**TITLE IX: GENERAL REGULATIONS**

Chapter

 **90.** **ANIMALS**

 **91. NUISANCES**

 **92. FIREWORKS AND EXPLOSIVES**

 **CHAPTER** **90:** **ANIMALS**

Section

***General Provisions***

90.01 Definitions

90.02 Rabies vaccination and control; report

90.03 Licensing

90.04 Tag and collar

90.05 Restraint

90.06 Running at large; impoundment

90.07 Impoundment; fees

90.08 Confinement; prohibition on keeping certain animals

90.09 Exemptions

90.10 Investigation; interference

90.11 Records

90.12 Waste disposal

***Farm Animals***

90.25 Definition

90.26 Animals running at large

90.27 Fowl in the city

90.28 Horses, cows, goats and sheep in the city

90.29 Feed yards prohibited; exception

90.30 Pigs in the city

90.31 Staking animals

90.32 Cleaning yards

90.33 Facilities existing as of effective date of subchapter

90.34 Violation elimination

90.35 Nuisance

***Confinement Units***

90.50 Declaration of nuisance; definition

90.51 Grandfathered activities; compliance

90.52 Free from violations

90.53 Written complaints

90.99 Penalty

***GENERAL PROVISIONS***

 **90.01 DEFINITIONS.**

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

***ANIMAL SHELTER.*** Any premises designated by action of the city for the purpose of impounding and caring for all animals found running at large in violation of this subchapter.

***ANIMAL WARDEN.*** The person or persons employed by the city as its enforcement officer.

***AT LARGE.*** Any dog or cat shall be deemed to be ***AT LARGE*** when he or she is off the property of his or her owner and not under control of a competent person.

***EXPOSED TO RABIES.*** A dog or cat has been exposed to rabies within the meaning of this subchapter, if it has been bitten by, or been exposed to, any animal known to have been infected with rabies.

***KENNEL.*** Any person, group of persons or corporations engaged in the commercial business of breeding, buying, selling or boarding dogs or cats.

***OWNER.*** Any person, group of persons or corporations engaged in the commercial business of breeding, buying, selling or boarding a dog, dogs, a cat or cats.

***RESTRAINT.*** A dog or cat is under ***RESTRAINT*** within the meaning of this subchapter if he or she is controlled by a leash, at heel directly beside a competent person and obedient to that persons commands, on or within a vehicle being driven or parked on the streets or within the property limits of its owner or keeper.

***VICIOUS ANIMAL.*** Any dog or cat which habitually:

(1) Bites or attempts to bite any person;

(2) Attacks or attempts to attack any person, other dog or other animal; or

(3) Chases any dog or person.

(Ord. 93‑1, passed 6‑7‑1993)

 **90.02 RABIES VACCINATION AND CONTROL; REPORT.**

(A) (1) Any owner acquiring a dog or cat or other animal susceptible to rabies by purchase, gift, birth or otherwise shall have such animal vaccinated by a licensed veterinarian against rabies when the animal reaches the age of six months or within ten days of acquisition of the animal, if the animal is six months old or older.

(2) An animal shall be considered unvaccinated after the expiration of 13 months following the date of its latest vaccination; provided, however, that, if a licensed veterinarian shall issue a certificate certifying the effective period of a vaccination, the animal shall not be considered unvaccinated until after the expiration of the certified effective period of vaccination.

(B) (1) The citys Animal Warden shall obtain from the World Health Organization, or other reputable agency, current rules for the control of rabies and shall develop policies based upon such rules for the quarantine, pathological examination and control of animals suspected of being infected with rabies.

(2) The owner, upon demand made by the Animal Warden, shall forthwith surrender any animal which has bitten a human, or which is suspected as having been exposed to rabies, for supervised quarantine which expense shall be borne by the owner, and may be reclaimed by the owner if adjudged free of rabies, upon payment of fees set forth in  90.07(B) of this chapter and upon compliance with the licensing provisions set forth in  90.03 of this chapter.

(C) It shall be the duty of every physician, or other practitioner, to report to the Animal Warden the names and addresses of persons treated for bites inflicted by animals, together with such other information as will be helpful in rabies control.

(D) It shall be the duty of every licensed veterinarian to report to the Animal Warden his or her diagnosis of any animal observed by him or her as a rabies suspect.

(Ord. 93‑1, passed 6‑7‑1993)

 **90.03 LICENSING.**

(A) No person shall own, keep or harbor any dog or cat within the city limits unless such animal is licensed as herein provided. Written application for such license shall be made to the citys Finance Officer, or such agents of the city as shall be designated by the City Council, and shall state the name, breed, color, age and sex of the dog or cat. The license fee shall be paid at the time of making application, a numbered receipt given to the applicant and a number metallic tag shall be issued to the owner.

(B) The yearly license fee shall be $3 for each neutered dog or cat over the age of six months and $5 for each dog or cat over the age of six months that is not neutered.

(C) Every person, group of persons or corporation engaged in the commercial business of buying, selling, breeding or boarding, and who owns, harbors or keeps five or more dogs or cats in a kennel, shall pay an annual license fee of $5; provided, however, that, any persons operating such kennel may elect to license individual dogs or cats as provided in division (B) above.

(D) All licenses and kennel licensees shall be issued for one year beginning with January 1. Applications for licenses may be made prior to and for 30 days after the start of the licensing year without penalty, but when application is made after 30 days of the licensing year have elapsed, the applicant shall be assessed a penalty of 50% of the license fee, which amount shall be added and collected with the regular license fee. If the dog, cat or kennel did not become subject to licensing until after the start of the licensing year, no penalty shall be assessed.

(E) In the event that a metallic licensed tag issued shall be lost, the owner may obtain a duplicate tag upon the payment of $1.

(F) If there is a change in ownership of an animal or kennel during the license year, the new owner may have the current license transferred to his or her name upon the payment of a transfer fee of $2.

(G) No person shall use for any dog or cat a license receipt or license tag issued for another animal.

(H) No application for a dog license shall be accepted, nor shall any such license be issued, until the applicant has produced satisfactory evidence that the dog or cat for which the license is to be issued has been vaccinated for rabies, as provided herein.

(Ord. 93‑1, passed 6‑7‑1993) Penalty, see  90.99

 **90.04 TAG AND COLLAR.**

(A) Upon complying with the provisions of  90.03 of this chapter, there shall be issued to the owner a numbered metallic tag, stamped with the number and the year for which issued. The shape or design of such tag shall be changed from year to year.

(B) Every owner is required to see that the tag is securely fastened to the cats or dogs choke chain, collar or harness which must be worn by the dog or cat at all times.

(Ord. 93‑1, passed 6‑7‑1993) Penalty, see  90.99

 **90.05 RESTRAINT.**

The owner shall keep his or her dog or cat under restraint at all times and shall not permit such dog or cat to be at large, off the premises or property of the owner, unless under the control of a competent person.

(Ord. 93‑1, passed 6‑7‑1993) Penalty, see  90.99

 **90.06 RUNNING AT LARGE; IMPOUNDMENT.**

(A) An unlicensed cat or dog, or cats or dogs, found running at large shall be taken up by the harder and impounded in the shelter designated as the citys Animal Shelter, and there confined in a humane manner for a period of not less that three days, and may, thereafter, be disposed of in a humane manner if not claimed by his, her or their owner. Dogs or cats not claimed by their owners before the expiration of three days shall become the property of the city and be disposed of at the discretion of the city, except as hereinafter provided in the cases of certain dogs and cats.

(B) The city may transfer title of all animals held by it at its animal shelter after the legal detention period has expired and the animal has not been claimed by its owner. In the event of such transfer of title, it is expressly understood that the person receiving title shall pay for each animals care until it shall be removed from the animal shelter.

(C) When dogs or cats are found running at large, and their ownership is known to the Animal Warden, such animals need not be impounded, but the Warden, may, at his or her discretion, cite the owners of such animals to appear in court to answer to charges or violation of the ordinance.

(D) Immediately upon impounding cats, dogs or other animals, the Animal Warden shall make every possible effort to notify the owners of such animals so impounded and inform such owners of the conditions whereby they may regain custody of such animals.

(E) Animals other that dogs and cats shall be impounded when found running at large within the city limits and disposed of in accordance with law.

(F) No unspayed female dog or cat which has been impounded by reason of its being a stray shall be allowed to be adopted from the animal shelter unless the prospective owner shall agree to have such female spayed.

