

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: JUNKED VEHICLES AND JUNKYARDS

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ABATEMENT AND REMOVAL OF JUNKED VEHICLES

' 90.01 DEFINITIONS AND INTERPRETATION.

(A) As used in this subchapter, the term "JUNKED VEHICLE" shall have the meaning assigned to it by Texas Transportation Code ' 683.071, as amended.

(B) As used in this subchapter, the term "INTERESTED PARTY" shall mean and refer to any Code Enforcement Officer of the city or any of the persons or firms entitled to notice pursuant to ' 90.04(F).

(C) This subchapter shall be interpreted and administered in a manner consistent with Texas Transportation Code ' 683.074, et seq., as those sections may be amended, from time to time. Should any provision of such state law be amended so that the procedures or requirements set forth in this chapter are inconsistent with such state law, then this chapter shall be interpreted and administered in compliance with such amended procedure or requirement.
(Ord. 693, passed 5-4-05)

' 90.02 DECLARATION OF NUISANCE; EXCEPTIONS.

(A) Any junked vehicle or part of a junked vehicle located on private or public property or a public right-of-way within the corporate limits of the city is hereby declared a public nuisance.

(B) The procedures set forth in this subchapter shall not apply to a junked vehicle or vehicles that are, in fact, a vehicle or vehicles of the type described in Texas Transportation Code ' 683.077, as amended.
(Ord. 693, passed 5-4-05) Penalty, see ' 90.99

' 90.03 ADMINISTRATION OF ABATEMENT AND REMOVAL PROCEDURES.

(A) Officers administering procedures; authority. The procedures in this section shall be administered by a code enforcement official of the city who is a regularly salaried, full-time employee of the city except that any person may be authorized to remove a nuisance.

(B) Authority of Code Enforcement Officers. A Code Enforcement Officer of the city may enter private property for the following purposes:

(1) To examine a vehicle which such officer has reason to believe is a junked vehicle and a public nuisance, as defined by this chapter, to obtain information to determine if a vehicle is a junked vehicle and a public nuisance or to identify an alleged junked vehicle; or

(2) Following the entry of an order finding that a vehicle is a junked vehicle and a public nuisance and ordering its abatement or removal, to remove or direct the removal of the nuisance.
(Ord. 693, passed 5-4-05)

' 90.04 NOTICE PRIOR TO ABATEMENT AND REMOVAL BY THE CITY.

When a junked vehicle or part of a junked vehicle which is a public nuisance is discovered, or brought to the attention of, a code enforcement official of the city, such official shall give written notice (sometimes hereinafter referred to as the "original notice") which shall conform to the following requirements:

(A) It shall describe the nature of the nuisance as being a junked vehicle or vehicles;

(B) It shall state that the nuisance must be abated and removed not later than the tenth day after the date on which the notice is personally delivered or mailed; and

(C) It shall state that a public hearing will be held before the Municipal Judge in the city's Municipal Court to determine the allegations in the notice and a remedy to be imposed if the allegations are found to be true; and

(D) It shall state that the hearing will be held:

(1) At a specified date and time in the city's Municipal Court; which date and time shall not be earlier than the eleventh day after the date of the service of the notice; and

(2) If any notice is returned undelivered and the hearing date specified in the notice is within 11 days from the date the notice is returned, then the hearing will be continued to the next available date and time on the Municipal Court's docket following expiration of 11 days from the date the notice is returned and notice of the date and time of the continued hearing will be posted either on the vehicle or vehicles alleged to be a public nuisance or in the place specified for public notices at City Hall; and

(E) It shall state that any request for a hearing at a date or at a time other than that specified in the notice must be made not later than the tenth day after the date on which the notice is personally delivered or mailed; and

(F) It shall be personally delivered or sent by certified mail with a five-day return requested to:

(1) The last known registered owner of the nuisance;

(2) Each lien holder of record of the nuisance; and

(3) The owner or occupant of:

(a) The property on which the nuisance is located; or

(b) If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way; or

(G) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, personally delivered.
(Ord. 693, passed 5-4-05)

' 90.05 HEARING PROCEDURES.

(A) Applicable procedures. Hearings under this subchapter to determine whether a vehicle or vehicles alleged to be a public nuisance is, in fact, a public nuisance, as defined by this subchapter and state, shall be conducted in accordance with the following procedures:

(1) Hearing to be held before Municipal Judge in Municipal Court. All hearings shall be before the city's Municipal Judge at the Municipal Court unless otherwise ordered by the Municipal Judge.

(2) Scheduling of hearing. The hearing shall be held at the date, time and place specified in the original notice unless: (i) the Municipal Judge continues the hearing to a different date, time and place upon the request of an interested party or (ii) a continued hearing date is required because a notice is returned undelivered and the hearing in the original notice is within 11 days of the date of the return. A rescheduled hearing shall be set not less than seven days from the date of the hearing in the original notice.

