

ORDINANCE NO. 2016-24

AN ORDINANCE AMENDING CHAPTERS 1, 8, 10, 12, AND 14 FOR MISCELLANEOUS UPDATES AND STANDARD PROCEDURES FOR SERVICE OF ABATEMENT, FINE AND FEE NOTICES; AND PUBLIC SWIMMING POOL CLOSURE CRITERIA

The City Council of the City of Bloomington hereby ordains:

Section 1. That Chapter 1 of the City Code is hereby amended by deleting those words that are in ~~strike through~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

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CHAPTER 1: INTERPRETATION AND ENFORCEMENT OF THE CITY CODE

ARTICLE I: GENERAL PROVISIONS

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§ 1.08 GENERAL PENALTY; CONTINUING VIOLATIONS.

(a) Whenever in this code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and when no specific penalty is provided therefor, the violation of any such provision of this code or any ordinance shall be a misdemeanor punishable by a fine not exceeding \$1,000 ~~[and]~~ or imprisonment for a term not exceeding 90 days or both. Each day any violation of any provision of this code or of any ordinance continues shall constitute a separate offense.

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ARTICLE II: CIVIL HEARING PROCESS

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§ 1.11 CITY CODE PROVISIONS THAT ARE ADMINISTRATIVE OFFENSES.

A violation of the following provisions of the city code shall be an administrative offense that may be subject to the administrative mediation and hearing process of this Article II.

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(8) ~~[Chapter 10, Article III, Litter;]~~RESERVED.

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§ 1.12 ORDERS TO CORRECT; ADMINISTRATIVE CITATIONS.

(a) Upon the reasonable belief that an administrative offense detailed in § 1.11 of this Article II has occurred, the city officials listed in § 1.06 of this chapter shall serve on the violator an order to correct the violation. If compliance is not achieved by virtue of an order to correct, the official is authorized to issue an administrative citation pursuant to this Article II of the city code. An administrative citation shall be ~~[presented]~~served in person or by mail to the person responsible for the violation, as well as the owner of the property on which the violation occurred, if not the same person. The citation shall state the date, time and nature of the offense, the name of the official issuing the citation, the amount of the scheduled civil fine and the manner for paying the fine or appealing the citation by requesting an administrative conference.

(b) Except as otherwise required in law, rule, regulation or ordinance, service pursuant to this Chapter shall be effective when a copy is:

(1) Delivered personally;

(2) Sent by first-class mail addressed to the person who is listed by the County Auditor as the owner of tax payer record. If the tax payer's address is different than the address where the violation exists, then the notice shall also be mailed to the property address where the violation exists; or

(3) If the notice is returned showing that the letter was not delivered or the property is known to be vacant, a copy thereof shall be posted in a conspicuous place in or about the structure involved.

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§ 1.15 PAYMENT OF CIVIL FINE; REQUEST FOR ADMINISTRATIVE CONFERENCE.

(a) The person responsible for the violation must either pay the scheduled civil fine to the Community Development Department or request a conference with the City Attorney's office within 25 calendar days after issuance of the administrative citation. This administrative conference will be with the City Attorney or an Associate City Attorney who has reviewed the underlying facts of the violation, the history of prior violations, the impact of the violation on adjoining properties and any information provided by the person responsible for the violation. Based upon those facts, the City Attorney or Associate City Attorney will determine if any settlement options may, consistent with the public health, welfare and safety, be offered to the person responsible for the violation as an alternative to the payment of the entire amount of the fine. This conference shall take place within 20 calendar days of the City Attorney's office receiving the request. If a settlement cannot be reached at the administrative conference, the person responsible for the violation may, at the conclusion of the conference, either pay the fine or request a hearing before an independent hearing officer. A request for an administrative conference must be made to the City Attorney's office by mail or telephone. Only the City Attorney or an Associate City Attorney has authority to dismiss the citation ~~and~~ or waive the scheduled civil fine or both during the administrative conference. Failure to pay the fine or request an administrative conference within 25 calendar days of the date of the citation shall be deemed an admission of the charges set forth therein.

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§ 1.17 ~~[CIVIL FINE]~~ HEARING PROCEDURES.

The City Attorney will determine whether the independent hearing officer conducting the hearing will be an administrative law judge or a hearing officer.

(a) *Hearing officers.* The City Manager shall periodically approve a list of lawyers, from which the City ~~Manager~~ Attorney shall select as a hearing officer, to hear a matter for which a hearing is requested. The person requesting a hearing shall have the right to request, no later than ten calendar days before the date of the hearing, that the assigned hearing officer be removed from the case. One such request for each case will be granted automatically by the City Attorney. A subsequent request shall be directed to the assigned hearing officer, who will decide whether he or she cannot fairly and objectively review the case. If such a finding is made, the hearing officer shall remove himself or herself from the case, and the City Manager shall assign another hearing officer. The hearing officer is not a judicial officer, but is a public officer as defined by M.S. § 609.415, as it may be amended from time to time. The hearing officer shall not be a current city employee or have a personal or financial interest in the outcome of the case.