(Ord. 93‑1, passed 6‑7‑1993) Penalty, see  90.99

 **90.07 IMPOUNDMENT; FEES.**

(A) (1) The owner shall be entitled to resume possession of any impounded cat or dot, except as hereinafter provided in the cases of certain cats or dogs, upon compliance with the license provisions in  90.03 of this chapter and the payment of impoundment fees set forth herein.

(2) Any other animal impounded under the provision of this subchapter may be reclaimed by the owner upon the payment of impoundment fee set forth herein.

(3) Any animal impounded under the provisions of this subchapter and not reclaimed by its owner within three days, may be humanely destroyed by the city, or placed in the custody of some person deemed to be a responsible and suitable owner, who will agree to comply with the provisions of this subchapter and such other regulations as shall be fixed by the city. If the animal is one as to which the respective rights of the owner and the person in possession or custody are determined by state law, such law shall be complied with.

(B) Any animal impounded hereunder may be reclaimed, as herein provided, upon payment by the owner to the city of the sum of $25 for each dog or cat, the additional sum of $10 for each day such dog or cat is kept after the expiration of the legal detention period; and the sum of $40 for any other animal, excepting rabbits, poultry and birds, and the additions sum of $10 for each day such animal is kept after the legal detention period.

(Ord. 93‑1, passed 6‑7‑1993)

 **90.08 CONFINEMENT; PROHIBITION ON KEEPING CERTAIN ANIMALS.**

(A) No person shall keep, harbor, own or in any way possess within the corporate limits of the city any vicious dog or cat.

(B) Every female dog or cat in heat shall be kept confined in a building or secure enclosure, or in a veterinary hospital or boarding kennel, in such manner that such female dog or cat cannot come in unintended contact with another animal.

(C) No wild animal may be kept within the city limits, except under such conditions as shall be fixed by the city.

(D) Any animal, described in  90.02(B) of this chapter, found at large shall be impounded by the city and may not be redeemed by owners, unless such redemption be authorized by any court having jurisdiction.

(E) Any dog, cat or other animal, impounded for being a public nuisance may not be redeemed unless such redemption is authorized by any court having jurisdiction.

(F) When, in the judgment of the city or its agents, an animal should be destroyed for humane reasons, such animal may not be redeemed.

(Ord. 93‑1, passed 6‑7‑1993) Penalty, see  90.99

 **90.09 EXEMPTIONS.**

(A) Hospitals, clinics and other premises operated by licensed veterinarians for the care and treatment of animals are exempt from the provisions of this subchapter, except where such duties are expressly stated.

(B) The licensing requirements of this subchapter shall not apply to any dog or cat belonging to a non‑resident of the city kept within the city for not longer than 30 days; provided, all such dogs or cats shall at all times while in the city be kept within a building, enclosure or vehicle or be under restraint by the owner.

(Ord. 93‑1, passed 6‑7‑1993)

 **90.10 INVESTIGATION; INTERFERENCE.**

(A) For the purpose of discharging the duties imposed by this subchapter and to enforced its provisions, any agent of the city or any police officer, is empowered to enter upon any premises upon which a dog or cat is kept or harbored and to demand the exhibition by the owner of such dog or cat or the license for such dog or cat. It is further provided that any agent of the city may enter the premises where any animal is kept in a reportedly cruel or inhumane manner and demand to examine such animal and to take possession of such animal, when, in his or her opinion, it requires humane treatment.

(B) No person shall interfere with, hinder or molest any agent of the city in the performance of any duty of such agent, or seek to release any animal in the custody of the Animal Warden or is agents, except as herein provided.

(Ord. 93‑1, passed 6‑7‑1993) Penalty, see  90.99

 **90.11 RECORDS.**

(A) It shall be the duty of the Animal Warden to keep, or cause to be kept, accurate and detailed records of the licensing, impoundment and disposition of all animals coming into his or her custody.

(B) It shall be the duty of the Animal Warden to keep or cause to be kept accurate and detailed records of all bites cases reported to him or her and his or her investigation of the same.

(Ord. 93‑1, passed 6‑7‑1993)

 **90.12 WASTE DISPOSAL.**

The owner or keeper of a dog or cat shall remove and properly dispose of all dog and cat excrement deposited by his or her dog or cat on a public sidewalk, street, alley or on property not possessed by the owner.

(Ord. 93‑1, passed 6‑7‑1993) Penalty, see  90.99

***FARM ANIMALS***

 **90.25 DEFINITION.**

For the purpose of this subchapter, a ***FARM ANIMAL*** shall mean any horse, cattle, swine, sheep, goats, ducks, geese, chickens, exotic animals or any other livestock of any kind ordinarily maintained on a farm for the production of income or the personal use of a farmer.

(Ord. 96‑6, passed 7‑1‑1996)

 **90.26 ANIMALS RUNNING AT LARGE.**

No person shall allow any hose, cattle swine, sheep or goat to run at large within the city limits.

(Ord. 96‑6, passed 7‑1‑1996) Penalty, see  90.99

 **90.27 FOWL IN THE CITY.**

No person shall allow any ducks, geese, chickens or other domestic fowl to run at large, nor shall any person keep enclosed or housed any geese, ducks, chickens or other domestic fowl in any house, pen, coop or enclosure situated within the distance of 100 feet of any dwelling, house, store, church, school, other public building or other building used or occupied as the residence of any person. Such house, pen, coop or enclosure shall be maintained at all times in a clean an sanitary condition.

(Ord. 96‑6, passed 7‑1‑1996) Penalty, see  90.99

 **90.28 HORSES, COWS, GOATS AND SHEEP IN THE CITY.**

No person shall keep any horse, cow, goat or sheep or erect or maintain any building or enclosure for use in keeping any of such animals within 150 feet of any dwelling, house, store, church, school, public building or building used for human habitation, other than that of the owner of such animals. No person shall keep or maintain any building or enclosure where livestock is kept, unless the same shall be at all times kept in a clean and sanitary condition and in accordance with the ordinances of the city.

(Ord. 96‑6, passed 7‑1‑1996) Penalty, see  90.99

 **90.29 FEED YARDS PROHIBITED; EXCEPTION.**

No person shall keep any feed yard or other place where cattle, hogs or other livestock are kept and habitually fed or fattened within the city. This section shall not apply to stockyards or other places where livestock are kept temporarily for convenience in shipping or to places where cattle and sheep are kept temporarily for feeding on stalks or other crop residue grown in the city limits.

(Ord. 96‑6, passed 7‑1‑1996) Penalty, see  90.99

 **90.30 PIGS IN THE CITY.**

No person shall place, keep or maintain any live hogs within the city, excepting such hogs as are kept in the pens, houses or yards of the stockyards, packing houses or butcher shops and kept for the purpose of immediate shipment, slaughter or veterinary work.

(Ord. 96‑6, passed 7‑1‑1996) Penalty, see  90.99

 **90.31 STAKING ANIMALS.**

No person shall, within the city, stake out any farm animal in such a manner as to permit it to approach within 150 feet of any dwelling, house or building used for human habitation other than that of the owner of such animal.

(Ord. 96‑6, passed 7‑1‑1996) Penalty, see  90.99

 **90.32 CLEANING YARDS.**

All yard where farm animals are confined in such a manner that manure and waste are accumulated and stored on the premises shall be cleaned in such a manner so that all manure and waste stores on such property over the winter and spring are removed by July 1 of each year and the area cleaned to a fresh dirt or cement surface.

(Ord. 96‑6, passed 7‑1‑1996) Penalty, see  90.99

 **90.33 FACILITIES EXISTING AS OF EFFECTIVE DATE OF SUBCHAPTER.**

The terms of this subchapter shall not apply to any facility or use of property occurring as of 4‑16‑1996; provided that, the owner os such facility or of any farm animal within the city in violation of the terms of this subchapter shall, comply fully with all ordinance of the city regulating animals within the city limits, including, specifically,  90.50 through 90.53 of this chapter.

(Ord. 96‑6, passed 7‑1‑1996)

 **90.34 VIOLATION ELIMINATION.**

In the event of transfer of any non-conforming use to any person other than the immediate family of the owner, discontinuance of the non-conforming use or occupancy for a period of two years, or operation of the non-conforming use in such a manner as to violate an ordinance of the city, then the City Council may adopt, after notice by certified mail to the property owner, an amortization schedule to bring about the gradual elimination of such non-conforming use or occupancy.

(Ord. 96‑6, passed 7‑1‑1996)

 **90.35 NUISANCE.**

Possession of any farm animal in violation of this subchapter shall constitute a nuisance.