(3) Notice of continued hearing. If a hearing is rescheduled from the date and time specified in the original notice, notice of the date, time and place of the rescheduled hearing shall be given in accordance with the following rules:

(a) Posting of notice of continued hearing. If the hearing is being rescheduled because one or more of the original notices has been returned undelivered and the hearing specified in the original notice is within 11 days of the date the original notice is returned undelivered, the Code Enforcement Officer handling the matter shall obtain a hearing date and time before the Municipal Court on the

next available docket of the Municipal Court. Such officer shall prepare a revised notice in accordance with the requirements of ' 90.04 above and if the post office address of the interested party whose notice has been returned undelivered is unknown: (i) such officer shall place the revised notice on the nuisance if he or she has physical access to the nuisance or (ii) if such officer does not have access to the nuisance such officer shall post the revised notice in the place specified for public notices at City Hall.

(b) Other interested parties entitled to notice of continued hearing. The following interested parties shall be entitled to notice of a continued hearing:

1. One who appears at the hearing scheduled in the original notice;
2. One who contacts the Municipal Court or Code Enforcement Officer regarding the vehicle or vehicles the subject of the original notice by written communication or electronic mail on or before the date set for the hearing specified in the original notice; and
3. The Code Enforcement Officer handling the matter.

(c) Permissible methods of giving notice of continued hearing. Notice of a continued hearing may be given in any one or more of the following methods:

1. In person to a person who appears before the Municipal Court or the Code Enforcement Officer;
2. In writing by certified mail with five day return receipt requested or by facsimile transmission; or
3. By electronic mail.

(B) Issue to be determined. At the hearing, the Municipal Judge shall determine whether the vehicle alleged to be a public nuisance is, in fact, a public nuisance as defined by this chapter and state law. At the hearing, the junked motor vehicle is presumed to be inoperable unless demonstrated otherwise by the owner.

(C) Contents of order upon determination that a public nuisance exists. If a determination is made that the alleged nuisance is, in fact, a public nuisance, the Municipal Judge shall enter an order, pursuant to Texas Transportation Code ' 683.074(b)(c), reciting such finding and ordering the abatement or removal of the nuisance by a date certain. The order shall also provide for the removal or abatement of the nuisance by the city or a contractor retained by the city in the absence of compliance with the order by the owner or other person interested in the nuisance by the date specified in the order. If the information is available at the location of the nuisance, the order must include the vehicles: description, vehicle identification number and license plate number.
(Ord. 693, passed 5-4-05)

' 90.06 POST HEARING REQUIREMENTS.

(A) Notice to Texas Department of Transportation. Not later than the fifth day following the date that a vehicle found to be a public nuisance under this subchapter is removed, a Code Enforcement Officer of the city shall give notice to the Texas Department of Transportation identifying the vehicle or part of the vehicle removed.

(B) Prohibition on reconstruction. A vehicle found to be a public nuisance under this subchapter may not be reconstructed or made operable after its removal.
(Ord. 693, passed 5-4-05)

' 90.07 INTERFERENCE WITH CODE ENFORCEMENT OFFICER.

It shall be unlawful for any person to interrupt, disrupt, impede, or otherwise interfere with a Code Enforcement Officer of the city who is performing any duty or exercising any authority imposed or granted by law in connection with the enforcement of the provisions of this chapter. An offense under this section shall be punishable by a fine up to \$200 for each offense.
(Ord. 693, passed 5-4-05) Penalty, see ' 90.99

REGULATION OF MOTOR VEHICLE JUNKYARDS

' 90.50 MOTOR VEHICLE JUNKYARDS LICENSING.

(A) City license required. No person may operate a motor vehicle junkyard or motor vehicle salvage yard unless such person first obtains a license to operate such facility from the city.

(B) License requirements. A person seeking a license to operate a motor vehicle junkyard or motor vehicle salvage yard shall submit a written application for such license on a form approved by the city and shall provide any other information required for the city to determine compliance with these requirements. Specifically, the person applying for a license shall sign a form consenting to a criminal background check and shall provide proof of insurance. The conditions for the issuance of a license are:

(1) That the person have a currently valid and unrestricted license to operate as a salvage vehicle dealer issued by the State of Texas and that there be no pending complaints or proceedings to revoke said license;

(2) That the person pay an application fee of \$50 to defray the cost of processing the application;

(3) That the person currently be in compliance with all operating conditions set forth in ' 90.51 of this Code or, if no operations have been commenced, the applicant must certify that he or she has been provided with a copy of the operating conditions, that he or she understands such operating conditions and must sign a statement that all operations by the applicant will be in compliance with such operating conditions if a license is issued; and

(4) That the person not have been convicted of any offense under the laws of the United States or any state or country in the nature of a felony or misdemeanor involving moral turpitude, such as theft.

(C) Expiration of license; renewal. A license issued under this subchapter expires on the first anniversary date of its issuance. The person holding a license must renew the license each year and comply with the license requirements set forth above.

(D) Nontransferability. The license issued under this subchapter is not transferable.

(E) Motor vehicle junkyard or motor vehicle salvage yard defined. As used in this subchapter, the term or terms "MOTOR VEHICLE JUNKYARD or AMOTOR VEHICLE SALVAGE YARD" shall mean any location within the city which: (1) stores more than two motor vehicles which are inoperative or not currently registered, and (2) routinely sells parts from any motor vehicles which are inoperative or not currently registered or (3) is the place of business of any person who is a licensed motor vehicle salvage dealer, as that term is defined under state law. Wrecker service companies contracted by the city to abate junk vehicles are exempted from this definition.

(Ord. 693, passed 5-4-05) Penalty, see ' 90.99

' 90.51 OPERATING CONDITIONS FOR MOTOR VEHICLE JUNKYARDS OR MOTOR VEHICLE SALVAGE YARDS.

