

TITLE XIII: GENERAL OFFENSES

Chapter

13.1 GENERAL OFFENSES

13.2 NUISANCES

13.1: GENERAL OFFENSES

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WEAPONS

§ 13.1.01 POSSESSION

No person shall carry on his person, or have in his possession or control in any public place, any firearm except as provided in Section 5 and except the following persons:

- a) peace officers
- b) military personnel while on duty
- c) person holding special police commissions while carrying on their occupations
- d) persons duly certified by permit under the Minnesota Citizens' Personal Protection Act of 2003, Minnesota Statutes Chapter 28.

For the purpose of this chapter, "public place" includes private gatherings in buildings or locations not ordinarily considered public places if, on the occasion of the gathering, ten or more unrelated persons are present, but "public place" shall not include private residences, premises licensed for the sale of firearms, activities held under the sponsorship of a registered target shooting or sportsmen's club, or gun training programs, gun shows, parades or similar public events for which a permit has been issued by the Clerk of the City of Cromwell.

§ 13.1.02 MINORS.

Subject to the provisions of the Minnesota Personal Protection Act, it shall be unlawful for minors under the age of 12 years to handle or have in their possession or under their control, except while accompanied by or under the immediate charge of their parents or guardian, any firearm, air gun, or B.B. gun, of any kind, for hunting or target practice, or any other purpose, within the city. Any person aiding or knowingly permitting any such minor, as mentioned in this section, to violate this section shall also have committed a violation.

§ 13.1.03 POINTING WEAPONS PROHIBITED.

No person shall, within the city, aim or point any firearm, bow, air gun, or B.B. gun, of any kind, whether loaded or not, at or toward another human being, except it being in defense of person or persons or property, against one committing or attempting to commit a felony.

§ 13.1.04 DISCHARGE OR FIRING OF WEAPONS OR FIREARMS.

No person shall hunt or discharge any firearm, air gun, or B.B. gun of any kind, or bow hunt within the city, except at a duly authorized shooting range while such range is supervised, or while under reasonable apprehension of harm to protect person or property against anyone committing or attempting to commit a felony, or, after permission to do so is granted by the City Council, to protect property against damage by rodent, animals, or destructive fowl.

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Any person violating any provisions of this chapter shall be guilty of a misdemeanor.

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GENERAL PROVISIONS

§ 13.2.01 PUBLIC NUISANCE DEFINED.

(A) 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:

- (1) 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;
- (2) Interferes with, obstructs, or renders dangerous for passage any public highway or right-of-way, or waters used by the public; or
- (3) Is guilty of any other act or omission declared by law or this subchapter to be a public nuisance and for which no sentence is specifically provided.

Statutory reference:

Similar provisions, see M.S. § 609.74

§ 13.2.02 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

- (A) Exposed accumulation of decayed or unwholesome food or vegetable matter;
- (B) All diseased animals running at large;
- (C) All ponds or pools of stagnant water;
- (D) Carcasses of animals not buried or destroyed within 24 hours after death;
- (E) Accumulations of manure, refuse or other debris;
- (F) Privy vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;

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

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

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

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

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

§ 13.2.03 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

The following are hereby declared to be nuisances affecting public morals and decency:

(A) All gambling devices, slot machines and punch boards, except as otherwise authorized by federal, state, or local law;

(B) Betting, bookmaking, and all apparatus used in such occupations;

(C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame and bawdy houses;

(D) All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor, or where intoxicating liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining such a place;

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

§ 13.2.04 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 12 hours after the snow or other precipitation causing the condition has ceased to fall;

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

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

(D) All unnecessary noises and annoying vibrations;

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

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

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

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

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

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

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

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

(M) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from such accumulation;

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

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

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

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

(R) Permitting litter to remain on private property in any zoning district unless

(1) The property had been designated an appropriate disposal site for litter by federal, state, or local government entities;

(2) The litter is placed in a receptacle or other container intended by the owner or tenant in lawful possession of that property for the deposit of litter;

(3) The person is acting under the direction of proper officials during special cleanup days; or

(4) The person is lawfully acting in or reacting to an emergency situation where health and safety is threatened, and removes and properly disposes of such litter when the emergency situation no longer exists;

(5) Litter means any discarded, used or unconsumed substance or waste. Litter may include, but is not limited to any garbage, trash, refuse, debris, rubbish, glass, metal, plastic or paper containers or other packaging material, motor vehicle parts, furniture, appliances, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person, or anything else of an unsightly or unsanitary nature, which exists upon any private property within the jurisdiction of the city.