(Ord. 96‑6, passed 7‑1‑1996)

***CONFINEMENT UNITS***

 **90.50 DECLARATION OF NUISANCE; DEFINITION.**

(A) The city hereby finds and declares that the operation of an animal feeding confinement unit within the corporate limits of the city is a nuisance and that, from and after the effective date hereof, no person, firm or corporation, shall construct, put in operation or start any animal feeding confinement unit within the corporate limits of the city.

(B) For the purposes of this subchapter, an ***ANIMAL FEEDING CONFINEMENT UNIT*** shall be defined as any lot, yard, building or area or combination thereof, where in excess of 15 head of cattle, hogs, horses and/or sheep are confined on a regular basis for commercial purposes. The increase of any breeding livestock held shall not be included in a count to determine the number of head present in a confinement unit until such increase shall reach breeding age.

(Ord. 92‑1, passed 4‑6‑1992)

 **90.51 GRANDFATHERED ACTIVITIES; COMPLIANCE.**

(A) Any animal feeding confinement unit being actively operated within the corporate limits of the city as of 2‑1‑1992 may continue to be operated, but only under the terms and conditions of this subchapter.

(B) The owner of any animal feeding confinement unit described in division (A) above shall operate such unit in full compliance with all federal, state and municipal laws, regulations and ordinances, including all applicable provisions requiring the safe and sanitary disposal of sewage and animal waste.

(Ord. 92‑1, passed 4‑6‑1992) Penalty, see  90.99

 **90.52 FREE FROM VIOLATIONS.**

(A) The owner of any animal feeding confinement unit described in  90.51(A) of this chapter shall operate such unit in such a manner as to give full effect to the right of the inhabitants of the city to be free from obnoxious odors, noises, dust and pests.

(B) All yards comprising such units shall be kept clean and free of waste and debris, odor shall be controlled and all sewage and animal waste shall be promptly removed from the buildings comprising such unit and shall be disposed of properly.

(Ord. 92‑1, passed 4‑6‑1992) Penalty, see  90.99

 **90.53 WRITTEN COMPLAINTS.**

(A) In the event any person shall make written complaint to the city that any animal confinement unit, as defined herein, is not being operated as required by this subchapter, the City Council shall notify the owner of such unit of such complaint and shall cause an investigation of the allegations in the complaint to be made.

(B) If, after considering the results of such investigation, the Council shall determine that the allegations are true, the Council shall determine what actions are required to bring the unit into compliance and shall order the owner of such unit to immediately take all steps required to correct such deficiencies.

(B) If the owner of such unit shall fail to comply with the order of the Council, the city shall proceed under the law to abate the nuisance.

(Ord. 92‑1, passed 4‑6‑1992)

 **90.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to 10.99 of this code of ordinances.

(B) Any person violating any provision of  90.01 through 90.12 of this chapter shall be deemed guilty of a misdemeanor and punished by a fine not exceeding $200; and, if such violation be continued, each days violation be a separate offense.

(C) (1) Any person convicted of a violation of any provision of  90.25 through 90.35 of this chapter may be fined in an amount not to exceed the sum of $200.

(2) Each day in which any violation of any provision of  90.25 through 90.35 of this chapter shall occur shall constitute a separate offense.

(D) Any person convicted of a violation of any provision of  90.50 through 90.53 of this chapter may be fined in an amount not to exceed the sum of $200. Each day in which any violation of any provision of  90.50 through 90.53 of this chapter shall occur shall constitute a separate offense.

(Ord. 92‑1, passed 4‑6‑1992; Ord. 93‑1, passed 6‑7‑1993; Ord. 96‑6, passed 7‑1‑1996)

 **CHAPTER 91: NUISANCES**

Section

***General Provisions***

91.01 Purpose

91.02 Definitions

91.03 Unsightly property

91.04 Outdoor furniture

91.05 Composts

91.06 Firewood

91.07 Graffiti

91.08 Weeds, grass and vegetation

91.09 Stagnant water

91.10 Garbage and refuse

91.11 Exceptions

91.12 Construction of visual barriers

91.13 Inspections

91.14 Written orders

91.15 Emergency actions without notice

91.16 Appeals

91.17 Failure to comply; remediation

91.18 Violations

91.19 Liability

***Dangerous Buildings***

91.30 Purpose and scope

91.31 Alterations, additions and repairs

91.32 Right of entry

91.33 Abatement

91.34 Violations

91.35 Inspection of work

91.36 Board of Appeals

91.37 Definition

91.38 Notices and orders of enforcement officer; recordation

91.39 Repair, vacation and demolition

91.40 Notice to vacate

91.41 Appeals; effect; scope; hearing; decision

91.42 Enforcement

91.43 Performing work; interference; performance

91.44 Repair and Demolition Fund

91.45 Recovery of costs

***Snow and Ice Removal***

91.60 Removal required

91.61 Failure to remove

91.62 Assessments

91.63 Violations

91.99 Penalty

***GENERAL PROVISIONS***

 **91.01 PURPOSE.**

The purpose of this subchapter is to protect the community from unsightly, hazardous or blighting conditions that contribute to the deterioration of neighborhoods and to provide for the abatement of such conditions.

(Ord. 2012‑2, passed 5‑7‑2012)

 **91.02 DEFINITIONS.**

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

***AGRICULTURAL PURPOSES.*** The lawful use of land for the purpose of crop production or the raising of livestock.

***ALLEY.*** A narrow highway intended chiefly to give access to the rear of buildings and parcels of land.

***BOARD.*** The Nuisance Appeal Board appointed by the Mayor.

***CITY.*** The City of Kimball, a municipal corporation.

***CONSTRUCTION MATERIAL.*** All construction and demolition material or supplies accumulated on premises while constructing, altering, repairing or demolishing any building or structure and includes, but is not limited to, earth, vegetation or rock during such construction, alteration or repair.

***DAMAGE TO HUMAN HEALTH.*** Whatever renders the ground, the water, the air or food a hazard

or an injury to human health.

***DOMESTIC WASTE.*** Includes:

(1) Refuse, debris, junk or effluent belonging to, or associated with, a house or household;

(2) Accumulations of leaves, grass cuttings or garden remains that are not kept in a compost container;

(3) Refrigerators, freezers, stoves or other appliances or any part of them, if the appliance is not being used for the purpose for which it was manufactured;

(4) Furnaces, furnace parts, pipes, unused metal, wire, fittings or tanks of any kind when not in use;

(5) Inoperative vehicles, campers, RVs, boats and vehicle parts or accessories;

(6) Old or decayed lumber, paper, ashes, glass, cardboard, plastics, sewage or dilapidated furniture, clothing or fencing; and

(7) Construction materials that are not being actively used in a construction project.

***EXTERIOR PROPERTY AREA.*** The lot excluding any building or structure.

***GRAFFITI.*** An inscription, symbol, or drawing by means of paint, chalk, ink or other substance, or by chisel, hammer or other device, that disfigures or defaces a property or object, but does not include a sign, public notice, or traffic control mark authorized by the city or by state or federal legislation.

***HIGHWAY.*** Includes a street, avenue, alley, parkway, driveway, square, place, bridge, viaduct or

trestle, any part of which is intended for or used by the general public for passage of persons and vehicles, and includes a sidewalk.

***INDUSTRIAL WASTE.*** Includes:

(1) Refuse, debris, junk or effluent belonging to, associated with or resulting from, any industry, trade or business; and

(2) The following materials or things, if they are not being actively used by the industry, trade or business:

(a) Agricultural, animal or vegetable products;

(b) Mineral, metal or chemical products;

(c) Inoperative vehicles, vehicle parts, appliances, mechanical equipment, mechanical parts or accessories to any of them;

(d) Lumber or wood products, piping, tubing, conduit, cable, fittings or accessories to any of them;

(e) Containers of any size or type;

(f) Bones, feathers, hides, ashes or sewage; and

(g) Construction materials that are not being actively used in a construction project.

***INOPERATIVE VEHICLE.*** A vehicle located on private land having missing, damaged or deteriorated parts or in a rusted, wrecked or other condition that may prevent its mechanical function, including any vehicle that does not display a vehicle permit number plate with evidence of current validation of the permit affixed to it, issued by any state, tribal or national government; and not located within a structure erected in accordance with any law respecting the erection of structures enforced within the city and which vehicle does not form part of the business enterprise lawfully operated on that land.

***OCCUPANT.*** Includes a person that is in possession of or residing on the premises, and includes:

(1) The agent of any such person; and

(2) A person controlling a property during construction.

***OFFICER.*** Any employee or agent of the city whose duties include the enforcement of this subchapter.

***ORDER.*** An order issued pursuant to this subchapter and includes a confirmation or amendment made to any order made following an appeal.

