

## **TITLE IX: GENERAL REGULATIONS**

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## CHAPTER 90: ANIMALS

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#### ***AT-LARGE FARM ANIMALS***

### **§ 90.01 DEFINITIONS.**

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

***ANIMAL.*** Any horse, bull, cow, calf, heifer, mule, swine, sheep, goat, rabbit, or poultry.

***CITY.*** The City of Malin.

***OWNER.*** Any person owning an animal described in this subchapter or having a proprietary interest therein, or an authorized agent of such person.

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**PERSON.** Every natural person, firm, partnership, association, or corporation.

(B) As used in this subchapter, the singular includes the plural and the masculine includes the feminine.

(Ord. 113, passed 6-2-70)

**§ 90.02 APPLICABILITY OF PROVISIONS.**

The provisions of this subchapter do not apply to any animal or animals being moved or herded through the city while such animals are under the control of one or more attendants and their movement is confined to the public streets of the city.

(Ord. 113, passed 6-2-70)

**§ 90.03 AT-LARGE ANIMALS PROHIBITED.**

A person owning or having possession or control of any animal shall not permit such animal to run at large within the corporate limits of the city. Any such animal found to be running at large is hereby declared to be a public nuisance.

(Ord. 113, passed 6-2-70) Penalty, see § 90.99

***Cross-reference:***

*Nuisances, see Ch. 93*

**§ 90.04 IMPOUNDMENT; NOTICE.**

(A) *Impounding of animals.* An animal found running at large contrary to the provisions of § 90.03 may be impounded by any member of the Police Department. Such animal, while impounded, shall be properly cared for.

(B) *Notice if owner known.* The City Marshal, upon impounding any animal under the provisions of this subchapter, shall within two days give written notice to the owner thereof of such impounding, if such owner is known. Said notice shall provide that unless the owner thereof redeems the animal so impounded and pays all costs, charges, and expenses for keeping and impounding the same within two days from the date of said notice, such animal shall be sold at public auction to the highest bidder. The date, time, and place of the sale shall be specified in said notice.

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(C) *Notice if owner unknown.* If the owner of the impounded animal is unknown or cannot be found, the City Marshal shall give notice of the impounding by posting such notice in three public places in the city. Said notice shall describe the animal impounded. It shall contain a statement that if such animal is not reclaimed by its owner and all costs, charges, and expenses for keeping and impounding the same paid within two days from the date of posting such notice, such animal shall be sold at public auction to the highest bidder. The date, time, and place of the sale shall be specified in said notice.  
(Ord. 113, passed 6-2-70)

### **§ 90.05 REDEMPTION.**

If sufficient proof of ownership of the impounded animal is made by the owner to the City Marshal before sale, and if said owner pays all charges, costs, and expenses for keeping and impounding the same up to the time such proof is made, then said City Marshal shall deliver the impounded animal to such claiming party.  
(Ord. 113, passed 6-2-70)

### **§ 90.06 SALE OR OTHER DISPOSITION.**

(A) (1) If any impounded animal is not redeemed as provided by this subchapter, the City Marshal shall cause the same to be sold at public auction to the highest bidder. The date, time, and place of such sale shall conform with the applicable notice referred to in § 90.04(B) and (C).

(2) Upon payment of the amount bid under this section, title to the animal shall be vested in the purchaser and the city shall provide evidence of such title.

(B) If the City Marshal is unable to dispose of such animal as provided in (A), he or she shall dispose of the animal in a humane manner. The city shall reimburse the City Marshal for any costs incurred by him or her under the provisions of this subchapter if he or she is unable to recover them from such sale.  
(Ord. 113, passed 6-2-70)

### **§ 90.07 SALE PROCEEDS.**

All sales under the provisions of this subchapter shall be for cash, and the City Marshal shall apply the proceeds of such sales to the payment of all charges, costs, and expenses, including legal fees, for taking up the animal, keeping the same, posting notice, and costs of sale of the same. If there is any surplus, it shall be paid to the City Treasurer, who shall keep such moneys in a separate account. The City Marshal shall make a full and complete report of the above sale to the City Recorder and shall file his or her receipt for all costs and disbursements with said report.  
(Ord. 113, passed 6-2-70)

**§ 90.08 SALE SURPLUS DISTRIBUTION.**

The owner of such animal sold under the provisions of this subchapter shall be entitled to receive any surplus from such sale as hereinafter provided. Such owner shall offer the City Recorder within one year from the sale of such animal sufficient proof of ownership of the animal sold and shall demand payment of such surplus. Thereafter, the City Recorder shall issue a written order to the City Treasurer directing him or her to refund to the owner making demand and proving ownership such surplus of moneys collected under the terms of this subchapter and deposited with him or her from the sale of the animal, less the charges of making such proof and of writing such order.

(Ord. 113, passed 6-2-70)

**§ 90.09 CHARGES, COSTS, AND EXPENSES.**

There shall be levied the sum of \$5 for the taking and impounding of each animal under the terms of this subchapter. In addition, costs, charges, and expenses shall include the costs of keeping and caring for the animal while impounded, the expense of publishing the notice, and the expense of selling the animal, as hereinabove provided.

(Ord. 113, passed 6-2-70)

***DOG CONTROL*****§ 90.20 DEFINITIONS.**

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

***DOG.*** A male or female dog including a dog which has been neutered or spayed.

***CHAIN.*** A steel chain of common construction as used generally for the control of dogs. It must be of sufficient size and strength to contain the dog it is meant to control. As used in connection with § 90.25, means a steel chain of welded loop construction of sufficient size and strength to contain the dog it is meant to control.

***DANGEROUS DOG.***

(1) Shall mean:

(a) Any dog with a propensity, tendency, or disposition to attack, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals;

(b) Any dog which attacks a human being or other domestic animal one or more times without provocation;

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(c) Any dog which has the propensity to attack or bite any person or other domestic animal without provocation and the capacity to inflict serious harm on that person or animal; or

(d) Any pit bull terrier which shall herein be defined as a Staffordshire Bull Terrier, also known as an American Pit Bull Terrier or Bull Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of Staffordshire Bull Terrier, American Pit Bull Terrier, or Bull Terrier as evidenced by a verified statement from a qualified veterinarian duly licensed by the state.

(2) No portion of this definition is meant to include an animal which bites, attacks, or menaces a trespasser on the property of its owner or harms or menaces anyone who had tormented or abused it.

### ***ENCLOSURE.***

(1) A securely locked fence or structure at least six feet high forming or causing an enclosure suitable to prevent the entry of young children or other animals and of a size and manufacture suitable to confine a dangerous dog securely and humanely. Such ***ENCLOSURE*** shall be designed with secure sides, tops, and bottom, and shall be designed to prevent the animal's escape from the enclosure. The ***ENCLOSURE*** shall also provide protection from the elements such as to insure the safety and comfort of the dog, and be of dimensions adequate for the animal to move about freely, based on the size and breed of dog, but in no case smaller than 5 feet by 10 feet.

(2) Additionally, for owners or keepers of dangerous dogs who will maintain the dog out of doors, a portion of the property shall be fenced with a perimeter or area fence. The enclosure described in (1) above shall be placed within the perimeter or area fence, but must not share common fencing with the perimeter or area fence.

***LEASH.*** Leash, cord, rope, or other such physical restraint held by the owner or securely fastened so that the animal is contained to the owner's property.

