

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: ABANDONED VEHICLE REGULATIONS

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§ 90.01 PUBLIC NUISANCE FINDING.

The Town Council finds that abandoned vehicles are a public nuisance and a safety and health hazard.

(`86 Code, § 8-61) (Ord. 97-7, passed 5-6-97)

§ 90.02 DEFINITIONS.

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

ABANDONED VEHICLE.

- (1) A vehicle located on public property illegally;
- (2) A vehicle left on public property continuously without being moved for three days;
- (3) A vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicle traffic on a public right-of-way;

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(4) A vehicle that has remained on the private property without the consent of the owner, or person in control of that property for more than 48 hours;

(5) A vehicle from which there has been removed the engine, transmission, or differential, or that is otherwise partially dismantled or inoperable and left on public property;

(6) A vehicle that has been removed by a towing service or a public agency upon request of an officer enforcing a statute or ordinance other than the State Abandoned Vehicle Act, if the vehicle, once impounded, is not claimed or redeemed by the owner or his or her agent within 15 days of its removal;

(7) A vehicle that is six or more model years old and mechanically inoperable, and is left on private property continuously in a location visible from the public property for more than 30 days; or

(8) A recreational vehicle or trailer parked on private property in the same location for a continuous period of 365 days and visible from public property; provided, however, that this division (8) shall only apply to private property zoned A-1, R-1, R-2, R-3 or PUD within the corporate limits of the town.

AUTOMOBILE SCRAPYARD. A business organized for the purpose of scrap metal processing, automobile wrecking, or operating a junkyard.

BUREAU. The State Bureau of Motor Vehicles.

FISCAL BODY. The Town Council.

OFFICER. A member of the Town Police Department.

OWNER. The last known record titleholder of a vehicle according to the records of the Bureau under I.C. 9-17-1 *et seq.*

PARTS. All components of a vehicle that, as assembled, do not constitute a complete vehicle.

PERSON. An individual, firm, corporation, association, fiduciary, or governmental entity.

PRIVATE PROPERTY. All property other than public property.

PUBLIC AGENCY. The Town Marshal or Police Department, which is given the responsibility for the removal, storage, and disposal of abandoned vehicles.

PUBLIC PROPERTY. A public right-of-way, street, highway, alley, park, or other state, county or municipal property.

RECREATIONAL VEHICLE. A vehicle with or without motive power equipped exclusively for living quarters for persons.

TOWING SERVICE. A business that engages in moving or removing disabled vehicles, and once removed, to store or impound vehicles.

TRAILER. A vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. This definition includes pole trailers and homemade trailers.

VEHICLE. An automobile, motorcycle, truck, trailer, semitrailer, tractor, bus, school bus, recreational vehicle, or motorized bicycle.

(` 86 Code, § 8-62) (Ord. 97-7, passed 5-6-97; Am. Ord. 2004-4, passed 9-7-04)

Statutory reference:

Abandoned vehicles, see I.C. 9-17-1 et seq.

§ 90.03 LIABILITY OF THE OWNER.

The owner of an abandoned vehicle is responsible for the abandonment and is liable, to the extent of the market value of the vehicle, for all of the costs incidental to the removal, storage, and disposal of the vehicle or the parts.

(` 86 Code, § 8-63) (Ord. 97-7, passed 5-6-97)

§ 90.04 PROCEDURE FOR DECLARATION OF ABANDONMENT.

(A) When an officer discovers a vehicle in the possession of a person other than the owner and the person cannot establish his or her right to the possession of that vehicle, the vehicle shall be taken to and stored in a suitable place. The Bureau shall be notified within 72 hours of the location and description of the vehicle. Upon receipt of notification, the Bureau shall cause a search to be made to determine and notify the owner in accordance with I.C. 9-22-1-20.

(B) If the owner of the vehicle cannot be determined, the Bureau shall declare the vehicle abandoned and provide for its disposal in accordance with the provisions of I.C. 9-22-1-27.

(C) If the properly identified owner or lienholder appears at the site of storage before disposal of the vehicle or parts and pays all proper costs incurred against it at that time, then the vehicle or parts shall be released. A copy of the release of all vehicles or parts shall be sent to the Bureau. The release must contain the owner or lienholder's signature, name, address, vehicle or parts description, costs and date of release.

(D) If the person who owns or holds a lien to the vehicle does not appear and pay all costs, the Bureau will declare the vehicle abandoned and provide for disposal in accordance with the provisions of I.C. 9-22-1-10.

(` 86 Code, § 8-64) (Ord. 97-7, passed 5-6-97)

§ 90.05 NOTICE TAG AND DISPOSAL OR STORAGE OF VEHICLES.

(A) An officer who finds a vehicle or parts believed to be abandoned shall attach in a prominent place a notice tag containing the following information:

- (1) The date, time, officer's name, public agency, and address and telephone number to contact for information;
- (2) The vehicle or parts are considered abandoned;
- (3) The vehicle or parts will be removed after 72 hours;
- (4) The owner will be held responsible for all costs incidental to the removal, storage and disposal, and if not paid, the owner's registration privileges will be suspended on that car by the Bureau; and
- (5) The owner may avoid costs by removal of the vehicle or parts within 72 hours.

(B) If the tagged vehicle or parts are not removed within that 72-hour period, the officer shall prepare a written abandoned vehicle report of the vehicle or parts including information of the condition, missing parts, and other facts that might substantiate that the market value is less than \$100. Photographs shall be taken to describe the condition of the vehicle or parts.

(C) If, in the opinion of the officer, the market value of the abandoned vehicle or parts is less than \$100, the officer shall immediately dispose of the vehicle to an automobile scrapyards. A copy of the abandoned vehicle report and photographs relating to the abandoned vehicle shall be forwarded to the Bureau. The Police Department shall retain the original records and photographs for at least two years.

(D) If, in the opinion of the officer, the market value of the abandoned vehicle or parts is \$100 or more, the officer, before placing a notice tag on the vehicle or parts, shall make a reasonable effort to ascertain the owner or person who may be in control of the vehicle or parts. After 72 hours, the officer shall require the vehicle or parts to be towed to a storage area.

(` 86 Code, § 8-65) (Ord. 97-7, passed 5-6-97)

§ 90.06 ABANDONED VEHICLE REPORT.

Within 72 hours after removal of an abandoned vehicle to a storage area, the Police Department shall prepare and forward to the Bureau an abandoned vehicle report containing a description of the vehicle, including the make, model, engine number, if any, identification number, and the number of the license plate, and request that the Bureau advise the Police Department of the name and most recent mailing address of the owner and any lienholder.

(` 86 Code, § 8-66) (Ord. 97-7, passed 5-6-97)

§ 90.07 ADOPTION OF PROCEDURES.

In order to facilitate the removal of abandoned vehicles or parts, the Town Council may employ personnel and acquire equipment, property, and facilities and enter in towing contracts as necessary for the purpose of removal, storage and disposition of abandoned vehicles and parts.
(`86 Code, § 8-67) (Ord. 97-7, passed 5-6-97)

§ 90.08 VEHICLES LEFT ON PRIVATE PROPERTY; COMPLAINTS.

Upon complaint of a private property owner or person in control of the property that a vehicle has been left on the property for 48 hours or more without the consent of the owner or person in control, an officer shall follow the procedures set forth in § 90.05.
(`86 Code, § 8-68) (Ord. 97-7, passed 5-6-97)

§ 90.09 LIABILITY FOR LOSS OR DAMAGE TO VEHICLES DURING REMOVAL, STORAGE, OR DISPOSITION.

Pursuant to I.C. 9-22-1-32, neither the owner, lessee, or occupant of the property from which an abandoned vehicle or parts are removed nor a public agency, towing service, or automobile scrapyard is liable for loss or damage to the vehicle or parts occurring during its removal, storage, or disposition.
(`86 Code, § 8-69) (Ord. 97-7, passed 5-6-97)

§ 90.10 PAYMENT FOR COSTS FROM ABANDONED VEHICLE ACCOUNT; MAXIMUM CHARGE.

The costs for removal and storage of an abandoned vehicle or parts not claimed by the owner or lienholder shall be paid from the Abandoned Vehicle Account. The charge payable by the owner or lienholder for towing, storing, or removing an abandoned vehicle or parts shall not exceed \$35 for the towing of each abandoned vehicle or load of parts and \$4 per day or any part of a day for the storage of each abandoned vehicle or load of parts.
(`86 Code, § 8-70) (Ord. 97-7, passed 5-6-97)

§ 90.11 ABANDONED VEHICLE ACCOUNT.

(A) An Abandoned Vehicle Account is established and is governed by all applicable provisions of I.C. 9-22-1-27 *et seq.*

(B) Anything not specifically addressed in this chapter shall be governed by applicable state law. (⁸⁶ Code, § 8-71) (Ord. 97-7, passed 5-6-97)

§ 90.12 EXEMPT VEHICLES.

This chapter does not apply to:

(A) A vehicle in operable condition specifically adopted or constructed for operation on privately owned raceways;

(B) A vehicle stored as the property of a member of the Armed Forces of the United States who is on active duty assignment;

(C) A vehicle located on a vehicle sale lot or at a commercial vehicle servicing facility;

(D) A vehicle located upon property licensed or zoned as an automobile scrapyard; or

(E) A vehicle registered and licensed under I.C. 9-18-12 as an antique vehicle. (⁸⁶ Code, § 8-72) (Ord. 97-7, passed 5-6-97)

§ 90.13 LICENSING AND REGISTRATION.

All vehicles shall be registered and licensed with the Bureau of Motor Vehicles. (Ord. 2004-4, passed 9-7-04) Penalty, see § 10.99

CHAPTER 91: PARKS AND RECREATION

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GENERAL PROVISIONS**§ 91.01 AUTHORITY TO OPERATE.**

The town may establish, aid, maintain, and operate public parks, playgrounds, and recreation facilities programs.

(`86 Code, § 5-1)

Statutory reference:

Recreation facilities and programs, see I.C. 36-10-2-2

§ 91.02 ADMINISTRATION OF PARKS AND RECREATION PROGRAMS.

Parks and recreation programs may be established and administered under the Park and Recreation Law, I.C. 36-10-3-1 *et seq.*

(`86 Code, § 5-2)

§ 91.03 TOWN PARK.

The town shall operate a town park within the town limits.