***OWNER.*** Includes any person who:

(1) Is the registered owner as shown on the records maintained by the Register of Deeds of the county;

(2) Is shown by the records of the Director of Equalization of the county;

(3) Has purchased or otherwise acquired the property and has not yet become the registered owner thereof; and

(4) Is a trustee, an executor, an administrator, a personal representative, a guardian or a mortgagee in possession or the person having the care and control of any land or building in case of the absence or disability of the person having title thereto.

***PERSON.*** Includes a corporation, partnership, LLC, government body or other party, and the personal or other legal representative of a person.

***PREMISES*** or ***PROPERTY.*** Includes:

(1) Buildings or structures, or part thereof;

(2) The land appurtenant thereto;

(3) All mobile homes, mobile buildings, mobile structures or outbuildings;

(4) Fences, scaffolding and similar erections; and

(5) Vacant land.

***STRUCTURE.*** Anything erected or constructed, the use of which requires temporary or permanent location on, or support of, the soil, or attached to something having a permanent location on the ground or soil, but not including pavement, curbs, walks or open air surfaced areas.

***UNSIGHTLY.*** Property characterized by visual evidence of any one or more of the following:

(1) Accumulation of waste, unless the waste is contained within a closed waste receptacle, or a closed building or structure, such that the waste is not visible from another parcel or a public place;

(2) Fences characterized by holes, breaks, rot, crumbling, peeling or rusting;

(3) Landscaping that is dead, characterized by uncontrolled growth or lack of maintenance, or is damaged;

(4) A lowering in quality of the condition or appearance of a building or structure or parts thereof characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or missing portions of a building or structure or other evidence of physical decay or neglect or excessive use or lack of maintenance;

(5) The accumulation of graffiti;

(6) The infestation of vermin, insects or other pests;

(7) That is dangerous to human health; or

(8) Any other similar conditions of disrepair and deterioration regardless of the condition of the other properties in the neighborhood.

***VEHICLE.*** Includes a motor vehicle, camper, RV, trailer, boat, motorized snow vehicle, farm tractor, self‑propelled implement of husbandry, mechanical equipment and any vehicle drawn, propelled or driven by any kind of power, including muscular power.

***WASTE.*** Includes:

(1) Domestic waste;

(2) Industrial waste; and

(3) Any other unused or unusable material that, by reason of its state, condition or excessive accumulation:

(a) Appears to have been cast aside, discarded or abandoned;

(b) Appears to be worthless, useless or of no particular value; or

(c) Appears to be used up, expended or worn out, in whole or part.

***YARD.*** The open space of a property between any building and the adjacent lot lines, not occupied

by a building or structure, extending across the width of the lot and open from the ground to the sky.

(Ord. 2012‑2, passed 5‑7‑2012)

 **91.03 UNSIGHTLY PROPERTY.**

(A) No owner or occupant of premises shall cause or allow the premises of which he or she is the owner or occupant to become unsightly.

(B) Exterior property areas shall be maintained in a neat, tidy and safe condition, and, without restricting the generality of the foregoing, such maintenance shall include the removal of:

(1) Waste;

(2) Vermin, insects and other pests and of conditions which may encourage infestation by pests;

(3) Dilapidated, collapsed or unfinished buildings, structures or fences, which are currently not under construction;

(4) Accumulated graffiti; or

(5) Decayed, dead or diseased trees, bushes or hedges.

(Ord. 2012‑2, passed 5‑7‑2012) Penalty, see  91.99

 **91.04 OUTDOOR FURNITURE.**

(A) No person shall keep, store or maintain any upholstered furniture not manufactured for outdoor use, including, without limitation, upholstered chairs, upholstered couches and mattresses, in any exterior property areas located adjacent to a highway.

(B) The following shall constitute specific defenses to any alleged violation of this section:

(1) Such furniture was placed in an outside location in order to allow it to be moved during a move of an occupant or removed as part of a waste removal or recycling program on a day scheduled for such moving or removal;

(2) Such furniture was located in an exterior property area in such a manner that it could not be seen from the ground level from another parcel or public place and that it was not visible to a person without taking extraordinary steps, such as climbing a ladder or peering over a screening fence, in order to achieve a point of vantage; and

(3) Such furniture was temporarily placed in an outside location in order that it be offered for sale at a yard sale or garage sale; provided, each of the following conditions exist:

(a) The furniture was located in an outside location only for a period of the yard sale or garage sale;

(b) The person attempting to sell the furniture, or that persons agent, was outside during the period of the yard sale or garage sale in order to monitor the sale;

(c) A sign was placed on or near the furniture indicating that it was for sale; and

(d) The furniture was located in an outside location for no longer than two days in any one-month period.

(Ord. 2012‑2, passed 5‑7‑2012)

 **91.05 COMPOSTS.**

A compost pile is permitted on residential property; provided that, the compost pile is no larger than one square yard and six feet in height and is enclosed on all sides.

(Ord. 2012‑2, passed 5‑7‑2012)

 **91.06 FIREWOOD.**

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

***CORD OF WOOD.*** A unit or quantity for cut fuel wood, equal to 128 cubic feet in a stack measuring four feet by four feet by eight feet.

***FIREWOOD.*** Neatly stacked burnable wood cut into lengths of approximately one to two feet that require no further cutting of the wood prior to placing it in a wood burner or fireplace.

(B) No person shall store firewood on residentially zoned property, except for use on the premises and in conformance with the following.

(1) No more than five cords of firewood shall be stored at any time, without the written approval of the Fire Department.

(2) The firewood must be cut and neatly stacked and may not be stacked closer than five feet to any property line and not higher than six feet from grade. Exception: firewood may be cut and neatly stacked on or near the lot line or against a fence; provided that, it is no higher than the fence and that it is located a minimum of six feet from any structure on adjacent property.

(3) All brush, debris and refuse from processing of firewood shall be promptly removed from the premises.

(Ord. 2012‑2, passed 5‑7‑2012) Penalty, see  91.99

 **91.07 GRAFFITI.**

No owner or occupant shall place graffiti, or cause graffiti to be placed, or allow graffiti to remain on the exterior or exposed surface of any wall, fence, building or structure located on property and adjacent to a highway or other public place.

(Ord. 2012‑2, passed 5‑7‑2012) Penalty, see  91.99

 **91.08 WEEDS, GRASS AND VEGETATION.**

(A) All weeds or plants declared to be primary noxious weeds or secondary noxious weeds by the State Weed Board and all other weeds and grass growing upon any lot or parcel of land in the city to a greater height than eight inches or which have gone or are about to go to seed will be considered a nuisance if they are growing within 150 feet of any residential or commercial lot perimeter (building). Fallen tree limbs, dead trees, and dead tree limbs which in the opinion of an enforcement officer constitute a health, safety, or fire hazard are declared to be a nuisance condition. If not removed within three days after giving notice, the city will cut and remove the same.

(B) This section does not prohibit the cultivation of crops. If you intend to hay grass in an area less than one acre, written notice to the city must be given prior to March 1 of each year and said grass must be hayed and removed from the property no later than July 15 of each year, at which time, the property then must be in compliance with this statute.

(C) If the land is classified as agricultural, this provision will not apply. Also, if the land is not classified as agricultural but the landowner has been planting and harvesting row crops and haying grass in a area of one or more acres, this section will not apply.

(D) All costs incurred by the city for removal and disposition of the nuisance or for correcting the nuisance shall be assessed, levied and collected as a special assessment payable in one sum or by up to five equal annual installments as the City Council may provide against the premises from which it was removed, in the manner provided by law for the levy and collection of other special assessments.

(Ord. 2012‑2, passed 5‑7‑2012; Ord. 2019-02, passed 10-7-2019) Penalty, see  91.99

 **91.09 STAGNANT WATER.**

(A) All bodies of water (except storm management ponds), excavations, ditches and other depressions on premises shall be kept free of stagnant water.

(B) Containers or materials located on exterior property areas shall be kept in such a condition that water cannot accumulate and stagnate in or on the containers or material.

(Ord. 2012‑2, passed 5‑7‑2012) Penalty, see  91.99

 **91.10 GARBAGE AND REFUSE.**

(A) Waste receptacles located on exterior property areas shall be provided with covers so that the materials within shall not be exposed to view or to rodents or other pests.

(B) Such receptacles shall be kept covered, except when the containers are being filled or emptied.

(C) Garbage bags and containers may be set out on the day of garbage pick‑up.

