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CHAPTER 90: HEALTH AND SANITATION; NUISANCES

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GENERAL PROVISIONS

§ 90.01 TOILET INSTALLATION REQUIRED.

It is the duty of every owner or occupant of any property within the city, having a dwelling house or business building situated thereon, which property is abutting a street in which there are city water and sewer mains, to install a toilet in the dwelling or business building and make connection thereof with the water and sewer mains. The city shall serve written notice upon the owner or occupant requiring the installation of toilet facilities upon premises described in the notice, and connection thereof with the sewer and water mains, all of which shall be done within 30 days after service of the written notice. Whenever any owner or occupant shall default in compliance with the written notice the Council may, by resolution, direct that a toilet be installed and connection made with the water and sewer mains and that the actual cost of the installation be paid in the first instance out of the General Revenue Fund, and assessed against the property so benefitted. After the installation and connection is completed by order of the Council, the city shall serve a written notice of intention to make an assessment therefor. If the assessment is not paid within ten days the city shall certify the amount thereof to the County Auditor in the same manner as with other special assessments; provided that, the Council may, by resolution, provide that the assessment be spread over a term of four years upon written request by the owner of the property.

(Prior Code, § 10.02) Penalty, see § 90.99

REFUSE STORAGE AND DEPOSIT

§ 90.15 DEFINITIONS.

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

COMMERCIAL ESTABLISHMENT. Any premises where a commercial or industrial enterprise of any kind is carried on, and shall include restaurants, clubs, churches and schools where food is prepared or served.

MULTIPLE DWELLING. Any building used for residential purposes consisting of more than four dwelling units with individual kitchen facilities for each.

REFUSE. Includes all organic material resulting from the manufacture, preparation or serving of food or food products, and spoiled, decayed or waste foods from any source, bottles, cans, glassware, paper or paper products, crockery, ashes, rags and discarded clothing, tree or lawn clippings, leaves, weeds and other waste products, except human waste or waste resulting from building construction or demolition.

RESIDENTIAL DWELLING. Any single building consisting of one through four dwelling units with individual kitchen facilities for each.

(Prior Code, § 10.01)

§ 90.16 STORAGE.

(A) It is unlawful for any person to store refuse on residential dwelling premises for more than one week. All such storage shall be in five- to 30-gallon metal or plastic containers with tight-fitting covers, which shall be maintained in a clean and sanitary condition; provided that, tree leaves, weeds and grass clippings may be stored in plastic bags and tree limbs must be stored in bundles weighing no more than 75 pounds and no longer than four feet.

(B) It is unlawful for any person to store refuse on multiple dwelling premises for more than one week. The storage shall be in containers as for residential dwelling premises; except that, so-called “dumpsters” with close-fitting covers may be substituted.

(C) (1) It is unlawful for any person to store refuse on commercial establishment premises for more than 48 hours.

(2) The storage shall be in containers as for residential dwelling premises; except that,

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so-called “dumpsters” with close-fitting covers may be substituted.

(D) It is unlawful to store organic refuse unless it is drained and wrapped.
(Prior Code, § 10.01) Penalty, see § 90.99

§ 90.17 DEPOSIT.

It is unlawful for any person to deposit refuse from any source, rubbish, offal or the body of a dead animal, in any place other than a sanitary landfill.
(Prior Code, § 10.01) Penalty, see § 90.99

§ 90.18 FIRE DANGER.

It is unlawful for any person to store, deposit or dispose of any refuse which is in flames or heated to the point where it could cause danger of fire in other refuse.
(Prior Code, § 10.01) Penalty, see § 90.99

SHADE TREE DISEASE CONTROL AND PREVENTION

§ 90.30 POLICY AND PURPOSE.

(A) The city has determined that the health of oak and elm trees is threatened by fatal diseases know as oak wilt, Emerald Ash Borer and Dutch elm disease.

(B) It has further determined that the loss of oak and elm trees located on public and private property would substantially depreciate the value of property and impair the safety, good order, general welfare and convenience of the public.

(C) It is declared to be the intention of the Council to control and prevent the spread of these diseases.
(Prior Code, § 10.06)

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§ 90.31 DEFINITIONS.

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

NUISANCE.

(1) Any living or standing tree infected to any degree with a shade tree disease; or

(2) Any logs, branches, stumps or other parts of any dead or dying tree, so infected, unless the parts have been fully burned or treated under the direction of the Tree Inspector.

SHADE TREE DISEASE. Dutch elm disease or oak wilt disease.

TREE INSPECTOR. The Superintendent of Maintenance, or such other employee of the city as the Council may designate and who shall thereafter qualify, together with his or her duly designated assistants.

(Prior Code, § 10.06)

§ 90.32 SCOPE AND ADOPTION BY REFERENCE.

M.S. § 18G.13, as it may be amended from time to time, is hereby adopted by reference, together with the rules and regulations of the state's Commissioner of Agriculture relating to shade tree diseases; provided that, this subchapter shall supersede the statutes, rules and regulations, only to the extent of inconsistencies.