(`86 Code, § 5-6)

SKATEBOARD USE REGULATIONS**§ 91.10 DEFINITIONS.**

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

SKATEBOARDS AND OTHER SIMILAR DEVICES. Any non-motorized object which contains wheels and is propelled by an individual for the purpose of transporting that individual any distance. Such a description shall include, but not be limited to, skateboards, roller skates, cross-country skis with wheels and roller blades. For the purposes of this subchapter, such definition shall specifically exclude wheelchairs and any device propelled by an animal.

(Ord. 2002-7, passed 7-3-02; Am. Ord. 2007-2, passed 5-1-07)

§ 91.11 SPECIFIC AREAS WHERE SKATEBOARDING IS PROHIBITED.

The use of a skateboard or other similar device is prohibited in these areas of the town which are described as follows:

- (A) All public benches, flower terrace areas, steps, handrails, fences, street curbs, parking bumpers, picnic tables, playground equipment and adjoining areas, buildings and building fronts.
 - (B) Any place within one block of the intersection of Waterford Street and Elkart Street.
 - (C) Any area of the town which is owned by the town.
 - (D) Any place within the town where acting in any manner may cause property damage, may be harmful to someone or where there is a safety concern.
- (Ord. 2002-7, passed 7-3-02; Am. Ord. 2007-2, passed 5-1-07) Penalty, see § 91.99(B)

RULES AND REGULATIONS OF PARKS

§ 91.20 DISORDERLY CONDUCT.

No person shall, in any area designated by appropriate signage as a public park:

- (A) Disobey an order of a police officer or disobey or disregard the notices, prohibitions, instructions or directions on any park sign, playground areas, recreation centers, shelter houses, posted on the grounds or buildings or structures connected with or used for any purpose under jurisdiction, control, operation or supervision of the town.
- (B) Use threatening, abusive or insulting language.
- (C) Do, engage in, or aid, or abet any obscene or indecent act.
- (D) Throw, cast or propel stones or other missiles.
- (E) Solicit alms, subscriptions or contributions for any purpose.
- (F) Molest or annoy any persons.
- (G) Interfere with, encumber, obstruct or render dangerous, any part of a park or park-street.
- (H) Climb or lie upon any wall, fence, shelter, seat or other structure.
- (I) Do any act tending to or amounting to a breach of peace.

(J) Enter or leave any park except at established entrance ways or exits, at established times; use, or gain admittance to, or attempt to use, or gain admittance, to any facilities or event in any park for the use of which, or admittance to which a charge is made, without paying the charge or price fixed by the town or its duly authorized agent or officer.

(K) Engage in, instigate, or encourage a contention or fight.

(L) Do aid, abet or assist in doing any act injurious to any person, animal or property within any park or park-street.

(M) Dress or undress behind shrubs or other structures, or in any place not designated by the town for such purposes.

(N) Act as crier, or advertiser, through the media of voice, public address system, amplifier, loud speaker, or other mechanical device, in parks, park-streets or beaches.

(O) Appear in or upon any park or park-street while intoxicated or under the influence of intoxicating liquor or narcotics.

(P) Exhibit, sell, or offer for sale, hire, lease or let out any object or merchandise, or anything whatsoever.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.21 GAMBLING.

No person shall, in any area designated by appropriate signage as a public park, play games of chance, sell fortunes or futures, participate in the conduct of a lottery or use any slot machine, gaming table or instrument or bring into any park or have in his possession while there, any implements or devices commonly used, or intended to be used, for gambling purpose.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.22 EXPLOSIVES, FIREARMS, WEAPONS AND MISSILES.

No person shall, in any area designated by appropriate signage as a public park:

(A) Bring into or have in his possession in any park or park-street any firearms, slingshots, firecrackers, torpedoes, fireworks, or other missile propelling instruments or explosives, including any substance, compound mixture or article having properties of such a character that alone or in any combination or contiguity with other substances, mixtures, compounds or articles may propel missiles or may decompose suddenly and generate sufficient heat, sound, gas or pressure or any or all of those to produce rapid flames, combustion or noxious or dangerous odors or sounds such as to annoy any other person or to injure any person or property.

(B) Shoot or propel any missile, pellet, shot, arrow, dart, or other thing by means of any firearm compressed air or gas propulsion device, bow, slingshot, or propelling device of any kind, nature or description, into, upon, across, through or against, any lands, the air above same or the waters or the lands below same or any ways, walks, buildings, structure, swimming pools, or the interior of any structures, shelters, buildings, or facilities, owned or under the control, operation, supervision or management of said town, is prohibited, unless done under a permit granted by said town or within a regularly conducted event authorized by, or conducted by said town.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.23 AVIATION.

No person shall, in any area designated by appropriate signage as a public park, voluntarily bring, land or cause to descend or alight within or upon any park, any airplane, flying machine, balloon, parachute or other apparatus for aviation. Voluntarily, in this connection shall mean anything other than a forced landing. Any landing other than one caused by mechanical or structural failure of the aircraft or any of its parts shall be deemed to have been made voluntarily, and this shall include landings by error or oversight, negligence, or failure to include landings by error or oversight, negligence or failure to comply with any Civil Aeronautics Authority regulations or rulings.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.24 CAMPING.

No person shall, in any area designated by appropriate signage as a public park, place a tent or maintain a tent, shelter or camp in any park without a permit from said town or its duly authorized agents.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.25 ADVERTISING.

(A) No person shall, in any area designated by appropriate signage as a public park, distribute or display any flag, banner, sign or other matter for advertising purposes within any park or park-street.

(B) No person shall display, by means of aircraft, kite, balloon, aerial bomb or any other device, any flag, banner, sign or any other matter for advertising purposes above the surface of any park-street.

(C) No person shall operate any musical instrument, or drum, or loud speaker, amplifier, or siren, or cause any noise to be made within any park or upon any park-street for advertising purposes or for the purpose of attracting to any exhibition, performance show or other spectacle.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.26 PROTECTION OF ANIMALS; ANIMALS AT LARGE; HORSES.

No person shall, in any area designated by appropriate signage as a public park:

(A) Molest, kill, wound, trap, hunt, take, chase, shoot, or throw missiles at, remove, or have in his possession an feral animal, reptile, bird, bird's nest or squirrel's nest, or remove the young of any such animal or the eggs or young of any such reptile or bird; or knowingly buy, receive, have in his possession, sell or give away any such animal, reptile, bird or egg so killed or taken.

(B) Cause or permit any pet or animal to go at large in any park or park-street. A dog may be brought into a park or park-street provided that such dog is continuously restrained by a leash not exceeding six feet in length, except that no dog will be permitted in, upon, or on buildings, playgrounds, stands, concert areas, seats, seating areas, areas where food is purveyed, kept or prepared, or other areas designated by signs as prohibited areas. Any animal found at large may be seized and impounded or disposed of pursuant to the laws or ordinances of the state or town, in relation to the disposal of stray animals on the highways or other public places. All pet waste shall be collected by the pet owner, placed in an appropriate container and disposed of by the pet owner.

(C) Use, ride or drive a horse in any park unless authorized to do so by the Board or its duly authorized agents.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.27 FIRES, LIGHTED CIGARS AND THE LIKE.

No person shall, in any area designated by appropriate signage as a public park, kindle, build, maintain or use a fire except in fireplaces provided for the purpose or under special permit. Any fire shall be continuously under the care and direction of a competent person over 18 years of age from the time it is kindled until it is extinguished, and no fire shall be built within ten feet of any tree or building, or beneath the branches of any trees or in any underbrush. No person shall throw away or discard any lighted match, cigar or cigarette in any park or park-street.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.28 TOY AVIATION, KITE FLYING, MODEL BOATING, AUTOMOBILING AND FLYING.

No person shall, in any area designated by appropriate signage as a public park, engage in toy aviation, model boating or model automobiling or model airplane flying, except at places designated or maintained therefor.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.29 ALCOHOLIC BEVERAGES AND DANGEROUS DRUGS.

No person shall, in any area designated by appropriate signage as a public park, bring dangerous drugs, beer, ale, or other alcoholic beverages into any park, or consume, have in possession, sell, give away or handle dangerous drugs or intoxicating or alcoholic beverages in any park.
(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.30 DRIVING IN THE PARK.

No person shall, in any area designated by appropriate signage as a public park:

(A) Operate, drive or propel, or cause or permit to be operated, driven or propelled, any vehicle recklessly or negligently or at a speed or in such a manner as to endanger the life, limb, safety, comfort or property of any person or persons. All vehicular traffic shall yield the right of way to persons on foot or bicycles.

(B) Cause or permit any vehicle to obstruct traffic in any park, or to stop such vehicle except at those places specifically designated or maintained for the purpose of stopping or parking, except in cases of emergency.

(C) Operate a motorcycle, motor bike, mini-bike, snowmobile or any other motor powered bike or vehicle in any area under the control of the town, except areas that have been designated by the town for such use.

(D) Drive or operate a vehicle within or upon a safety zone, walk, or any part of any park designated or customarily used for such purposes.

(E) Operate a vehicle off the improved or paved roadways of any park. Disabled vehicles may be driven off the roadway so as to prevent obstruction of traffic, but no disabled vehicle shall be permitted to remain in a park for a longer period than two hours except in designated parking areas.

(F) Give instructions in operating automobiles or motorcycles in parks and park-streets at any time except by permit of the town. No person who may not lawfully operate a vehicle within the state or town shall drive or operate a vehicle within any park or park-street.
(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.31 PARKING.

No person shall, in any area designated by appropriate signage as a public park:

(A) Park a vehicle in any park area not designed for parking.

(B) Park a vehicle in, or along any park or park-street, except at places designated or maintained therefor, between 11:00 p.m. and 6:00 a.m.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.32 TREES, SHRUBS AND GRASS.

No person shall, in any area designated by appropriate signage as a public park, destroy, cut, break, deface, mutilate, injure, disturb, sever from the ground or remove any growing thing, including, but not limited to, any plant, flower, flower bed, shrub, tree, growth or any branch, stem, fruit or leaf thereof, or bring into or have in his possession in any park or park-street, any garden or agricultural implements or tools which could be used for the removal thereof; or pile or maintain any material or debris of any kind against or upon the same; or attach any rope, cable or other contrivance thereto; or to set fire to any timber, tree, shrubs, plants, flower, grass or plant growth, or suffer any fire upon other land to extend into park land; or hitch any horse or, other animal to, or leave the same standing near enough to injure any tree, shrub, lawn or grass plot; or go upon any lawn, grass plot or planted area, except at such times when permission to do so shall have been given by the Board or its duly authorized agent, to the public. No person shall bring into or have in his possession in any park or park-street any tree, shrub or other plant, or any branch, stem, flower, or leaf, thereof without permission from the town or its duly authorized agent.