***MUZZLE.*** A device constructed of strong, soft material or a metal muzzle such as that used commercially with greyhounds. The muzzle must be made in a manner which will not cause injury to the dog or interfere with its vision or respiration, but must prevent it from biting any person or animal.

***OWNER.*** Any person or persons, firm, association, or corporation owning or having control, custody, or possession of a dog or who acts as its custodian. If the ***OWNER*** is a minor, then the parent or guardian is also responsible for compliance with this subchapter.

***RUNNING AT LARGE.*** Off or outside of the premises or property belonging to the owner or keeper of such dog, or not in the company of and "under the control of" its owner or keeper.

***UNCONFINED.*** In connection with § 90.25 means a dog is not securely confined indoors, or leashed and muzzled, or chained as described in the definition of "chained" above, or confined in a securely enclosed and locked pen, fence, or structure upon the premises of the person described in the definition of "owner." Such pen or structure must comply with the definition of "enclosure."

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***UNDER THE CONTROL OF.*** Control maintained by leash not over six feet in length while off of the owner's property, or by chain or leash not over 12 feet in length while on the owner's property, but the use of such leash or chain shall not be required when said dog is safely and securely confined or completely controlled while in or upon any motor vehicle or under the direct supervision and control of its owner.

(Ord. 243, passed 3-19-92)

**§ 90.21 APPLICABILITY OF PROVISIONS.**

No portion of this subchapter shall include any police dog while under the control or supervision of its handler who is a certified police officer.

(Ord. 243, passed 3-19-92)

**§ 90.22 IMPOUNDMENT AND DISPOSITION.**

(A) (1) When a dog is found running at large in the city, or when a dog is a public nuisance as described in this subchapter, the City Marshal or his or her designee shall impound it or cite the owner or keeper to court or do both. A police officer may enter into private property (exclusive of dwelling houses) to do so without prior notice.

(2) A police officer impounding any dog under the provisions of this subchapter shall safely keep such dog until the earliest practical time at which time the dog shall be delivered to a County Animal Control Officer. The disposition of such dog shall thereafter be governed by applicable county ordinances.

(3) At the city's option, the Mayor and Recorder are hereby authorized to execute an agreement with the county providing for the delivery and disposal of dogs impounded under the provisions of this subchapter and under the terms of the applicable ordinances of the county, said contract to include the expenses involved in the delivery of such dog to a County Animal Control Officer.

(4) When a dog is impounded under this subchapter, the City Marshal shall post on the bulletin board at the City Hall a notice giving the description of the dog and the time and location where the dog was found running at large. Said notice shall be posted for three days for unlicensed dogs and for five days for licensed dogs. If the impounded dog was licensed, reasonable efforts shall be made to notify the owner during the five-day period.

(5) If the dog has been impounded for any reason other than being a dangerous dog and the owner of the dog does not claim it within the time frames set forth in this subchapter, the dog may be sold to or adopted by another for the sum of charges mentioned in § 90.24. If no owner appears to redeem a dog within the allotted time, or if the dog had been impounded as a public nuisance for killing or injuring a person or another animal, it shall be killed in a humane manner.



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(6) Any dog impounded for biting or killing a person or another animal shall be held for not less than ten days before destruction to determine if the dog is rabid.

(B) Any dog owner believing him- or herself aggrieved by the seizure and impounding of his or her dog may apply to the City Recorder for the release of such dog, provided such appeal is filed in writing within three days of the date of the seizure and impoundment. The Recorder shall thereupon set a time and place for hearing such application and notify the City Marshal and the Common Council. Upon a hearing at such time and place as set by the Recorder, the Common Council shall have full power to determine whether the dog has been wrongfully impounded and whether it shall be returned to its owner and upon what terms. The Council may utilize expert witnesses within the “dog training and breeding field” to assist them in any decisions they make.

(Ord. 243, passed 3-19-92)

### **§ 90.23 SUMMARY DESTRUCTION.**

Any dog running at large which because of its deposition or diseased condition is too hazardous to apprehend may be destroyed by a peace officer, animal control officer, or by a person acting in defense of him or herself, his or her family, or another person.

(Ord. 243, passed 3-19-92)

### **§ 90.24 REDEMPTION.**

Should the owner of a dog impounded for running at large desire its release, the owner shall pay an impound fee as set forth from time to time by resolution of the Common Council. Any owner redeeming an impounded dog shall pay in addition to the impound fee the total of the daily care expenses accrued during the impound period plus any other expenses incurred in the keeping of the dog.

(Ord. 243, passed 3-19-92)

### **§ 90.25 DANGEROUS DOGS.**

(A) No person owning, harboring, or having care of a dangerous dog as defined in this subchapter shall suffer or permit such dog to go unconfined on the premises of such person.

(B) No person owning, harboring, or having care of a dangerous dog as defined in this subchapter shall suffer or permit such dog to go beyond the premises of such a person unless such dog is securely leashed and muzzled.

(C) Any person owning, harboring, or having care of a dangerous dog as defined in this subchapter shall comply with the chain and enclosure sections of this subchapter.

(D) Any person owning, harboring, or having care of a dangerous dog as defined in this subchapter may be subject to inspection in connection with the adequate containment procedures he or she has taken to contain the dangerous dog.

(Ord. 243, passed 3-19-92) Penalty, see § 90.99

### **§ 90.26 NUISANCE DOGS.**

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

- (1) Bites, injures, or causes injury to a person or another animal;
- (2) Chases or threatens vehicles, persons, or another animal;
- (3) Damages or destroys property of persons other than the owner or keeper of the dog;
- (4) Scatters garbage;
- (5) Trespasses on private property of a person other than the owner or keeper of the dog;
- (6) Disturbs any person by frequent or prolonged noises; or
- (7) Is a female in heat and running at large.

(B) The owner or keeper of a dog in the city shall not allow his or her dog to be a public nuisance under this subchapter.

(C) Any person who has cause to believe a dog is being maintained as a public nuisance may complain, either orally or in writing, to the City Marshal or his or her designee. The complaint shall be considered sufficient cause for the city to investigate the matter and determine if the owner or keeper of the dog is in violation of this subchapter.

(D) A dog shall not be considered a public nuisance or destroyed under this subchapter if it bites a person wrongfully assaulting the dog or the dog's owner or if it bites a person trespassing upon premises occupied by the dog's owner after being provoked by that person.

(Ord. 243, passed 3-19-92)

***Cross-reference:***

*Nuisances, see Ch. 93*

*Offenses against public peace and safety; noisy animals, see § 131.02*

### **§ 90.27 BITING DOGS; DUTY TO NOTIFY CITY.**

(A) The owner of a dog which bites a person or another domestic animal shall immediately notify the city of such bite, giving the name and address of the person bitten or of the owner of the dog bitten, if known.

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(B) Any person who is bitten, or the owner of a dog bitten by another dog, shall notify the city of such bite, giving a description of the dog and the name and address of the owner, if known.

(C) When a doctor, a veterinarian, or medical personnel have information that a person or dog has been bitten by a dog, such person shall forthwith notify the city.

(Ord. 243, passed 3-19-92)

### **§ 90.28 DOG LICENSE.**

(A) Every person keeping a dog that has a set of permanent canine teeth or is six months old, whichever comes first, shall procure a license for the dog. The license must be procured by paying a license fee to the county in which the person resides not later than March 1 of each year or within 30 days after the person becomes keeper of the dog.

