

## CHAPTER 92: HEALTH AND SAFETY; NUISANCES

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## **GENERAL PROVISIONS**

### **SECTION 92.01 ASSESSABLE CURRENT SERVICES.**

(A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**CURRENT SERVICE.** Shall mean one or more of the following: snow, ice, or rubbish removal from sidewalks; weed elimination from street grass plots adjacent to sidewalks or from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in M.S. Section 463.15 through 463.26 as they may amended from time to time; installation or repair of water service lines; street sprinkling, street flushing, light street oiling, or other dust treatment of streets; repair of sidewalks and alleys; trimming and care of trees and removal of unsound and insect-infected trees from the public streets or private property; and the operation of a street lighting system.

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

(1) *Duty of owners and occupants.* The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep the walk safe for pedestrians. No owner or occupant shall allow snow, ice, dirt or rubbish to remain on the walk longer than 24 hours after its deposit thereon. Failure to comply with this section shall constitute a violation.

(2) *Removal by city.* The City Clerk or other person designated by the City Council may cause removal from all public sidewalks all snow, ice, dirt and rubbish as soon as possible beginning 24 hours after any matter has been deposited thereon or after the snow has ceased to fall. The City Clerk or other designated person shall keep a record showing the cost of removal adjacent to each separate lot and parcel.

(C) *Public health and safety hazards.* When the city removes or eliminates public health or safety hazards from private property under the following provisions of this chapter, the administrative officer responsible for doing the work shall keep a record of the cost of the removal or elimination against each parcel of property affected and annually deliver that information to the City Clerk.

(D) *Installation and repair of water service lines.* Whenever the city installs or repairs water service lines serving private property under Chapter 52 of this code, the

City Clerk shall keep a record of the total cost of the installation or repair against the property.

(E) *Repair of sidewalks and alleys.*

(1) *Duty of owner.* The owner of any property within the city abutting a public sidewalk or alley shall keep the sidewalk or alley in repair and safe for pedestrians. Repairs shall be made in accordance with the standard specifications approved by the City Council and on file in the office of the City Clerk.

(2) *Inspections; notice.* The City Council or its designee shall make inspections as are necessary to determine that public sidewalks and alleys within the city are kept in repair and safe for pedestrians or vehicles. If it is found that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the City Council shall cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property, ordering the owner to have the sidewalk or alley repaired and made safe within 30 days and stating that if the owner fails to do so, the city will do so and that the expense thereof must be paid by the owner, and if unpaid it will be made a special assessment against the property concerned.

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

(F) *Personal liability.* The owner of property on which or adjacent to which a current service has been performed shall be personally liable for the cost of the service. As soon as the service has been completed and the cost determined, the City Clerk, or other designated official, shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable at the office of the City Clerk.

(G) *Damage to public property.* Any person driving any vehicle, equipment, object or contrivance upon any street, road, highway or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of the vehicle, equipment or object or contrivance; or as a result of operating, driving or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object or contrivance, but is operating, driving or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. Section 514.67, as it may be amended from time to time.

(H) *Assessment.* On or before September 1 of each year, the City Clerk shall list the

total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges against property benefited as a special assessment under the authority of M.S. Section 429.101 as it may be amended from time to time and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

Penalty, see Section 10.99

## **SECTION 92.02 TREE DISEASES.**

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

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

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

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

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

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

(B) *Abatement of nuisance.* It is unlawful for any person to permit any public nuisance as defined in division (A) of this section to remain on any premises the person owns or controls within the city. The City Council may by resolution order the nuisance abated. Before action is taken on that resolution, the City Council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to the affected property owner and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the street affected, action proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs. At such hearing or adjournment thereof, the City Council shall hear any property owner with reference to the scope and desirability of the proposed project. The City Council shall thereafter adopt a resolution confirming the original resolution with modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

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

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

Penalty, see Section 10.99

## ***NUISANCES***

### **SECTION 92.15 PUBLIC NUISANCE.**

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

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

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

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

### **SECTION 92.16 PUBLIC NUISANCES AFFECTING HEALTH.**

The following are hereby declared to be nuisances affecting health:

(A) Exposed accumulation of decayed or unwholesome food or vegetable matter, or waste material, debris, refuse or garbage not kept in an enclosed container designed for such purposes;

(B) All diseased animals running at large;

(C) All ponds or pools of stagnant water;

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

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

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

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

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

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

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

(K) Any offensive trade or business as defined by statute not operating under local license.

Penalty, see Section 10.99

#### **SECTION 92.17 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.**

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

(A) All snow and ice not removed from public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;

(B) All trees, hedges, billboards or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;

(C) All wires and limbs of trees which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;

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

(E) Radio aerials or television antennae erected or maintained in a dangerous manner;

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

(G) All hanging signs, awnings and other similar structures over streets and

sidewalks, so situated so as to endanger public safety, or not constructed and maintained as provided by ordinance;

(H) The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk;

(I) Any barbed wire fence less than six feet above the ground and within three feet of a public sidewalk or way;

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

(K) Waste water cast upon or permitted to flow upon streets or other public properties;

(L) Accumulations in the open of discarded or disused machinery, household furnishings or household appliances, or parts or components thereof, unlicensed, unregistered, or inoperable motor vehicles, automobile bodies, tires, recreational equipment, building materials, refuse or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;

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

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

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

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

(Q) All outside fuel wood piles exceeding six feet in height;

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

(S) Accessing property from a public right-of-way where a driveway has not been established.