A person operating a motor vehicle junkyard or motor vehicle salvage yard shall, at all times, comply with the following conditions:

(A) Location. The yard shall only be located in a zone in which a motor vehicle junkyard or salvage yard business is permitted by the city's Zoning Ordinance and shall not be located within 1,000 feet of the right-of-way of public street, state or federal highway, school, hospital or medical clinic or a residence.

(B) Insurance. Maintain general commercial liability insurance in an amount not less than \$300,000 and includes coverage for liabilities related to the presence of hazardous wastes or products and environmental hazards.

(C) Compliance with laws. Comply with all applicable federal and state laws and regulations applicable to such operations including those designed to insure environmental quality and those relating to highway beautification.

(D) Fencing requirement. Each motor vehicle junkyard in the city shall be completely surrounded by a solid barrier fence or structure at least eight feet high. The fence must be painted a natural earth tone color and may not have any sign appear on its surface other than a sign indicating the business name of the licensed operator of the yard.

(E) Height and access requirements. No motor vehicles, or parts thereof, shall be piled or stacked in any such motor vehicle junkyard in any manner as to exceed six feet in height, or 625 square feet in floor or lot area. An aisle of at least four feet shall be maintained at all times between piles or stacks of motor vehicles or parts thereof, in such a manner as to allow free access on the part of the Fire Department of the city.

(F) Gas tanks to be drained. All gasoline shall be drained from the gasoline reservoirs of all motor vehicles stored or kept on the premises of any such motor vehicle junkyard, unless such motor vehicles are in such state of repair as to enable them to be removed from the premises under their own power.

(Ord. 693, passed 5-4-05) Penalty, see ' 90.99

' 90.98 VIOLATIONS; INJUNCTIVE RELIEF.

(A) Violation- No license. It is unlawful for any person, firm or corporation to establish, operate or maintain a motor vehicle junkyard or salvage yard without procuring a license as hereinabove provided; and each day a motor vehicle junkyard or salvage yard is operated or maintained without such license shall constitute a separate offense.

(B) Violation B Non-compliance with operating conditions. It is unlawful for any person, firm or corporation to operate or maintain a motor vehicle junkyard or salvage yard in violation of any of the operating conditions set forth in this subchapter; and each day a motor vehicle junkyard or salvage yard is operated or maintained in violation of such operating conditions shall constitute a separate offense.

(C) Injunctive relief. The city may also bring suit for injunction against any person, firm or corporation that violates or threatens to violate any of the provisions of this chapter, in order to prevent a continued violation or such threatened violation.

(Ord. 693, passed 5-4-05)

' 90.99 PENALTY.

Any person, firm or corporation that violates, disobeys, neglects or refuses to comply with, or that resists the enforcement of any of the provisions of this subchapter, shall be fined not less than \$10 nor more than \$500 for each offense.

(Ord. 693, passed 5-4-05)

CHAPTER 91: ANIMALS

Section

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' 91.01 DEFINITIONS.

When used herein, the following words and phrases shall have the meaning ascribed to them below:

"ANIMAL(S)." Any living dumb creature or creatures and shall include dogs, cats, fowl, livestock and wild animals.

"ANIMAL RECLAIM CENTER." A facility designated by the city as the location to be used for keeping animals impounded or quarantined under this chapter or applicable law.

"AT LARGE." Any animal not restrained by some physical means to the premises of the person in possession of the animal. However, an animal shall not be considered at large when held and controlled by some person by means of a leash or chain of proper strength and length to control the actions of the animal, fowl or livestock.

"FOWL." Birds of any kind including chickens, turkeys, pheasants, quail, guineas, geese, ducks, peafowl, emu and other domestic feathered creatures but excluding parakeets, canaries, or other similar small sized birds or any exotic birds, such as parrots provided they be continuously confined within the residence or business of the person in possession of same and are non-domestic feathered creatures.

"KENNEL." A kennel is any lot, building, structure, enclosure or premises wherein five (5) or more dogs and/or five (5) or more cats, or five (5) or more dogs and cats in the aggregate, four (4) months of age or older, are kept or maintained, whether for profit or pleasure but shall not include a veterinary hospital or pet shop.

"LIVESTOCK." Horses (all equine species including mules, donkeys and jack asses); cows (all bovine species); sheep (all ovine species); llamas; goats (all caprine species); and pigs (all swine species).

"NOTICE." Written memorandum either personally delivered to the person entitled thereto or mailed by certified mail, return receipt requested, addressed to the person entitled thereto at the last-known address of the recipient.

"PERSON." Any individual, corporation organization, business trust, estate, trust, partnership, association, and any other legal entity.

"POSSESSION OF (AN/THE) ANIMAL." When any person:

(a) is the owner or has any ownership interest in an animal,
or

(b) has an animal in that person's care, custody or control, including, without limitation, any person who: (i) is boarding an animal, (ii) is caring for an animal on another person's property (whether for remuneration or not), (iii) has been given the temporary use, possession or control of an animal by any other person or (iv)

provides food, shelter maintenance or care for an animal for three days or more (regardless of whether such three days are consecutive). The fact that an individual has obtained a license for a dog or a cat or has done so for such animal within five year period immediately preceding an offense under this chapter shall be *prima facie* evidence of the fact that such individual is in possession of the animal for purposes of this chapter.