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(g) *Authority of independent hearing officer.* The independent hearing officer shall have the authority to:

- (1) Mediate and enforce a settlement of the disputed administrative citation or excessive nuisance service call fee;
- (2) Determine whether ~~or not~~ the city has proven by a preponderance of the evidence that the facts serving as the basis for the administrative citation or excessive nuisance service call fee occurred;
- (3) Dismiss the administrative citation or declaration of a public nuisance issued under § 12.04 of this city code based upon a finding that the city failed to provide sufficient evidence to prove the violation or charge;
- (4) Impose the scheduled fine or affirm the excessive nuisance service call fee imposed under § 12.15 of this city code or affirm the costs of public health nuisance abatement to be assessed under § 12.06 of this city code;
- (5) Reduce, stay or waive a scheduled fine or the excessive nuisance service call fee imposed under § 12.15 of this city code or the costs of abatement to be assessed under § 12.06 of this city code either unconditionally or upon compliance with appropriate conditions; or
- (6) Make the final determination as to the apportionment of the costs of mediation.

The independent hearing officer shall not have the authority to declare any portion of the city code invalid or to interpret the city code in a manner that is inconsistent with the interpretation of the City Attorney. The decision of a hearing officer in any case, shall have no precedential value in future cases.

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(k) *Payment for cost of hearing.* The cost of the hearing before the independent hearing officer shall be apportioned equally between the person requesting the hearing and the city. At the time the request for a hearing is made, the city shall provide the requestor with an estimate of the requesting party's share of that cost. The requestor must provide payment of that estimated cost in cash or cash equivalent to the city not later than seven days in advance of the scheduled mediation or hearing. However, the city has authority to reduce the requesting person's share of the costs where that person can demonstrate indigency by clear and convincing evidence. Proof of indigency can be demonstrated by the person's receipt of means tested governmental benefits or a

demonstrated lack of assets or current income. Such proof shall be presented preliminarily to the City Attorney's office for determination of the amount of the prepayment in advance of the hearing. However, the independent hearing officer at the time of the hearing shall make specific findings as to whether ~~[or not]~~ the requesting person is indigent and make a final determination as to that party's share of the hearing's costs. In all cases where the person requesting a hearing is unable to attend and fails to request a continuance of the hearing at least 48 hours in advance of the scheduled hearing, all costs incurred by the city attributable to the requested hearing shall be charged to the requesting party and deducted from any prepayment made. Where the requesting party's one-half share of the costs of the hearing exceed the requesting party's prepayment, payment thereof must be made within 25 calendar days of the date the city serves, by regular mail, notice of the amount due and owing to the address on record for the requesting party. Failure to pay the remaining costs when due will result in the assessment of a late payment fee of 10% of the amount due and owing. This amount shall constitute a personal obligation of the violator that may be collected by any appropriate legal means. If the initial fine was imposed for a property-related violation, including excessive nuisance service calls pursuant to § 12.15 of this city code, the city may assess the applicable property pursuant to § 1.19 of this city code.

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§ 1.19 ASSESSMENT OF CIVIL FINES FOR PROPERTY-RELATED VIOLATIONS.

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(c) *Assessment procedure.* On or before October 1 of each year, the unpaid civil fine and late fees, including the administrative charge due under subsection (d) below, together with interest thereon at the maximum lawful rate permitted under M.S. Chapter 429, as it may be amended from time to time, to be charged against said lot or parcel of land, together with a description of the premises and the name of the supposed owner, shall be certified to the County Auditor and shall be collected in the same manner as taxes ~~[and]~~ or special assessments against the premises. The charge shall be a perpetual lien on the premises until paid. Prior to the certification to the County Auditor, the owner shall be given written notice of the proposed assessment and have the right to a hearing before an independent hearing officer to determine the following:

- (1) Whether ~~[or not]~~ the unpaid civil fine is of the type of unpaid special charge that qualifies for special assessment pursuant to M.S. § 429.101, as it may be amended from time to time, or § 12.15 of the City Charter;
- (2) Whether ~~[or not]~~ the amount to be assessed is correct;
- (3) Whether ~~[or not]~~ the property was correctly identified;
- (4) Whether ~~[or not]~~ the owner of the property was correctly identified; and
- (5) Whether ~~[or not]~~ the special assessment procedure set forth in M.S. Chapter 429, as it may be amended from time to time, was ~~[property]~~ properly followed by the city.

Thereafter, the independent hearing officer shall make a report that includes recommendations to the City Council as to whether ~~[or not]~~ the unpaid civil fine should be collected as a special assessment against the real property. Subsequently the property owner shall be provided an opportunity to be heard before the City Council.

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§ 1.20 ASSESSMENT OF OTHER SPECIAL CHARGES.

Prior to any assessment of special charges, the City Manager or the Manager's design~~[at]~~ee shall seek voluntary payment of the following charges by notifying the owner of the property in writing of the amount and basis for the charge. In accordance with applicable state law, on or before October 1 of each year the unpaid charge, with any late fees and administrative charges, together with interest thereon at the maximum lawful rate permitted under state law, to be charged against said lot or parcel of land, together with a description of the premises and the name of the supposed owner, shall be certified to the County Auditor and shall be collected in the same manner as taxes ~~[and]~~ or special assessments against the premises. The charge shall be a perpetual lien on the premises until paid. Prior to the certification to the County Auditor, the owner shall be given written notice of the proposed assessment and have the right to a hearing before an independent hearing officer to determine the propriety of the charge to be assessed. Thereafter, the independent hearing officer shall make a report that includes recommendations to the City Council as to whether ~~[or not]~~ the charge should be collected as a special assessment against the real property. Subsequently, the property owner shall be provided an opportunity to be heard before the City Council.

