. (Ord. 154, passed 3-17-1993)

§ 94.09 ENFORCEMENT.

Enforcement of this subchapter may be carried out by the state police, the County Sheriff's Department and other law enforcement agencies. (Ord. 154, passed 3-17-1993; Ord. 190, passed 11-10-1994)

§ 94.10 CITY PERMISSION REQUIREMENT.

(A) No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises, licenses and permits.

(1) A public works permit shall be requested and secured from the City Recorder/Manager prior to making any permanent improvements in a right-of-way, and in accordance with provision of the zoning ordinance.

(2) A right-of-way permit shall be requested and secured for any temporary improvements or activities in a right-of-way. Such a permit shall be issued only after approval by the City Recorder/Manager, who shall review the request to ensure conformance with the requirements of this chapter and all other applicable rules and regulations as to whether, in his or her discretion, the public's safety will be compromised.

(B) Once a right-of-way or public works permit has been issued, it may be recorded with the County Clerk, if in the city's judgment, it is necessary. The property owner shall be responsible for all recording costs. (Ord. 11-271, passed - -2011) Penalty, see § 10.99

§ 94.11 IMPROVEMENTS AND ACTIVITIES IN PUBLIC RIGHTS-OF-WAY.

(A) Any person planning to dig or excavate in the right-of-way in order to make permanent improvements, temporary improvements or conduct activities shall first notify the State Utilities

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Notification Center to ensure that all underground utilities are located and marked prior to undertaking any such digging or excavation.

(B) No improvement or activity will be approved if it does not meet the requirements of the zoning district in which it is located, or any other regulation, which may be deemed applicable.

(C) Temporary improvements and activities are the responsibility of the property owner, and the city may, at any time, require the removal or modification of any improvement or activity if deemed necessary by the city. Where deemed necessary by the city, persons may be required to maintain liability insurance on their improvement or activity, in an amount specified by the city, naming the city as an additionally insured party.

(D) For all improvements and activities in the public rights-of-way, a minimum four feet wide area of sidewalk or walkway space must be kept clear horizontally and eight feet vertically in order to permit adequate and safe pedestrian circulation and passage.

(Ord. 11-271, passed - -2011) Penalty, see § 10.99

§ 94.12 ACCEPTANCE OF PUBLIC RIGHTS-OF-WAY.

For a right-of-way to be accepted as a city public right-of-way, the City Council shall put forth a written order accepting such public right-of-way, whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

(Ord. 11-271, passed - -2011)

DRAINAGEWAYS AND CULVERTS

§ 94.25 NEW DRAINAGEWAYS AND CULVERTS OR REPAIRS; REQUIRED WHEN.

(A) Property owners shall maintain at all times any drainageways and culvert or curb adjacent to their land in a reasonably safe condition and shall be liable for any damage or injury by a failure to do so. Nothing contained in this subchapter is intended to alter the duties and liabilities imposed by the city zoning ordinance.

(B) No recourse whatsoever shall be had against the city, its Council, Mayor, employees or agents for damage or loss to person or property arising out of the negligent or otherwise harmful maintenance of any drainageways and culverts described in division (A) above.

(C) A property owner described in division (A) above shall indemnify, defend and hold the city, its Council, Mayor, employees and agents harmless against any claim, suit or action made against the City, its Council, Mayor, employees and agents as a result of any person's failure to fulfill the duty imposed by division (A) above.

(D) In case the owner fails to keep such drainageways and culverts in repair, the council may proceed to repair or replace the same on the same notice and in the same manner as specified in the city ordinance for the construction of new sidewalks.

(E) No culvert shall be repaired where, in the judgment of the Council, a new culvert should be installed, and the decision of the Council as to whether an existing culvert should be repaired or a new culvert constructed in the place thereof shall be final and binding upon all property owners.

(Ord. 02-236, passed 1-10-2002)

§ 94.26 REPAIR AND MAINTENANCE OF DRAINAGEWAYS AND CULVERTS IN THE PUBLIC RIGHT-OF-WAY.

(A) It is declared to be the duty of the owners of all property in the city to keep the drainageways and culverts and the area along and adjacent to same clean and free from refuse of all kinds.

(B) No person owning real property shall cause or allow the drainageways and culvert, in the abutting public right-of-way to present an unreasonable risk of harm to persons or property.

(C) For purposes of this section, drainageways and culverts shall be deemed to present an unreasonable risk of danger to person or property if, among other things:

(1) There exists in the drainageway or culvert, problem rainwater runoff (PRWRO), any pool of water accumulating in the public right of way because of rainfall that does not dissipate within 24 hours after the rain ceases to fall;

(2) A culvert installed after October, 2001 shall be manufactured of corrugated metal or other material approved by the Planning Commission prior to installation, and shall be not less than 12 inches diameter; or

(3) A drainageway or culvert remains in a state of disrepair for a period of time exceeding 30 days after notice is provided to the property owner

(D) The existence of drainageways and culverts, in such condition as to present an unreasonable risk of danger to persons or property hereby is declared to be a public nuisance and may be abated by any of the procedures set forth in the city's nuisance abatement ordinance.

(E) A person who owns property that abuts a drainageways and culvert, in such condition as to present an unreasonable risk of danger to persons or property is civilly liable for all claims arising from that condition notwithstanding the person's notice of

the condition and notwithstanding the time period allowed by law to correct same before abatement as a public nuisance.

(Ord. 02-236, passed 1-10-2002) Penalty, see § 10.99

§ 94.27 PERMIT ISSUANCE AND FEES.

(A) The Building Clerk shall issue a permit upon approval of a permit application for construction and repairs to all drainageways and culverts within city rights-of-way.

(B) A deposit or bond in the amount established by Council resolution shall be collected from all applicants for new drainageways and culvert construction prior to issuance of a permit. The deposit shall be returned to the applicant upon inspection and approval by the City Engineer's designee of the constructed or repaired drainageways and culvert. The deposit or bond shall be waived in the case of repairs to existing drainageways and culvert. The permit for each construction or repair shall declare the applicants responsibility for repair or replacement of any defective or damaged drainageways and culvert affected by this work.

(C) A permit fee shall be collected by the city for each drainageways and culvert repair or construction permit in the amount established by Council resolution.

(D) No person shall construct a drainageways and culvert in the public right-of-way, except in accordance with current standards and specifications established by the City Engineer or in accordance with the zoning ordinance.

(E) No person shall construct drainageways or culverts without first obtaining a permit from the city and complying with the provisions of city ordinances. If the city is requiring the construction, the permit shall state the date within which the work shall be completed.

(Ord. 02-236, passed 1-10-2002) Penalty, see § 10.99