"RESIDENCE." Any place of human habitation at any time day or night, including but not limited to any residence, church, school or nursing home.

"RESTRAINED." To secure an animal by a leash or lead or confinement within the property limits of the person in possession of the animal.

"VACCINATION." An injection of rabies vaccine which is approved by the U.S. Department of Agriculture, Veterinary Biologics Division or an appropriate state agency and administered by a veterinarian.

"VETERINARIAN." Any person duly licensed to practice veterinary medicine by the Texas State Board of Veterinary Examiners or an equivalent authority of any other state of the United States.

"VETERINARY HOSPITAL." Any establishment maintained and operated by a veterinarian for surgery, diagnosis and treatment of animal diseases and injuries.

"WILD ANIMAL(S)." The animals described and defined in ' 91.61 of this chapter.
(Ord. 562, passed 9-21-98; Am. Ord. 607, passed 12-18-00)

' 91.02 ANIMAL CONTROL OFFICER.

(A) The Chief of Police, with the approval of the City Manager shall appoint animal control officer or officers' and fix compensation therefore. The animal control officers shall be under the supervision and control of the police department. It shall be the duty of the animal control officers to: (i) pick up and impound all animals found running at large, (ii) issue citations for any violations of the provisions of this chapter or any applicable law pertaining to animals, (iii) carry out all other duties assigned to the animal control officer under this chapter or under applicable law and (iv) to perform such duties as may be directed by the police.

(B) While the primary responsibility for the duties described in division (A) rest with the animal control officers, any police officer of the city or any peace officer of the State of Texas is hereby authorized to discharge such duties and nothing in this Chapter shall be construed to limit the authority of police officers of the City or any peace officer of the State of Texas in that regard.
(Ord. 562, passed 9-21-98)

' 91.03 INTERFERENCE WITH ANIMAL CONTROL OFFICER WHILE PERFORMING DUTY.

A person commits an offense if the person intentionally or with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with an animal control officer performing any duty or exercising any authority imposed or granted by this chapter or applicable law pertaining to animals. The phrase "with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with" shall have the same meaning as in Section 38.15 of the Texas Penal Code and the decisions interpreting said law.
(Ord. 562, passed 9-21-98)

' 91.04 OFFENSE; PENALTY.

Any person who fails to comply with any of the provisions of this chapter commits an offense. Any person who is found guilty of any offense under this chapter shall be fined not less than \$15 and not more than \$500. Each day of a violation shall be deemed a separate and complete offense.

(Ord. 562, passed 9-21-98; Am. Ord. 607, passed 12-18-00)

REGULATIONS PERTAINING TO THE KEEPING OF ANIMALS

' 91.20 ANIMALS RUNNING AT LARGE PROHIBITED.

(A) A person commits an offense if the person in possession of any animal, including a dog, cat, horse, mule, jack, jenny, cow, sheep, or fowl, allows or permits the animal to run at large.

(B) A person in possession of a dog or cat commits an offense if such person does not restrain the dog or cat by some physical means (fence, rope, leash, or chain) at all times, on or off the premises of the person in possession thereof.

(C) A person in possession of an animal commits an offense if such person transports the animal in any open motor vehicle without securing the animal by a rope, leash, chain, carrier or other device which will prevent the animal from escaping the vehicle or being ejected from the vehicle.

(Ord. 562, passed 9-21-98; Am. Ord. 607, passed 12-18-00)

' 91.21 REGULATIONS OF CERTAIN LIVESTOCK AND FOWL.

(A) Swine. Except as provided for Vietnamese potbellied pigs pursuant to ' 91.22 of this chapter, a person commits an offense if the person is in possession of any swine species of any kind.

(B) Fowl. A person commits an offense if the person is in possession of any fowl which is not housed and maintained as follows:

(1) There must be at least ten square feet of floor or ground area dedicated exclusively for each fowl;

(2) The fowl must be fed and watered as required by ' 91.80(A) of this chapter;

(3) The fowl must have access to a shelter as required by ' 91.80(B) of this chapter and such shelter shall be thoroughly cleaned on a daily basis; and

(4) The shelter must be painted or whitewashed at least once every six months and the roosting places sprayed with crude oil or some disinfectant at least once each calendar month to discourage insects, fleas, mites, mosquitoes and flies.

(C) Cows, goats, horses, sheep, or any other animal of similar species. A person commits an offense if the person is in possession of any horses, mules, donkeys or other equine species, cows, bulls or other bovine species, sheep or other bovine species, llamas, goats or other caprine species which are not housed and maintained as follows:

(1) A minimum of 400 square feet shall be provided to each such animal.

(2) Such animal(s) must be fed and watered as required by ' 91.80(A) of this chapter;

(3) Such animal(s) must have access to a shelter as required by ' 91.80(B) of this chapter and such shelter shall be thoroughly cleaned on a daily basis;

(4) The parcel of land and shelter where such animal(s) is/are kept shall not be nearer than 100 feet to any building occupied by any person;

(5) A suitable method shall be provided to rapidly eliminate excess water from the parcel of land where the animal(s) is/are kept; and

(6) Every parcel of land and shelter where such animal(s) is/are kept shall have a suitable manure box or container in which all manure and droppings shall be placed daily; each such box or container shall be securely sealed and otherwise protected from flies, vermin, and rodents; shall be cleaned out and disinfected at least once a week; and manure from such boxes or containers shall not be left in open stacks but removed and buried.