(a) *Special charges against real property.* The independent hearing officer may, where the charge against the property is contested, conduct hearings at the Bloomington Civic Plaza to determine the following facts:

- (1) Whether ~~[or not]~~ the type of disputed unpaid special charge qualifies for special assessment pursuant to M.S. § 429.101, as it may be amended from time to time, or § 12.15 of the City Charter;

- (2) Whether ~~or not~~ the amount to be assessed is correct;
- (3) Whether ~~or not~~ the property was correctly identified;
- (4) Whether ~~or not~~ the owner of the property was correctly identified; and
- (5) Whether ~~or not~~ the special assessment procedure set forth in M.S. Chapter 429, as it may be amended from time to time, was properly followed by the city.

~~[Thereafter, the independent hearing officer shall make a report that includes recommendations to the City Council as to whether or not the unpaid special charge should be collected as a special assessment against the benefited real property.]~~

(b) *Public health nuisance abatements.* The independent hearing officer may, where the abatement cost is contested, conduct hearings at the Bloomington Civic Plaza to determine whether ~~or not~~ all or a portion of the city's cost of abating a public health nuisance pursuant to M.S. § 145A.04, subd. 8, as it may be amended from time to time, is properly subject to special assessment against the benefited real property pursuant to M.S. § 145A.08, as it may be amended from time to time, and if so, whether ~~or not~~ the special assessment procedure set forth in M.S. Chapter 429, as it may be amended from time to time, was properly followed by the city. The property owner may not contest the underlying basis for the ~~remediation~~ abatement at this time.

(c) *Hazardous building abatements.* The independent hearing officer may, where the cost of the abatement is contested, conduct hearings at the Bloomington Civic Plaza to determine whether ~~or not~~ all or a portion of the city's cost of repair, removal or correction of a hazardous building or hazardous building condition pursuant to M.S. § 463.21, as it may be amended from time to time, is properly subject to special assessment against the real property pursuant to M.S. Chapter 429, as it may be amended from time to time, and if so, whether ~~or not~~ the special assessment procedure set forth in M.S. Chapter 429, as it may be amended from time to time, was properly followed by the city. The property owner may not contest the underlying basis for the abatement at this time.

(d) *Delinquent utility charges.* The independent hearing officer may, where the cost of the delinquent utility charges are contested, conduct hearings at the Bloomington Civic Plaza to determine the propriety of the charge to be assessed pursuant to M.S. § 444.075, as it may be amended from time to time. The property owner may not contest the underlying basis for the utility charges at this time.

(e) *Public nuisance abatements.* The independent hearing officer may, where the cost of the abatement is contested, conduct hearings at the Bloomington Civic Plaza to determine whether all or a portion of the city's cost of abating the public nuisance pursuant to M.S. Chapters 609 and 617, as they may be amended from time to time, is properly subject to special assessment against the benefited real property pursuant to M.S. Chapters 609 and 617, as they may be amended from time to time, and if so, whether the special assessment procedure set forth in M.S. Chapter 429, as it may be amended from time to time, was properly followed by the city. The property owner may not contest the underlying basis for the abatement at this time.

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Section 2. That Chapter 8 of the City Code is hereby amended by deleting those words that are in ~~strike through~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 8: TRAFFIC, VEHICLES AND PARKING

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ARTICLE III: VEHICLE REGULATIONS

DIVISION A: STORAGE OF ABANDONED, JUNK, AND INOPERABLE VEHICLES AS PUBLIC NUISANCES

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§ 8.19 ~~[ABATEMENT,]~~REMOVAL AND DISPOSITION.

(a) ~~[Abatement and]~~Removal by city. If the vehicle owner of any motor vehicle which is in violation of this Division A, or the owner or occupant of the property upon which such vehicle is located, fails, neglects or refuses to remove or properly house the abandoned, junk or inoperable vehicle in accordance with the notice, the motor vehicle shall be deemed to be in violation of this Article III of this city code and the City Enforcement Officer may cause the removal and disposal of the vehicle.

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Section 3. That Chapter 10 of the City Code is hereby amended by deleting those words that are in ~~strikethrough~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 10: ENVIRONMENTAL CONTROL

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ARTICLE III: ~~[LITTER]~~RESERVED

~~§ 10.15~~ DEFINITIONS.

~~—The following words and terms, when used in this Article III, shall have the following meanings, unless the context clearly indicates otherwise.~~

~~—**AUTHORIZED PRIVATE RECEPTACLE.** A litter storage and collection receptacle as required and authorized in § 10.05 of this chapter.~~

~~—**GARBAGE.** Putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption of food.~~

~~—**HEALTH OFFICER.** The City Health Officer of Bloomington.~~

~~—**LITTER.** Garbage, refuse, rubbish as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.~~

~~—**PARK.** A park, reservation, playground, beach, recreation center or any other public area in the city owned or used by the city and devoted to active or passive recreation.~~

~~—**PERSON.** Any person, firm, partnership, association, corporation, company or organization of any kind.~~

~~—**PRIVATE PREMISES.** Any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.~~

~~—**PUBLIC PLACE.** Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.~~

~~—**REFUSE.** All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, trash, ashes, street cleanings, dead animals, junk, abandoned automobiles and solid market and industrial wastes.~~

~~—**RUBBISH.** Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, wood, glass, bedding, crockery and similar materials.~~

~~—**VEHICLE.** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.~~

~~§ 10.16~~ LITTER IN PUBLIC PLACES.