(Ord. 2003-1, passed 6-3-03) Penalty, see § 91.99(B)

§ 91.33 CURFEWS.

(A) Except as otherwise provided in division (B) below, no person shall, in any area designated by appropriate signage as a public park, remain in any park, playground, picnic area or pavilion, either on foot or in vehicles of any type, between 11:00 p.m. and 6:00 a.m. unless otherwise posted, except by permit from the town.

(B) No person shall, in any area of the public park area designated and located at 107 South Walnut Street, remain in such park or such park's playground, picnic area or pavilion, either on foot or in vehicles of any type, between 10:00 p.m. and 6:00 a.m. unless otherwise posted, except by permit of the town.

(Ord. 2003-1, passed 6-3-03; Am. Ord. 2010-1, passed 4-6-10) Penalty, see § 91.99(B)

§ 91.34 SMOKING PROHIBITED.

No person shall smoke in the public park area designated and located at 107 South Walnut Street. For the purposes of this section, *SMOKE* shall mean to inhale, exhale, burn or carry or possess any lighted cigar, cigarette, pipe or other combustible tobacco product in any manner or in any form.

(Ord. 2010-1, passed 4-6-10) Penalty, see § 91.99(B)

§ 91.35 PETS PROHIBITED.

In the public park area designated and located at 107 South Walnut Street, no person shall cause or permit any pet or animal to be in, upon or about such park, whether at large, on a leash or otherwise, of which such person owns or for which such person has care, custody or control.
(Ord. 2010-1, passed 4-6-10) Penalty, see § 91.99(B)

§ 91.36 BICYCLES PROHIBITED.

In the public park area designated and located at 107 South Walnut Street, no person shall ride or cause to be ridden or propelled a bicycle, skateboard or other similar device in, upon or about any playground equipment or in, on or about any area set off by fencing, landscaping timbers or other like sectioning device. For purposes of this subchapter, **SKATEBOARD OR OTHER SIMILAR DEVICE** shall have the meaning set forth in § 91.10.
(Ord. 2010-1, passed 4-6-10) Penalty, see § 91.99(B)

§ 91.99 PENALTY.

(A) Any person, firm, or corporation who violates any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) The penalty for an individual's first offense under §§ 91.10 *et seq.* or under §§ 91.20 *et seq.* shall be a fine of up to \$50. The penalty for the second such offense shall be a fine of up to \$100. An individual's subsequent offenses may include a penalty up to \$200. Alternatively, the penalty for any offense under this subchapter may be a sentence to perform community service in a form to be designated by the enforcing court, with the period of time for such community service to not be in excess of 20 hours for any one offense.

(Ord. 2002-7, passed 7-3-02; Am. Ord. 2003-1, passed 6-3-03; Am. Ord. 2010-1, passed 4-6-10)

CHAPTER 92: PUBLIC HEALTH AND SAFETY MATTERS; PUBLIC NUISANCES

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- 92.72 Abatement by town
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Unnecessary Noise

- 92.85 Loud and unnecessary noise prohibited
- 92.86 Enumeration of certain prohibited acts
- 92.87 Exemptions
- 92.88 Penalty and enforcement

Parking of Motor Vehicles in Lawns and Greenway

- 92.100 Driving/parking prohibited in lawn and greenway
- 92.101 Fine for driving/parking violation in lawn and greenway

- 92.999 Penalty

Cross-reference:

- Abandoned Vehicle Regulations, see Ch. 90*
- Nuisance conditions prohibited, see § 95.08*

GENERAL PROVISIONS

§ 92.01 TOWN'S AUTHORITY TO REGULATE.

The town may regulate the conduct, or use or possession of property which might endanger the public health, safety, or welfare of its citizens.

(` 86 Code, § 6-1)

Statutory reference:

Regulation of conduct and property for reasons of public health, safety and welfare, see I.C. 36-8-2-4

§ 92.02 PRESERVATION OF PUBLIC PEACE AND ORDER.

The town may establish, maintain, and operate a police and law enforcement system to preserve public peace and order and may provide facilities and equipment for that system.

(` 86 Code, § 6-2)

Statutory reference:

Authority to preserve public peace and order, see I.C. 36-8-2-2

§ 92.03 FIRE PREVENTION SYSTEMS.

(A) The town may establish, maintain, and operate a firefighting and fire prevention system and provide facilities and equipment for the system.

(B) Section 32.03 addresses various firefighting regulations.

(` 86 Code, § 6-3)

Statutory reference:

Firefighting and fire prevention, see I.C. 36-8-2-3

§ 92.04 AUTHORITY TO REGULATE AIR AND SOUND.

The town may regulate the introduction of any substance or odor into the air, or any generation of sound.

(` 86 Code, § 6-4)

Statutory reference:

Regulation of air and sound, see I.C. 36-8-2-8

§ 92.05 AUTHORITY TO REGULATE PUBLIC GATHERINGS.

The town may regulate public gatherings, such as shows, demonstrations, fairs, conventions, sporting events, and exhibitions.

(`86 Code, § 6-5)

Statutory reference:

Regulation of public gatherings, see I.C. 36-8-2-9

§ 92.06 OFFENSES AGAINST PUBLIC HEALTH, ORDER, AND DECENCY.

All offenses against public health, order, or decency not addressed by this chapter shall be governed by applicable state statute.

(`86 Code, § 6-6)

Statutory reference:

Offenses against public health, order, and decency, see I.C. 35-45-1-1

§ 92.07 ADOPTION OF NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS).

The Town Council hereby adopts the National Incident Management System (NIMS), dated March 1, 2004, as the town's standard for incident management.

(Ord. 2006-11, passed 11-8-06)

PUBLIC USE NUISANCES**§ 92.15 PUBLIC NUISANCES PROHIBITED.**

(A) No person shall cause, permit, keep or maintain within the town limits anything which is injurious to the public health, safety, or welfare of the community, or which is an obstacle to the free use of property. The existence of any of the above is declared to be a public nuisance and is prohibited.

(B) Specific nuisances are identified in this chapter and are declared illegal. The declaration is for the purpose of identification and shall not limit the scope of enforcement regarding other nuisances which may not be specifically listed herein.

(`86 Code, § 6-11) Penalty, see § 10.99

§ 92.16 ABATEMENT OF PUBLIC NUISANCES.

(A) Whenever the Town Marshal or his or her authorized designee determines that a public nuisance exists, he or she shall cause to be served upon the property owner, as shown by the records of the County Auditor, a written notice to abate the nuisance within a reasonable time after the notice. The notice shall be sent to the property owner by certified mail, return receipt requested.

(B) The notice to abate shall contain:

- (1) A description of what constitutes the public nuisance;
- (2) The location of the public nuisance;
- (3) A statement of the act or acts necessary to abate the nuisance;
- (4) A reasonable time within which to complete the abatement; and

(5) A statement that if the nuisance is not abated as directed and no request for hearing is made within the time prescribed, the town will abate it and assess the costs against the property owner.

(C) Any person ordered to abate a public nuisance may have a hearing before the Town Council to determine whether a nuisance does exist. A request for a hearing must be made in writing and delivered to the Clerk-Treasurer within the time stated in the notice, or it will be conclusively presumed that a nuisance exists that must be abated as ordered.

(D) At the conclusion of the hearing, the Council shall render its written findings and determinations as to whether a nuisance exists. If it finds that a nuisance exists, it shall order the nuisance abated within an additional period of time which must be reasonable under the circumstances.

(E) If the person notified to abate a public nuisance neglects or fails to abate as directed, the town may perform the action required to abate, keeping an accurate account of the expenses incurred. An itemized expense account shall be certified and filed with the fiscal officer.

(F) In the event the nuisance is abated within the period of time, in addition to the provisions of division (D), the property owner shall be charged with an ordinance violation and shall be subject to the penalties provided by § 10.99 of this code.

(G) The Clerk-Treasurer shall send a statement by certified mail of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within 30 days, he or she shall certify the costs to the County Auditor. The amount due shall then be collected with and in the same manner as general property taxes and disbursed into the General Fund of the town.

(` 86 Code, § 6-12)

JUNK OR DANGEROUS OR OBNOXIOUS MATTER**§ 92.20 ACCUMULATION OF JUNK OR DANGEROUS OR OBNOXIOUS MATTER PROHIBITED.**

Except for premises permitted for that use under the terms of the Town Zoning Ordinance, it shall be unlawful for any owner of real estate within the Town of Wakarusa to accumulate, or allow to accumulate any article or articles of tangible personal property on such owner's real estate unless such articles are in a legally constructed building, do not constitute a health or fire hazard, and are not articles being accumulated and stored to be picked up by the Maintenance Department of the town.

(Ord. 2006-4, passed 7-11-06; Am. Ord. 2007-9, passed 8-7-07; Am. Ord. 2008-10, passed 8-5-08) Penalty, see § 92.999

§ 92.21 ENFORCEMENT.

(A) Any owner or occupying tenant may seek a waiver of the enforcement of § 92.20 by submitting a written request to the Town Council President, Town Manager or Clerk-Treasurer setting forth the basis for the waiver. The Town Council President, Town Manager or Clerk-Treasurer may, at his or her discretion, approve or deny the request for the waiver, or may place the request for waiver on the agenda of the next Town Council meeting for determination by the Town Council. The owner and/or occupying tenant shall be given notice of the meeting and be given opportunity to support the petition at the meeting.

(B) The Town Manager and the President of the Town Council shall jointly identify any real property found to be in violation of § 92.20. The Town Marshal shall notify the owners and occupying tenants of any real property that such real property has been identified as in violation of § 92.20, and that such violation shall be placed on the agenda for the next Town Council meeting scheduled for more than seven days after the date of such notice. At such Town Council meeting, the owners and occupying tenants of the real property in violation of § 92.20 shall have an opportunity to present evidence to defend their position as to whether the real property is in violation of § 92.20. After the Town Council hears such evidence, if any, it shall determine whether such real property is in violation of § 92.20. If the Town Council determines that such real property is in violation of § 92.20, the property owner shall remove any such accumulations from the real property within a reasonable time not less than ten days but not more than 30 days from the date of the meeting at which the Town Council determined that the real property was in violation of § 92.20. In the event the accumulation has not been removed within such time period, the Maintenance Department of the town is authorized to enter upon the real property and remove the unlawful accumulations. The cost of removal and disposal of the unlawful accumulations shall be a lien upon the real property from which those accumulations are removed, and the Town Maintenance Supervisor shall certify the costs of the removal to the Town Clerk-Treasurer, who shall in turn certify the costs to the treasurer of the county in question for collection in the same manner as real estate taxes are collected upon the real property.