(Ord. 562, passed 9-21-98)

' 91.22 VIETNAMESE POT-BELLIED PIGS.

(A) A person commits an offense if the person is in possession of: (i) more than two adult Vietnamese potbellied pigs or (ii) any Vietnamese potbellied pig which is in excess of 20 inches in height and weighing in excess of 95 pounds. A Vietnamese pot-bellied pig that is not prohibited by this chapter is classified as a domestic pet.

(B) A person commits an offense if the person is in possession of any Vietnamese potbellied pig without complying with the following requirements:

(1) The pig(s) shall be kept under restraint at all times and shall not be permitted to be at large; and

(2) A license for keeping the pig(s) shall be obtained from the city on an annual basis and as a condition to the issuance of such license the pig(s) shall be vaccinated for erysipelas annually and certificate of the vaccination from a veterinarian shall be presented to the police department at the time the license is obtained. Upon payment of the required fee and upon receipt of proof of vaccination, in accordance with this subsection, the police department shall issue a tag evidencing the fact that a Vietnamese pig meeting the requirements of this section has been licensed.

(Ord. 562, passed 9-21-98)

' 91.23 KEEPING NOISY ANIMALS PROHIBITED.

Any animal that makes noise which unreasonably disturbs the public peace is hereby declared a public nuisance. The animal control officer shall give notice to the person in possession of an animal that makes noise which unreasonably disturbs the public peace. Such notice shall direct the person in possession of the animal to abate such disturbance by the animal and prevent its reoccurrence. A person who is given such notice commits an offense if the person falls to comply with the order and directive of the animal control officer by abating the disturbance and its reoccurrence.

(Ord. 562, passed 9-21-98)

' 91.24 VACCINATION AND LICENSING OF DOGS AND CATS.

(A) Vaccination and License Required. Any person in possession of a dog or cat that is more than four months old shall: (i) have the dog or cat vaccinated against rabies not less often than every 12 months, (ii) present a certificate from a veterinarian certifying such vaccination to the police department, (iii) obtain a license for keeping the dog or cat in the city from the police department and (iv) renew the license annually prior to its expiration. A person commits an offense if they fail to comply with the provisions of this subsection.

(B) Criteria for the Issuance of a License. Any person who applies for a license (an "Applicant") must satisfy all of the following criteria before a license will be issued:

(1) Certificate of Veterinarian. The Applicant must present a written certificate from a veterinarian certifying that the dog or cat has been vaccinated against rabies within the 12 month period preceding the date the certificate is presented.

(2) Written Application. The Applicant must complete a written application which will be prepared and revised, from time to time, by the Chief of Police or his designee. Among other things, the application shall require the Applicant to certify: (i) that the Applicant is qualified for the issuance of a license (including the criteria regarding prior convictions and that no grounds for revocation of a license exist) and (ii) that all information in the application is complete and accurate.

(3) No Prior Convictions of Certain Offenses or Revocation of a License. Applicant shall not have been convicted of any offense under this chapter or any law relating to animals, protection of animals or the keeping of dangerous animals within one year from the date the application is submitted nor shall the Applicant have had a license revoked under this chapter within one year from the date the application is submitted.

(4) No Grounds for Revocation of License Exist. No facts or circumstances exist which would provide grounds for revocation of the license under this chapter, pursuant to division (D), at or prior to the time the license is issued.

(5) Payment of License Fee. Applicant has paid the license fee then required by the city. The license fee shall be established by the Chief of Police, from time to time, with the concurrence of the City Manager.

(6) Competent Adult. Applicant shall be a competent adult.

(C) Expiration of License. Upon satisfaction of the above criteria, the city shall issue a license to the Applicant. A license will expire on the date the rabies vaccination described in the certificate of the dog or cat's vaccination expires.

(D) Revocation of License.

(1) Grounds. A license may be revoked upon a finding that any of the following grounds exist:

(a) Non Compliance with this Chapter or Other Laws Relating to Animals. The person to whom the license was issued (the "Licensee") refuses or fails to comply with any of the provisions of this chapter or any law governing the protection of animals or any law governing dangerous animals; regardless of whether any such acts or omissions have resulted in a final conviction.

(b) Multiple Impoundments. The dog or cat in question has been impounded by the city three or more times during any consecutive twelve month period within three years from the date notice of intention to revoke license is sent by the city to the Licensee.

(c) Two or More Convictions. The Licensee has two or more final convictions of any offense under this chapter or any law relating to animals, protection of animals or the keeping of dangerous animals within three years of the date the notice of intention to revoke license is sent by the city to the Licensee.

(d) Dog or Cat Determined to be Dangerous. The dog or cat has been determined to be a dangerous animal under state law.

(2) Procedure.

(a) Notice. The animal control officer shall give written notice of his or her intention to revoke the license for a dog or cat in the manner specified in ' 91.31 of this code.