### **§ 90.99 PENALTY.**

(A) Any person who violates § 90.03 shall, upon conviction, be punished by a fine of not more than \$250. (Ord. 113, passed 6-2-70; Am. Ord. 211, passed 2-4-86)

(B) Any owner or person charged with the control of a dog found to be running at large in violation of § 90.20 et seq. shall be fined an amount as set by resolution but not to exceed \$250. A fourth offense involving any one animal shall require removal of the dog from within the city limits. (Ord. 243, passed 3-19-92)

## CHAPTER 91: STREETS AND SIDEWALKS

### Section

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#### ***Cross-reference:***

*Bicycles and other vehicles on sidewalks, see § 70.02*

## **Streets and Sidewalks**

### ***SIDEWALK REPAIR AND REPLACEMENT***

#### **§ 91.01 DUTIES OF PROPERTY OWNER.**

The owners of real property in the city shall maintain and keep in repair all sidewalks in the streets, alleys, and avenues of the city in front of, and that are adjacent to or abutting upon, any such owners' real property; or, when the Common Council finds it is needed, replace it with a new walk.  
(Ord. 118, passed 8-19-70) Penalty, see § 10.99

#### **§ 91.02 LIABILITY OF PROPERTY OWNER.**

An owner of real property in the city refusing or failing to keep the sidewalk adjacent to or abutting on his or her real property in a good state of repair shall be and is hereby made responsible to any person suffering personal injury or property damage by reason of any defect in such sidewalk.  
(Ord. 118, passed 8-19-70)

#### **§ 91.03 NOTICE OF DEFECTIVE SIDEWALK; HEARING.**

The Common Council, upon receipt of a report that any sidewalk is defective or out of repair and deeming such repair or new walk necessary, shall direct the owner of the property adjacent thereto to repair the sidewalk or to replace it with a new walk by causing the City Recorder to notify such owner in writing, by mail, if the address thereof is known; and if not known, by causing such notice to be posted on the property involved. Such notice shall direct that the owner make and complete the repairs or new construction in the manner described in such notice on or before 30 days after the mailing or posting of such notice. If the owner has any objections to the repairing of such sidewalk or the replacing of it with a new sidewalk, he or she may appear at any regular meeting of the Common Council during such 30day period and present the same. At the conclusion of such hearing, the Common Council may abandon the project, make any change in plans therefor it deems proper, or proceed with the project as planned.  
(Ord. 118, passed 8-19-70) Penalty, see § 10.99

#### **§ 91.04 SUPERVISION OF WORK.**

The repair or new construction of a sidewalk shall be made under supervision of the City Recorder.  
(Ord. 118, passed 8-19-70)

**§ 91.05 WORK BY CITY; LIEN.**

In the event such owner referred to in § 91.03 fails or refuses to make and complete repairs to the sidewalk or to construct a new walk as directed by such notice, or as modified by the Common Council after hearing the owner's objection, within 30 days after the mailing or posting of such notice or such additional time as the Common Council may fix, then the City Recorder shall proceed to cause such repairs or new sidewalk to be constructed and shall report the cost thereof, including 10% thereof for administrative costs, to the Common Council together with the name of the owner of record of the real property adjacent to or abutting such sidewalk; and upon approval of such report and cost by the Common Council, it shall by ordinance declare it to be a lien against such adjacent or abutting real property, in such proportion as it may fix, and direct that it be entered in the miscellaneous lien docket; and such lien shall have priority over all other liens against such property, save and except such liens or taxes as by law take precedence.

(Ord. 118, passed 8-19-70)

***Cross-reference:***

*Liens and lien docket, see § 35.10 et seq.*

**§ 91.06 FAILURE OF NOTICE.**

The failure of the owner of the property adjacent to or abutting the sidewalk involved to receive any notice directed to be mailed to him or her pursuant to this subchapter to inspect or observe a notice posted on the respective real property shall not in any way invalidate the procedure provided by this subchapter for repairing a sidewalk or the replacing of a sidewalk with a new one. The lien provided for in this subchapter upon such repairs or construction of a new sidewalk being done by the city shall not be invalidated by failure of the owner of the property against which such lien attaches to receive a notice mailed or posted on the property as provided by this subchapter.

(Ord. 118, passed 8-19-70)

**§ 91.07 VIOLATIONS.**

Any owner of real property in the city refusing or failing within 30 days after the mailing or posting of the respective notice, as provided in § 91.03, or such additional time as the Common Council may grant, to repair a sidewalk or construct a new sidewalk is guilty of violating the terms of this subchapter. In addition to the right of the city to cause the repairs to be made to such sidewalk or a new sidewalk constructed and the right of the city to levy a lien against the owner's property and collection thereof as provided by this subchapter, such person shall, upon conviction, be subject to the penalty provided in § 10.99.

(Ord. 118, passed 8-19-70) Penalty, see § 10.99

**Streets and Sidewalks**  
***SIDEWALK CONSTRUCTION***

**§ 91.15 APPROVAL OF COMMON COUNCIL REQUIRED.**

No sidewalks shall be built in the city by any private person, firm, or corporation without first securing the approval of the Common Council. The Council may require any party desiring to construct sidewalks to submit suitable plans and specifications.

(Ord. 119, passed 8-19-70) Penalty, see § 10.99

**§ 91.16 ORDER OF COMMON COUNCIL.**

The Common Council may, by resolution, find that a sidewalk along and adjacent to any lot or parcel of land within the city is necessary and for the best interest of the public and may, as provided by this subchapter, cause the same to be constructed.

(Ord. 119, passed 8-19-70)

**§ 91.17 PLANS, SPECIFICATIONS, AND ESTIMATE.**

A resolution by the Common Council finding a sidewalk to be necessary shall instruct the City Recorder to prepare, or cause to be prepared, plans and specifications for the construction of such sidewalks together with an estimate of the cost thereof and cause the same to be filed. If such sidewalk is to be along and adjacent to more than one lot, the estimate shall be broken down to show the estimated cost of the proposed sidewalk adjacent to each lot or parcel of land.

(Ord. 119, passed 8-19-70)

**§ 91.18 NOTICE OF HEARING.**

After the plans, specifications, and estimate referred to in § 91.17 have been completed and are in the hands of the Recorder, the Common Council shall, by resolution, set a date for a hearing of objections and opposition to the proposed plans, specifications, and estimate and to the construction of such sidewalk. The date for such hearing shall be not less than 15 days after the adoption of such resolution. Such resolution shall direct the Recorder to forthwith notify the owners of lots or parcels of land adjacent to the site of the proposed sidewalk at their last known address, or if such address is not known, then at the address appearing on the most recent assessment roll in the office of the County Assessor, of such hearing. Such notice shall give sufficient information to advise the party of the nature and purpose thereof and shall further inform the owner that if the Common Council, upon such hearing, finds such sidewalk necessary and for the best interest of the public, it will order such owner of the respective lot or parcel of land to construct the sidewalk, at his or her expense, conforming to certain plans and specifications, and that upon his or her failure to do so, the city shall cause the sidewalk to be constructed and a lien placed against the property adjacent to the site of such sidewalk for the cost thereof.