~~—No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the city except in public receptacles or authorized private receptacles for collection.~~

~~§ 10.17~~ PLACEMENT OF LITTER IN RECEPTACLES.

~~—Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.~~

~~§ 10.18~~ SWEEPING LITTER INTO GUTTERS PROHIBITED.

~~—No person shall sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot or from any private or public sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.~~

~~§ 10.19~~ DUTY OF MERCHANTS.

~~—No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway or allow litter on his or her premises to be deposited by the elements upon any street, sidewalk or other public place, or upon private property.~~

~~§ 10.20~~ LITTER THROWN FROM VEHICLES.

~~—No person while a driver or passenger in a vehicle shall throw or deposit litter upon any street or other public place within the city or upon private property.~~

~~§ 10.21~~ TRUCK LOADS CAUSING LITTER.

~~—No person shall drive or move any truck or other vehicle within the city unless such vehicle is equipped with covers or is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. Nor shall any person drive or move any vehicle or truck within the city the~~

wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

§ 10.22 LITTER IN PARKS.

—No person shall throw or deposit litter in any park within the city except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided herein.

§ 10.23 LITTER IN LAKES AND FOUNTAINS.

—No person shall throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the city.

§ 10.24 POSTING NOTICES PROHIBITED.

—No person shall post or affix any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamp post, or shade tree, or upon any public structure or building, except as may be authorized or required by law.

§ 10.25 LITTER ON PRIVATE PROPERTY.

—The owner or person in control of private property shall maintain thereon private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place, or to prevent litter from becoming a nuisance, source of filth, or cause of sickness on said private property.

§ 10.26 MERCHANT EQUALLY LIABLE.

—Any merchant who advertises his or her goods, wares or merchandises by causing such advertising material to be thrown or deposited in violation of any of the provision of this Article III shall be guilty of violating this Article III along with the person so throwing or depositing same.

§ 10.27 PENALTY.

—Violation of any provision of this Article III shall be a misdemeanor.

§ 10.28 NUISANCE DEFINED.

—Each of the acts hereinbefore forbidden and made a misdemeanor are hereby declared to be a nuisance, and the Health Officer is authorized and directed to abate the nuisance according to Chapter 12 of the city code.]

ARTICLE VI: WEEDS AND BRUSH

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§ 10.39 NOTICE.

(a) When the owner [and/]or occupant or both permit[s] a nuisance to exist in violation of § 10.38 of this Article VI, the Environmental Health Manager, or designated employee, shall serve a notice on the owner, occupant or agent of the owner of such lot or parcel of land ordering such person to have such brush, yard waste or weeds or long grass cut and removed, or removed within seven calendar days after the service of such notice; such notice shall also state that in the event of noncompliance, removal will be done by the city at the owner's expense. The notice of the cost of abatement shall also inform the owner of the owner's right to appeal the fee under § 1.17 of the city code. [When no owner, occupant or agent of the owner can be found, notice shall be sent by regular mail to the person who is listed on the records of County Auditor or County Treasurer as the owner; service will be complete with mailing.]

(b) Such notice shall be deemed to be properly served if a copy thereof is:

(1) Delivered personally;

(2) Sent by first-class mail addressed to the person who is listed by the County Auditor as the owner of tax payer record. If the tax payer's address is different than the address where the violation exists, then the notice shall also be mailed to the property address where the violation exists; or

(3) If the notice is returned showing that the letter was not delivered or the property is known to be vacant, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

§ 10.40 ASSESSMENT.

(a) If any person fails to comply with the notice provided in § 10.39 of this Article VI within ~~[ten]~~seven calendar days after service, or if no owner, occupant or agent can be found, the Environmental Health Manager, or designated employee, shall have such brush, yard waste, long grass or weeds cut and removed or otherwise eradicated. A record showing the cost of such work attributable to each separate lot or parcel shall be delivered to the City Clerk. On or before October 1 of each year, the amount so charged, including the administrative and inspection charges due under subsections (b) and (c) below, together with interest thereon at the maximum lawful rate permitted under M.S. Chapter 429, as it may be amended from time to time, against said lot or parcel of land, together with a description of the premises and the name of the supposed owner, shall be certified to the County

Auditor and shall be collected in the same manner as taxes ~~and/or~~ special assessments against said premises. The charge shall be a perpetual lien on the premises until paid.

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Section 4. That Chapter 12 of the City Code is hereby amended by deleting those words that are in ~~strike through~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 12: PUBLIC PEACE AND SAFETY

ARTICLE I: GENERAL PROVISIONS

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§ 12.01.01 DEFINITIONS.

When used in this chapter, the following words, terms and phrases shall have the following meanings, unless the context clearly indicates otherwise.