(C) Each time that any person, firm or corporation violates the provisions of § 92.20 or fails to comply with the order for the removal of any unlawful accumulation as provided in § 92.21(B), a fine of \$300 shall be charged to the property owner. If the violation remains unabated after the time period established by the Town Council for compliance, a fine of \$300 per day may be charged to the property owner for each day that elapses after the initial time period expires until the property is brought into compliance.

(Ord. 2006-4, passed 7-11-06; Am. Ord. 2007-9, passed 8-7-07; Am. Ord. 2008-10, passed 8-5-08; Am. Ord. 2011-3, passed 6-7-11)

§ 92.22 REPEAT VIOLATIONS.

If the Town Manager or President of the Town Council shall identify any real property found to be in violation of § 92.20, which property shall have been subject to the provisions of §92.21(B) within the prior 12 months, and all persons known to have a substantial interest in the property have been given reasonable opportunity to bring the property into compliance, but have not done so, the Town Manager or Town Council President may submit the matter to the Town Council for review, and the Town Council may direct that an ordinance violation citation be issued to the record owner of the property or to the person shown to have a right of exclusive possession of the property. Such citation shall impose a fine in conformance with § 92.21(C). Each subsequent day of violation shall be considered a separate violation for which a citation may be issued.

(Ord. 2011-3, passed 6-7-11)

TREES

§ 92.25 TITLE.

This subchapter shall be known as the Municipal Tree Ordinance for the Town of Wakarusa, State of Indiana.

(Ord. 2008-8, passed 4-1-08)

§ 92.26 PURPOSE.

It is the purpose of this subchapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the Town of Wakarusa.

(Ord. 2008-8, passed 4-1-08)

§ 92.27 DEFINITIONS.

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

LARGE TREES. Trees with a potential of attaining a height of 45 feet or more.

PARK. All areas within the Town of Wakarusa designated as town parks.

PUBLIC TREES. Any tree, existing or hereafter planted in a park or street location.

STREET LAWN. The area between the street edge and the sidewalk.

(Ord. 2008-8, passed 4-1-08)

§ 92.28 TREE BOARD.

(A) There is hereby created and established a Tree Board for the Town of Wakarusa, which shall consist of five members, citizens and residents of this town, who shall be appointed by the Town Council president with the approval of the Town Council. Members of the Board shall serve without compensation. The term of the Tree Board shall be three years, except that the term of two members appointed to the first Board shall be only one year and the term for two members of the first Board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

(B) The Tree Board shall develop a comprehensive plan for the Town of Wakarusa, Indiana including planning, tree planting, and maintenance programs for all public trees. The Board will promote the goals of the tree program.

(Ord. 2008-8, passed 4-1-08)

§ 92.29 AUTHORITY.

The Tree Board shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of public trees to ensure safety or preserve or enhance the aesthetics of public sites. The Tree Board shall have the authority to supervise or inspect all work done in accordance with the terms of this subchapter. The Tree Board shall have the authority to formulate and publish a master tree plan.

(Ord. 2008-8, passed 4-1-08)

§ 92.30 MAINTENANCE.

(A) All trees planted shall have trunks of not less than one-half inch in diameter at six inches above the ground. No tree shall be planted closer than three feet from the curb line or outer line of the sidewalk. All trees must be planted in line with each other and at a spacing of 40 to 60 feet depending on the species planted. Street lawn trees shall not be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground utility wire. No trees shall be planted within 50 lateral feet from corners or intersections.

(B) All trees and shrubs on public or private property, which have branches overhanging a public street or sidewalk, shall have said branches trimmed to a clearance of 14 feet on the street side and ten feet on the sidewalk side.

(C) All public trees designated for removal shall be completely removed from the growing site and disposed of in an authorized manner.

(Ord. 2008-8, passed 4-1-08)

§ 92.31 OBSTRUCTION.

(A) It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees to prune such trees in a manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be ten feet over sidewalks and 14 feet over all streets.

(B) When a person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the Town of Wakarusa to prune such trees with the cost assessed to the owner as provided by law in special assessments.

(Ord. 2008-8, passed 4-1-08)

§ 92.32 NUISANCE; CONDEMNATION.

All trees existing or hereafter planted in the street lawn in violation of, or not maintained in strict compliance with the provision of this subchapter, or that are dead or dangerous are declared to constitute a public nuisance. The Tree Board shall cause written notice to be served on the property owner requiring such nuisances to be corrected within 30 days or the cost of correction will be assessed against the property owner.

(Ord. 2008-8, passed 4-1-08)

§ 92.33 PROTECTION OF TREES.

(A) During development, redevelopment, razing, or renovating, nor more than 50% of the trees shall be cut, damaged, or removed. No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of 20 feet from any public tree.

(B) No person shall intentionally damage, cut, carve, attach any rope, wire, nails, advertising posters, or other contrivance to any public tree; allow any gaseous, liquid, chemical, or solid substance that is harmful to such trees come in contact with them; or set fire or permit fire to burn when such fire or the heat will injure any portion of any tree.

(C) Tree topping is not allowed on any public trees.

(Ord. 2008-8, passed 4-1-08)

§ 92.34 APPEALS.

Any person who receives an order the Tree Board and objects to all, or a part thereof, may within 15 days of receipt thereof, notify the Town Council, in writing of the nature of the objection and request a hearing thereon. The hearing shall be held within 60 days of notice to the appellant. Within 15 days after such hearing, the Town Council president shall notify the appellant of the final decision.

(Ord. 2008-8, passed 4-1-08)

§ 92.35 REMOVAL AND DESTRUCTION OF CAROLINA POPLAR TREES.

(A) It shall be unlawful for any person, firm or corporation to maintain or permit any trees of the species known as Carolina Poplar to grow in or about his, her or their premises within the town.

(B) All trees of the kind described in division (A) shall be cut down and destroyed by the owner or owners of the lots or parcels of ground on or about the property on which the trees are now or hereafter may be growing.

(C) If the owner or owners shall fail and refuse to cut down and destroy the Carolina Poplar(s) found growing on or about the property, then the Town Council, by its Street Commissioner or other employees, shall cut down, destroy, or girdle the trees.

(` 86 Code, § 6-31) (Ord. 37, passed 3-1-16; Am. Ord. 2008-8, passed 4-1-08) Penalty, see § 10.99

§ 92.36 TREE REPLACEMENT PROGRAM.

(A) Application.

(1) The Tree Replacement Program shall be applicable to all areas within the town that are within 20 linear feet of any curb or any street edge where there is no curb.

(2) No trees shall be planted within 25 linear feet of an intersection of two roads, or within 15 linear feet of the intersection of an alley with a street.

(3) No tree shall be planted between a sidewalk and the edge of a street or curb unless there is six feet or more between the edge of the street or curb and the sidewalk. In areas where there is less than six feet between the edge of the street or curb and the sidewalk, the trees shall be planted at least three feet from the sidewalk on the non-street side of the sidewalk.

(B) Replacement trees.

(1) At the time the town determines, at its sole discretion, that a tree requires removal due to damage, age, disease or otherwise, the town will pay for the its removal, including stump removal.

(2) After the tree is removed, the town will contract with a local nursery to plant a replacement tree.

(3) The town will pay the costs associated with the replacement tree and its planting.

(C) Other new trees.

(1) If a resident requests the placement of a new tree that is not a replacement tree, the town will determine whether a tree is needed in the requested location.

(2) If the town determines, at its sole discretion, that a new tree is needed in the requested location, the town will contract with a local nursery to plant a new tree in the requested location.

(3) The town will pay the costs associated with the new tree and its planting.

(D) *Special exceptions.* Special exceptions to the above may be approved by the town upon recommendation by the Tree Board.

(Res. 2006-4, passed 2-7-06; Am. Ord. 2008-8, passed 4-1-08; Am. Res. 2010-4, passed 6-1-10)

PUBLIC HEALTH REGULATIONS; UNSANITARY CONDITIONS

§ 92.40 REGULATIONS AGAINST UNSANITARY CONDITIONS.

It shall be unlawful for any person, firm, company or corporation to place, deposit, permit or have upon their premises, whether owned or leased by them, any one or more of the following unsanitary, fly-producing, disease or fire-causing conditions, to wit:

(A) Animal manure in any quantity which is not securely protected from flies;

(B) Filthy or littered cellars, house yards, barn yards, stable yards, factory yards, vacant areas in rear of stores, or vacant lots;

(C) Privies, vaults, cesspools, pits or like places which are not securely protected from flies and rats, or which are foul or malodorous;

(D) Garbage in any quantity which is not securely protected from flies in galvanized iron receptacles; and

(E) Trash, litter, rags, waste, accumulations of empty barrels, boxes, crates, packing cases, tin cans, lumber not neatly piled, or anything whatsoever in which flies or rats may breed or multiply, or which may be a fire danger.

(`86 Code, § 6-50) (Ord. 46, passed - -) Penalty, see § 10.99

§ 92.41 NOTICE TO ABATE.

It shall be the duty of the County Health Officer, upon learning in any way whatsoever of the existence of one or more of the unlawful conditions described in § 92.40, to notify the offender in writing, upon official blanks provided by the County Health Department, to remove or abate the unlawful conditions, stating the shortest reasonable time for removal or abatement. In the event of the refusal or neglect on the part of the notified offender to remove or abate the unlawful conditions, the Health Officer shall inform the Town Marshal upon an official blank provided for the purpose. It shall then be the duty of the Town Marshal under his or her power and authority to remove or abate the reported unlawful conditions. He or she shall keep an accurate account of the cost and expenses thereof,

which shall be paid from the Town Treasury upon sworn vouchers of the Town Marshal. The cost and expenses shall be a lien upon the property and shall be collected by law as taxes are collected and duly paid into the Town Treasury.

(`86 Code, § 6-51) (Ord. 46, passed - -)

§ 92.42 SANITARY CONDITIONS OF BARNS AND STABLES.

All stables and barns, or other shelters wherein animals are kept, shall be cleaned regularly and shall be maintained in accordance with all applicable county and state health regulations.

(`86 Code, § 6-52) (Ord. 46, passed - -)

RECYCLABLE VEGETATION AND CHARGES

§ 92.55 DEFINITIONS.