(S) Permitting or allowing to remain in the open an inoperable vehicle.

- (1) An inoperable vehicle means any motor vehicle from which, for a period of at least seven days, the engine, wheels, or other parts have been removed, or on which the engine, wheels, or other parts have been altered, damaged, or otherwise so treated that the vehicle is incapable of being driven under its own motor power.
- (2) It is permissible to keep inoperable vehicles stored in any fully enclosed building, to keep inoperable historic motor vehicles over 25 years of age which are licensed or to keep inoperable motor vehicles on the premises of a duly authorized place of business engaged in wrecking or junking motor vehicles.
- (3) Owners or persons in control of any private property shall store all inoperable vehicles in a completely enclosed building or otherwise remove the same from the property.

§ 13.2.05 DUTIES OF CITY OFFICERS.

Designated City officials shall enforce the provisions of this subchapter relating to nuisances affecting public safety.

§ 13.2.06 ABATEMENT.

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

- (1) Notice of violation. Written notice of violation shall be served by the officer charged with enforcement on the owner of record or occupant of the premises either in person or by certified or registered 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 nuisance shall be served on the owner of record and occupant of the premises either in person or by certified or registered 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 City Council order. Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in M.S. § 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.
- (4) Notice of motion for summary enforcement. Written notice of any motion for summary enforcement shall be made as provided for in M.S. § 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.

(B) Procedure. Whenever the officer charged with enforcement determines that a public nuisance is being maintained or exists on premises in the city, the officer shall notify in writing the owner of record or occupant of the premises of such fact and order that such 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 enforcing 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 seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement.

(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 officer charged with enforcement 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 enforcement officer 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 such 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.

(E) Weed removal costs. The costs to the city for weed removal shall be collected as determined by the City Council.

§ 13.2.07 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-Treasurer or other official designated by the City Council 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-Treasurer.

(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-Treasurer shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other such charges as well as other charges for current services to be assessed under M. S. § 429.101, as it may be amended from time to time, against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against such 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.

TREE DISEASES

§ 13.2.08 DECLARATION OF POLICY.

The City Council determines that the health of the elm and oak trees within the municipal limits is threatened by fatal diseases known as Dutch elm and oak wilt diseases, and other trees may be threatened by other epidemic diseases of shade trees. It further determines that the loss of elm, oak, and other trees growing upon

public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare, and convenience of the public. It is declared to be the intention of the City Council to control and prevent the spread of those diseases, and this chapter is enacted for that purpose.

§ 13.2.09 POSITION OF FORESTER CREATED; DUTIES.

(A) Position created. The position of Forester is hereby created under the duties of the Utilities Superintendent.

(B) Duties of Forester. It is the duty of the Forester to coordinate, under the direction and control of the City Council, all activities of the municipality relating to the control and prevention of Dutch elm disease and oak wilt disease and other epidemic diseases of shade trees. The Forester shall recommend to the City Council the details of a program for the control of such diseases and perform the duties incident to such a program adopted by the City Council.

§ 13.2.10 TREES CONSTITUTING NUISANCES; ABATEMENT.

(A) 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 of thereof which in the opinion of the Forester constitutes a hazard, including but not limited to logs, branches, stumps, roots, firewood, or other oak material, which has been stripped of its bark and burned or sprayed with an effective fungicide;
- (5) Any other shade tree with an epidemic disease.

(B) 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. Such nuisances may be abated in the manner prescribed by this part.

§ 13.2.11 INSPECTION.

As often as practicable, the Forester shall inspect all public and private premises within the city which might harbor any plant pest as defined in M.S. § 18.46, Subd. 13, as it may be amended from time to time, to determine whether any unfit condition exists thereon. The Forester shall investigate all reported incidents of infestation by Dutch Elm fungus, elm bark beetles, oak wilt fungus, or any other epidemic disease of shade trees.

§ 13.2.12 INVESTIGATION; ENTRY ON PRIVATE PREMISES.

The Forester or the duly authorized agents of the Forester may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this code.

§ 13.2.13 ABATEMENT OF DISEASES CREATING NUISANCE.

In abating a nuisance, the Forester shall cause the infected tree or wood to be sprayed, removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of epidemic diseases, including Dutch elm disease and oak wilt disease. The Forester shall also take such steps as are necessary to prevent root graft transmission of the diseases. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.

§ 13.2.14 PROCEDURE FOR REMOVAL OF INFECTED TREES AND WOOD.