ABATEMENT NOTICE. Notice served upon the private property owner ~~and/or~~ interested party or both by the City Manager or the Manager’s designee of law enforcement responses to two or more nuisance service calls within a 365-day period on private property in which they have an interest pursuant to § 12.15 (c) of this city code.

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NUISANCE INCIDENT NOTICE. Notice served upon private property owner ~~and/or~~ interested party or both by the City Manager or the Manager’s designee of a law enforcement response to a nuisance service call to private property in which they have an interest pursuant to § 12.15 (a) of this city code.

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ARTICLE II: NUISANCE CONDUCT AND CONDITIONS

DIVISION A: PUBLIC NUISANCE PROPERTY CONDITIONS

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§ 12.03 PROPERTY CONDITIONS CONSTITUTING A PUBLIC NUISANCE OR PUBLIC HEALTH NUISANCE.

The following property conditions are declared to be nuisances affecting public peace, welfare and safety (“public nuisance” or “public health nuisance”):

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(15) Construction materials and equipment (including, but not limited to, piles of dirt, rock, landscaping materials, sod, scaffolding, forms, dumpsters, portable toilets, debris and construction trailers) left in the open:

(A) On a single-family or two-family residential site beyond 180 days after authorized work has stopped or one year from commencement of authorized work. A construction project is considered to commence when the first exterior evidence of the project is visible (for example, delivery of materials or removal of soil cover)~~[-];~~

(B) On a multi-family residential site or on a nonresidential site beyond 180 days after authorized work has stopped or 180 days after the issuance of the first temporary or permanent certificate of occupancy, whichever occurs first~~[-];~~

(C) Except that in the case of demonstrated hardship due to sources beyond the control of the property owner (including, but not limited to, extreme weather conditions; reasonably unforeseen material, equipment or labor shortages; vandalism; or theft), the time allowed for exterior construction and finishes may be extended at the sole discretion of the Manager of Building and Inspection upon written appeal, pursuant to §§ 15.201 ~~and/or~~ 15.202 of the city code; and

(D) All city, county or State Department of Transportation roadway and utility construction and maintenance projects, and maintenance projects on city owned property with temporary stockpiling of materials are exempt.

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(18) A clandestine lab site under M.S. Section 152.0275;

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(23) Accumulation of decaying animal or plant material, animal or human feces, trash, refuse, yard waste, rubbish, garbage, litter, rotting lumber, packing material, scrap metal, tires or any other substances in which flies, mosquitoes, other disease carrying insects, rodents or other vermin can harbor; this definition does not include compost bins or compost sites which are being managed in accordance with the standards in § 10.05 of this city code;

* * *

(29) At single-family and two-family dwelling units, the parking or storage of more than four vehicles per unit outside of a garage or on the street. ~~[(A)]~~Counting of vehicles: vehicles temporarily parked at the residence for visitation or business service reasons, Class I recreational vehicles ~~[(as defined in § 19.50.03 of this code)]~~, or any vehicle parked or stored within a garage shall not be counted for the purposes of this numerical limitations. All other vehicles, whether screened or not, including abandoned vehicles, junk vehicles, inoperable vehicles as defined in § 8.04 of this code shall be counted as vehicles for purposes of determining the number of vehicles parked or stored outside of a garage or on the street. Nothing in this section shall be interpreted as permitting the storage of vehicles if such storage is not otherwise permitted by this code. Only one vehicle per unit may be a vehicle with a snowplow attached or other Type II vehicle. Type II vehicles will be counted as a vehicle for the purposes of this section.

* * *

(34) Grading, filling, excavating, storing, stockpiling, or disposing of earth material or performing other land disturbing or land filling activity without first implementing approved measures to prevent~~[A]~~ or control erosion ~~[e]~~ affecting neighboring properties, drainage, ~~[and]~~ or water resources; and

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§ 12.04 ~~[DECLARATION OF]~~PUBLIC NUISANCE OR PUBLIC HEALTH NUISANCE ~~[AND]~~ ABATEMENT ORDERS.

It shall be the duty of the City Manager or the Manager's designee to determine and declare the existence of a public nuisance pursuant to city code § 12.03, M.S. §§ 609.744-.745 or M.S. §§ 617.80 et seq., or a public health nuisance pursuant to M.S. § 145A.01 et seq. or a clandestine lab site pursuant to M.S. § 152.0275, all as amended from time to time.

However, for purposes of inspecting and securing the site, removing and collecting evidence or removing immediate hazards, any public officer may determine that a structure, property or portion of a property constitutes a public nuisance or a public health nuisance, including, but not limited to, the determination that the site constitutes a clandestine lab site. The City Manager or the Manager's designee may at any time modify conditions of the declaration or dismiss the declaration of a public nuisance or a public health nuisance. Where deemed necessary by the city in furtherance of the public health and safety, a warning sign shall be posted on the entrance to the structure or property containing information sufficient to alert visitors or returning occupants to the site that it may be dangerous to enter and that entry is prohibited unless authorized by the city. No person, except as authorized by the city, shall remove a warning sign posted in accordance with this section of city code. Where a public nuisance or a public health nuisance is found to exist upon private property, the City Manager or the Manager's designee, may cause a declaration of public nuisance or a public health nuisance and abatement order to be served ~~[personally]~~ upon the owner of said premises.~~;~~ The city may also ~~[and]~~ provide a copy thereof to any other interested party. ~~[The abatement order may be served by mail in all cases where such owner or other interested party is not in the city or cannot be found therein, and if the post office address thereof is known. The abatement order may likewise be served by posting, for at least 24 hours, a copy of the abatement order upon the premises where the public nuisance exists, whenever the owner or agent thereof is not known or cannot be found, and the post office address thereof is unknown. The City Manager, or the Manager's designee, shall, in providing for the service and posting of the abatement order, designate therein]~~ Each declaration and abatement order shall contain the following elements listed in clauses (a) through (g) and be served as set forth in clause (h):