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

DEPOSITORY. The area or bin designated by the Town Council as being provided for the deposit of recyclable vegetation situated at 405 Maple Lane, Wakarusa, Indiana.

HOURS. Hours of operation shall be 9:00 a.m. to 7:00 p.m., Monday through Saturday.

PATRONS. Residents of the town, not including businesses conducted by individuals as sole proprietorships or any form of business entity such as corporation, partnership, or LLC.

PROHIBITED VEGETATION. Any vegetation other than grass clippings and tree leaves.

VEGETATION. Grass clippings and tree leaves.
(`86 Code, § 6-90) (Ord. 96-7, passed 6-18-96)

§ 92.56 PROHIBITION.

No person or entity shall be permitted to deposit prohibited vegetation in the depository.
(`86 Code, § 6-91) (Ord. 96-7, passed 6-18-96) Penalty, see § 10.99

§ 92.57 PERMITTED USAGE.

The deposit of permitted vegetation at the depository shall be limited to patrons during the specified hours.
(`86 Code, § 6-92) (Ord. 96-7, passed 6-18-96)

§ 92.58 CHARGES AND COLLECTION PROCEDURES.

(A) If the landowner fails to remove the vegetation within the time prescribed, the town may cut or remove the vegetation. A minimum charge of \$50 per hour including manpower, labor and equipment shall be assessed when the town must remove the vegetation from any lot.

(B) The Clerk-Treasurer shall prepare a certified copy of the statement of costs incurred by the town in the removal and shall serve the statement as provided in § 92.70.

(C) If the landowner fails to pay the amount within ten days after receiving the statement, a certified copy of the statement of costs shall be filed in the office of the County Auditor.

(D) The Auditor shall place the amount claimed on the tax duplicate against the property affected by the work and the amount shall be collected as taxes, and when collected, shall be disbursed to the General Fund of the town.
(`86 Code, § 6-102) (Ord. 98-4, passed 5-5-98)

WEEDS AND RANK VEGETATION**§ 92.65 SHORT TITLE.**

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

§ 92.66 JURISDICTION.

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

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

§ 92.67 DEFINITIONS; EXCLUSIONS.

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

DESTRUCTION ORDER. The notice served by the town executives, or Common Council in cases of appeal, on the property owner of the ordinance violation.

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

WEEDS, GRASSES and RANK VEGETATION.

(1) Canada thistle, thistles, johnson grass, sorghum, alum [i.e., allium], bur cucumber, and shattercane.

(2) Rank vegetation is the uncontrolled, uncultivated growth of annuals and perennial plants.

(3) ***WEEDS*** do not include shrubs, trees, cultivated plants or crops.

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

(C) The Indiana Cooperative Extension Service shall be the referenced technical authority for the town executives with respect to the definition of exempt matters, shrubs, trees, cultivated plants and crops.

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

(A) All property owners within the corporate limits of the town shall be required and be financially responsible for the removal, cutting, or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of 10 inches in average height, and in no event, exceeds 15 inches maximum height on at least 20% of the surface area of the property.

(B) All parking site area under and around all recreational vehicles and trailers, each as defined in § 90.02, shall be free from all debris and weeds, grasses and rank vegetation in excess of 12 inches in height; provided, however, that this division (B) shall only apply to private property zoned A-1, R-1, R-2, R-3 or PUD within the corporate limits of the town.
(Am. Ord. 2004-5, passed 9-7-04)

§ 92.69 FILING COMPLAINT.

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

§ 92.70 NOTICE OF VIOLATIONS.

(A) Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the town executives shall make an inspection and prepare a written report to the executives regarding the condition. The executive of the town, upon concluding that there is a probable belief that this subchapter has been violated, shall forward written notification in the form of a "Destruction Order" to the property owner and/or the person occupying the property as that information is contained within the records of the Town Clerk-Treasurer or any other town agency. Such notice shall be served in writing by certified mail. The notice shall provide that within seven calendar days after the receipt of the notice that the designated violation shall be removed by the property owner and/or person occupying the property.

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

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

§ 92.71 APPEALS.

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

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

§ 92.72 ABATEMENT BY TOWN.

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

§ 92.73 LIABILITY.

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

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

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

Penalty, see § 10.99

UNNECESSARY NOISE**§ 92.85 LOUD AND UNNECESSARY NOISE PROHIBITED.**

(A) It shall be a violation of this subchapter for a person to make or allow property under his or her control to make any loud, raucous, improper, unreasonable, offensive or unusual noise which

disturbs, injures or endangers the comfort, repose, health, peace, safety, or quiet enjoyment of others within the town.

(B) It shall be the duty of every real property owner, the owner or manager of any business in the town, or motor vehicle driver operating a vehicle within the town, to prevent persons using property under their control from violating this subchapter.

(Ord. 2002-8, passed 6-4-02)

§ 92.86 ENUMERATION OF CERTAIN PROHIBITED ACTS.

The following acts, among others, are declared to be loud, raucous or disturbing noises in violation of this subchapter, but such enumeration shall not be deemed to be exclusive. The acts enumerated in this subchapter are declared to be a public nuisance, but the enumeration of the particular offenses hereinafter particularly defined shall not be construed as limiting the generality of this section, or limiting the offense hereunder to the particular offense hereinafter enumerated.

(A) Using, operating or permitting to be played, used or operated, any radio receiving set, CD player, musical instrument, speakers, tape deck, public address or paging system, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or chamber in which such machine or device is operated and who is a voluntary listener. The operation of any such set, instrument, phonograph, machine or device, in such a manner to be plainly audible to any persons on or in an adjoining property, apartment, office, structure, sidewalk, or vehicle shall be prima facie evidence of a violation of this subchapter.

(B) Using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, CD player or tape deck, loudspeaker, sound amplifier, public address system, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any buildings or structure.

(C) Yelling, shouting, hooting, whistling, or singing on the public streets at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any commercial building or in any dwelling, or other type of residence or of any person in the vicinity.

(D) The creation of any loud and raucous noise on any street adjacent to any school, library, church or court while the same are in use, which unreasonably interferes with the working of such institution, or which unduly disturbs persons in said facilities, provided conspicuous signs are displayed in such streets indicating that the same is a school, library or court street.

(E) The use of any sound creating instrument or device for the purpose of generating a sound to attract attention by creation of noise to any performance, show or sale.

(F) The participation in, or permitting of any parties or gatherings which create loud or raucous noise.

(G) The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.

(H) The use of any automobile, motorcycle or vehicle with appurtenances attached thereto so as to create loud or unnecessary grating, grinding, rattling or other noise.

(I) To operate, cause to operate or use a motor vehicle such as to cause excessive noise levels as a result of a defective or modified exhaust system, or as a result of unnecessary rapid acceleration, deceleration, revving or tire squeal, or as the result of the operation of audio devices such as but not limited to, radios, CD players, and tape players on or from such vehicle.

(J) To intentionally or unintentionally utilize or engage an engine exhaust or compression regulating system or similar device installed on a diesel engine, which results during the braking, freewheeling, or deceleration of said engine and the vehicle upon which it is installed, noise greater than that which occurs when that same engine is under acceleration. Noise caused by such activity shall be considered excessive noise, and is prohibited.

(Ord. 2002-8, passed 6-4-02)

§ 92.87 EXEMPTIONS.

The following are exempted from the provisions of this subchapter:

(A) Sound emitted from sirens of authorized emergency vehicles;

(B) Lawn mowers, garden tractors, farm equipment, remodeling, repair and construction tools and equipment being used on a job site, and similar home power tools when properly muffled, for up to four hours per day between the hours of 8:00 a.m. and 8:00 p.m.;

(C) Burglar alarms on light motor vehicles of the electronic signaling type, which transmit a non-audible signal to a receiver which can be carried by the owner or operator of the vehicle;

(D) Celebrations on legal holidays and celebrations in connection with duly authorized parades;

(E) Noise created on a manufacturing or commercial property in a properly zoned location as a result of the manufacturing or commercial business being conducted at said location after 6:00 a.m. in the morning and before 6:00 p.m. in the evening; and

(F) Church or worship center bells sounded in conjunction with a function or service.
(Ord. 2002-8, passed 6-4-02)

§ 92.88 PENALTY AND ENFORCEMENT.

(A) Whoever violates any provision of this subchapter for which no specific penalty is otherwise provided, shall, upon citation thereof, pay a fine of not more than \$250. Each day any violation shall continue shall constitute a separate offense.

(B) In all cases where the same offense may be made punishable, or may be created by different clauses or sections of the ordinances of the town, the Town Attorney may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense.

(C) Whoever violates any of the provisions of this chapter shall be considered guilty of an infraction and upon conviction shall be punished by a fine not less than \$50.

(D) All fines delinquent in payment for 14 calendar days or longer from the date of the violation will be double the original fine, and thereafter will bear interest at the rate of 8% per annum.

(E) If the violator has received one or more citations for violations or written warnings from town police officers of the existence of a violation of this subchapter, the Town Manager or Town Marshal may issue notice of the violation and a penalty of up to \$250 may be assessed. If the violation is not terminated within 24 hours of delivery of the notice and the fine paid within ten days, the Town Manager or Town Marshal may pursue civil proceedings, including injunctive relief to prevent further violations. In such event, the town may collect all costs of such action, including attorney fees.
(Ord. 2002-8, passed 6-4-02)

PARKING OF MOTOR VEHICLES IN LAWNS AND GREENWAY

§ 92.100 DRIVING/PARKING PROHIBITED IN LAWN AND GREENWAY.

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

FRONT YARD. A yard extending across the full width of the zoning lot and lying between the front line of the lot and the nearest line of a building.

GREENWAY. The area, excluding the sidewalk, if any, between the property line and the curb or in the absence of a curb, between the property line and the curb or in the absence of a curb, between the property line and the nearest edge of the street paving, which is usually used for planting lawn, low ground cover and/or street trees.

MOTOR VEHICLE. Every vehicle which is self-propelled, including but not limited to, an automobile, truck, recreational vehicle, antique motor vehicle, motorcycle, private bus, school bus, low speed vehicle, or other vehicle specifically defined in I.C. §§ 9-13-2 *et seq.*

PERMANENT PARKING AREA. An area or portion of a zoning lot with definite and identifiable boundaries and which is improved with either hard surface or gravel or stone regularly used for driveways and parking areas, is regularly maintained as a parking area and is intended to be permanently and continually used as a parking area.