(Prior Code, § 10.06)

§ 90.33 UNLAWFUL ACT.

It is unlawful for any person to keep, maintain or permit, upon premises owned by him or her or upon public property where he or she has the duty of tree maintenance, any nuisance, as herein defined.

(Prior Code, § 10.06) Penalty, see § 90.99

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§ 90.34 INSPECTION AND DIAGNOSIS.

It is the power and duty of the Tree Inspector to enter upon public or private property, at any reasonable time, for the purpose of inspecting for, and diagnosing, shade tree disease. In cases of suspected shade tree disease and, in performance of his or her duties, the Tree Inspector may remove the specimens, samples and biopsies as may be necessary or desirable for diagnosis.

(Prior Code, § 10.06)

§ 90.35 ABATEMENT OF NUISANCE.

Abatement of a nuisance, defined herein, shall be by spraying, removing, burning or otherwise effectively treating the infected tree or wood to prevent spread of shade tree disease. The abatement procedures shall be carried out in accordance with current technical and expert methods and plans as may be designed by the Commissioner of Agriculture of the state. The city shall establish specifications for tree removal and disposal methods consistent therewith.

(Prior Code, § 10.06)

§ 90.36 REMOVAL OF INFECTED TREES AND WOOD.

(A) Whenever the Tree Inspector finds with reasonable certainty that the infection, or danger of infection, exists in any tree or wood on any public or private property, he or she shall proceed as follows.

(1) If the Tree Inspector finds that the danger of infection of other trees is not imminent because of dormancy of shade tree disease, he or she shall make a written report of his or her finding to the Council which shall proceed by:

(a) Abating the nuisance as a public improvement under M.S. Ch. 429, as it may be amended from time to time; or

(b) Abating the nuisance as provided in division (B) below.

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(2) If the Tree Inspector finds that the danger of infection of other trees is imminent, he or she shall notify the owner of the property, or the abutting property, as the case may be, by certified mail that the nuisance will be abated within a specified time, not less than ten days from the date of mailing of the notice. The Tree Inspector shall immediately report the action to the Council and, after the expiration of the time limited by the notice, he or she may abate the nuisance.

(3) If the Tree Inspector finds with reasonable certainty that immediate action is required to prevent the spread of shade tree disease, he or she may proceed to abate the nuisance forthwith. He or she shall report the action immediately to the Council and to the abutting property owner or to the owner of the property where the nuisance is located.

(B) Upon receipt of the Tree Inspector's report required by division (A)(3) above, the Council 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 affected property owners and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the streets affected, action proposed, the estimated cost of the abatement and the proposed basis of assessment, if any, of costs. At the hearing or adjournment thereof, the 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 such modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

(C) The Tree Inspector shall keep a record of the costs of abatements done under this section and shall report monthly to the City Administrator 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) On or before September 1 of each year, the City Administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this 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.

(E) No damage shall be awarded the owner for destruction of any tree, wood or part thereof pursuant to this subchapter.

(Prior Code, § 10.06)

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§ 90.37 SPRAYING TREES.

(A) Whenever the Tree Inspector determines that any tree or wood is infected or threatened with infection, he or she may spray or treat all nearby high value trees with an effective concentrate or fungicide or both. Activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the Commissioner of Agriculture and under the supervision of the Commissioner and his or her agents whenever possible.

(B) The notice and assessment provisions of § 90.36 of this chapter apply to spraying and treatment operations conducted under this section.

(Prior Code, § 10.06)

§ 90.38 TRANSPORTING WOOD PROHIBITED.

(A) It is unlawful for any person to transport elm wood, including elm firewood, with bark intact into or through the city, or into or through any designated “disease control area” as defined by M.S. § 18G.13, as it may be amended from time to time.

(B) This prohibition shall not apply to movement of the wood pursuant to an approved wood disposal or utilization program authorized by M.S. § 18G.13, as it may be amended from time to time, or to transportation of elm wood intended for industrial use not to include firewood; provided, the transportation of elm logs for industrial use continues without interruption through the city or “disease control area” to their intended destination lying outside the city and “disease control area”.

(Prior Code, § 10.06) Penalty, see § 90.99

§ 90.39 INTERFERENCE PROHIBITED.

It is unlawful for any person to prevent, delay or interfere with the Tree Inspector while he or she is engaged in the performance of duties imposed by this subchapter.

(Prior Code, § 10.06) Penalty, see § 90.99

§ 90.40 TREE INSPECTOR; ADDITIONAL DUTIES.

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(A) It is the additional duty of the Tree Inspector to coordinate, under the direction and control of the Council, all activities of the city relating to the control and prevention of shade tree disease.

(B) He or she shall recommend to the Council the details of a program for the control of the diseases and perform the duties incident to such a program adopted by the Council.
(Prior Code, § 10.06)

§ 90.41 DISEASED TREES IN STREETS.