(b) Hearing. An administrative hearing shall be held before the Chief of Police to determine if grounds for revocation of the license exist. The date, time and place for the hearing shall be designated by the Chief of Police and included in the notice. The hearing shall be on a date not less than seven days from the date the notice of intention to revoke license is sent to the Licensee. If the Chief of Police determines that grounds exist to revoke the license, pursuant to division (D)(1), the license shall be revoked by the Chief of Police. The ruling or decision of the Chief of Police shall be noted on the license records of the city or by a letter or other appropriate memoranda selected by the Chief which will be kept with the license records of the city. All determinations by the Chief of Police under division (D)(2)(b) shall be final.

(3) Disposition of the Dog or Cat Following License Revocation.

(a) Surrender or Removal of Dog or Cat. Except as provided below for a dog or cat running at large, pursuant to division (D) (3) (d), upon a determination that grounds to revoke a license for a dog or cat do exist, the Licensee shall, within 24 hours of the time the hearing adjourns, either: (i) surrender possession of the dog or cat to the animal control officer or (ii) permanently remove the dog or cat from the city limits of the city and provide proof of such removal to the animal control officer. A person commits an offense if they fail to comply with the provisions of division (D) (3) (a).

(b) Proof of Removal of Dog or Cat. Proof of removal of a dog or cat from the city, in compliance with division (D) (3) (a), may be shown by: (i) a written receipt signed by an individual who is not a resident of the city, acknowledging that such individual is in possession of the dog or cat, stating such individual's address outside of the city and a phone number where such individual can be reached to verify their possession of the dog or cat and (ii) the agreement by the person whose license has been revoked to permit the animal control officer to inspect the premises where the dog or cat was kept to verify its removal.

(c) Transfer of Dog or Cat to Another Who Obtains a License. A person in possession of a dog or cat for which the license has been revoked shall be relieved of the duty to surrender or remove the dog or cat, in accordance with division (D) (3) (a), if such person transfers possession and ownership of the dog or cat to another person who is eligible to obtain a license and such other person does obtain a license within 24 hours of the time the hearing adjourns.

(d) Dog or Cat Running at Large. If the dog or cat the subject of the hearing is running at large the animal control officer shall take immediate steps to impound the dog or cat.

(4) Disposition of a Dog or Cat in the Possession of the City Following License Revocation.

(a) Applicability. This subsection does not apply to any dog or cat that is removed from the city or transferred to another person following revocation of its license in strict compliance with divisions (D) (3) (a) and (D) (3) (b) or (D) (3) (c).

(b) Dog or Cat Surrendered. If a dog or cat whose license has been revoked is surrendered to the animal control officer following the revocation hearing, such dog or cat shall be disposed of in accordance with ' 91.32 of this code without further notice to the former Licensee.

(c) Dog or Cat Running at Large. If the license for a dog or cat has been revoked as a result of a hearing under this section and the dog or cat is running at large, the person in possession of the dog or cat may, at the conclusion of the hearing, provide the animal control officer with an address and telephone number where such person can be reached at all times. If such person will be away from such

address or phone number for more than 12 hours, such person shall advise the animal control officer of such other address or phone number where they can be contacted. Once the dog or cat is captured by the animal control officer, the animal control officer will contact such person and provide them with an opportunity to: (i) remove the dog or cat from the city, in compliance with division (D)(3)(a), or (ii) transfer the dog or cat to another person who obtains a license, in accordance with division (D)(3)(c). Such removal or transfer of the dog or cat must be accomplished within 24 hours of the time the animal control officer gives notice that the dog or cat has been captured. This time period will not be extended if the person requesting notice is not available to receive the notice at the address or telephone number provided the animal control officer. The animal control officer shall not surrender possession of the dog or cat to the person previously in possession of same. The animal control officer will only surrender possession of the dog or cat to the person who is not a resident of the city who will remove the dog or cat from the city or to the person who has obtained a license for the dog or cat. If the dog or cat is not removed from the city or transferred to another person who obtains a license (in strict compliance with this division) the animal control officer shall dispose of the dog or cat in accordance with ' 91.32 of this code

(d) Dog or Cat Not Surrendered and Not Running at Large. If the license for a dog or cat is revoked and the dog or cat is not surrendered and is not running at large, the animal control officer shall proceed to capture the dog or cat by all lawful means and shall thereafter dispose of the animal in accordance with ' 91.32 of this code without further notice to the person in possession of the dog or cat.

(5) Interfering with Apprehension of a Dog or Cat Whose License is Revoked. A person commits an offense if the person: (i) fails to surrender to the animal control officer a dog or cat whose license has been revoked as required by division (D)(3)(a), (ii) conceals the location of a dog or cat whose license has been revoked, or (iii) hinders the apprehension of a dog or cat whose license has been revoked.

(Ord. 562, passed 9-21-98; Am. Ord. 607, passed 12-18-00; Am. Ord. 638, passed 6-17-02)

' 91.25 DOGS AND CATS IN SEASON.

The animal control officer may require any person in possession of a female dog or cat that is in season to confine the animal to a secure building or structure where the animal cannot escape and where other animals cannot enter. A person commits an offense if the person is in possession of a female dog or cat in season and fails to comply with such an order or directive of the animal control officer.

(Ord. 562, passed 9-21-98)

' 91.26 MINIMUM DISTANCE OF KENNEL FROM RESIDENCE.