Penalty, see Section 10.99

## **SECTION 92.18 DUTIES OF CITY OFFICERS.**

The City Administrator, together with the public works and police departments, shall enforce the provisions relating to nuisances. Any authorized City employee shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances.

## **SECTION 92.19 ABATEMENT.**

(A) *Notice.* Written notice of violation; notice of the time, date, place and subject of any hearing before the City Council; and notice of abatement shall be given as set forth in this section.

(1) *Notice of violation.* Written notice of violation shall be served on the owner of record or occupant of the premises either in person or by U.S. mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.

(2) *Notice of City Council hearing.* Written notice of any City Council hearing to determine or abate a nuisance shall be served on the owner of record and occupant of the premises either in person or by U.S. mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of the City Council hearing, notice of City Council hearing shall be served by posting it on the premises.

(3) *Notice of abatement.* Written notice of any Council order for abatement shall be delivered personally or by U.S. mail to the owner of record or the occupant of the premises.

(B) *Procedure.* Whenever a designated City employee or official determines that a public nuisance is being maintained or exists on the premises in the city, the City shall notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the officer shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may abate the nuisance and charge the costs to the owner of

record or occupant.

(C) *Emergency procedure; summary enforcement.* In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health, safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the designated City employee or official shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The City shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) of this section, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

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

Penalty, see Section 92.99

## **92.20 INOPERABLE MOTOR VEHICLES.**

(A) It shall be unlawful to keep, park, store or abandon any motor vehicle which is not in operating condition, partially dismantled, used for repair of parts or as a source of repair or replacement parts for other vehicles, kept for scrapping, dismantling or salvage of any kind, or which is not properly licensed for operation with the state, pursuant to M.S. ' 168B.011, Subd. 3, as it may be amended from time to time.

(B) This section does not apply to a motor vehicle enclosed in a building and/or kept out of view from any street, road or alley, and which does not foster complaint from a resident of the city. A privacy fence is permissible.

(C) Any motor vehicles described in this section constitute a hazard to the health and welfare of the residents of the community in that such vehicles can harbor noxious diseases, furnish a shelter and breeding place for vermin and present physical danger to the safety and well-being of children and citizens; and vehicles containing fluids which, if released into the environment, can and do cause significant health risks to the community.

## **92.21 BUILDING MAINTENANCE AND APPEARANCE.**

(A) *Declaration of nuisance.* Buildings, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they (a) are unsightly, (b) decrease adjoining landowners and occupants' enjoyment of their property and neighborhood, and (c) adversely affect property values and neighborhood patterns.

(B) *Standards.* A building, fence or other structure is a public nuisance if it does not comply with the following requirements:

(1) No part of any exterior surface may have deterioration, holes, breaks, gaps, loose or rotting boards or timbers.

(2) Every exterior surface that has had a surface finish such as paint applied must be maintained to avoid noticeable deterioration of the finish. No wall or other exterior surface may have peeling, cracked, chipped or otherwise deteriorated surface finish on more than 20% of:

(a) Any one wall or other flat surface; or

(b) All door and window moldings, eaves, gutters, and similar projections on any one side or surface.

(3) No glass, including windows and exterior light fixtures, may be broken or cracked, and no screens may be torn or separated from moldings.

(4) Exterior doors and shutters must be hung properly and have an operable mechanism to keep them securely shut or in place.

(5) Cornices, moldings, lintels, sills, bay or dormer windows and similar projections must be kept in good repair and free from cracks and defects that make them hazardous or unsightly.

(6) Roof surfaces must be tight and have no defects that admit water. All roof drainage systems must be secured and hung properly.

(7) Chimneys, antennae, air vents, and other similar projections must be structurally sound and in good repair. These projections must be secured properly, where applicable, to an exterior wall or exterior roof.

(8) Foundations must be structurally sound and in good repair.

## **SECTION 92.22 RECOVERY OF COST.**

(A) *Personal liability.* The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.

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

Penalty, see Section 10.99

## **SECTION 92.23 EXCESSIVE CONSUMPTION OF SERVICES.**

(A) The Annandale City Council finds that some property owners take little or no responsibility for the maintenance of their property until the City, through its inspections process, has repeatedly ordered them to abate the conditions listed in the provisions of this code. Such property owners create excessive costs for the city which are over and above the normal cost of providing inspection services city-wide. Property owners who must repeatedly be ordered to abate nuisances on their property consume an unacceptable and disproportionate share of limited city resources. Therefore, it is the intent of the City by the adoption of this section to impose and collect a user fee to defray costs associated with the excessive consumption of City inspection services.