The rights, duties and responsibilities of property owners set forth in this subchapter shall be equally applicable to, and binding upon, abutting property owners with tree maintenance responsibilities under §§ 151.085 through 151.089 of this code of ordinances.
(Prior Code, § 10.06)

§ 90.42 SUBSIDIES.

The duty of any property owner to bear the cost of removing or maintaining trees, whether by private contract or assessment, shall be subject to a subsidy policy, if any, established by the city for the treatment or removal of trees infected with shade tree disease.
(Prior Code, § 10.06)

INOPERABLE VEHICLES, JUNK, APPLIANCES AND THE LIKE

§ 90.55 DEFINITION.

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

INOPERABLE VEHICLE. Any motor vehicle, recreational vehicle, boat, trailer or semi-trailer which lacks a current registration, including component parts of any vehicles, or which will not operate consistent with its usual functions or which, because of its condition is unfit for the use for

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which it is intended and which had been located on the premises for ten days or longer outside an enclosed building.

JUNK. All scrap metal, rags, batteries, paper, trash, rubber tires, debris, waste, wood, stone, masonry and concrete blocks, and/or construction materials not used in connection with a building project on which there has been issued a valid building permit or which is carried as inventory in an on-going construction business at a lawful place of business; dismantled vehicles, machinery and equipment and appliances or parts thereof and parts of vehicles, glass, tinware, plastic, aluminum and/or steel cans, old or discarded household goods, metal household furnishings, furniture or hardware.

(Prior Code, § 10.13)

§ 90.56 DECLARATION OF NUISANCE AND UNLAWFUL ACT.

(A) The city finds that the outside parking of inoperable vehicles and outside storage of junk is a nuisance and unlawful act because of any or all of the following:

- (1) Threat to public health through accumulations of water and/or breeding of mosquitoes;
- (2) Obstructed views on streets and private property;
- (3) Creation of cluttered and otherwise unsightly areas;
- (4) Potential to decrease adjoining landowners' and occupants' enjoyment of their property;

and/or

- (5) Potential decrease of adjoining and nearby property values.

(B) It is unlawful for any person to accumulate and store any inoperable vehicles or junk, as defined above, unless housed in a completely enclosed building and the unlawful storage of inoperable vehicles or junk upon a public or private premises is hereby declared to be a public nuisance affecting health and safety.

(Prior Code, § 10.13) Penalty, see § 90.99

§ 90.57 ENFORCEMENT.

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The Administrator and/or city designated law enforcement shall enforce the provisions of this subchapter and ensure that proper procedures are followed.
(Prior Code, § 10.13)

§ 90.58 NOTICE AND ABATEMENT.

(A) *Public nuisance.* Whoever by his or her act or failure to perform a legal duty or whoever intentionally permits or maintains any “unlawful act” or any of the conditions in division (B) below, is committing or maintaining a public nuisance, which may be enjoined and/or abated as noted below. The city finds, in its legislative capacity that these conditions may annoy, injure members of the public, or endanger the health, safety, morals, welfare or repose of members of the public.

(B) *Other public nuisances affecting health or safety.* The following are hereby declared to be nuisances affecting health because of the potential each of these scenarios have to the spread of disease:

- (1) Exposed accumulation of decayed or unwholesome food or vegetable matter;
- (2) All diseased animals running at large;
- (3) All ponds or pools of stagnant water;
- (4) Carcasses of animals not buried or destroyed within 24 hours after death;
- (5) Accumulations of manure, refuse, junk or other debris, including inoperable vehicles or tires where water may accumulate, thus increasing the potential for mosquito breeding;
- (6) Vaults or garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
- (7) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances;
- (8) All noxious weeds and other rank growths of vegetation upon public or private property; and

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(9) Dense smoke, noxious fumes or gas.

(C) Investigation.

(1) Whenever a public officer or other person charged with enforcement determines that a public nuisance may be maintained or exists on premises in the city, the city enforcement officer shall investigate the scene.

(2) If it appears a nuisance may exist, the officer or a designee shall notify, in writing, the owner or occupant of the premises of the fact and request that the nuisance be terminated and abated.

(D) *Notice.* The notice shall be served in person or by certified or registered mail to the owner of record and the occupant of the property, if known. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding ten days, within which the nuisance is to be abated. The notice shall also indicate that there shall be a hearing set before the City Council to review the situation and to allow the respondent(s) to contest the claim that a nuisance exists. The respondent shall be notified of the time and place of the hearing. The Council will learn at the hearing whether the respondent has remedied the alleged nuisance. The Council will review the evidence as to the status of the property and make findings as to whether, in its opinion, a nuisance exists. A finding that a nuisance exists shall be made based upon clear and convincing evidence, and any finding shall be by a majority of the members of the City Council. A copy of the written findings shall be mailed to the owner of record and occupant of the property by certified mail. If a nuisance is found to exist by the City Council, the city shall be, and hereby is authorized to abate the nuisance.