(A) A person commits an offense if the person owns, leases, keeps, possesses or maintains a kennel which does not meet the following requirement: it shall be more than three hundred (300) feet

from any residence or habitation for human beings (other than the residence of the owner, lessor, keeper, or possessor of such kennel). The foregoing distance requirement shall be determined by measuring the most direct line between the two (2) structures.

(B) This section shall not apply to a kennel in existence and operated on the date this chapter is adopted so long as such kennel is hereafter operated continuously and without interruption.
(Ord. 562, passed 9-21-98)

' 91.27 KEEPING OF BEES.

A person commits an offense if the person is in possession of bees if such bees create an unreasonable nuisance to the public or if the bees have attacked or stung any person or animal.
(Ord. 562, passed 9-21-98)

' 91.28 IMPOUNDMENT: DISPOSAL OR TRANSFER OF ANIMALS.

(A) Authority to Impound Animals. The animal control officer shall have authority to impound any animal being kept within the city in violation of any of the provisions of this chapter or any law relating to animals, protection of animals or the keeping of dangerous animals.

(B) Reclaim Procedure.

(1) Notice. When an animal is impounded the animal control officer shall send notice of that fact to the person in possession of the animal. The notice shall be sent in accordance with ' 91.31 of this code.

(2) Conditions for Reclaiming an Animal. Unless the animal control officer has reason to believe and does believe that the impounded animal is a dangerous animal as defined by state law or that the impounded animal has been cruelly treated and should be forfeited, the person previously in possession of an animal may reclaim the animal by complying with the following conditions within seven days of the date notice of impoundment is sent to such person:

(a) Payment of Fines and Fees. Payment of all applicable fines, penalties and expenses of impoundment, including, without limitation, those fees specified in ' 91.29 of this code; and

(b) Compliance with Law. Compliance by such person with any applicable provision of this chapter or any other law relating to the manner in which the animal is to be kept or the conditions under which the animal is kept; and

(c) License for a Dog or cat. If the animal is a dog or cat for which a license is required under this chapter, such person obtains a license for such dog or cat.

(3) Release of the Animal. The animal control officer shall determine, from the foregoing list of conditions, which conditions apply as prerequisites to the reclaim or release of an impounded animal. The animal control officer shall not release an impounded

animal until all conditions determined to be applicable to the impounded animal have been fully satisfied.

(4) Cruelly Treated Animal or Dangerous Animal. If the animal control officer has reason to believe and does believe that the impounded animal is being cruelly treated (pursuant to Chapter 821 of the Texas Health and Safety Code) or is a dangerous animal (pursuant to Chapter 822 of the Texas Health and Safety Code) or any other law permitting the seizure and disposition of such animals, the animal control officer shall not release the impounded animal but shall pursue the remedies under such laws provided for officers responsible for animal control or the animal control authority.

(C) Disposition of an Animal.

(1) If Animal Not Reclaimed. If the person previously in possession of an animal does not reclaim the impounded animal within the time period set forth below, the animal control officer or his or her designee may dispose of the animal in accordance with '91.32 of this code without further notice to such person. The time period for reclaiming an animal is as follows:

(a) For any animal having a current license issued in accordance with this chapter at the time the animal control officer takes possession of the animal, the reclaim period shall be five working days.

(b) For any animal that is not licensed under this chapter or any animal that does not have a current license in accordance with chapter at the time the animal control officer takes possession of the animal, the reclaim period shall be three working days.

(c) For purposes of this division, a Working day shall be any Monday through Friday on which the Burkburnett City Hall is open for business. This section shall not apply to an animal that has been cruelly treated or that is the subject of a proceeding to determine if it is a dangerous animal; such animals will be disposed of in accordance with the law applicable to such situation.

(2) Emergency Disposition. Notwithstanding the provisions of division (C)(1) above, an impounded animal shall be destroyed immediately if, in the opinion of the animal control officer, any police officer of the city or a veterinarian: (i) it is injured or is sick and is in such a state that its recovery is seriously in doubt or (ii) it is sick and endangers the health of other animals or persons.

(D) Record of Impounded Animals. The animal control officer shall keep a record of all animals impounded. Such record shall include a description of animal, the date of impoundment, the location and time of impoundment, the name of owner or person in possession of the animal (if known), and disposition of the animal.

(E) Animal Reclaim Center. The Board of Commissioners shall erect or establish a suitable animal reclaim center for impounding animals running at large or otherwise in violation of the provisions of this chapter or applicable law.

(F) Citation in Lieu of Impoundment. In lieu of impounding an animal that is at large or being kept in violation of this chapter, the animal control officer may issue the person in possession thereof a citation for any violations of this chapter or applicable law.

(G) Private Property-Right to Enter. In the event an animal is observed at large on private property, the animal control officer may enter the property in accordance with applicable law for the purpose of emergency impoundment, seizure of the animal or issuance of a citation or both.

(Ord. 562, passed 9-21-98; Am. Ord. 607, passed 12-18-00; Am. Ord. 762, passed 7-20-09)

' 91.29 FEES.

(A) The following this shall be charged by the animal control officer before an impounded animal is surrendered to its owner.

(1) Impoundment fees:

(a) Dogs and Cats - \$25.00 per animal, per impoundment;

(b) Livestock - \$50.00 per head, per impoundment; and

(c) Fowl and any animal excluding dogs, rats, and livestock - \$5.00 per head, per impoundment.

(2) Boarding Fees: \$3.50 per day, per animal.