(A) Action by Forester. Whenever the Forester finds with reasonable certainty that the infestation exists in any tree or wood in any public or private place in the city, the Forester shall in writing notify the owner of the existence of a nuisance, which notice shall state that the owner has 60 days to abate the nuisance and avoid city action. A copy of the notice shall be transmitted to the Clerk-Treasurer for the information of the City Council. If within the 60-day period the property owner has not abated the nuisance, the Forester shall report all the facts surrounding the unabated nuisance to the City Council.

(B) Action by City Council. Upon receipt of the Forester's report required in division (A) of this section, the City Council shall by resolution order the nuisance

abated. Before action is taken on such 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 affected property owners and published once no less than one week prior to such 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 such hearing or adjournment thereof, the City Council shall hear property owners with reference to the scope and desirability of the proposed project. The City 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.

§ 13.2.15 RECORD

The Forester shall keep record of the costs of abatement done under this section and shall report monthly to the Clerk-Treasurer (or other appropriate officer) 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.

§ 13.2.16 ASSESSMENT.

On or before September 1 of each year, the Clerk-Treasurer shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this chapter. The City 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 statues for certification to the County Auditor and collection the following year along with current taxes.

§ 13.2.17 INTERFERENCE PROHIBITED.

It is unlawful for any person to prevent, delay, or interfere with the Forester or the Forester's agents while they are engaged in the performance of duties imposed by this chapter. However, it is a defense to prosecution under this section that the interference alleged consisted of constitutionally protected speech only.

WEEDS

§ 13.2.18 SHORT TITLE.

This subchapter shall be cited as the "Weed Ordinance."

§ 13.2.19 JURISDICTION.

(A) The jurisdiction of this subchapter shall be the corporate limits of the city, as presently defined or as may be modified from time to time by annexation or city ordinance.

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

§ 13.2.20 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 Councilor 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, hairywhitetop, hedge bindweed, hoary cress, horsenettle, Johnsongrass, leafy spurge, mile-a-minute weed, musk thistle, oxeye daisy, perennial sowthistle, poison hemlock, purple 1 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 12 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.

§ 13.2.21 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.

All property owners within the corporate limits of the city shall be required and be financially 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 ten inches in average height, and in no event, exceeds 15 inches maximum height on at least 20 % of the surface area of the property.

§ 13.2.22 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 Clerk-Treasurer. If the city makes the complaint, an employee, officer, or councilor of the city shall file the complaint in all respects as set out above.

§ 13.2.23 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 Clerk-Treasurer or any other city agency. Such notice shall be served in writing by certified 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 Clerk-Treasurer.

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

§ 13.2.24 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 councilors in attendance and such being at a regularly scheduled or special meeting of the City Council.

§ 13.2.25 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 Clerk-Treasurer 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.

§ 13.2.26 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 Clerk-Treasurer and to be deposited in a general fund as compensation for expenses and costs incurred by the city.

OPEN BURNING

§ 13.2.27 PURPOSE.

The purpose of this subchapter is to establish permitted categories of open burn events for residences and farms within the city and provide for a permitting process for residential and agricultural open burning, except when such open burning is defined as a "recreational fire" as prescribed in this subchapter.

§ 13.2.28 DEFINITIONS.

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

FIRE CHIEF, FIRE MARSHAL, and ASSISTANT FIRE MARSHALS. The Fire Chief, Fire Marshal, and Assistant Fire Marshals of the Volunteer 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.

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. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers, and propane or natural gas devices are not defined as "recreational fires." 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 and 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. Parafin 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.

§ 13.2.29 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.

§ 13.2.30 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.

§ 13.2.31 PURPOSES ALLOWED FOR OPEN BURNING.

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

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

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

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

§ 13.2.32 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, and Assistant Fire Marshals for reviewing and processing such applications.

- (1) An open burning permit shall require fee. Permit fees shall be set annually by City Council resolution. However, the City Council may at other times amend its resolution setting the fee as it deems necessary. The fee established by City Council resolution shall continue to be the required fee until amended by a resolution.

§ 13.2.33 PERMIT PROCESS FOR OPEN BURNING.

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

§ 13.2.34 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. The permit holder or his or her competent representative shall constantly oversee every open burn event. 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.

§ 13.2.35 REVOCATION OF OPEN BURNING PERMIT.

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

§ 13.2.36 DENIAL OF OPEN BURNING PERMIT

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

§ 13.2.37 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.

§ 13.2.38 RULES ADOPTED BY REFERENCE.

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