REAR YARD. A yard extending across the full width of the zoning lot and lying between the rear line of the lot and the nearest line of the principal building.

SIDE YARD. That part of the yard lying between the nearest line of the principal building and a side lot line, and extending from the required front yard, or from the front lot line, if there is no required front yard, to the required rear yard.

YARD. An open space on the same zoning lot with a principal building or group of buildings which is unoccupied and unobstructed from its lowest level upward, except as otherwise permitted in this section, and which extends along a lot line and at right angles to it to a depth or width specified in the yard regulations for the district in which the zoning lot is located.

(B) *Public nuisance.* Parking of any motor vehicle in violation of the regulations set forth in this section is deemed a public nuisance.

(C) *Parking prohibited in lawn areas.* It shall be unlawful to drive and/or park a motor vehicle in the front yard, side yard, or rear yard unless the motor vehicle is driven over or parked on a permanent parking area on or about a lot zoned for a residential use or a dwelling or in a greenway area which abuts a street of a lot zoned for a residential use or a dwelling, except for the following uses:

- (1) Washing the vehicle;
- (2) Overflow parking for a single purpose, short-term family gathering; and
- (3) Loading or unloading objects from a vehicle.

(D) *Curb cuts.* No person shall operate or park any motor vehicle on any portion of a lot in any residential district whereby the motor vehicle is driven over the curb instead of through a curb cut.

(E) *Enforcement, violation, and towing vehicle.*

(1) This section shall be enforced by the Wakarusa Police Department. The owner of any motor vehicle which is parked or driven in violation of this section shall be subject to the penalties set forth in § 92.101.

(2) Furthermore, if in the opinion of the Wakarusa Police Department, a motor vehicle parked in violation of this section is substantially interfering with the ingress or egress of any foot or vehicular traffic by preventing free movement of traffic and/or pedestrians and the owner fails to cure the violation within 24 hours of the issuance of a citation for violation of this section, the vehicle may be towed and impounded. The owner of any vehicle which has been towed pursuant to this section shall be responsible for all storage and towing charges. The town, its agents, servants or employees, shall not be responsible or liable in any manner for the damage incurred in the towing, storage, possession or disposition of such vehicle.

(Ord. 2013-1, passed 5-17-13)

§ 92.101 FINE FOR DRIVING/PARKING VIOLATION IN LAWN AND GREENWAY.

The fine required for a violation of § 92.100 shall be \$50.

(Ord. 2013-1, passed 5-17-13)

§ 92.999 PENALTY.

(A) Any person, firm or corporation violating or failing to comply with any of the provisions of §§ 92.25 through 92.34 shall be guilty and shall be fined a sum no less than \$1, nor more than \$5,000.

(A) Any person, firm, or corporation violating the provisions of § 92.20 or failing to comply with the order for the removal of any unlawful accumulation as provided in § 92.21(B) shall be charged a fine of \$300. In the event such violation is not abated by the real property owner within the 30-day time period provided in § 92.21(B), an additional ordinance violation shall be charged to the real property owner for each 14-day period in which the ordinance violation remains unabated, and the real property owner shall be subject to a \$300 fine for each such ordinance violation.

(Ord. 2008-8, passed 4-1-08; Am. Ord. 2008-10, passed 8-5-08)

CHAPTER 93: FIRE PREVENTION

Section

Fire Limits

- 93.01 Fire limits established
- 93.02 Building restrictions
- 93.03 Moving of buildings restricted
- 93.04 Fire damaged buildings
- 93.05 Abatement procedures
- 93.06 Burning of trash
- 93.07 Burning on asphalt prohibited
- 93.08 Inspections by the Fire Department
- 93.09 Fire drills
- 93.10 Bonfire regulations
- 93.11 Removal of certain materials regulated

Burning Regulations

- 93.25 Prohibition against burning
- 93.26 Exception; no permit required
- 93.27 Exemption; permit required
- 93.28 Permit procedure
- 93.29 Illegal fires; authority to extinguish

FIRE LIMITS

§ 93.01 FIRE LIMITS ESTABLISHED.

(A) It shall be unlawful for any person or persons to erect or construct upon any lot or part of lot in the town any building whose outer wall or walls or roof covering shall be constructed of wood, within the territory described as follows:

- (1) Lot Nos. 1, 2, and 3 of Block No. 1, Smeltzer's Addition;

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(2) Lot Nos. 1, 2, and 3 of Block No. 2, Holdeman's Addition;

(3) Lot Nos. 1, 2, and 3 of Block No. 3, Pletcher's Addition; and

(4) Lot Nos. 1, 2, and 3 of Block No. 4, Henry Myer's addition to the town, the same being that portion of Waterford Street extending one-half block each way, east and west from Elkhart Street; and that portion of Elkhart Street extending each way, north and south, one-half block from Waterford Street.

(B) Sheds that do not exceed 12 feet in height at the highest point thereof, 250 total square feet, and having a metal or slate roof, are exempt from the provisions hereof.

(C) Buildings whose outer walls or parts of walls shall be constructed with wood enclosed with sheet-iron, tin, or other similar material, or with a casing of stone, brick, cement, or plaster or a thickness less than four inches shall not be considered as complying with the provisions of this section.

(D) Any person may erect, within the prescribed limits, wooded buildings of metal or slate roofs to be used for strictly residence purposes.

(` 86 Code, § 6-60) (Ord. 17, passed 7-9-1900) Penalty, see § 10.99

§ 93.02 BUILDING RESTRICTIONS.

It shall be unlawful for any person to erect or construct within the boundaries named in § 93.01 any building whatsoever, or to make any additions to any building already constructed, or make any change in the construction of the outer walls thereof, unless he or she shall have first obtained from the appropriate county office, a written permit for the construction or alteration of the building, for which permit an application shall be made in writing to the Council by the owner of the building.

(` 86 Code, § 6-61) Penalty, see § 10.99

§ 93.03 MOVING OF BUILDINGS RESTRICTED.

It shall be unlawful for any person to move from any point without the boundaries defined in § 93.01 to any point within the boundaries, or to move from one point to another within the boundaries, any building whose outer wall or walls are constructed of wood, or of wood encased with sheet-iron, tin or other similar material.

(` 86 Code, § 6-62) (Ord. 17, passed 7-9-1900) Penalty, see § 10.99

§ 93.04 FIRE DAMAGED BUILDINGS.

No wooden building within the fire limits which may hereafter be damaged to the extent of 50% of the value thereof, shall be repaired or rebuilt; which damage may be determined by three disinterested persons, one to be appointed by the owner of the building, the second by the Town Council, and the two so appointed shall select the third, and the decision of the persons so appointed shall be reported to the Town Council.

(`86 Code, § 6-63) (Ord. 17, passed 7-9-1900)

§ 93.05 ABATEMENT PROCEDURES.

Any wooden building which may be erected, enlarged, removed or repaired, or in process of erection, enlargement, removal or repair, contrary to this subchapter, shall be deemed a public nuisance, and may be abated and in case of concoction of any person for erecting, continuing, or maintaining the nuisance, the Court may make it a part of the judgment that the nuisance be removed by the Marshal, at the cost and expense of the owner or defendant. It shall be the duty of the Town Attorney to sue and collect the costs and expenses from the parties creating the nuisance and expense.

(`86 Code, § 6-64) (Ord. 17, passed 7-9-1900)

§ 93.06 BURNING OF TRASH.

No person shall burn or set fire to any trash or rubbish or other combustible material within 15 feet of any building within the corporate limits of the town.

(`86 Code, § 6-67) Penalty, see § 10.99

§ 93.07 BURNING ON ASPHALT PROHIBITED.

No person shall kindle or maintain any bonfire on any street or alley that is surfaced with any asphalt, bituminous or black top material within the corporate limits of the town.

(`86 Code, § 6-68) Penalty, see § 10.99

§ 93.08 INSPECTIONS BY THE FIRE DEPARTMENT.

The Chief of the Fire Department or any assistant inspector may, at all reasonable hours, enter any building or premises within his or her jurisdiction for the purpose of making any inspection or investigation which, under the provisions of this chapter, he or she may deem necessary to be made. (`86 Code, § 6-69)

§ 93.09 FIRE DRILLS.

It shall be the duty of the Chief of the Fire Department to require teachers of public, private and parochial schools to have one fire drill each month and to keep all doors and exits unlocked during school hours.

(`86 Code, § 6-70)

§ 93.10 BONFIRE REGULATIONS.

No persons shall kindle or maintain any bonfire or shall knowingly furnish the materials for any bonfire on or in any street, avenue, road, land or public ground, within the limits of the town unless a written permit to do so shall first have been secured from the Bureau of Fire Prevention. This section shall prohibit the burning of trash or rubbish on private lots of residences, provided the rubbish is burned in a safely constructed enclosure of wire mesh, and not within 15 feet of any flammable building.

(`86 Code, § 6-71) Penalty, see § 10.99

§ 93.11 REMOVAL OF CERTAIN MATERIALS REGULATED.

No persons shall deposit ashes, smoldering coals, greasy or oily substances or other material liable to spontaneous ignition within ten feet of any wooden or plastered wall, partition or floor, except in metallic or other non-combustible receptacles, which must be kept at least two feet from any combustible wall or partition.

(`86 Code, § 6-72) Penalty, see § 10.99

BURNING REGULATIONS**§ 93.25 PROHIBITION AGAINST BURNING.**

No person shall ignite an outdoor fire or burn any material within the town except as provided by §§ 93.26 and 93.27 of this subchapter.

(`86 Code, § 6-80) (Ord. 93-6, passed 11-16-93) Penalty, see § 10.99

§ 93.26 EXCEPTION; NO PERMIT REQUIRED.

(A) Outdoor fires conducted as a part of a community activity sponsored by the Chamber of Commerce or otherwise specifically endorsed by the Town Council (i.e., Maple Syrup Festival activities) are permitted without a permit.

(B) Outdoor fires confined to a burn barrel sufficiently vented to induce adequate primary combustion air with enclosed sides, a bottom and a mesh covering with openings no larger than ¼-inch square are permitted without a permit. Only loose paper products, combustible twigs and branches may be burned in burn barrels. There shall be no open burning of magazines, books or other bound paper products, green vegetation, leaves or any material that is not substantially consumed by fire within 30 minutes. Fires shall be attended at all times until completely extinguished.

(C) Outdoor fires conducted by a family as a family cook-out are permitted without a permit, provided that the fire is not conducted for the purpose of circumventing the permitting requirements of this subchapter.