(E) *Immediate abatement.* If an emergency exists that presents an immediate danger to citizens affecting their safety, the officer shall require immediate abatement of the nuisance. The notice shall explain why there is an immediate danger. If the notice is not complied with within the time specified, the enforcing officer shall report that fact forthwith to the Council and may take other appropriate action as may be necessary. The Council may, after notice to the owner or occupant, and a hearing before the City Council, provide for the abating of the nuisance by the city.

(Prior Code, § 10.13)

§ 90.59 RECOVERY OF COST.

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The owner of the premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including, but not limited to, administrative costs. As soon as the work has been completed and cost determined, the City Recorder shall prepare a bill for the cost and mail it to the owner. Thereupon, the amount shall be immediately due and payable to the City Administrator.

(Prior Code, § 10.13)

§ 90.60 ASSESSMENT.

If the cost of abating the nuisance is not paid in full to the City Administrator by the following September 1, the City Administrator shall list the total unpaid charges along with the other charges, as well as other charges for current services to be assessed under M.S. § 429.101, as it may be amended from time to time, against each separate lot or parcel to which charges are attributable. The Council may then spread the charges against the property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the Council may determine in each case.

(Prior Code, § 10.13)

§ 90.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful or fails to act when the failure is prohibited or declared unlawful by a code adopted by reference by this chapter and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Prior Code, § 10.99)

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GENERAL PROVISIONS

§ 91.01 DEFINITIONS.

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

ANIMALS. Includes farm animals and all other animals, reptiles and feathered birds or fowl, except dogs, cats, gerbils, rabbits, hamsters and caged household birds.

FARM ANIMALS. Cattle, horses, mules, sheep, goats, swine, ponies, ducks, geese, turkeys, chickens, guinea hens and honey bees.
(Prior Code, § 10.05) (Ord. passed 6-12-2017)

§ 91.02 KEEPING ANIMALS.

It is unlawful for any person to keep or harbor any animal, not in transit, except:

(A) Farm animals kept in that portion of the city zoned for agricultural purposes;

(B) Animals kept as part of a show licensed under the city code;

(C) Animals used in a parade;

(D) Animals kept in a laboratory for scientific or experimental purposes; or

(E) Animals kept in an animal hospital or clinic for treatment by a licensed veterinarian.

(Prior Code, § 10.05) Penalty, see § 91.99

§ 91.03 NUMBER.

No person shall own, keep, harbor or maintain more than three animals of each species, not included permitted chickens, on their premises within the city or permit such animals to be at large in the city. An owner shall have 90 days from the date of birth of any new members of that species in

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which to comply with the provisions of this section.

(Ord. passed 6-12-2017) Penalty, see § 91.99

§ 91.04 ANIMALS IN TRANSIT.

It is unlawful for any person to transport animals unless they are:

(A) Confined within a vehicle, cage or other means of conveyance;

(B) Farm animals being transported in a portion of the city zoned for agricultural purposes; or

(C) Restrained by means of bridles, halters, ropes or other means of individual restraint.

(Prior Code, § 10.05) Penalty, see § 91.99

§ 91.05 CHICKENS LIMITED; PERMIT; COOPS AND RUNS.

(A) It is unlawful for any person to own, keep or maintain hen chickens in the city unless the property is in the rural residential zoning district or issued a chicken permit. A permit shall only be issued for a property situated in the R-1 and R-2 (single-family residence) District. No chicken permit shall be issued for more than five hen chickens or one chicken per 1,800 square feet of lot size, whichever number is less. Roosters are prohibited.

(B) No person shall own, keep, harbor or have custody of any live chicken without first obtaining a permit in writing from the city. A person applying for a permit shall include the following information in written form: a scaled diagram with the location of the chicken coop or run on the property; property lines with dimensions and location of buildings; distance from the coop or run to adjacent buildings not located on the property; and a completed application which includes written consent of 100% of the owners or occupants of privately or publicly owned real estate that is located adjacent (i.e., sharing property lines) on the outer boundaries of the premises for which the permit is being requested, or in the alternative, proof that the applicant's property lines are 150 feet or more from any house. Cost of the annual permit shall be set by resolution.

(C) A separate coop is required to house chickens. Coops cannot be housed within or attached to a residential building. All chicken coops and runs must be located within the rear yard and are subject to the required setbacks for accessory structures; must be located at least 50 feet from any

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existing residential building not located on the property; and, must be screened from all adjacent properties and streets. Screening can include: an existing building; a four-foot high solid fence; or a four-foot in height (high) landscaped hedge. Hen chickens must be confined in a chicken coop or run at all times.

(Prior Code, § 10.05) Penalty, see § 91.99

§ 91.06 RABBITS LIMITED.

It is unlawful for any person to own, keep or maintain rabbits in the city unless the property is in the Rural Residential Zoning District or issued a chicken permit. A permit shall only be issued for a property situated in the R-1 and R-2 (single-family residence) District. No rabbit permit shall be issued for more than five rabbits or one per household member, whichever number is less.

(Ord. passed 6-12-2017) Penalty, see § 91.99

§ 91.07 PERMIT REQUIRED.