(Ord. 119, passed 8-19-70)

**§ 91.19 HEARING; DECISION; CONSTRUCTION GENERALLY.**

Upon such hearing pursuant to § 91.18, the interested property owner and the public generally shall be given an opportunity to be heard and thereafter the Common Council shall determine whether or not such sidewalk shall be constructed. If it finds the sidewalk shall not be constructed, no further steps shall be taken. If it finds in accord with its first resolution that such sidewalk is necessary and for the best interest of the public, then it shall set forth such finding by ordinance and direct the owner of the lot or parcel of land adjacent to the site of the proposed sidewalk to construct the same in accordance with the plans and specifications. The Recorder shall by such ordinance be directed to notify the owner of the property involved, by written notice, to construct such sidewalk and begin the work thereon within 30 days from receipt of such notice, if served upon the owner in person, or within 30 days from the date of mailing such notice by registered mail to the owner, addressed to him or her at his or her last known address, or if his or her address is not known, to the address given on the most recent assessment roll in the office of the County Assessor. The Recorder may serve such notice by either of such methods; that is, by personal service on the party, or by registered mail as provided in this section. Such notice shall also inform the owner of the lot or parcel of land that the work is to be done according to certain plans and specifications. It shall further inform the party that if the construction of the sidewalk is not begun within 30 days, the city shall construct the same; and the cost thereof shall be placed and assessed against such lot or parcel of land and be a lien against the same. The owner shall complete the construction of such sidewalk within a period of 20 days after he or she begins construction, or the city may complete the same and the cost thereof be placed as a lien against the adjacent property in the same manner as provided by this section for a lien upon the city doing the entire job. If more than one lot or parcel of land is involved, the cost of such sidewalk shall be equitably prorated by the City Recorder between the several pieces of property involved and the estimate provided for by this section shall show such prorated division.

(Ord. 119, passed 8-19-70)

**§ 91.20 CONSTRUCTION BY CITY; BIDS; COSTS AND LIENS.**

(A) When it becomes necessary for the city to construct a sidewalk, it shall by resolution cause the Recorder to advertise for bids for material work and doing the job, which notice shall state the time and place bids shall be opened. Such notice shall be placed in a newspaper of general circulation within the city and shall appear in not less than three separate issues thereof, the first publication to be not more than 15 days before the time of opening bids and the last publication not less than 10 days before the time for opening such bids. Such notice shall describe the sidewalk to be built and the location thereof, refer to the plans, specifications, and estimate of cost on file in the office of the Recorder, advise the public that bids will be received at the office of the Recorder up to the time set for the opening thereof, and inform the public that all bids shall be opened by the Common Council.

(B) Upon opening of the bids and due consideration thereof, the Common Council may reject any or all thereof. If a bid is accepted, the Council shall, by ordinance, accept such bid and authorize the Mayor and Recorder to enter into a contract with the successful bidder on behalf of the city upon terms and conditions conforming to the plans and specifications and such bid. Such work shall be completed within a period of 90 days from the date of signing such contract, or such shorter period of time as may be agreed upon with the contractor and noted in such contract.

(C) (1) In lieu of advertising and calling for bids and letting a contract, as provided by (A) and (B),



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the city may do such work by force account and charge the cost thereof to the abutting and adjoining property, the same in all respects as if the same had been let upon contract after a call for bids.

(2) When the city does the work under force account, it shall be under the supervision and direction of the City Recorder, who shall, when the project is completed, file with the Common Council an itemized statement of the cost thereof, duly certified by the City Recorder to the effect that such statement is in all respects true and correct.

(D) Upon completion of a sidewalk by the city and payment therefor pursuant to this subchapter, the cost of such sidewalk, including that for material and labor and incidental costs, shall be declared and assessed against the lot or parcel of land adjacent to such sidewalk by ordinance. Such ordinance shall direct the Recorder to enter such cost in the city lien docket against the respective lot or parcel of land, and it shall thereupon become a lien against such property, and thereafter the collection and enforcement of such lien shall be done and performed in substantially the same manner as in the case of collecting and enforcing all city liens.

(Ord. 119, passed 8-19-70)

***Cross-reference:***

*Liens, see § 35.10 et seq.*

### **§ 91.21 NOTICE CERTIFICATION.**

Upon the giving of any notice provided for in this subchapter, the Recorder shall execute a certificate showing how and when such notice was given.

(Ord. 119, passed 8-19-70)

### **§ 91.22 FUND FOR RECEIPT OF REVENUES.**

Upon payment of the lien, or foreclosure thereof, pursuant to this subchapter, the money received by the city shall be placed in the fund from which payment for such sidewalk was made.

(Ord. 119, passed 8-19-70)

**Malin - General Regulations*****STREET EXCAVATIONS*****§ 91.35 PERMIT REQUIRED; PERMIT FEE AND TERM.**

No person shall make any excavation within any street, alley, or way within the city without obtaining an excavation permit therefor, granted upon proper application to the Director of Public Works. An inspection fee shall be charged at the time such permit is issued. The amount of such fee shall be established by resolution of the Common Council. Application, issuance, and execution of such permit shall be governed by this subchapter. Such permit shall be in force for no longer than 30 days from the date of issuance.

(Ord. 227, passed 11-1-88) Penalty, see § 10.99

**§ 91.36 PERMIT APPLICATION AND PLAN SUBMISSION.**

At the time of application for the excavation permit, the permittee shall submit a plan and shall give an estimated date when work will begin. A form shall be available at the Public Works Department office which details all of the information required by the Director of Public Works.

(Ord. 227, passed 11-1-88)

**§ 91.37 COORDINATION WITH AFFECTED AGENCIES; LIABILITY FOR PROPERTY DAMAGE.**

The permittee shall be responsible for contacting all other private and public agencies who may be affected during any phase of construction and shall be solely responsible for coordinating all construction activities with such agencies. The permittee shall be responsible for any damage done to any public or private property during any phase of construction and the permit application shall so provide.

(Ord. 227, passed 11-1-88)

**§ 91.38 LIABILITY INSURANCE.**

The permittee, prior to the commencement of work, shall furnish the Public Works Director satisfactory evidence, in writing, that the permittee has in force, and will maintain in force during all phases of construction, public liability insurance in amounts at least equal to the maximums established by O.R.S. 30.270 as presently constituted, duly issued by an insurance company authorized to do business in the state.

(Ord. 227, passed 11-1-88; Am. Ord. 252, passed 12-8-92)

## **Streets and Sidewalks**

### **§ 91.39 BOND.**

(A) The permittee shall deposit with the Director of Public Works a cashier's check, irrevocable letter of credit, or a corporate surety bond in a form acceptable to the Director and in the amount of \$150 or the estimated cost of backfilling the excavation and resurfacing the street, as determined by the Public Works Director, whichever sum is greater. Such corporate surety bond shall be in the form of a performance bond insuring the permittee's performance of all the terms and conditions of the permit.