(`86 Code, § 6-81) (Ord. 93-6, passed 11-16-93)

§ 93.27 EXEMPTION; PERMIT REQUIRED.

The following types of outdoor fires are permitted if done pursuant to a permit issued in accordance with § 93.28 of this subchapter.

(A) Fires lit in conjunction with a religious celebration;

(B) Fires celebrating school pep rallies;

(C) Fires celebrating scouting activities;

(D) Burning of fence rows and fields or materials derived therefrom;

(E) Burning of material growth derived from clearing a drainage ditch;

(F) Burnings of limbs and prunings, but only if not diseased or infected as to present a contamination problem;

(G) Fires permitted by state variances pursuant to 326 I.A.C. 4-1-4 or amendments thereto; and

(H) Fires confined to approved incinerator devices.

(`86 Code, § 6-82) (Ord. 93-6, passed 11-16-93)

§ 93.28 PERMIT PROCEDURE.

(A) A person or entity desiring to have a fire allowed under § 93.27 shall file a fire permit application with the Fire Department on a form provided by the Department. The Fire Chief or his or her designee shall approve the application if the desired burning is allowed under § 93.27.

(B) All permits granted hereunder are subject to the following restrictions:

- (1) Only wood products shall be burned.
- (2) Fires shall be attended at all times until completely extinguished.
- (3) If the fire creates a nuisance or fire hazard, it shall be extinguished.
- (4) All burning shall occur during daylight hours except as otherwise specifically authorized.

(5) No burning shall be conducted during unfavorable meteorological conditions such as temperature inversions, high winds, air stagnation, drought conditions, and the like.

(C) An administrative fee of \$10 shall be charged for each permit granted.

(D) A person or entity desiring to burn on a regular basis in an incinerator device shall file an incinerator permit application with the Fire Department on a form provided by the Department. The Fire Chief shall approve the application if the desired burning is allowed under this section. An administrative fee of \$25 shall be charged for each permit approved. Permits shall be valid for a period of 12 months after issuance.

(` 86 Code, § 6-83) (Ord. 93-6, passed 11-16-93)

§ 93.29 ILLEGAL FIRES; AUTHORITY TO EXTINGUISH.

The Fire Department shall have authority to extinguish any fire which, in the discretion of the Fire Chief:

- (A) Is not exempt per § 93.26;
- (B) Is lit without a permit issued pursuant to this subchapter; or
- (C) Is in violation of the restrictions set forth herein.

(` 86 Code, § 6-84) (Ord. 93-6, passed 11-16-93)

CHAPTER 94: STREETS AND SIDEWALKS

Section

General Provisions

94.01 Excavations

Sidewalk Regulations

94.15 Sidewalk requirements

94.16 New construction

94.17 Repair or replacement

94.18 Costs

94.19 Time of completion

94.20 Emergency procedures

GENERAL PROVISIONS

§ 94.01 EXCAVATIONS.

It shall be unlawful for any person to make any excavation in any street, sidewalk, alley or public way within the town without the consent of the proper county officials.

(`86 Code, § 6-35) Penalty, see § 10.99

SIDEWALK REGULATIONS

§ 94.15 SIDEWALK REQUIREMENTS.

All sidewalk construction requirements shall be those established by the County Building Department.

(`86 Code, § 7-16)

§ 94.16 NEW CONSTRUCTION.

It shall be discretionary with the Town Council to mandate that a sidewalk be constructed along the side of any public streets where a building permit has been issued for any type of improvement for the real estate which is contiguous to the street. The sidewalk shall run the entire length of the frontage owned by the individual requiring the building permit. In the event the real property is immediately contiguous to more than one street, then a sidewalk must be constructed along the entire length of each property where the property abuts a public street.

(`86 Code, § 7-45) (Ord. 95-3, passed 10-17-95)

§ 94.17 REPAIR OR REPLACEMENT.

Except as the Town Council may otherwise determine, whenever any sidewalks in the town shall need any repair of any nature, the Town Council shall, by resolution, direct the Town Manager to notify the owner of the lot along or in front of the location of the sidewalk in need of repair, to repair or replace the sidewalk in accordance with town specifications within 30 days after service of notice. The notice shall specify the manner in which the sidewalk shall be repaired, the width, and materials to be used, and shall conform to the grades of the respective streets of the town.

(`86 Code, § 7-46) (Ord. 95-3, passed 10-17-95)

§ 94.18 COSTS.

(A) The cost of constructing new sidewalks mandated by the Town Council shall be paid by the Town Council. Property owners constructing new sidewalks voluntarily shall assume responsibility for the cost of construction.

(B) The cost of all sidewalk repair and replacement shall be paid by the owner of the lot upon or along which the sidewalk is situated.

(`86 Code, § 7-47) (Ord. 95-3, passed 10-17-95)

§ 94.19 TIME OF COMPLETION.

Any sidewalk required to be constructed pursuant to this subchapter must be completed within 60 days after the completion of the structure for which the building permit referenced at § 94.16 hereof is required, or within 60 days after having received notice from a town official of a decision made by the Town Council to mandate that a sidewalk be constructed.

(`86 Code, § 7-48) (Ord. 95-3, passed 10-17-95)

§ 94.20 EMERGENCY PROCEDURES.

In case the owner of any lot or part thereof shall fail to refuse at the expiration of 30 days from the service of the notice to repair the sidewalks in front of his or her lot in accordance with the notice or if the owner is a nonresident of the town or cannot be found, the Town Council shall cause the repair to be made at the cost or expense of the owner of the lot out of the General Fund of the town. If the Council shall, by resolution, declare that the sidewalk is dangerous, it shall be the duty of the Council to cause the repairs to be made immediately out of the General Fund of the town, and shall in either of the cases, have a lien on the lot for the reimbursement of the costs of the improvement. The Council, at its next regular meeting after the repairs have been completed, by resolution, shall declare the actual cost of the improvement, which shall be a lien, the same as a mortgage lien, upon the lot or part of lot, in front of which the repairs shall have been made, and it shall be the duty of the Town Attorney within ten days thereafter to bring an action in the Circuit Court to foreclose the lien, as a mortgage is foreclosed in accordance with the acts of the General Assembly in the cases made and provided.

(`86 Code, § 7-18) (Ord. 7, passed 11-7-1898)

CHAPTER 95: ANIMAL REGULATIONS

Section

- 95.01 Footage restriction regarding the keeping of animals
- 95.02 Livestock regulations
- 95.03 Leaving horse teams unattended
- 95.04 Horses on sidewalks
- 95.05 Hitching to shade trees
- 95.06 Vicious dogs
- 95.07 Animals at large
- 95.08 Nuisance conditions prohibited

- 95.99 Penalty

§ 95.01 FOOTAGE RESTRICTION REGARDING THE KEEPING OF ANIMALS.

(A) It shall be unlawful and declared a nuisance to erect, construct, or move any building or buildings or structure of any kind, to be used for the purpose of keeping any horses, cattle or other animals, the keeping of which is detrimental to the public health, within 200 feet of any private dwelling house within the corporate limits of the town.

(B) For any violation of this section, the Town Council may take any action as it shall deem necessary to abate and remove the nuisance.

(`86 Code, § 6-16) (Ord. 55, passed 9-18-34) Penalty, see § 95.99

§ 95.02 LIVESTOCK REGULATIONS.

It shall be unlawful for any person to lead or drive any livestock on any sidewalk within the corporate limits of the town, except in the necessary acts of crossing the same.

(`86 Code, § 6-17) (Ord. 34, passed 10-5-14) Penalty, see § 95.99

§ 95.03 LEAVING HORSE TEAMS UNATTENDED.

It shall be unlawful for any person to leave unattended any horse or horses or other animals hitched to any vehicle in any of the streets or alleys of the town without securely fastening the horse or horses or other animals to some object to prevent the animals from running away.
(`86 Code, § 6-18) (Ord. 26, passed 7-6-09) Penalty, see § 95.99

§ 95.04 HORSES ON SIDEWALKS.

It shall be unlawful for any person to tie any horse or horses or other animals within the town without securing the same so that it cannot go upon or over any sidewalk within the town.
(`86 Code, § 6-19) (Ord. 26, passed 7-6-09) Penalty, see § 95.99

§ 95.05 HITCHING TO SHADE TREES.

It shall be unlawful for any person to hitch any horse or horses or other animals to any shade tree upon or along the streets or alleys of the town.
(`86 Code, § 6-20) (Ord. 26, passed 7-6-09) Penalty, see § 95.99

§ 95.06 VICIOUS DOGS.

(A) *Prohibition.* It shall be unlawful for any person to keep, harbor or suffer to run at large any cross, vicious or unruly dog within the town.

(B) *Definition.* A **VICIOUS DOG** is any dog of any breed that:

- (1) When unprovoked, exhibits behavior that requires a defensive action by any person to prevent bodily injury or property damage;
- (2) When unprovoked, inflicts a bite, bites on or attacks a human being, either on public or private property;
- (3) Attacks another animal on property other than that of the owner of the attacking dog; or
- (4) Has a known propensity, tendency or disposition to attack without provocation, to cause injury, or to otherwise endanger the safety of human beings or domestic animals.

(C) *Exemptions.* No dog shall be deemed vicious if it:

(1) Bites, attacks or menaces anyone who has tormented or abused it; or

(2) Is a professionally trained dog for law enforcement guard duties.

(`86 Code, § 6-21) (Ord. 26, passed 7-6-09; Am. Ord. 2006-5, passed 6-6-06) Penalty, see § 95.99

§ 95.07 ANIMALS AT LARGE.

It shall be unlawful for the owner or person having the care, custody and control of any dog, cat, cow, horse, mule, swine, or other livestock, or chickens, ducks, geese, turkeys, other poultry, or any other animal described in I.C. 15-2.1-2-15, to permit the animal or animals to be or remain at large upon any of the streets, alleys or public grounds, or unenclosed lots within the town.

(`86 Code, § 6-22) (Ord. 99-2, passed 2-2-99) Penalty, see § 95.99

§ 95.08 NUISANCE CONDITIONS PROHIBITED.

No person shall keep or harbor any animal or fowl in the town so as to create noises, odors, or unsanitary conditions which are a menace to the health, comfort, or safety of the public, and shall constitute a public nuisance.

(`86 Code, § 6-23) Penalty, see § 95.99

§ 95.99 PENALTY.

(A) The penalty for violating any provision of §§ 95.01 to 95.05, § 95.07 and § 95.08 shall be a fine of not more than \$100 per occurrence. The penalty for violating § 95.06 shall be a fine of not more than \$100, and an additional ordinance violation shall be charged against any person for each week such person is in violation of § 95.06.