No person shall own, keep, harbor or have custody of any live rabbit without first obtaining a permit in writing from the city. A person applying for a permit shall include the following information in written form: a scaled diagram with the location of the rabbit pen on the property; property lines with dimensions and location of buildings; distance from the pen located on the property to all buildings including those on adjacent properties. The pen must be located at least 50 feet from any existing residential building not located on the property. Cost of the annual permit shall be set by resolution.

(Ord. passed 6-12-2017) Penalty, see § 91.99

§ 91.08 SLAUGHTERING PROHIBITED.

Slaughtering of animals is prohibited.

(Prior Code, § 10.05) Penalty, see § 91.99

§ 91.09 TREATMENT.

It is unlawful for any person to treat any animal as herein defined, or any other animal, in a

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cruel or inhumane manner.

(Prior Code, § 10.05) Penalty, see § 91.99

§ 91.10 HOUSING.

It is unlawful for any person to keep any animal as herein defined, or any other animal, in any structure infested by rodents, vermin, flies or insects, or inadequate for protection against the elements.

(Prior Code, § 10.05) Penalty, see § 91.99

§ 91.11 TRESPASSES.

It is unlawful for any person to herd, drive or ride any animal over and upon any grass, turf, boulevard, city park, cemetery, garden or lot without specific permission therefor from the owner.

(Prior Code, § 10.05) Penalty, see § 91.99

DOGS AND CATS

§ 91.25 DEFINITIONS.

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

AT LARGE. Off the premises of the owner and not under the control of the owner or some other person of suitable age and discretion either at heel by command or by leash, cord or chain of not more than ten feet in length. Confinement within a building, motor vehicle or other type of enclosure shall not be considered ***AT LARGE***.

LICENSING PERIOD. The licensing period shall be from March 1 through May 31 of each year. However, if May 31 falls on a non-business day, then the ***LICENSING PERIOD*** will include the next business day of June.

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NOISE. Excessively makes disturbing noises, including, but not limited to, continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.

OWNER. Any person owning, keeping, harboring, feeding or maintaining a dog or cat or permitting the dog or cat to be at large.

VACCINATION. A vaccination and all boosters for rabies licensed for use specifically for the species of dog or cat and administered by a licensed veterinarian of medicine.

VICIOUS ANIMAL. If a dog or cat bites or inflicts injury upon a person, such shall be deemed to be prima facie evidence that such dog or cat is **VICIOUS**. Also, if two or more residents complain that a dog or cat displays outwardly a mean disposition by growling or displaying its teeth when approached by a human. The dog or cat is then deemed **VICIOUS** when the owner is notified in writing that the dog or cat has been determined as being **VICIOUS**.

(Prior Code, § 10.04)

§ 91.26 LICENSE.

(A) *License required.* It is a petty misdemeanor for the owner of any dog or cat six months old or older to keep, harbor or maintain the dog or cat unless licensed with the City Administrator. The license shall include such information as the type of dog or cat, breed, age, color, sex, size of the dog or cat, vaccine number, veterinarian's name and the name, address and phone number of the owner. A new dog or cat over the age of six months shall obtain a license within 30 days.

(B) *Term of license.*

(1) The license for a dog or cat under six months old shall be good until the licensing period (March, April and May) of the next calendar year.

(2) The license for a dog or cat that has only received one vaccination for rabies shall be effective until the licensing period (March, April and May) of the next calendar year.

(3) All other licenses shall be effective until the licensing period (March, April and May) in the year following the next calendar year, if the dog or cat is older than one year and has received a

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rabies vaccine booster.

(C) *Identification.* A tag shall be issued along with the license with a number which corresponds with the number of the license, and shall be attached to the dog or cat by a collar, or by some other acceptable means.

(D) *Licensing period.* Except for the first license of a dog or cat, the license shall be obtained from the City Administrator’s office during the months of March, April or May. If the last day of May ends on a non-business day, then the last day shall be the following business day.
(Prior Code, § 10.04) Penalty, see § 91.99

§ 91.27 RABIES VACCINATION REQUIRED.

All dogs or cats shall be vaccinated against rabies by a licensed veterinarian with a vaccine that is certified by the manufacturer as being effective for a period of one year after the initial vaccination and effective for a period of three years after the booster thereafter.
(Prior Code, § 10.04) Penalty, see § 91.99

§ 91.28 LICENSE FEES AND CHARGES.

(A) *License fee.* Each license, whether a one- or two-year license, shall be in an amount as set by City Council by resolution and not refundable for any reason.

(B) *Late penalty charge.* If the license is not obtained within the prescribed time limits described in § 91.31 of this chapter, a penalty of in an amount as set by City Council by resolution will be added to the license fee.

(C) *Pound fee.* A pound fee, in an amount as set by City Council by resolution, per day shall be charged to the owner of any dog or cat that is kept in the pound for any reason. If special provisions must be made because of a condition or suspected condition of the dog or cat, an appropriate charge shall be paid by the owner.
(Prior Code, § 10.04)

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§ 91.29 DOGS AND CATS AT LARGE.