(B) Subsection (A) shall not apply to licensed contractors, public utility companies holding a franchise from the city, or governmental agencies.  
(Ord. 227, passed 11-1-88)

### **§ 91.40 PROTECTION OF PUBLIC CONVENIENCE.**

The permittee shall take appropriate measures as required by the Director of Public Works to assure that during the performance of all phases of construction traffic conditions as near normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the neighboring property and to the general public. The permittee shall take appropriate measures to reduce noise, dust, and unsightly debris to the fullest extent practicable in the performance of the work.  
(Ord. 227, passed 11-1-88) Penalty, see § 10.99

### **§ 91.41 PROTECTION OF PUBLIC SAFETY; LIABILITY OF CITY.**

The permittee shall be responsible for insuring the safety of the public. This subchapter shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of any work for which a permit is issued hereunder, nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval or any work. The permittee shall sign a hold harmless clause prior to issuance of such permit. Furthermore, the permittee shall be required to implement any safety measures which may be deemed necessary by the Director of Public Works or the state.  
(Ord. 227, passed 11-1-88) Penalty, see § 10.99

### **§ 91.42 EXCAVATION, INSPECTION, AND RESTORATION.**

The permittee shall give the Director of Public Works 48-hours notice prior to actually starting work. The permittee shall notify the Director of Public Works prior to backfilling any excavation and prior to repaving any street in order to allow all phases of construction to be inspected. After work is commenced, the permittee shall prosecute with diligence and speed all work covered by the permit and shall promptly complete such work and restore the street to its original condition.  
(Ord. 227, passed 11-1-88) Penalty, see § 10.99

**§ 91.43 NONCOMPLIANCE.**

(A) The permittee shall, within 24 hours, comply with any notice from the Public Works Director of noncompliance with any provision of this subchapter.

(B) If the permittee or his or her subcontractor fails to comply with any provision as set forth in this subchapter or with any requirement of the Director of Public Works, the city shall have the right to cause the work, as deemed necessary by the Director of Public Works, to be done and may recover the full cost and expense, together with court costs and attorney fees necessary to collect said amounts from the permittee.

(C) If a bond or cashier's check has been deposited under § 91.39, the city may utilize said bond or check to cover its costs and expense. If the amount of the deposit is less than the costs and expense incurred by the city, it shall release the remainder. If the amount of the deposit is less than the cost and expense incurred by the city, the permittee shall be liable to the city for the difference.  
(Ord. 227, passed 11-1-88) Penalty, see § 10.99

## **Parks and Recreation**



**Parks and Recreation**  
**CHAPTER 92: PARKS AND RECREATION**

Section

***Malin Community Park***

- 92.01 Vehicles
- 92.02 Hours
- 92.03 Swimming pool
- 92.04 Camping or overnight stay
- 92.05 Firearms

***Cross-reference:***

*Drinking in public places; alcohol in Malin Park Hall, see § 135.01*

***MALIN COMMUNITY PARK***

**§ 92.01 VEHICLES.**

(A) It shall be unlawful for any person to drive any vehicle upon the public streets within the boundaries of the Malin Community Park at a speed in excess of 10 miles per hour.

(B) It shall be unlawful for any person to drive any vehicle within the boundaries of the Malin Community Park on any areas of the Malin Community Park not clearly designated as public roadways unless authorized by the Malin Park Board.

(C) It shall be unlawful for any person to operate and for any owner of any motor vehicle to permit to be operated upon any public roadways within the boundaries of the Malin Community Park any motor vehicle so as to cause any greater noise or sound than is reasonably necessary for the proper operation of such motor vehicle.

(Ord. 100, passed 9-5-67; Am. Ord. 166, passed 4-5-77; Am. Ord. 223, passed 10-6-87; Am. Ord. 312 passed 6-10-08)

(D) It shall be unlawful for any person to drive an ATV within the boundaries of the Malin Community Park without the authorization of the Malin Park Board. (Ord. 312 passed 6-10-08) Penalty, see § 10.99

**§ 92.02 HOURS.**

It shall be unlawful for any person to go in or upon or to be found within the boundaries of the

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Malin Community Park May 1<sup>st</sup>-September 30<sup>th</sup> between the hours of 10:00 p.m. and 6:00 a.m., and October 1<sup>st</sup>-April 30<sup>th</sup> between the hours of 8:00 p.m. and 6:00 a.m. of the following day, except caretakers and city employees whose duties require them to be there. Any person going in or upon or found within the boundaries of any portion of the Malin Community Park in violation of this section shall be deemed a trespasser under this section.

(Ord. 100, passed 9-5-67; Am. Ord. 166, passed 4-5-77; Am. Ord.309, passed 7-10-07 ) Penalty, see § 10.99

**§ 92.03 SWIMMING POOL.**

It shall be unlawful for any person, except those persons authorized by the Malin Community Park Board, to go within the enclosed areas of the swimming pool located in the Malin Community Park at any time other than that designated by the Park Board for public swimming. Any person going in or upon or found within the swimming pool enclosure in violation of this section shall be deemed a trespasser under this section.

(Ord. 100, passed 9-5-67) Penalty, see § 10.99

**§ 92.04 CAMPING OR OVERNIGHT STAY.**

It shall be unlawful for any person to camp or stay overnight within the boundaries of the Malin Community Park without first securing a permit to do so from the Malin Community Park Board.

(Ord. 100, passed 9-5-67) Penalty, see § 10.99

**§ 92.05 FIREARMS.**

It shall be unlawful for anyone to carry in hand a rifle, shotgun, pistol, pellet gun, air gun, BB gun, crossbow, longbow, slipper, slingshot, or other weapon which propels a projectile by use of spring, air, gunpowder or other explosive, or jet or rocket propulsion within the boundaries of the Malin Community Park without the written permission of the Malin Community Park Board.

(Ord. 179, passed 1-8-80; Am. Ord. 223, passed 10-6-87) Penalty, see § 10.99



## CHAPTER 93: NUISANCES

### Section

#### *General Provisions*

- 93.01 Definitions
- 93.02 Liability for injuries

#### *Nuisances*

- 93.15 Nuisances declared; unenumerated nuisances
- 93.16 Nuisances affecting public health
- 93.17 Containers, cisterns, and the like
- 93.18 Attractive nuisances
- 93.19 Noxious vegetation
- 93.20 Rubbish
- 93.21 Trees
- 93.22 Fences
- 93.23 Surface water and drainage
- 93.24 Snow, ice, and other sidewalk hazards
- 93.25 Junk

#### *Abatement Procedure*

- 93.35 Notice of nuisance determination meeting
- 93.36 Notice to abate
- 93.37 Abatement by person responsible
- 93.38 Joint responsibility
- 93.39 Abatement by city
- 93.40 Assessment of costs
- 93.41 Summary abatement

- 93.99 Penalty

#### ***Cross-reference:***

*Nuisance dogs, see § 90.26*

*Offenses against public peace and safety, see Ch. 131*

**GENERAL PROVISIONS****§ 93.01 DEFINITIONS.**

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

**COUNCIL.** The Common Council of the City of Malin.

**NUISANCE.** A thing, condition, substance, or activity which is injuring or endangering the public peace, health, safety, or welfare, including but not limited to the enumerated things, conditions, substances, and activities specified in this chapter.

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

**PERSON IN CHARGE OF PROPERTY.** An agent, occupant, lessee, contract purchaser, or other person having possession or control of property or supervision of a construction project.

**PERSON RESPONSIBLE.** The person responsible for abating a nuisance includes:

- (1) The owner;
- (2) The person in charge of property, as defined in this section;
- (3) The person who caused a nuisance, as defined in this chapter or another ordinance of the city, to come into or continue in existence.