(Ord. 2012‑2, passed 5‑7‑2012) Penalty, see  91.99

 **91.11 EXCEPTIONS.**

(A) Nothing contained in this subchapter applies to prevent a lawfully licensed premises operating within the scope of a license that specifically permits that which is prohibited by this subchapter.

(B) Nothing in this subchapter applies to prevent the lawful outside storage of materials or things if:

(1) The use is permitted under the applicable zoning laws and the use is in compliance with the zoning law; or

(2) If the use is permitted as a legal non-conforming use under the applicable zoning, licensing or other legislation.

(C) Where the principal use of a property is wholesaling or retailing, storing or parking of inoperative vehicles or dismantled materials or equipment, all fences and screening surrounding such property shall be properly maintained so as to screen the exterior property areas from view.

(Ord. 2012‑2, passed 5‑7‑2012) Penalty, see  91.99

 **91.12 CONSTRUCTION OF VISUAL BARRIERS.**

Any condition upon property otherwise deemed a nuisance under the provisions of this subchapter shall not be relieved or excused from being a nuisance for the reason that such nuisance condition is screened from public view by means of a fence, wall or other visual barrier.

(Ord. 2012‑2, passed 5‑7‑2012)

 **91.13 INSPECTIONS.**

An officer shall have the right to enter upon the property of any person at reasonable times and in a reasonable manner for purposes of inspecting the property and declaring whether the property is unsightly or otherwise not in compliance with the provisions of this subchapter.

(A) An officer making an inspection may, without limiting the generality of the foregoing:

(1) Make photographs or videotapes;

(2) Examine documents; and

(3) Require the productions of documents and property for the purposes of examination or making copies.

(B) When entering onto property pursuant to this subchapter, the officer may:

(1) Enter with any equipment, machinery, apparatus, vehicle or materials that the officer considers necessary for the purpose of the entry; or

(2) Take any person or thing that the officer considers necessary to assist in the inspection.

(C) Before entering onto any property, the officer shall notify the owner or occupant, if the owner or occupant is present at the time of the entry, of the purpose of the entry.

(D) While an officer/inspector is conducting an inspection pursuant to this section, no person shall:

(1) Fail to comply with any reasonable request of the officer;

(2) Knowingly make any false or misleading statement to the officer;

(3) Unless authorized by the officer, remove, alter or interfere in any way with anything seized, detained or removed by the officer; or

(4) Obstruct or interfere with the officer or a person assisting the officer.

(E) If, in the opinion of the officer, there is a violation of this subchapter, the officer may issue to the owner or occupant a written order which states that the property is in violation of this subchapter.

(Ord. 2012‑2, passed 5‑7‑2012) Penalty, see  91.99

 **91.14 WRITTEN ORDERS.**

(A) *Contents.* An order issued shall:

(1) Specify the municipal address or legal description of the property;

(2) Give reasonable particular of the activity or thing the owner or occupant is required to do, or is required to cease doing or change the way in which it is done, in order to remedy the violation;

(3) State the time within which the violation is to be remedied; except that, in such cases where the officer determines that the nuisance constitutes a health or safety hazard, the notice may require abatement of the nuisance to be immediate;

(4) State that it is an offense to fail to comply with the order;

(5) State that if compliance with the order is not effected as specified, the city may take the actions or measures specified to remedy the violation at the expense of the owner or occupant and, if such person does not pay the costs, the costs shall be charged against the property concerned as a debt due to the city and recovered as taxes or assessments due and owing in respect to that property;

(6) State that if the city remedies the violation, any material being removed to effect compliance with the order can be destroyed or if, in the opinion of the officer, it has sufficient commercial value, sold and the proceeds used to offset the costs of the removal and sale; and

(7) State that an appeal lies from the issuance of the order if an appeal is lodged in writing within 14 days.

(B) *Construction of fence.* An order under this section may, without limiting the generality of the foregoing, direct that the owner construct a fence, wall, screen or similar structure to prevent unsightly premises from being viewed from any highway or other public place.

(C) *Service of order.*

(1) An order issued pursuant to this subchapter must be served on the owner or occupant of the property.

(2) Service may be effected by the order being:

(a) Delivered personally to the person who is intended to be served;

(b) Left with a person apparently over the age of 18 years at a dwelling place or place of business of the person who is intended to be served; or

(c) Sent by registered or certified mail to the last known address of the person who is intended to be served as shown on the assessment roles.

(3) If an order is served by mail, the service shall be deemed to have been made on the fifth day after the day of mailing of the order.

(4) If, in the opinion of the officer, service under division (C)(2) above cannot reasonably be effected, the officer may place the order on the front door of the property or in a receptacle for messages, if any, on the property described in the order, or post the order in a conspicuous place on the property, and such delivery or posting of the order shall be deemed to be sufficient service of the notice on the owner as of the day of delivery or posting.

(D) *Extension of time.* The officer may, in writing, extend the time for compliance with an order issued pursuant to this subchapter; provided, there is, in the opinion of the officer, evidence of an intent to comply with any such order and reasonable cause exists to prevent compliance as required in the order.

(E) *Enforcement.* Where the owner or occupant of property upon whom an order has been served does not comply with the requirement of such order and fails to appeal as provided for in this subchapter or has exhausted his or her right of appeal, the officer shall immediately notify Council, who may authorize an officer, by resolution, to enter the property to carry out any and all work as stated in the order and being the property into compliance with the requirements of this subchapter. A resolution passed by Council shall be in effect for six months from the date of passing and authorize the officer to reenter at any time to remedy a recurring condition.

(Ord. 2012‑2, passed 5‑7‑2012)

 **91.15 EMERGENCY ACTIONS WITHOUT NOTICE.**

When an officer believes that there is an immediate danger to any person or persons he or she may take emergency action to abate the nuisance immediately without the necessity to give notice as set forth in this subchapter.

(Ord. 2012‑2, passed 5‑7‑2012)

 **91.16 APPEALS.**

(A) *Nuisance Appeal Board.* A Nuisance Appeal Board shall be established to review orders issued by an officer.

(1) The Board shall consist of five members, who are residents of the city, chosen by the Mayor to serve three-year terms of office. A quorum for any meeting shall be three members.

(2) The Board shall adopt rules or procedures for hearing appeals.

(B) *Appeal process.*

(1) A person wishing to appeal an order must submit notice of the appeal in writing to the citys Finance Officer within 14 days of the date on which the order was served.

(2) Each notice of appeal shall:

(a) State with reasonable exactness the grounds of the appeal;

(b) State the appellants name, address, telephone number and the interest of the appellant in the property; and

(c) Be dated and signed by the appellant or an agent on his or her behalf and, if signed by an agent, shall state the name, address and telephone number of the agent.

(3) Following the receipt of a notice of appeal, the citys Finance Officer shall, in writing, notify the appellant of the date, time and place at which the Board will consider the matter. If the appellant is not the person registered as the owner of the land as shown on a current certificate of title, the citys Finance Officer must also send a copy of the written notice to that owner.

(4) The appellant may appear before the Board in person or by representative.

(5) The Board shall consider each appeal having regard to the circumstances and merits of the case and the applicable provisions of this subchapter.

(6) When hearing an appeal, the Board:

(a) Shall not be bound by the technical rules of evidence; and

(b) Shall afford to every person concerned the opportunity to be heard, submit evidence and to hear the evidence of others.

(7) The Board may confirm, vary or revoke the order or may substitute its decision in place of the order which was issued.

(8) The Board may extend the time within which anything required to be done by the order is to be performed.

(9) The Board may direct that anything to be done that an officer may direct to be done, either in addition to, or in substitution for, the direction in the order appeal from.

 (10) Following the appeal, the citys Finance Officer shall forthwith serve a copy of the Boards decision on the appellant.

(C) *Effect of appeal, prosecution.*

(1) The person to whom an order is directed shall comply with the directions set out in the order, as may be confirmed, varied or amended by any decision of the Appeal Board.

(2) When an order is appealed, the order appealed from is stayed pending a final decision on the merits of the appeal.

(3) Prosecution of a person under this subchapter does not exempt the person from the remediation requirements as set forth in  91.17 of this chapter.

(Ord. 2012‑2, passed 5‑7‑2012)

 **91.17 FAILURE TO COMPLY; REMEDIATION.**

(A) When there exists on private property a condition which has been determined a nuisance by a city enforcement officer, a notice will be served in the matter specified in 91.14 of this subchapter. The notice will describe the matter to be removed and require such removal thereof. The occupant, person in charge or owner of property shall, within ten days after receipt of the nuisance unless otherwise specified, remove and abate all nuisances.