(A) It is a petty misdemeanor for the owner of any dog or cat to permit the animal to run at large.

(B) An Animal Control Officer may apprehend and take possession of any dog or cat found to be running at large in the city and place the dog or cat in the animal pound until such time that the owner claims the dog or cat and pays all fines, fees and penalties.

(C) Any resident of the city may humanely detain a dog or cat that is found on his or her property and promptly call officials notifying them that the dog or cat is being detained and request that the dog or cat be picked up.

(D) Individuals whom observe a dog or cat violating this subchapter may sign a written complaint to an Animal Control Officer. If two or more households sign a complaint stating the name of the owner and describing the dog or cat, a citation may be issued by an Animal Control Officer. (Prior Code, § 10.04) Penalty, see § 91.99

§ 91.30 NOTIFICATION.

(A) (1) When any unlicensed dog or cat is apprehended by an Animal Control Officer, notice shall be posted in three public places and notify the City Administrator.

(2) The notice shall include where the dog was apprehended, date, description of the dog or cat, and will remain posted for five days thereafter, at which time, if the dog or cat has not been claimed, it will be disposed of in a humane manner.

(B) (1) When any licensed dog or cat is apprehended by an Animal Control Officer, the Animal Control Officer shall, within 48 hours after apprehension, notify the owner in writing at the address given to the City Administrator at the time of licensing, notifying the owner, when, where and other information relating to the apprehension of the dog.

(2) The owner shall have five days from the receipt of the letter to claim the dog or cat, or it shall be disposed of in a humane manner.

(C) (1) All fines, fees and penalties must be paid prior to the dog or cat being released to the

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owner.

(2) If the dog or cat is not licensed, the owner must pay, in addition to other charges, the cost of the license and penalty prior to the dog or cat being released. The owner then has three business days to vaccinate the dog or cat and return the record of such to the City Administrator and receive the license and license tag, or be subject to a fine as described in § 91.99(C) of this chapter. (Prior Code, § 10.04)

§ 91.31 VICIOUS DOGS OR CATS.

(A) The owner of a vicious dog or cat shall be required to harbor and keep the vicious dog or cat confined, upon his or her own property, and within a wire mesh pen or cage for the purpose of confining the dog or cat completely from the public.

(B) Any vicious dog or cat found to be at large, after it has been determined that the dog or cat is vicious and the owner notified of that determination in writing, shall be either removed from the city or disposed of in a humane manner. (Prior Code, § 10.04) Penalty, see § 91.99

§ 91.32 PUBLIC NUISANCE.

(A) It is a petty misdemeanor for an owner to allow a dog or cat to persist in continual noise making, such as, but not limited to, barking, whining or crying in such spans of time as to disturb the comfort of people surrounding the immediate area.

(B) It is a petty misdemeanor for the owner of a dog or cat to allow the dog or cat to cause unnecessary foul odor by not keeping clean the area in which the dog or cat is kept or harbored.

(C) It is a petty misdemeanor for the owner to allow a dog or cat to deposit dog or cat waste in a public place in a manner that it is continually bothersome to others.

(D) It is a petty misdemeanor for the owner to allow any dog or cat to destroy property of others or habitually trespass in a damaging manner on property of a person other than the owner, including public property. (Prior Code, § 10.04) Penalty, see § 91.99

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§ 91.99 PENALTY.

(A) Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful or fails to act when the failure is prohibited or declared unlawful by a code adopted by reference by this chapter and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Prior Code, § 10.99)

(B) (1) Any person who owns, keeps or maintains chickens without obtaining or maintaining a current permit, or after a permit has been suspended or revoked, shall be guilty of a misdemeanor.

(2) In addition, a violation of §§ 91.01 through 91.11 shall be considered a nuisance and the city may abate the same as provided if in the provision of § 90.58 of this code of ordinances.

(Prior Code, § 10.05)

(C) The owner of a dog or cat which has been allowed to be in violation of § 91.28 of this chapter shall be subject to a \$10 fine. The fine shall increase by \$10 for each time the owner is found to be in violation within a 12-month period.

(Prior Code, § 10.04) (Ord. passed 6-12-2017)

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CHAPTER 92: PUBLIC PARKS AND TRAILS

Section

- 92.01 Traffic prohibited
- 92.02 Other traffic, rules and regulations

- 92.99 Penalty

§ 92.01 TRAFFIC PROHIBITED.

It is unlawful for any person to drive a self-propelled or motorized vehicle, except an electrically propelled wheelchair, in any park, recreational trail, playground, recreational area or athletic field owned or maintained by the city, except upon a street or other public thoroughfare therein; provided that, this section shall not apply to construction or maintenance equipment operated by, or under a contract with, the city and within the scope of the operation or contract.

(Prior Code, § 10.10) Penalty, see § 92.99

§ 92.02 OTHER TRAFFIC, RULES AND REGULATIONS.