(a) Property location by street address, and property identification number or legal property description;

(b) Information identifying the nature of the public nuisance or public health nuisance on the property;

(c) A summary of the owner or other interested party's responsibilities under this Division A of city code;

(d) Specific orders for abatement or remediation of the public nuisance or public health nuisance;

(e) A date for completion of the abatement not less than ten ~~[business]~~ calendar days following the receipt of the declaration or abatement order unless a shorter period of time is determined necessary by the city to protect the public health and safety;

(f) Notice that unless the public nuisance or public health nuisance condition is abated or removed in accordance with the terms of the abatement order, the city may, in its discretion have the public nuisance or the public health nuisance abated or removed at the expense of the owner pursuant to city code § 12.06 or ~~[under the~~

provisions of M.S. § 145A.08, as amended from time to time, or any other applicable provision of this city code or other [applicable] law and that the cost thereof will constitute a charge against the private property which shall be collected in the manner of a tax; and

(g) Notice of the right of appeal as provided in ~~§[§ 1.17 and]~~ 12.05.01 of this city code.

(h) Such notice shall be deemed to be properly served if a copy thereof is:

(1) Delivered personally;

(2) Sent by first-class mail addressed to the person who is listed by the County Auditor as the owner of tax payer record. If the tax payer's address is different than the address where the violation exists, then the notice shall also be mailed to the property address where the violation exists; or

(3) If the notice is returned showing that the letter was not delivered or the property is known to be vacant, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

(4) When declared a public health nuisance or a clandestine lab site, notice shall be served pursuant to M.S. § 145A.04, as it may be amended from time to time.

§ 12.05 ACCESS TO PRIVATE PROPERTY AND RESPONSIBILITY TO ABATE PUBLIC NUISANCE OR PUBLIC HEALTH NUISANCE.

The owner or other interested party of private property on which a public nuisance or a public health nuisance has been declared must, upon the demand of a public officer, permit access to all portions of the private property and structures thereon at any reasonable time for the purposes of inspection, remediation and abatement as often as the public officer deems necessary and shall exhibit and allow the copying of all records necessary to ascertain compliance with this Division A of city code. Any public nuisance or public health nuisance upon private property shall be removed and abated by the owner or other interested party at their own cost after notice, as provided in § 12.04. If such notice is not complied with, the city shall cause removal or abatement of such public nuisance or public health nuisance, and the cost thereof shall be charged against the private property in the manner provided in § 12.06 and collected in the manner set forth in § 1.19 of this city code.

§ 12.05.01 APPEALS, SUMMARY ABATEMENT.

When a public nuisance or public health nuisance is declared, the owner of the private property may appeal the declaration, including abatement order, by filing a written request for an administrative hearing with the City Attorney's office within ten calendar days of the issuance of the notice of public nuisance. A hearing shall be held within 45 calendar days thereof following the procedures set forth in § 1.17 of this city code. Where a declared public nuisance or public health nuisance constitutes, in the sole determination of the city, an imminent threat to the public health or safety, an immediate threat of serious property damage, or the public nuisance or public health nuisance has been caused by the actions of private parties on public property, the city may order the immediate abatement thereof notwithstanding this provision. Where there has been summary abatement, any properly filed appeal thereafter will be limited to the issue of cost recovery by the city.

§ 12.06 FAILURE TO ABATE; ABATEMENT BY CITY; ASSESSMENT THEREOF.

~~If[;] a public nuisance or public health nuisance has neither been abated or removed by the period fixed by the city nor appealed pursuant to § 12.05.01 of this city code, then [at the end of the period fixed by the city for the abatement or removal of a public nuisance, the public nuisance has not been abated or removed by the owner or other interested party and no appeal has been filed pursuant to § 12.05.01 of this city code,]~~the city may cause the same to be abated or removed by the city or in any other manner deemed appropriate, and the costs and expenses of such abatement ~~[and] or removal, including but not limited to the city's administrative [departmental]~~ costs and expenses~~[, including]~~ such as overheads and allowances for time of city employees with a minimum inspection charge of \$100, expenses of equipment, if used, and sums of money necessarily paid out if done by other than city departments, shall be computed and reported to the City Council. Thereupon, the City Council may adopt an assessment roll levying a special assessment upon such lands and premises, which shall be transmitted to the County Auditor and included with the next tax levy upon such lands and premises and collected in the manner provided by law for the levy and collection of other special assessments.

* * *

DIVISION C: NUISANCE SERVICE CALL

§ 12.13 RESERVED.

§ 12.14 RESERVED.

§ 12.15 NUISANCE SERVICE CALL FEE.