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

(Ord. 269, passed 10-11-94)

**§ 93.02 LIABILITY FOR INJURIES.**

(A) The person responsible for real property on which a nuisance exists is liable to the person injured because of failure by the person responsible to abate the nuisance.

(B) If the city is required to pay damages for an injury to any person caused by the failure to abate a nuisance, the person responsible shall reimburse the city for the amount of the damages paid and for the attorney fees and costs of defending against the claim for damages. The city may maintain an action in court to enforce the provisions of this section.

(Ord. 269, passed 10-11-94)

**Nuisances**  
***NUISANCES***

**§ 93.15 NUISANCES DECLARED; UNENUMERATED NUISANCES.**

(A) The acts, conditions, or objects specifically enumerated and defined in this subchapter are declared public nuisances and may be abated by the procedures contained in § 93.35 et seq.

(B) In addition to the nuisances specifically enumerated in this chapter, every other thing, substance, or act that is determined by the Council to be injurious or detrimental to the public health, safety, or welfare of the city is declared a nuisance and may be abated as provided in this chapter.  
(Ord. 269, passed 10-11-94) Penalty, see § 93.99

**§ 93.16 NUISANCES AFFECTING PUBLIC HEALTH.**

No person shall cause or permit a nuisance affecting public health on property owned or controlled by the person. The following are nuisances affecting public health and may be abated as provided in this chapter:

(A) Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the Department of Environmental Quality (DEQ) regulations;

(B) Accumulations of debris, rubbish, manure, and other refuse that are not removed within a reasonable time and that affect the health of the city;

(C) Stagnant water that affords a breeding place for mosquitoes and other insect pests;

(D) Pollution of a body of water, well, spring, stream, or drainage ditch by sewage, industrial wastes, or other substances placed in or near the water in a manner that will cause harmful material to pollute the water;

(E) Decayed or unwholesome food offered for human consumption;

(F) Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition;

(G) Drainage of liquid wastes from private premises;

(H) Cesspools or septic tanks that are in an unsanitary condition or that cause an offensive odor;

(I) Oil, grease, or petroleum products allowed to be introduced into the sewer system by a user connected to the sewer system;

(J) The disposition of an animal carcass or part thereof, or any excrement or sewage, or industrial waste, or any putrid, nauseous, decaying, offensive, or dangerous substance in a stream, well, spring,

brook, ditch, pond, river, or other inland waters within the city, or the placing of such substances in such a position that high water or natural seepage will carry the same into such waters;

(K) The obstruction or interference with the flow of water in any ditch, drain, or catch basin constructed in a public street in connection with the improvement of the street;

(L) Failure to hook up to the municipal water and/or sewer system.  
(Ord. 269, passed 10-11-94) Penalty, see § 93.99

### **§ 93.17 CONTAINERS, CISTERNS, AND THE LIKE.**

No person shall create a hazard by:

(A) Maintaining or leaving in a place accessible to children a container with a compartment of more than 1½-cubic-feet capacity and a door or lid that locks or fastens automatically when closed and that cannot be easily opened from the inside, such as refrigerators or freezers;

(B) Being the person responsible for property on which there is a well, cistern, cesspool, excavation, or other hole of a depth of four feet or more, and a top width of 12 inches or more, and failing to cover or fence it with a suitable protective construction.  
(Ord. 269, passed 10-11-94) Penalty, see § 93.99

### **§ 93.18 ATTRACTIVE NUISANCES.**

(A) No person responsible for property shall permit on the property:

(1) Unguarded machinery, equipment, or other devices that are attractive, dangerous, and accessible to children.

(2) Lumber, logs, or piling placed or stored in a manner so as to be attractive, dangerous, and accessible to children.

(B) This section does not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children.  
(Ord. 269, passed 10-11-94) Penalty, see § 93.99

### **§ 93.19 NOXIOUS VEGETATION.**

(A) No person responsible for real property shall allow noxious vegetation on the property. Noxious vegetation is declared a nuisance.

(B) The person responsible for real property shall abate noxious vegetation from the property. The person responsible shall be jointly and severally liable for the cost of abatement as provided in this chapter.

## Nuisances

(C) For purposes of this section, *NOXIOUS VEGETATION* means vegetation that is or is likely to become:

(1) A health hazard;

(2) A fire hazard;

(3) A traffic hazard because it impairs the view of the public thoroughfare or otherwise makes use of the thoroughfare hazardous.

(D) No person responsible for property shall allow noxious vegetation to be on the property or in the right-of-way of a public thoroughfare abutting on the property. A person responsible for property shall cut down or destroy noxious vegetation as often as needed to prevent it from becoming a health or fire hazard or, in the case of weeds or other noxious vegetation, from maturing or going to seed.

(E) The City Recorder may publish in a newspaper of general circulation in the city a copy of (D) as a notice to all persons responsible for property of the duty to keep their property free from noxious vegetation.

(F) The notice provided for in (E) may be used in lieu of the notice required by § 93.36. (Ord. 269, passed 10-11-94) Penalty, see § 93.99

### § 93.20 RUBBISH.

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

(B) Those substances enumerated in (A) may be temporarily stored in containers which are substantially fly- and rodent-proof and are covered in such a manner as to prevent said substances from being carried away by the elements. No garbage container shall be allowed to remain on or adjacent to the parking strip except for those days in which the garbage is to be collected.

(Ord. 269, passed 10-11-94) Penalty, see § 93.99

### § 93.21 TREES.

(A) No person responsible for property that abuts on a street or public sidewalk shall permit trees or bushes on the property to interfere with street or sidewalk traffic. A person responsible for property that abuts on a street or public sidewalk shall keep all trees and bushes on the premises, including the adjoining parking strip, trimmed so that any overhanging portions are at least eight feet above the sidewalk and at least 12 feet above the roadway.

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(B) No person responsible for property shall allow a dead or decaying tree to stand if it is a hazard to the public or nearby property or to persons on or near the property.  
(Ord. 269, passed 10-11-94) Penalty, see § 93.99

**§ 93.22 FENCES.**

(A) No person responsible for property shall construct or maintain a barbedwire fence, or permit barbed wire to remain as part of a fence, along a sidewalk or public way; except wire may be placed above the top of other fencing not less than 6 feet 6 inches high.

(B) No person responsible for property shall construct, maintain, or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person without written permission of the Common Council.  
(Ord. 269, passed 10-11-94) Penalty, see § 93.99

**§ 93.23 SURFACE WATER AND DRAINAGE.**

(A) No person responsible for a building or structure shall permit rainwater, ice, or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk.

(B) The person responsible for property shall install and maintain in a proper state of repair adequate drainpipes or a drainage system so that overflow water accumulating on the roof or about the building is not carried across or on the sidewalk.  
(Ord. 269, passed 10-11-94) Penalty, see § 93.99

**§ 93.24 SNOW, ICE, AND OTHER SIDEWALK HAZARDS.**

(A) No person responsible for property, improved or unimproved, abutting on a public sidewalk, shall permit:

(1) Snow to remain on the sidewalk for more than the first two hours of daylight after the snow has fallen;

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

(B) No person responsible for property, improved or unimproved, abutting on a public sidewalk, shall permit the sidewalk to deteriorate to such a condition that, because of cracks, chipping, weeds, settling, covering by dirt, or other similar occurrences, the sidewalk becomes a hazard to persons using it.  
(Ord. 269, passed 10-11-94) Penalty, see § 93.99

## Nuisances

### § 93.25 JUNK.

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

(B) The term **JUNK** as used in this section includes all old motor vehicles, old motor vehicle parts, abandoned automobiles, old machinery, old machinery parts, old appliances or appliance parts, old iron or other metal, glass, paper, lumber, wood, or other waste or discarded material.