(B) The town shall be permitted, by its employees and designees, to capture and destroy any animals at large, as defined and set forth in § 95.07, and if necessary, to establish, maintain and operate animal shelters, and to transfer any animals so captured to similar private organizations.

(`86 Code, § 6-24) (Ord. 99-2, passed 2-2-99; Am. Ord. 2006-5, passed 6-6-06)

CHAPTER 96: FAIR HOUSING

Section

- 96.01 Policy
- 96.02 Definitions
- 96.03 Unlawful practice
- 96.04 Discrimination in the sale or rental of housing
- 96.05 Discrimination in the financing of housing
- 96.06 Discrimination in the provision of brokerage services
- 96.07 Exemption
- 96.08 Administration
- 96.09 Education and conciliation
- 96.10 Enforcement
- 96.11 Investigations; giving of evidence
- 96.12 Enforcement by private persons
- 96.13 Interference, coercion, or intimidation
- 96.14 Separability of provisions
- 96.15 Prevention of intimidation in fair housing cases

§ 96.01 POLICY.

It is the policy of the town to provide, within constitutional limitation, for fair housing throughout the town.

(Res. 2002-5, passed 2-5-02)

§ 96.02 DEFINITIONS.

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

DISCRIMINATORY HOUSING PRACTICE. An act that is unlawful under §§ 96.04 - 96.06 and as defined in the Fair Housing Amendments Act of 1988, and the Title VIII of the Civil Rights Act of 1968.

DWELLING. Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

FAMILY. Includes a single individual.

PERSON. Includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

TO RENT. Includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy the premises owned by the occupant.
(Res. 2002-5, passed 2-5-02)

§ 96.03 UNLAWFUL PRACTICE.

Subject to the provisions of division (B) and § 96.07, the prohibitions against discrimination in the sale or rental of housing set forth in § 96.04 shall apply to:

(A) All dwellings except as exempted by division (B).

(B) Nothing in § 96.04 shall apply to:

(1) Any single-family house sold or rented by an owner where the private individual owner does not own more than three such single-family houses at any one time; provided that in the sale of such single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of such house prior to the sale, the exemption shall apply only to one such sale within any 24-month period. The private individual owner may not own any interest in, nor have owned or reserved on his or her behalf, title to or any right to all or a portion of the proceeds from the sale or rental of any such single-family house unless such house is sold or rented:

(a) Without the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesman, or any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent or salesman, or person; and

(b) Without the publication, posting or mailing, after notice of advertisement or written notice in violation of § 96.04(C) or this chapter, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies and other such professional assistance as necessary to perfect or transfer this title.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(C) For the purpose of division (B), a person shall be deemed to be in the business of selling or renting dwellings if he or she has, within the preceding 12 months, participated as:

(1) Principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) Agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) The owner of any dwelling unit designed or intended for occupancy by, or occupied by, five or more families.

(Res. 2002-5, passed 2-5-02)

§ 96.04 DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING.

As made applicable by § 96.03 and except as exempted by § 96.03(B) and § 96.07, it shall be unlawful:

(A) To refuse to negotiate for the sale or rental of, or otherwise make unavailable, a dwelling to any person because of age, race, color, religion, sex, national origin, disability, or families with children.

(B) To discriminate against any person in the terms, conditions, or privileges of sale or rental of dwelling, or in the provision of services or facilities in connection therewith, because of age, race, color, religion, sex, national origin, disability, or families with children.

(C) To cause to be made, printed, or published any notice, statement or advertisement, that indicates any intention to preference, limitation, or discrimination based on age, race, color, religion, sex, national origin, disability, or families with children.

(D) To represent to any person because of age, race, color, religion, sex, national origin, disability, or families with children that the dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(E) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or perspective entry into the neighborhood of a person or persons of a particular age, race, color, religion, sex, national origin, disability, or families with children.

(Res. 2002-5, passed 2-5-02)

§ 96.05 DISCRIMINATION IN THE FINANCING OF HOUSING.

It shall be unlawful for any bank, building and loan association, or other corporation, association, firm or enterprise whose business consists in whole or part in making of commercial real estate loans, to deny a loan or other financial assistance to a person for the purpose of purchasing, construction, improving, repairing, or maintaining a dwelling. Such discrimination shall include the fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance, because of the age, race, color, religion, sex, national origin, disability, or families with children status, or of any person associated with that person in connection with the loan or other financial assistance or the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings. Nothing contained in this section shall impair the scope or effectiveness of the exception contained in § 96.03(B). (Res. 2002-5, passed 2-5-02)

§ 96.06 DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES.

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against that person in the terms or conditions of such access, membership, or participation, on account of age, race, color, religion, sex, national origin, disability, or families with children status. (Res. 2002-5, passed 2-5-02)

§ 96.07 EXEMPTION.

Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of age, race, color, sex, national origin, disability, or families with children status. Nor shall anything in this resolution prohibit a private club not to open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. (Res. 2002-5, passed 2-5-02)

§ 96.08 ADMINISTRATION.

(A) The authority and responsibility for administering this chapter shall be in the Chief Executive Officer of the town.

(B) The Chief Executive Officer may delegate any of these functions, duties, and powers to employees of the town or to boards of such employees, including such functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter under this chapter. The Chief Executive Officer shall by rule prescribe such rights of appeal from the decisions of his or her hearing examiners to other hearing examiners or to other officers of the town, to boards of officers or to himself or herself, as shall be appropriated and in accordance with the law.

(C) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the Chief Executive Officer to further such purposes.

(Res. 2002-5, passed 2-5-02)

§ 96.09 EDUCATION AND CONCILIATION.

Immediately after the enactment of this chapter, the Chief Executive Officer shall commence such educational and conciliatory activities as will further the purposes of this chapter. He or she shall call conferences of persons on the housing industry and other interested parties to acquaint them with the provisions of this chapter and his or her suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement.

(Res. 2002-5, passed 2-5-02)

§ 96.10 ENFORCEMENT.

(A) Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Chief Executive Officer. Complaints shall be in writing and shall contain such information and be in such form as the Chief Executive Officer requires. Upon receipt of such a complaint, the Chief Executive Officer shall furnish a copy of the same to the person or persons who allegedly committed or is about to commit the alleged discriminatory housing practice. Within 30 days after receiving a complaint, or within 30 days after the expiration of any period of reference under division (C), the Chief Executive Officer shall investigate the complaint and give notice in writing to the person aggrieved whether he or she intends to resolve it. If the Chief Executive Officer decides to resolve the complaints, he or she shall proceed to try to eliminate or correct the alleged discriminatory practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

(B) A complaint under division (A) shall be filed within 180 days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against that person and with

the leave of the Chief Executive Officer which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both complaints and answers shall be verified.

(C) If within 30 days after a complaint is filed the Chief Executive Officer has been unable to obtain voluntary compliance with this chapter, the person aggrieved may, within 30 days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The Chief Executive Officer will assist in this filing.

(D) If the Chief Executive Officer has been unable to obtain voluntary compliance within 30 days of the complaint, the person aggrieved may, within 30 days thereafter, commence a civil action in any appropriate court to enforce the rights granted or protected by this chapter. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(E) Wherever an action filed by an individual shall come to trial, the Chief Executive Officer shall immediately terminate all efforts to obtain voluntary compliance.

(Res. 2002-5, passed 2-5-02)

§ 96.11 INVESTIGATIONS; GIVING OF EVIDENCE.

(A) The Chief Executive Officer shall seek to have access at all reasonable times to premises, records, individuals and other possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The Chief Executive Officer may seek subpoenas to compel his or her access to, or the reproduction of, such materials; the appearance of such persons; or he or she may seek to issue interrogatories in the district in which the investigation is taking place. The Chief Executive Officer may administer oaths.

(B) Upon written application to the courts, a respondent is entitled to seek the issuance of a reasonable number of subpoenas if approved by the court.

(C) In case of refusal to obey a subpoena, the Chief Executive Officer may petition for its enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(D) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in their power to do so, in obedience to the subpoena or lawful order of the courts, shall be fined as determined by the courts, or imprisoned as determined by the courts, or both. Any person who, with intent to mislead the Chief Executive Officer, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Chief Executive Officer, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Chief Executive Officer pursuant to a subpoena or other order, or shall willfully neglect or fail to make or cause to be

made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined and/or imprisoned as determined by the courts.

(E) The Town Attorney shall conduct all litigation in which the Chief Executive Officer participates as a party or as amicus pursuant to this chapter.

(Res. 2002-5, passed 2-5-02)

§ 96.12 ENFORCEMENT BY PRIVATE PERSONS.

(A) The rights granted by §§ 96.03 - 96.06 may be enforced by civil rights actions in state or local courts of general jurisdiction. A civil action shall be commenced within 180 days after alleged discriminatory housing practice occurred. The court shall continue such civil case brought pursuant to this section or § 96.10(D) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Chief Executive Officer are likely to result in satisfactory settlement of the discriminatory housing practice complained of and which forms the basis for the action in court. Any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this chapter, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provision of this chapter shall not be affected.

(B) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages, to the prevailing plaintiff, provided, that in the opinion of the court the plaintiff is not financially able to assume said attorney's fees.

(Res. 2002-5, passed 2-5-02)

§ 96.13 INTERFERENCE, COERCION, OR INTIMIDATION.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by §§ 96.03 - 96.06. This chapter may be enforced by appropriate civil action.

(Res. 2002-5, passed 2-5-02)

§ 96.14 SEPARABILITY OF PROVISIONS.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder or the resolution and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Res. 2002-5, passed 2-5-02)

§ 96.15 PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.

Whoever, whether or not acting under cover of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

(A) Any person because of their age, race, color, sex, religion, national origin, disability, or families with children and because he or she is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings;

(B) Any person because he or she is or has been, or in order to intimidate such person or any other person or any class of persons from:

(1) Participating, without discrimination on account of age, race, color, religion, sex, national origin, disability, or families with children in any of the activities, services, organizations or facilities described in division (A); or

(2) Affording another person or class of persons opportunity or protection so to participate;
or

(C) Any citizen because he or she is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of age, race, color, religion, sex, national origin, disability, or families with children in any of the activities, services, organizations, or facilities described in division (A), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to participate shall be fined as determined by the courts, or imprisoned as determined by the courts.

(Res. 2002-5, passed 2-5-02)