(B) Weeds and noxious vegetation upon any lot shall, within three days after giving notice be cut and removed. The recorded owner of any building or ground within the city where a sidewalk exists shall clear the sidewalk within 24 hours after snow or ice has fallen or formed. If at the end of the allowed number of days, the nuisance has not been removed or corrected, the city may cause the correction or removal and disposition. All costs incurred by the city for removal and disposition of the nuisance or for correcting the nuisance shall be assessed, levied and collected as a special assessment payable in one sum or by up to five equal annual installments as the City Council may provide against the premises from which it was removed, in the manner provided by law for the levy and collection of other special assessments.

(Ord. 2012‑2, passed 5‑7‑2012; Ord. 2019-02, passed 10-7-2019)

 **91.18 VIOLATIONS.**

(A) Every person is guilty of an offense under this subchapter who:

(1) Violated any of the provisions of this subchapter;

(2) Suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this subchapter;

(3) Neglects to do or refrains from doing anything required to be done by the provisions of this subchapter;

(4) Does any act which violates any provision of this subchapter;

(5) Fails to comply with any order, direction or notice given under this subchapter; or

(6) Willfully interferes with, resists or obstructs any person authorized to carry out any duty pursuant to the provisions of this subchapter; and a violation of this division (A) shall be subject to the general penalty provisions as contained in  91.99 of this chapter.

(B) Each day that a violation is permitted to exist shall constitute a separate offense.

(C) A conviction for an offense for failing to comply with an order does not relieve the person convicted from complying with the order, and the judge may, in addition to any fine and or jail sentence imposed, order the person to do any act or work, within a specified time, to comply with the order with respect to which the person was convicted.

(D) The imposition of a penalty under this subchapter shall not be a bar to further prosecution under this subchapter and shall not be construed so as to exclude any other remedies or sanctions, either criminal or civil, elsewhere provided in this code.

(Ord. 2012‑2, passed 5‑7‑2012) Penalty, see  91.99

 **91.19 LIABILITY.**

The city, an officer or any other person who carries out any duties or performs work on behalf of the city in administering or enforcing this subchapter is not liable for any damages caused by the inspection, the duties or work, or the sale or disposing of anything to carry out the requirements of this subchapter.

(Ord. 2012‑2, passed 5‑7‑2012)

***DANGEROUS BUILDINGS***

 **91.30 PURPOSE AND SCOPE.**

It is the intent of this subchapter to provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy provided or otherwise available by law, whereby buildings or structures which endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired, vacated or demolished.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.31 ALTERATIONS, ADDITIONS AND REPAIRS.**

All buildings or structures which are required to be repaired under the provisions of this subchapter shall be subject to the provisions of SDCL  11‑10‑6.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.32 RIGHT OF ENTRY.**

When it is necessary to make an inspection to enforce the provisions of this subchapter, or when the enforcement officer (as defined in  91.38 of this chapter) has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this subchapter which makes the building or premises unsafe, dangerous or hazardous, the official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this subchapter; provided that, if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the official shall have recourse to the remedies provided by law to secure entry.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.33 ABATEMENT.**

All buildings or portions thereof which are determined after inspection by the enforcement officer to be dangerous, as defined in this subchapter, are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in this subchapter.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.34 VIOLATIONS.**

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this subchapter.

(Ord. 2017‑02, passed 7‑5‑2017) Penalty, see  91.99

 **91.35 INSPECTION OF WORK.**

All building or structures within the scope of this subchapter shall be subject to inspection in accordance with and in the manner provided by this subchapter.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.36 BOARD OF APPEALS.**

In order to hear and decide appeals of orders, decisions or determinations made by the enforcement officer relative to the abatement of dangerous buildings, there shall be and is hereby created a Board of Appeals consisting of the City Council members. The citys Finance Officer shall act as Secretary to said Board, but shall have no vote upon any matter before the Board. The Board shall render all decisions and findings in writing to the appellant, with a duplicate copy to the enforcement officer. Appeals shall be requested in writing.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.37 DEFINITION.**

For the purpose of this subchapter, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a ***DANGEROUS BUILDING***; provided that, such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered:

(A) Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic;

(B) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic;

(C) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is likely to cause a failure in the structure;

(D) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is likely to result in a failure or collapse of the structure or its members;

(E) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property;

(F) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure;

(G) Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction;

(H) Whenever the building or structure, or any portion thereof, because of:

(1) Dilapidation, deterioration or decay;

(2) Faulty construction;

(3) The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;

(4) The deterioration, decay or inadequacy of its foundation; or

(5) Any other cause, is likely to partially or completely collapse.

(I) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;

(J) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fail inside the middle one-third of the base;

(K) Whenever the building or structure, exclusive of the foundation, shows 33% or more damage or deterioration of its supporting member or members or 50% damage or deterioration of its non‑supporting members, enclosing or outside walls or coverings;

(L) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become:

(1) An attractive nuisance to children;

(2) A harbor for vagrants, criminals or immoral persons; or as to

(3) Enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

(M) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the zoning regulations of this jurisdiction, or of any law or ordinance of the state or jurisdiction relating to the condition, location or structure of buildings;

(N) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50%, or in any supporting part, member or portion less than 66% of the:

(1) Strength;

(2) Fire‑resisting qualities or characteris-tics; or

(3) Weather‑resisting qualities or charac-teristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

(O) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the enforcement officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease;

(P) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the enforcement officer or Fire Chief to be a fire hazard;

(Q) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence; and

(R) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.38 NOTICES AND ORDERS OF ENFORCEMENT OFFICER; RECORDATION.**

(A) *Commencement of proceedings.* When the enforcement officer has inspected or caused to be inspected any building and has found and determined that such building is a dangerous building, the enforcement officer shall commence proceedings to cause the repair, vacation or demolition of the building.

(B) *Notice and order.* The Enforcement Officer shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

(1) The street address and a legal description sufficient for identification of the premises upon which the building is located;

(2) A statement that the enforcement officer has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under the provisions of this subchapter; and

(3) A statement of the action required to be taken.

(C) *Order by enforcement officer.*

(1) If the enforcement officer has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed 60 days from the date of the order) and completed within such time as the enforcement officer shall determine is reasonable under all of the circumstances.

(2) If the enforcement officer has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a time certain from the date of the order as determined by the enforcement officer to be reasonable.

(3) If the enforcement officer has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the enforcement officer shall determine is reasonable (not to exceed 60 days from the date of the order); that all required permits be secured therefore within 60 days from the date of the order; and that the demolition be completed within such time as the enforcement officer shall determine is reasonable.

(4) Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the enforcement officer:

(a) Will order the building vacated and posted to prevent further occupancy until the work is completed; and

(b) May proceed to cause the work to be done and charge the costs thereof against the property or its owner.

(5) Statements advising:

(a) Any person having any record title or legal interest in the building may appeal from the notice and order or any action of the enforcement officer to the Board of Appeals; provided, the appeal is made in writing as provided in this subchapter and filed with the enforcement officer within 30 days from the date of service of such notice and order; and

(b) Failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

(D) *Service.*

(1) *Service of notice and order.* The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following if known to the enforcement officer or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the enforcement officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

(2) *Method of service.* Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at his or her address as it appears on the last equalized assessment roll of the county or as known to the enforcement officer. If no address of any such person so appears or is known to the enforcement officer, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

(3) *Proof of service.*

(a) Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date and manner in which service was made.

(b) The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the enforcement officer.

(E) *Recordation of notice and order.*

(1) If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the enforcement officer shall file in the office of the County Recorder a certificate describing the property and certifying:

(a) The building is a dangerous building; and

(b) The owner has been so notified.

(2) Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the enforcement officer shall file a new certificate with the County Recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.39 REPAIR, VACATION AND DEMOLITION.**

The following standards shall be followed by the enforcement officer (and by the Board of Appeals if an appeal is taken) in ordering the repair, vacation or demolition of any dangerous building or structure.

(A) Any building declared a dangerous building under this subchapter shall be made to comply with one of the following:

(1) The building shall be repaired in accordance with the current Building Code as established by SDCL  11‑10‑6;

(2) The building shall be demolished at the option of the building owner; or

(3) If the building does not constitute an immediate danger to the life, limb, property or safety of the public it may be vacated, secured and maintained against entry.