(a) *Nuisance incident notice.* Where the City Manager, or the Manager's designee, determines that a specific private property or building is being operated in violation of Article II of Chapter 12 of this Code, or public officers have been dispatched to private property on a nuisance service call as defined in § 12.01.01, the City Manager, or the Manager's designee, may issue a written nuisance incident notice to the owner of the private property, and may provide a copy thereof to any other interested party. The nuisance incident notice may be served upon the

owner of the private property by regular mail, to the address determined by the most recent property tax records maintained by the county for the private property. The service of a nuisance incident notice, as provided herein, shall be prima facie evidence that an owner ~~[or interested party]~~ has knowledge of the events listed in the nuisance incident notice and has permitted subsequent conduct or behavior at the private property.

(b) *Contents of the notice.* The nuisance incident notice shall:

- (1) Identify the type and specific location of nuisance service call(s), including tenant or lessee names where known or applicable;
- (2) Summarize the evidence of the public nuisance occurring on the private property;
- (3) Provide the dates on which the nuisance service calls were made and the dates of any prior responses by public officers to incidents of nuisance conduct on the private property; and
- (4) Warn the owner, and any occupant~~[, interested party and]~~ or person(s) in control of the private property and known to the city that future nuisance service calls may subject them jointly and severally to a nuisance service call fee in the amount of \$250 or more, up to \$2,000, based upon the actual cost of the law enforcement response.

(c) *Abatement notice.* Where the City Manager or Manager's designee determines that public officers have been dispatched to two or more nuisance service calls, as defined in either Article II of Chapter 12 or § 12.01.01 and counted pursuant to the definitions of "unlawful gathering" and "verified incident," to the same private property within a 365-day period, he or she shall cause a written abatement notice to issue to the owner of the private property, and may provide a copy thereof to any interested parties. The abatement notice may be served upon the owner of the private property by regular mail, to the address determined by the most recent property tax records maintained by the county for the private property. The service of an abatement notice, as provided herein, shall be prima facie evidence that an owner ~~[or interested party]~~ served has knowledge of and has permitted subsequent conduct or behavior at the private ~~[party]~~ property.

(d) *Contents of the abatement notice.* The abatement notice shall:

- (1) Identify the type and specific location of nuisance service calls, including tenant or lessee names, where known or applicable;
- (2) Summarize the evidence of the nuisance occurring on the private property;
- (3) Provide the dates on which the nuisance service calls were made and the dates of any prior responses by public officers to nuisance incidents on the private property; and
- (4) Warn the private property owner and any occupant~~[interested parties]~~ or person(s) in control of the private property and known to the city that future nuisance service calls will subject them jointly and severally to a nuisance service call fee in the amount of \$250 or more, based upon the actual cost of the law enforcement response, up to \$2,000, for each separate call. The costs of providing the excess law enforcement services shall include, without limitation, the gross salaries, including all fringes, benefits and overhead paid to the public officers responding, the pro rata cost of all equipment, including vehicles and K-9 officers, and the cost of repairs to any city equipment or property damaged in responding to the nuisance service call. The civil penalty will issue in the manner set forth in Article II of Chapter 1 of this city code and if left unpaid will be charged against the private property and collected in the manner of a tax; and
- (5) Advise the private property owner and any occupant~~[interested parties]~~ or person(s) in control of the private property and known to the city that subsequent conduct in violation of this section of city code may also subject them jointly and severally to criminal charges punishable by up to a \$1,000 fine and 90 days in jail for each separate violation.

(e) *Imposition of nuisance service call fee.* Private property owners, ~~[interested parties]~~ and any occupant or~~]~~ other person(s) having control over a private property and known to the city shall be jointly and severally responsible for nuisance incidents occurring thereon and individually responsible for payment of any nuisance service call fee issued to that party hereunder. Where an abatement notice or nuisance service call fee was ~~[properly]~~ served ~~[upon the private property owner and/or interested party of the private property]~~ as set forth in subsections (c) or (e) hereof each successive nuisance service call within the same 365-day period shall result in an administrative citation to that party in the manner set forth in Article II of Chapter 1 of this city code in the amount of \$250 or more based upon the actual cost of the law enforcement response, up to \$2,000 for each separate call. The costs of providing the excess law enforcement services shall include without limitation the gross salaries, including all fringes, benefits and overhead paid to the public officers responding, the pro rata cost of all equipment, including vehicles and K-9 officers, and the cost of repairs to any city equipment or property damaged in responding to the nuisance service call.

* * *

DIVISION N: GRAFFITI

* * *

§ 12.72 DEFINITIONS.

The following words and terms when used in this Division N shall have the following meanings, unless the context clearly indicates otherwise.

GRAFFITI. Any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of a permanent structure, fixture or object, including, but not limited to, buildings, walls, fences, bridges, benches, shelters, sidewalks, hydrants, fountains, pavement, curbs, trees, rocks, signs, utility poles or boxes situated on public or private property by any graffiti implement, to the extent that the inscription, word, figure, painting or other defacement was not authorized in advance by the responsible party for the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Environmental Health ~~[Services-]~~Manager, or the designee thereof, pursuant to the definition of "public nuisance" below.

* * *

§ 12.74 GRAFFITI ABATEMENT.