The Council may, by resolution, adopt additional restrictions on traffic, together with rules and regulations for the use of public parks and sign-post the same upon the parks, playgrounds, recreational areas or athletic fields as they apply, and it is unlawful for any person to violate the same when so sign-posted.

(Prior Code, § 10.10) Penalty, see § 92.99

§ 92.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful or fails to act

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when the failure is prohibited or declared unlawful by a code adopted by reference by this chapter and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Prior Code, § 10.99)

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CHAPTER 93: RIGHT-OF-WAY MANAGEMENT

Section

- 93.01 Findings, purpose, and intent
- 93.02 Election to manage the public rights-of-way
- 93.03 Definitions
- 93.04 Administration
- 93.05 Utility Coordination Committee
- 93.06 Registration and right-of-way occupancy
- 93.07 Registration information
- 93.08 Reporting obligations
- 93.09 Permit requirement
- 93.10 Permit applications
- 93.11 Issuance of permit; conditions
- 93.12 Permit fees
- 93.13 Right-of-way patching and restoration
- 93.14 Joint applications
- 93.15 Supplementary applications
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- 93.18 Installation requirements
- 93.19 Inspection
- 93.20 Work done without a permit
- 93.21 Supplementary notification
- 93.22 Revocation of permits
- 93.23 Mapping data
- 93.24 Location and relocation of facilities
- 93.25 Pre-excavation facilities location
- 93.26 Damage to other facilities
- 93.27 Right-of-way vacation; reservation of right
- 93.28 Indemnification and liability
- 93.29 Abandoned and unusable facilities
- 93.30 Appeal

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§ 93.01 FINDINGS, PURPOSE, AND INTENT.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

§ 93.02 ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY.

(A) Accordingly, the city hereby enacts this new chapter of this code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(B) This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”), as they may be amended from time to time, and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minn. Rules parts 7819.0050 through 7819.9950 where possible. To the extent any provision of this chapter cannot be parts interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit 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.

(C) Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant M.S. § 237.163, subd. 2(b), as it may be amended from time to time, to manage rights-of-way within its jurisdiction.

§ 93.03 DEFINITIONS.

The following definitions apply in this chapter of this code. References hereafter to “sections” are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined

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terms, whether or not capitalized.

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

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

CITY. The city of Spring Valley, Minnesota. For purposes of § 93.27, **CITY** means its elected officials, officers, employees and agents.

COMMISSION. The State Public Utilities Commission.

CONGESTED RIGHT-OF-WAY. A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with M.S. § 216D.04, subd. 3, as it may be amended from time to time, over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND. Any of the following forms of security provided at permittee's option:

(1) Individual project bond;

(2) Cash deposit;

(3) Security of a form listed or approved under M.S. § 15.73, subd. 3, as it may be amended from time to time;

(4) Letter of credit, in a form acceptable to the city;

(5) Self-insurance, in a form acceptable to the city;

(6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

DEGRADATION. A decrease in the useful life of the right-of-way caused by excavation in or

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disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

DEGRADATION COST. Subject to Minn. Rules part 7819.1100 means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. Rules parts 7819.9900 to 7819.9950.

DEGRADATION FEE. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

DEPARTMENT. The department of public works of the city.

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

DIRECTOR. The director of the department of public works of the city, or her or his designee.

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

EMERGENCY. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

EQUIPMENT. Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

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

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

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

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provided in § 93.11.

FACILITY or ***FACILITIES***. Any tangible asset in the right-of-way required to provide utility service.

FIVE-YEAR PROJECT PLAN. Shows projects adopted by the city for construction within the next five years.

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

HOLE. An excavation in the pavement, with the excavation having a length less than the width of the pavement.

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

MANAGEMENT COSTS. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; M.S. §§ 237.162 or 237.163, as they may be amended from time to time; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to § 93.29.

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

OBSTRUCTION PERMIT. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

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OBSTRUCTION PERMIT FEE. Money paid to the city by a permittee to cover the costs as provided in § 93.11.

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

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

PERMIT. The meaning given “right-of-way permit” in M.S. § 237.162, as it may be amended from time to time.

PERMITTEE. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

PROBATION. The status of a person that has not complied with the conditions of this chapter.

PROBATIONARY PERIOD. One year from the date that a person has been notified in writing that they have been put on probation.

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

REGISTRANT. Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

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RESTORATION COST. The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

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

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

RIGHT-OF-WAY USER. Means:

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

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

SERVICE or UTILITY SERVICE. Includes (1) those services provided by a public utility as defined in M.S. § 216B.02, subds. 4 and 6, as it may be amended from time to time; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in M.S. Chapter 238, as it may be amended from time to time; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under M.S. Chapter 308A, as it may be amended from time to time; and (6) water, and sewer, including service laterals, steam, cooling or heating services.

SERVICE LATERAL. An underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

SUPPLEMENTARY APPLICATION. An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

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TEMPORARY SURFACE. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

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

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

TWO YEAR PROJECT PLAN. Shows projects adopted by the city for construction within the next two years.