(B) If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.40 NOTICE TO VACATE.**

(A) Every notice to vacate shall, in addition to the notice requirements prescribed in  91.38(A) of this chapter, include a notice posted at or upon each exit of the building and shall be in substantially the following form:

|  |
| --- |
| DO NOT ENTERUNSAFE TO OCCUPYIt is a Class 2 misdemeanor to occupy this building, or to remove or deface this notice.Enforcement OfficialofCity of Kimball |

(B) Whenever such notice is posted, the enforcement officer shall include a notification thereof in the notice and order reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted; except that, entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal has been completed.

(Ord. 2017‑02, passed 7‑5‑2017) Penalty, see  91.99

 **91.41 APPEALS; EFFECT; SCOPE; HEARING; DECISION.**

(A) *General.*

(1) *Form of appeal.*

(a) Any person entitled to service under  91.38(A) of this chapter may appeal from any notice and order or any action of the enforcement officer under this subchapter by filing at the office of the enforcement officer a written appeal containing:

 1. A heading in the words: Before the Board of Appeals of the City of Kimball;

 2. A caption reading: Appeal of giving the names of all appellants participating in the appeal;

 3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order;

 4. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant;

 5. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside;

 6. The signatures of all parties named as appellants and their official mailing addresses; and

 7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

(b) The appeal shall be filed within 30 days from the date of the service of such order or action of the enforcement officer; provided, however, that, if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted accordingly, such appeal shall be filed within ten days from the date of the service of the notice and order of the enforcement officer.

(2) *Processing of appeal.* Upon receipt of any appeal filed pursuant to this section, the enforcement officer shall present it at the next regular or special meeting of the Board of Appeals.

(3) *Scheduling and noticing appeal for hearing.* As soon as practicable after receiving the written appeal, the Board of Appeals shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than ten days, nor more than 60 days, from the date the appeal was filed with the enforcement officer. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the Secretary of the Board either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

(B) *Effect of failure to appeal.* Failure of any person to file an appeal in accordance with the provisions of division (A) above shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.

(C) *Scope of hearing on appeal.* Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

(D) *Staying of order under appeal.* Except for vacation orders, enforcement of any notice and order of the enforcement officer issued under this subchapter shall be stayed during the pendency of an appeal therefor, which is properly and timely filed.

(E) *Procedures for conduct of hearing appeals.*

(1) The Board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted to the Board for decision.

(2) A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Board.

(3) The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the Board, but shall in no event be greater than the cost involved.

(4) The Board may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted, except by the examiner for good cause shown so long as the matter remains before the examiner.

(5) In any proceedings under this subchapter, the Board, any Board member or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

(6) The Board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

(F) *Form of notice of hearing.* The notice to appellant shall be substantially in the following form, but may include other information:

|  |
| --- |
| You are hereby notified that a hearing will be held before (the Board of Appeals or name of hearing examiner) at on the day of , 20 , at the hour AM/PM, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross‑examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with (Board of Appeals or name of hearing examiner). |

(G) *Subpoenas.*

(1) The Board or examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the Board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor, which: states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.

(2) In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.

(3) Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a Class 2 misdemeanor.

(H) *Conduct of hearing.*

(1) Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

(2) Oral evidence shall be taken only on oath or affirmation.

(3) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in the state.

(4) Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in the state.

(5) Irrelevant and unduly repetitious evidence shall be excluded.

(6) Each party shall have these rights, among others:

(a) To call and examine witnesses on any matter relevant to the issues of the hearing;

(b) To introduce documentary and physical evidence;

(c) To cross‑examine opposing witnesses on any matter relevant to the issues of the hearing;

(d) To impeach any witness regardless of which party first called the witness to testify;

(e) To rebut the evidence; and

(f) To be represented by anyone who is lawfully permitted to do so.

(7) (a) In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of the state or of official records of the board or departments and ordinances of the city or rules and regulations of the Board.

(b) Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

(c) Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Board or hearing examiner.

(8) (a) The Board or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing; provided that:

 1. Notice of such inspection shall be given to the parties before the inspection is made;

 2. The parties are given an opportunity to be present during the inspection; and

 3. The Board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom.

(b) Each party then shall have a right to rebut or explain the matters so stated by the Board or hearing examiner.

(I) *Method and form of decision.*

(1) When a contested case is heard before the Board itself, a member thereof who did not hear the evidence or has not read the entire record of the proceedings shall not vote on or take part in the decision.

(2) If a contested case is heard by a hearing examiner alone, the examiner shall within a reasonable time (not to exceed 90 days from the date the hearing is closed) submit a written report to the Board. Such report shall contain a brief summary of the evidence considered and state the examiners findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it may be adopted by the Board as its decision in the case. All examiners reports filed with the Board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the Board.

(3) The Board shall fix the time, date and place to consider the examiners report and proposed decision. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.

(4) Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiners report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the Board, any party may present oral argument to the Board.

(5) The Board may adopt or reject the proposed decision in its entirety or may modify the proposed decision.

(6) If the proposed decision is not adopted as provided in  91.43 of this chapter, the Board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, the examiner shall prepare a report and proposed decision as provided in  91.43 of this chapter after any additional evidence is submitted. Consideration of such proposed decision by the Board shall comply with the provisions of this section.

(7) The decision shall be in writing and shall contain findings of fact, a determination of the issues presented and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.

(8) The effective date of the decision shall be as stated therein.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.42 ENFORCEMENT.**

(A) After any order of the enforcement officer official or the Board of Appeals made pursuant to this subchapter shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a Class 2 misdemeanor.

(B) If, after any order of the enforcement officer or Board of Appeals made pursuant to this subchapter has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the enforcement officer may:

(1) Cause such person to be prosecuted under division (A) above; or

(2) Institute any appropriate action to abate such building as a public nuisance.

(C) Whenever the required repair or demolition is not commenced within 30 days after any final notice and order issued under this subchapter becomes effective:

(1) The enforcement officer official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

|  |
| --- |
| DANGEROUS BUILDINGDO NOT OCCUPYIt is a Class 2 misdemeanor to occupy this building, or to remove or deface this notice.Enforcement Officer ofCity of Kimball |

(2) No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the enforcement officer has been completed; and

(3) The enforcement officer may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris there from removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this subchapter. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.43 PERFORMING WORK; INTERFERENCE; PERFORMANCE.**

(A) (1) Upon receipt of an application from the person required to conform to the order and by agreement of such person to comply with the order if allowed additional time, the enforcement officer may grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation or demolition, if the enforcement officer determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property.

(2) The enforcement officers authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal the notice and order.

(B) No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of this jurisdiction or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this subchapter; or with any person to whom such building has been lawfully sold pursuant to the provisions of this subchapter, whenever such officer, employee, contractor or authorized representative of this jurisdiction, a person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this subchapter, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this subchapter.

(C) (1) When any work of repair or demolition is to be done pursuant to  91.42 of this chapter, the enforcement officer shall issue an order and the work shall be accomplished by personnel of this jurisdiction or by private contract. Plans and specifications therefore may be prepared by an architectural or engineering firm on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished by private contract, standard public works contractual procedures shall be followed.

(2) The cost of such work shall be paid from the Repair and Demolition Fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine is appropriate.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.44 REPAIR AND DEMOLITION FUND.**

(A) The legislative body of this jurisdiction shall establish a special revolving fund to be designated as the Repair and Demolition Fund. Payments shall be made out of said Fund to defray the costs and expenses which may be incurred by this jurisdiction in doing or causing to be done the necessary work of repair or demolition of dangerous buildings.

(B) The legislative body may at any time transfer to the Repair and Demolition Fund, out of any money in the General Fund of this jurisdiction, such sums as it may deem necessary in order to expedite the performance of the work of repair or demolition, and any sum so transferred shall be deemed a loan to the Repair and Demolition Fund and shall be repaid out of the proceeds of the collections hereinafter provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the Finance Officer of this jurisdiction who shall credit the same to the Repair and Demolition Fund.

(Ord. 2017‑02, passed 7‑5‑2017)

 **91.45 RECOVERY OF COSTS.**

(A) The enforcement officer works and shall keep an itemized account of the expense incurred by this jurisdiction in the repair or demolition of any building. Upon the completion of the work of repair or demolition, said enforcement officer shall prepare and file with the Finance Officer of this jurisdiction a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located and the names and addresses of the persons entitled to notice.

(B) Upon receipt of said report, the Clerk of this jurisdiction shall present it to the legislative body of this jurisdiction for consideration. The legislative body of this jurisdiction shall fix a time; date and place for hearing said report and any protests or objections thereto. The Finance Officer of this jurisdiction shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in this jurisdiction and served by certified mail, postage prepaid, addressed to the owner of the property as the owners name and address appears on the last equalized assessment roll of the county, if such so appears, or as known to the Finance Officer. Such notice shall be given at least ten days prior to the date set for the hearing and shall specify the day, hour and place when the legislative body will hear and pass upon the enforcement officers report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

(C) (1) Any person interested in or affected by the proposed charge may file written protests or objections with the Finance Officer of this jurisdiction at any time prior to the time set for the hearing on the report of the enforcement officer. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection.