(B) The City shall be entitled to collect its cost of enforcement from a property owner who consumes excessive inspection services. An excessive consumption of inspection services occurs when:

(1) Written notice of a nuisance violation is served following an initial inspection and a follow up inspection to determine compliance; and

(2) An additional initial inspection and follow up inspection are performed at the same location within a consecutive twelve-month period after the first initial inspection; and the enforcement officer finds nuisance violations which are either new violations or violations based upon failure to correct previous violations; and

(3) The fee shall be applied to a third initial inspection within a consecutive twelve-month period after the inspections set forth in subsections (1) and (2) at which the enforcement officer finds nuisance violations which are either new violations or violations based upon failure to correct previous violations.

(4) The fee shall be \$250.00. The fee for each initial inspection or reinspection thereafter shall be \$100.00. Owners who have received a notice of warning shall be jointly and severally liable for the excessive consumption of inspection services fee. The amount of the excessive consumption of inspection services fee shall be recovered by assessing the cost of the enforcement action against the real property upon which the nuisances existed and to certify the same for collection in the same manner as taxes and special assessments are certified and a debt owed to the city by the responsible person or persons. Action under this section does not preclude any other civil or criminal enforcement procedure.

## ***WEEDS***

### **SECTION 92.35 SHORT TITLE.**

This subchapter shall be cited as the “Weed Ordinance.”

### **SECTION 92.36 JURISDICTION.**

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

### **SECTION 92.37 DEFINITIONS; EXCLUSIONS.**

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

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

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

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

(1) Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife,

Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip;

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

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

(4) Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding 10 inches.

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

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

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

**SECTION 92.38 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.**

All property owners shall be responsible for the removal, cutting, or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of 10 inches in height.

Penalty, see Section 10.99

**SECTION 92.39 FILING COMPLAINT.**

Any person, including the city, who believes there is property located within the corporate limits of the city which has growing plant matter in violation of this subchapter shall make a written complaint signed, dated and filed with the City Clerk. If the city makes the complaint, an employee, officer or Council Member of the city shall file the complaint in all respects as set out above.

**SECTION 92.40 NOTICE OF VIOLATIONS.**

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

mail. The notice shall provide that within seven regular business days after the receipt of the notice that the designated violation shall be removed by the property owner or person occupying the property.

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

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

#### **SECTION 92.41 APPEALS.**

(A) The property owner may appeal by filing written notice of objections with the City Council within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the finding of the City Council. It is the property owner's responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants or crops or is not otherwise in violation of this subchapter, and should not be subject to destruction under the subchapter.

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

#### **SECTION 92.42 ABATEMENT BY CITY.**

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

#### **SECTION 92.43 LIABILITY.**

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

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

(C) All sums payable by the property owner are to be paid to the City Clerk and to be deposited in a general fund as compensation for expenses and costs incurred by the city.

(D) All sums payable by the property owner may be collected as a special

assessment as provided by M.S. Section 429.101, as it may be amended from time to time.

## ***OPEN BURNING***

### **SECTION 92.60 DEFINITIONS.**

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

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

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

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

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

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

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

lengths.

### **SECTION 92.61 PROHIBITED MATERIALS.**

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

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

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

(D) No person shall conduct, cause or permit open burning of any leaves or grass clippings except as provided herein.

Penalty, see section 10.99

### **SECTION 92.62 PERMIT REQUIRED FOR OPEN BURNING.**

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in section 92.60.

Penalty, see section 10.99

### **SECTION 92.63 PURPOSES ALLOWED FOR OPEN BURNING.**

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

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

(2) Ground thawing for utility repair and construction.

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

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

(5) Disposal of unpainted, untreated, non-glued lumber and wood shakes

generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical.

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

Penalty, see section 10.99

#### **SECTION 92.64 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.**

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

(B) An open burning permit shall require the payment of a fee in the amount established in the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

Penalty, see section 10.99

#### **SECTION 92.65 LEAF BURNING.**

The burning of dried leaves is permitted within the corporate limits of the City of Annandale only in accordance with conditions set forth in this ordinance and is restricted to residential properties. The burning of dried leaves shall be permitted to occur between the hours of 6 a.m. to 8 p.m. beginning with the 2<sup>nd</sup> Wednesday in October and ending with the 4<sup>th</sup> Wednesday in October each year subject to cancellation as provided herein and/or restriction by resolution of the Council further defining the permitted period for leaf burning.

#### **SECTION 92.66 PERMIT HOLDER RESPONSIBILITY.**

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

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

(C) The permit holder is responsible for compliance and implementation of all general conditions, special conditions, and the burn event safety plan as established in the

permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.

Penalty, see section 10.99

#### **SECTION 92.67 REVOCATION OF OPEN BURNING PERMIT.**

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

Penalty, see section 10.99

#### **SECTION 92.68 DENIAL OF OPEN BURNING PERMIT.**

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

#### **SECTION 92.69 BURNING BAN OR AIR QUALITY ALERT.**

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

Penalty, see section 10.99

#### **SECTION 92.70 RULES AND LAWS ADOPTED BY REFERENCE.**

The provisions of M.S. Section 88.16 to 88.22 and the *Minnesota Uniform Fire Code*, Minn. Rules Ch. 1510, as these statutes and rules may be amended from time to time, are hereby adopted by reference and made a part of this subchapter as if fully set forth at this point.