(C) This section does not apply to junk kept in a licensed junkyard or automobile wrecking house. (Ord. 269, passed 10-11-94) Penalty, see § 93.99

## *ABATEMENT PROCEDURE*

### § 93.35 NOTICE OF NUISANCE DETERMINATION MEETING.

At least five days prior to the meeting at which the nuisance determination described in § 93.36 is made, the Recorder shall notify the person responsible for the property involved of the time and place of the meeting. For the purposes of this section, notice is sufficient if it is:

(A) Mailed to the last known address of the person responsible; or

(B) Posted at the site of the property involved.  
(Ord. 269, passed 10-11-94)

### § 93.36 NOTICE TO ABATE.

(A) When the Council determines that a nuisance exists, the Council shall cause a notice to be posted on the premises or at the site of the nuisance directing the person responsible to abate the nuisance.

(B) At the time of posting, the City Recorder shall forward a copy of the notice by registered or certified mail to the person responsible at the person's last known address.

(C) The notice to abate shall contain:

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

(2) A direction to abate the nuisance within 10 days from the date of the notice;

(3) A description of the nuisance;

(4) A statement that unless the nuisance is removed the city may abate the nuisance and the cost

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of abatement will be charged to the person responsible;

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

(6) A statement that the person responsible may protest the order to abate by giving notice to the City Recorder within 10 days from the date of the notice.

(D) An additional notice shall be sent stating that the cost of abatement not paid may be assessed to and become a lien on the property.

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

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

(Ord. 269, passed 10-11-94)

**§ 93.37 ABATEMENT BY PERSON RESPONSIBLE.**

(A) Within 10 days after the posting and mailing of notice as provided in § 93.36, the person responsible shall remove the nuisance or file a protest, as described in (B) below.

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

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

(D) If the Council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within 10 days after the Council determination.

(Ord. 269, passed 10-11-94)

**§ 93.38 JOINT RESPONSIBILITY.**

If more than one person is the person responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

(Ord. 269, passed 10-11-94)



## Nuisances

### § 93.39 ABATEMENT BY CITY.

(A) If the nuisance has not been abated by the person responsible within the time allowed, the Council may cause the nuisance to be abated.

(B) The officer charged with abatement of the nuisance shall have the right to enter into or upon property at reasonable times to investigate or cause the removal of a nuisance.

(C) The City Recorder shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include a charge equal to 5% of those expenses for administrative costs. (Ord. 269, passed 10-11-94)

### § 93.40 ASSESSMENT OF COSTS.

(A) The City Recorder shall forward to the person responsible by registered or certified mail a notice stating:

(1) The total cost of abatement, including the administration costs;

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

(3) That if the person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the City Recorder not more than 10 days from the date of the notice.

(B) No sooner than 30 days after the date of the notice, the Council, in the regular course of business, shall hear and make a decision on the objections to the costs assessed.

(C) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs, as stated or as decided by the Council, shall be made by resolution and shall be entered in the docket of city liens. When the entry is made it shall constitute a lien on the property from which the nuisance was removed or abated.

(D) The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the current statutory interest rate. The interest shall begin to run from the date of entry of the lien in the lien docket.

(E) An error in the name of the person responsible or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid lien against the property. (Ord. 269, passed 10-11-94)

***Cross-reference:***

*Liens and lien docket, see § 35.10 et seq.*

*Streets and sidewalks, see Ch. 91*

**§ 93.41 SUMMARY ABATEMENT.**

The procedure provided by this chapter is not exclusive, but is in addition to procedures provided by other ordinances. The Chief of the Fire Department, a law enforcement officer, or any other city official may summarily abate a health or other nuisance that unmistakably exists and that imminently endangers human life or property.

(Ord. 269, passed 10-11-94)

**§ 93.99 PENALTY.**

(A) A violation of a provision of this chapter is punishable by a fine not to exceed \$1,000.

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

(C) The abatement of a nuisance is not a penalty for violation of this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance. However, abatement of a nuisance within 10 days of Council determination that a nuisance exists will relieve the person responsible from the imposition of a penalty under (A).

(Ord. 269, passed 10-11-94)

## **Fire Prevention**



**Fire Prevention**  
**CHAPTER 94: FIRE PREVENTION**

Section

*Open Burning*

94.01 Title  
94.02 Findings  
94.03 Permit required  
94.04 Permit procedure  
  
94.99 Penalty

***OPEN BURNING***

**§ 94.01 TITLE.**

This chapter shall be known as the Malin Outdoor Burning Ordinance.  
(Ord. 229, passed 8-1-89)

**§ 94.02 FINDINGS.**

The Common Council finds that the unregulated outdoor burning of flammable materials creates a health and safety hazard.  
(Ord. 229, passed 8-1-89)

**§ 94.03 PERMIT REQUIRED.**

(A) No person shall kindle or maintain any bonfire or rubbish fire (including fires in what are commonly known as “burning barrels”) nor authorize any such fire to be kindled or maintained without proper authorization.

(B) During construction or demolition of buildings and other structures, no waste materials or rubbish shall be disposed of by burning on the premises or in the immediate vicinity without proper authorizations having been maintained.  
(Ord. 229, passed 8-1-89) Penalty, see § 94.99

**§ 94.04 PERMIT PROCEDURE.**

Persons desiring authorization to burn shall contact the City Recorder or his or her designee. A permit shall be issued unless the City Recorder or his or her designee determines that the location of the fire, weather conditions, or the material sought to be burned could cause a safety or health hazard. The permit will only allow burning between the hours of 6am-2pm. At 2pm all signs of the fire must be totally extinguished.

(Ord. 229, passed 8-1-89)

**§ 94.99 PENALTY.**

Violation of § 94.03 is punishable by a fine not to exceed \$100.

(Ord. 229, passed 8-1-89)

## CHAPTER 95: ABANDONED AND HAZARDOUS VEHICLES

### Section

- 95.01 Definitions
- 95.02 Impoundment of abandoned and disabled vehicles
- 95.03 Impoundment of hazardous vehicles
- 95.04 Liens for towing expenses; disposition of vehicles
- 95.05 Notice regarding abandoned and disabled vehicles
- 95.06 Notice regarding hazardous vehicles
- 95.07 Hearing; recovery of possession through posting of security
- 95.08 Hearing decision; effect of failure to appear

### § 95.01 DEFINITIONS.

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

**ABANDONED VEHICLE.** A vehicle left unoccupied and unclaimed or in such a damaged, disabled, or dismantled condition that the vehicle is inoperable.

**HAZARDOUS VEHICLE.** A vehicle left in a location or condition that constitutes an immediate and continuous hazard to the safety of persons using the streets or alleys of the city. For example, and not for limitation, the following are hazardous vehicles:

- (1) Vehicles blocking public or private rightsofway;
- (2) Vehicles with leaks in gas tanks;
- (3) Vehicles blocking fire hydrants.

**LAW ENFORCEMENT OFFICER.** An authorized law enforcement officer of the city or another city employee authorized to enforce this chapter.