§ 93.04 ADMINISTRATION.

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

§ 93.05 UTILITY COORDINATION COMMITTEE.

The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and, by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

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§ 93.06 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

(A) *Registration.* Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(B) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.

(C) *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the M.S. Chapter 216D, as it may be amended from time to time, Gopher One Call Law.

§ 93.07 REGISTRATION INFORMATION.

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

(1) Each registrant's name, Gopher One-Call registration certificate number, address 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:

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(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;

(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 (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) 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 such coverages;

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

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

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

(5) If the person is a corporation, a copy of the certificate is 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 such certificate from said commission or other state or federal agency.

(B) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change.

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§ 93.08 REPORTING OBLIGATIONS.

(A) *Operations.* Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

(1) The plan shall include, but not be limited to, the following information:

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a “next-year project”); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a “five-year project”).

(2) The term “project” in this section shall include both next-year projects and five-year projects.

(3) By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

(4) Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

(B) *Additional next-year projects.* Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

§ 93.09 PERMIT REQUIREMENT.

(A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or

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excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.

(1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such 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 by a registrant 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 (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rule part 7819.1000 subp. 3 and notwithstanding subd. 2 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 city council resolution.

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

§ 93.10 PERMIT APPLICATIONS.

Application for a permit is made to the city. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

(A) Registration with the city pursuant to this chapter;

(B) Submission of a completed permit application form, including all required attachments, and

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scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

(C) Payment of money due the city for:

(1) Permit fees, 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 applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;

(4) franchise fees or other charges, if applicable.

(D) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

(E) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

§ 93.11 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

(B) *Conditions.* The city 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.

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§ 93.12 PERMIT FEES.

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

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

(B) *Obstruction permit fee.* The city shall establish the obstruction permit fee 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 such fees within 30 days of billing.

(D) *Non refundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in § 93.21 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.

§ 93.13 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 § 93.15.

(B) *Patch and restoration.* 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, permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all

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costs associated with correcting the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule part 7819.3000.

(3) *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. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

(C) *Standards.* The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rule part 7819.1100.

(D) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under § 93.15.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such 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 permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

§ 93.14 JOINT APPLICATIONS.

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

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

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will pay and indicate the same on their applications.

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

§ 93.15 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 (i) make application for a permit extension and pay any additional fees required thereby, and (ii) 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.

§ 93.16 OTHER OBLIGATIONS.

(A) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to M.S. §§ 216D.01 through 216D.09, as it may be amended from time to time (Gopher One Call Excavation Notice System) and Minn. Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(B) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way

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obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

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

(D) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in M.S. Chapter 216D, as it may be amended from time to time, and Minn. Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

§ 93.17 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.

§ 93.18 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 parts 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the M.S. §§ 237.162 and 237.163, as they may be amended from time to time. Installation of service laterals shall be performed in accordance with Minn. Rules Chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in § 93.22(B).

§ 93.19 INSPECTION.

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(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule part 7819.1300.

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

(C) *Authority of Director.*

(1) At the time of inspection, the director 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 director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to § 93.22.

§ 93.20 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant 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 registrant whose facilities occasioned the emergency.

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(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 said permit, pay double all the other fees required by the city 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.

§ 93.21 SUPPLEMENTARY NOTIFICATION.

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

§ 93.22 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 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 permittee's 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 § 93.19.

(B) *Written notice of breach.* If the city determines that the permittee has committed a

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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 such 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, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one full year.

(D) *Cause for probation.* From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

(E) *Automatic revocation.* If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

(F) *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 such revocation.

§ 93.23 MAPPING DATA.

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(A) *Information required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100. Within 90 days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the “as-built” location of all equipment installed, owed and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.

(B) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules part 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this division (B) and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition of any city approval necessary for 1) payments to contractors working on a public improvement project including those under M.S. Chapter 429, as it may be amended from time to time, and 2) city approval of performance under development agreements, or other subdivision or site plan approval under M.S. Chapter 462, as it may be amended from time to time. The director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

§ 93.24 LOCATION AND RELOCATION OF FACILITIES.

(A) *Placement, location and relocation; compliance with Act.* Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.*

- (1) The city may assign a specific area within the right-of-way, or any particular segment

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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.

(2) Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

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

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

§ 93.25 PRE-EXCAVATION FACILITIES LOCATION.

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

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§ 93.26 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each registrant 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 registrant's facilities.

§ 93.27 RIGHT-OF-WAY VACATION; RESERVATION OF RIGHT.

If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200.

§ 93.28 INDEMNIFICATION AND LIABILITY.

By registering with the city, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules part 7819.1250.

§ 93.29 ABANDONED AND UNUSABLE FACILITIES.

(A) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

(B) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove it 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 city.

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§ 93.30 APPEAL.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with M.S. § 237.163, subd. 6, as it may be amended from time to time; or (5) disputes a determination of the director regarding § 93.22(B) of this chapter may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.