* * *

(b) *Declaration of public nuisance.* Where the existence of graffiti on private property is determined to constitute a public nuisance, the Environmental Health Manager, or the designee thereof, shall serve a written notice of that finding to the responsible party ~~[or parties for the property by personal service or by regular mail to the last known address]~~. This notice shall contain the following ~~and be served as set forth in clause (c):~~

- (1) The street address ~~[and]~~or legal description or both of the property sufficient for identification of the property;
- (2) A statement that the graffiti on the property is a potential~~[-graffiti]~~ public nuisance ~~[property-]~~with a concise description of the conditions leading to that finding;
- (3) A description of what must be done to abate the graffiti;
- (4) A statement that within the period set forth in the notice the responsible party must either abate the graffiti in the manner described in the notice or serve the City Environmental Health ~~[Services-]~~Manager with a written demand for an administrative hearing and that failure to either abate or demand a hearing shall be deemed an admission that the graffiti constitutes a public nuisance subject to abatement by the city with assessment of those costs against the property as set forth in § 12.06 of the city code; and
- (5) A statement that the written demand for a hearing must contain the full legal names ~~[and dates of birth-]~~ for all persons known to be responsible parties for the property; the street address of the property; and a specific statement of the grounds on which the responsible party contests the city's determination that the graffiti constitutes a public nuisance.

(c) Such notice shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally;
- (2) Sent by first-class mail addressed to the person who is listed by the County Auditor as the owner of tax payer record. If the tax payer's address is different than the address where the violation exists, then the notice shall also be mailed to the property address where the violation exists; or
- (3) If the notice is returned showing that the letter was not delivered or the property is known to be vacant, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

§ 12.75 ADMINISTRATIVE HEARING PROCESS.

(a) Upon receipt of a properly completed written demand for an administrative hearing, the city shall promptly assign a hearing examiner to the case in the manner set forth in city code § 1.17(a).

(b) Subpoenas shall issue, if necessary, as set forth in city code § 1.17~~[(b)]~~.

(c) The city shall serve in person or by mail on the responsible party ~~[demanding]~~requesting a hearing a written notice of the time, place and date of the hearing at least five business days in advance of the scheduled date, unless a shorter time is acceptable to all parties.

(d) At the hearing, the parties shall have the opportunity to present testimony and question any witnesses, but strict rules of evidence shall not apply. The hearing ~~[examiner-]~~officer shall tape record the hearing and receive testimony and exhibits, and the full record of the hearing shall be kept. The hearing ~~[examiner-]~~officer shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

(e) The hearing ~~[examiner-]~~officer shall have the authority to determine:

- (1) Whether ~~[or not-]~~the graffiti constitutes a public nuisance as defined in § 12.~~[70]~~72 of the city code;
- (2) What must be done to abate graffiti found to constitute a public nuisance; and

(3) The date on which such abatement must be completed.

The decision of the hearing [examiner]officer shall be in writing and contain findings of fact and conclusions of law. The written report shall be served on the parties by mail within ten days of the date of hearing. The decision of the hearing [examiner]officer shall be final without any further right of administrative appeal.

§ 12.76 FAILURE TO ABATE; ABATEMENT BY CITY; ASSESSMENT THEREFOR.

If, at the end of the period fixed by the Environmental Health [Services]Manager or hearing [examiner]officer for the abatement of graffiti, the graffiti is not abated by the responsible party, the Manager of Environmental Health [Services]may cause the same to be abated or removed by the city in any manner deemed appropriate with the costs thereof subject to assessment against the property in the manner set forth for a public nuisance in § 12.06 of the city code.

§ 12.77 PENALTY.

Violation of this Division N shall, in addition to any civil fines, penalties or assessments, be punishable as a misdemeanor under state law except where a determination has been made by a hearing [examiner]officer that the graffiti does not constitute a public nuisance.

* * *

Section 5. That Chapter 14 of the City Code is hereby amended by deleting those words that are in ~~strike through~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 14: LICENSES AND PERMITS

* * *

ARTICLE V. FOOD ESTABLISHMENT, LODGING ESTABLISHMENT AND PUBLIC POOL REGULATIONS

* * *

DIVISION B: RESERVED

* * *

§ 14.452 ADDITIONAL RESTRICTIONS FOR HEALTH AND SAFETY.

* * *

(c) *Public pools.* This Article V specifically adopts the following additional standards for health and safety to Minnesota Rules Chapter 4717.

(1) When the public pool is not open for use, access to the pool shall be prevented.

~~[(2) Minnesota Rules Chapter 4717.3970, Pool Closure, C. The pool shall be closed when the disinfection residual exceeds ten parts per million for chlorine in pools using cyanuric acid. Pools using cyanuric acid with disinfection residual of five to ten parts per million chlorine may remain open if all other pool water conditions are met per Minnesota Rules Chapter 4717.1750.]~~

[2](3) Depth of the water must be plainly marked at or above the water surface on the vertical pool wall anywhere it is required on the deck in Minnesota Rules Chapter 4714.2450.

* * *

Passed and adopted this 24th day of October, 2016.

/s/ Gene Winstead
Mayor

ATTEST:

APPROVED:

/s/ Debbie Smith
Secretary to the Council (Acting)

/s/ Melissa J. Manderschied
City Attorney