(2) The Finance Officer of this jurisdiction shall endorse on every such protest or objection the date of receipt. The Finance Officer shall present such protests or objections to the legislative body of this jurisdiction at the time set for the hearing and no other protests or objections shall be considered.

(D) (1) Upon the day and hour fixed for the hearing, the legislative body of this jurisdiction shall hear and pass upon the report of the enforcement officer together with any such objections or protests. The legislative body may make such revision, correction or modification in the report or the charge as it may deem just; and, when the legislative body is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified), together with the charge, shall be confirmed or rejected.

(2) The decision of the legislative body of this jurisdiction on the report and the charge, and on all protests or objections, shall be final and conclusive.

(E) (1) The legislative body of this jurisdiction may thereupon order that said charge shall be made a personal obligation of the property owner or assess said charge against the property involved.

(2) If the legislative body of this jurisdiction orders that the charge shall be a personal obligation of the property owner, it shall direct the attorney for this jurisdiction to collect the same on behalf of this jurisdiction by use of all appropriate legal remedies.

(3) If the legislative body of this jurisdiction orders that the charge shall be assessed against the property, it shall confirm the assessment, cause the same to be recorded on the assessment roll and, thereafter, said assessment shall constitute a special assessment against and a lien upon the property.

(F) The validity of any assessment made under the provisions of this subchapter shall not be contested in any action or proceeding unless the same is commenced within 30 days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within 30 days after the entry of such judgment.

(G) The legislative body of this jurisdiction, in its discretion, may determine that assessments in amounts of $500 or more shall be payable in not to exceed five equal annual installments. The legislative bodys determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest and the rate thereof shall be by a resolution adopted prior to the confirmation of the assessment.

(H) (1) Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens, except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(2) All such assessments remaining unpaid after 30 days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of 7% per annum from and after said date.

(I) After confirmation of the report, certified copies of the assessment shall be given to the Assessor and the Tax Collector for this jurisdiction, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes.

(J) If the County Assessor and the County Tax Collector assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the County Auditor on or before August 10. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessors map books for the current year.

(K) (1) The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

(2) If the legislative body of this jurisdiction has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary property taxes in successive years, if any installment is delinquent, the amount thereof is subject to the same penalties and procedure for safe as provided for ordinary property taxes.

(L) All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the Finance Officer of this jurisdiction, who shall credit the same to the Repair and Demolition Fund.

(Ord. 2017‑02, passed 7‑5‑2017)

***SNOW AND ICE REMOVAL***

 **91.60 REMOVAL REQUIRED.**

The occupant or owner of any premises in the city adjacent to any sidewalk shall within 15 hours after the fall of snow or the formation of ice on said sidewalk, remove said snow and ice from so much of said sidewalks as adjoins said premises.

(Ord. 91‑1, passed 8‑5‑1991) Penalty, see  91.99

 **91.61 FAILURE TO REMOVE.**

If the owner or occupant of any such premises shall fail, neglect or refuse to remove said snow or ice from the adjacent sidewalk within the time specified in  91.60 of this chapter, any employee of the city responsible for the removal of snow or ice from the streets of the city may remove or cause the removal of said snow or ice from said sidewalks and may assess the cost of such removal upon the lots or parcels of land adjacent to said sidewalks. If such employee shall make such assessment, he or she shall make return of said assessment to the city and the citys Finance Officer shall cause to be published a notice that all such assessments will be considered by the City Council at its regular April meeting each year, at which time any person interested may appear and be heard concerning the matter. The notice shall be published once in the official newspaper of the city at least ten days prior to the April meeting.

(Ord. 91‑1, passed 8‑5‑1991)

 **91.62 ASSESSMENTS.**

(A) Within ten days after such assessments have been approved by the City Council, the City Finance Officer shall file a certified copy of the same and thereupon said assessment shall be payable and due to the city and, if not paid, within 60 days thereafter, a penalty of 10% of said sum shall be added.

(B) Snow removal assessments shall be collected in the same manner prescribed by law for the collection of special assessments.

(Ord. 91‑1, passed 8‑5‑1991)

 **91.63 VIOLATIONS.**

Any person or persons who shall fail, neglect or refuse to remove the snow or ice as required by this subchapter may, in addition to being responsible for the assessments as herein provided, upon conviction thereof, be fined.

(Ord. 91‑1, passed 8‑5‑1991)

 **91.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to 10.99 of this code of ordinances.

(B) (1) Any person violating any of the provisions of  91.01 through 91.19 of this chapter or failing to comply with any of the provisions hereof shall, upon conviction thereof, be punished by a fine not exceeding $500 or by imprisonment for a period not exceeding 30 days or by both such fine and imprisonment. Each and every violation of the provisions of  91.01 through 91.19 of this chapter shall constitute a separate offense.

(2) The penalty provided in  91.01 through 91.19 of this chapter shall be applicable to every section of this code the same as though it were a part of each and every separate section. Any person convicted of a violation of any section of  91.01 through 91.19 of this chapter where any duty is prescribed or obligation imposed, or where any action which is of a continuing nature is forbidden or is declared to be unlawful, shall be deemed guilty of a misdemeanor. A separate offense shall be deemed committed upon each day such duty or obligation remains unperformed or such act continues, unless otherwise specifically provided in  91.01 through 91.19 of this chapter.

(3) In all cases where the same offense is made punishable or is created by  91.01 through 91.19 of this chapter, the prosecuting officer may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense; provided that, the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

(4) Whenever the doing of any act or the omission to do any act constitutes a breach of  91.01 through 91.19 of this chapter and there shall be no fine or penalty specifically declared for such breach, the provisions of  91.01 through 91.19 of this chapter shall apply.

(Ord. 2012‑2, passed 5‑7‑2012)

 **CHAPTER 92: FIREWORKS AND EXPLOSIVES**

Section

92.01 Unlawful possession

92.02 Dropping fireworks from means of transportation

92.03 Discharging firework or firearm

92.04 Exception

 **92.01 UNLAWFUL POSSESSION.**

(A) (1) It shall be unlawful for any individual, firm, partnership or corporation to sell, possess for sale, use, discharge or cause to be discharged within the city any pyrotechnics (commonly known as fireworks) of any description whatsoever, except those herein enumerated and designated as safe and sane fireworks, that is: sparklers; Vesuvius fountains; spray fountains; torches; color fire cones; star and comet type color aerial shells, without explosive charge for the purpose of making a noise; Roman candles; rockets; star mines; color wheels; Chinese-made softshell firecrackers not exceeding one and five-eighths inches in length and one‑fourth inch outside diameter; toy cap pistols; and toy caps where the caps used therein do not contain more than thirty‑five hundredths grain of explosive material in each cap.

(2) The safe and sane fireworks as set out in this section shall not be sold, used, discharged or caused to be discharged, within the corporate limits of the city before June 27 and after July 5; except that, toy cap pistols and toy caps may be sold or used at any time.

(B) It shall be unlawful for any person to use, discharge or cause to be discharged, fireworks of any kind on Main Street, within one‑half block to the east and one‑half block to the west thereof, between Railroad Street and Third Street.

(Ord. 91‑1, passed 8‑5‑1991) Penalty, see  10.99

 **92.02 DROPPING FIREWORKS FROM MEANS OF TRANSPORTATION.**

It shall be unlawful for any person to drop or throw any burning fireworks from any vehicle or other means of transportation or to set off, discharge or cause to be discharged, any fireworks by dropping or throwing any fireworks from any vehicle or other means of transportation.

(Ord. 91‑1, passed 8‑5‑1991) Penalty, see  10.99

 **92.03 DISCHARGING FIREWORK OR FIREARM.**

It shall be unlawful for any person, not a law enforcement officer acting in his or her official capacity, to discharge a firearm within the city limits of the city. For the purposes of this section, a ***FIREARM*** shall be defined as any weapon from which a projectile or projectiles may be discharged by gunpowder.

(Ord. 91‑1, passed 8‑5‑1991) Penalty, see  10.99

 **92.04 EXCEPTION.**

Nothing in this chapter shall prohibit the sale or use of blank cartridges for ceremonial purposes or athletic and sporting events.

(Ord. 91‑1, passed 8‑5‑1991)