**OWNER.** A person with a claim, either individually or jointly, or ownership of any interest, legal or equitable, in a vehicle.

**PRIVATE GARAGE.** A reputable, private storage yard, garage, or other storage place selected by a law enforcement officer.

**VEHICLE** Every device in, upon, or by which a person or property is or may be transported or drawn upon a public highway, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks.

(Ord. 250, passed 12-8-92)

#### **§ 95.02 IMPOUNDMENT OF ABANDONED AND DISABLED VEHICLES.**

(A) No vehicle that a law enforcement officer has reason to believe is disabled or abandoned shall be parked or left standing on the rightofway of a city street or alley or on city property for a period in excess of 48 hours.

(B) A vehicle so parked or left standing may be taken into custody by a law enforcement officer and shall be held at the expense of the owner or person entitled to possession of the vehicle. A law enforcement officer may use department personnel, equipment, and facilities for the removal and preservation of the vehicle or may hire other personnel, equipment, and facilities for that purpose.

(Ord. 250, passed 12-8-92) Penalty, see § 10.99

#### **§ 95.03 IMPOUNDMENT OF HAZARDOUS VEHICLES.**

(A) On discovering a hazardous vehicle, a law enforcement officer may immediately cause the vehicle to be towed and impounded.

(B) The owner of the vehicle shall be responsible for costs of towing and storing the vehicle.

(Ord. 250, passed 12-8-92)

#### **§ 95.04 LIENS FOR TOWING EXPENSES; DISPOSITION OF VEHICLES.**

(A) A person who, at the request of a law enforcement officer, takes a vehicle into custody under the provisions of this chapter shall have a lien on the vehicle and its contents for reasonable towing and storage charges, may retain possession of the vehicle until the charges are paid, and may have the vehicle sold at public auction to satisfy the lien. The lien that attaches to the vehicle and its contents shall be a possessory chattel lien in accordance with O.R.S. 87.152 and may be foreclosed in the manner provided in O.R.S. 87.152 through 87.212. If the appraised value of the vehicle is \$750 or less, the vehicle may be disposed of in the manner provided in O.R.S. 819.220.

(B) If the vehicle is taken into custody under the provisions of this chapter and is held by the city rather than by a private garage, the vehicle and its contents shall be disposed of in the manner provided in O.R.S. 819.210 through 819.260.

(Ord. 250, passed 12-8-92)

#### **§ 95.05 NOTICE REGARDING ABANDONED AND DISABLED VEHICLES.**

(A) (1) A law enforcement officer who investigates a vehicle found in violation of § 91.02 shall:



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(a) Make a routine investigation to discover the owner and request removal of the vehicle;

(b) Failing to discover the owner by such a process, make a diligent inquiry as to the name and address of the owner of the vehicle by examining it for license number, identification number, make, style, and any other information that will aid in identification of the owner. When such vehicle is required by law to be registered with the Motor Vehicles Division, the officer shall transmit all available information to that office with an inquiry for the name and address of the owner;

(c) If the owner is identified, mail a notice to the owner at the address shown on the Motor Vehicles Division records;

(d) Whether or not the owner is identified, place a notice upon the windshield or some other part of the vehicle where it can be easily seen.

(2) This section does not apply to a hazardous vehicle.

(B) (1) Notices sent or placed under (A) shall contain the following information:

(a) The name of the officer or other city employee issuing the notice;

(b) That if the vehicle is not removed within the legal time limit, the vehicle will be towed and taken into custody as an abandoned vehicle;

(c) That any person who at the request of a law enforcement officer tows an abandoned vehicle shall have a lien on the vehicle and its contents for reasonable towing and storage charges, may retain possession of the vehicle and its contents until the charges are paid, and may have the vehicle and its contents sold at public auction to satisfy the lien;

(d) That the owner of the vehicle may request a hearing on the validity of the proposed tow and the creation and amount of the lien;

(e) How and where the owner of the vehicle may get information about the opportunity for a hearing and the location of the vehicle, if it has been towed.

(2) If the owner of the vehicle requests a hearing before the vehicle is taken into custody, the vehicle shall not be taken until a hearing is set and held in accordance with §§ 95.07 and 95.08.

(Ord. 250, passed 12-8-92)

### **§ 95.06 NOTICE REGARDING HAZARDOUS VEHICLES.**

(A) After an abandoned vehicle has been taken into custody, notice shall be provided to the owner indicating:

(1) The location of the vehicle;

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- (2) That a lien has arisen on the vehicle in favor of the person who towed the vehicle;
- (3) That the vehicle may be sold at public auction to satisfy the lien; and
- (4) That a hearing on the validity of the tow and on the creation and amount of the lien may be held, if requested.

(B) Notice is considered given when a certified letter addressed to the registered owner of the vehicle and a similar letter addressed to the legal owner, if any, return receipt requested and postage prepaid, is mailed within 24 hours after the vehicle is taken into possession by or at the direction of a law enforcement officer.

(C) If the vehicle is registered in the office of the Motor Vehicles Division, notice may be addressed to the registered owner and the legal owner, if any, at the latest respective address of each shown by Motor Vehicles Division records. If the vehicle is not registered, reasonable efforts shall be made to ascertain the names and addresses of the legal owner and persons entitled to possession of the vehicle so that notice may be mailed, if reasonably possible, within the time period outlined in this section.

(D) If a hearing is desired, the owner must request a hearing within five days after receipt of the notice. The request may be made in person or in writing, and failure to appear in person or to mail a letter within five days after receipt of the notice shall act as a waiver of the right to a hearing.  
(Ord. 250, passed 12-8-92)

**§ 95.07 HEARING; RECOVERY OF POSSESSION THROUGH POSTING OF SECURITY.**

(A) On request of the legal owner or the person entitled to possession of the vehicle, a hearing shall be held before the Municipal Judge.

(B) The hearing shall be set and conducted within 48 hours of receipt of the request, holidays, Saturdays, and Sundays not to be included. The hearing may be set for a later date if requested by the owner or the person entitled to possession. At the hearing, the owner may contest:

- (1) The validity of the action of the law enforcement officer in taking the vehicle into custody;  
and
- (2) The creation and amount of the lien attached to the vehicle.

(C) The city shall have the burden of showing the validity of the taking of the vehicle.

(D) At any time prior to the requested hearing, the owner or the person entitled to possession of the vehicle may regain possession of the vehicle by posting security with the city in the form of cash in an amount sufficient to cover the costs of removal and storage.

(Ord. 250, passed 12-8-92)

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### **§ 95.08 HEARING DECISION; EFFECT OF FAILURE TO APPEAR.**

(A) (1) If the Municipal Judge finds that the action of the law enforcement officer in taking the vehicle into custody was proper, the Judge shall enter an order supporting the removal.

(2) If the Municipal Judge finds that the action of the law enforcement officer in taking the vehicle into custody was invalid, the Judge shall:

(a) Order the vehicle released to the owner;

(b) Find that the owner is not liable for towing or storage charges occasioned by the taking;

and

(c) Order the city to satisfy the towing and storage lien.

(3) The action of the Municipal Judge is final.

(B) If the person requesting the hearing does not appear at the scheduled hearing, the Judge may enter an order supporting the removal and assessment of towing and storage costs and apply any security posted against such costs.

(Ord. 250, passed 12-8-92)