(3) Pet Pickup - \$5.00 per pickup of deceased pets (dogs and cats) from private property at the request of their owners.

(B) The fees or money received under the provisions of this chapter shall be paid to the city clerk and shall be used to for defraying of cost incurred in connection with the enforcement of the provisions of this chapter.

(C) The person in possession of every dog, cat, or Vietnamese pot-bellied pig shall pay a fee of \$4.00 for each tag evidencing the license required by this chapter.

(Ord. 562, passed 9-21-98)

' 91.30 DISPOSITION OF DEAD ANIMALS.

The person in possession of an animal shall properly disposal of the animal following its death (in accordance with applicable law) within 24 hours of the time such owner or person in possession of same discovers the death of the animal. A person commits an offense if the person fails to comply with this section.

(Ord. 562, passed 9-21-98)

' 91.31 NOTICES.

(A) Form of Notice. The notices required by ' 91.24 (notice of intention to revoke a license) and ' 91.28 (notice of impoundment) shall be substantially in the following forms:

(1) For license revocation:

CITY OF BURKBURNETT
ANIMAL CONTROL
208 East Fourth Street
Burkburnett, Texas 76354
Telephone: 940-569-2231

_____, 20____
(date notice is sent)

To: (name and address of the person listed on the subject license or the person in possession of the animal the subject of the notice)

Description of the dog or cat the subject of the notice:

License No.:

PLEASE TAKE NOTICE THAT: The Animal Control Officer of the City of Burkburnett, Texas has reason to believe, and does believe, that the following grounds exist to revoke the license for the above described dog or cat:

Those grounds which are marked or checked apply:

____(a) The person to whom the license was issued refuses or has failed to comply with provisions of the Code of Ordinances of the City of Burkburnett, Texas or a law governing the protection of animals or any law governing dangerous animals; regardless of whether any such acts or omissions have resulted in a final conviction. A brief description of the facts which form the basis for this allegation are as follows:

____(b) The dog or cat in question has been impounded by the city three or more times during a consecutive twelve month period within three years from the date of this notice.

____(c) The Licensee has two or more final convictions within three years from the date of this notice of an offense under Chapter 91 of the Code of Ordinances of the City of Burkburnett, Texas or a law relating to animals, protection of animals or the keeping of dangerous animals.

____(d) A final determination has been made, in accordance with state law, that the dog or cat is a dangerous animal.

An administrative hearing will be held before the Chief of Police on the following date and time and at the following location to determine if grounds exist to revoke the license for the dog or cat referred to above:

Date of Hearing: _____
Time of Hearing: _____
Place of Hearing: Municipal Courtroom
208 East Fourth Street
Burkburnett, Texas.

If a determination is made that grounds exist to terminate this license the license will be revoked and you will be required to either surrender the dog or cat to the animal control officer or remove it from the city and provide proof that you have done so within 24 hours from the time the hearing adjourns unless another person obtains a license for the dog or cat within that 24 hour time period. If your license is revoked you will not be eligible for a new license for a period of one year.

Animal Control Officer,
City of Burkburnett, Texas

(2) If for impoundment:

CITY OF BURKBURNETT
ANIMAL CONTROL
208 East Fourth Street
Burkburnett, Texas 76354
Telephone: 940-569-2231

_____, 20____
(date notice is sent)

To: [name and address of the person listed on the subject license or the person in possession of the animal the subject of the notice]

Description of the animal the subject of the notice:

License No. (if a dog or a cat with a license):

PLEASE TAKE NOTICE THAT: The above described animal has been impounded by the City of Burkburnett, Texas. You may reclaim this animal by: (i) paying of all applicable fines, penalties and expenses of impoundment, (ii) compliance with any applicable provision of the Code of Ordinances of the City of, Burkburnett, Texas or any other law relating to the manner in which the animal is to be kept or the conditions under which the animal is kept; and (iii) if the animal is a dog or cat for which a license is required, obtaining a license.

If you do not reclaim the animal by complying with these conditions within seven (7) days of the date of this notice, the City will dispose of the animal without further notice by one of the following methods: by transfer to the Humane Society of Wichita County or a similar charitable organization or destruction of the animal.

Animal Control Officer,
City of Burkburnett, Texas

(B) Manner of Providing Notice. The notices described in this section shall be provided by the animal control officer: (i) posting the appropriate notice at the City Police Department on a bulletin board provided for posting notices to the public and (ii) mailing the notice to the person named in the notice by certified mail, return receipt requested. The address to be used for mailing a notice will be determined as follows:

(1) If the animal is a dog or cat which has a current license, notice shall be mailed to the address shown for the licensee according to the license records of the city.

(2) If the animal is a dog or a cat which does not have a current license or is an animal for which a license is not required under this chapter, notice shall be sent to the address for the person entitled to notice according to the utility records of the city unless no address is shown in the utility records of the city for such person in which case the notice will be sent to the address for such person according to the ad valorem tax rolls of the city.

(3) If no address can be found by one of the methods described in division (B)(1) or (2) above, address of the premises where the animal was previously kept (if known) or if such location is not known to any address for the person in a current phone or address directory or any other publically accessible record of addresses.

(C) Delivery of Notice. The animal control officer may deliver a notice directly to the person named in the notice in lieu of mailing it; or the animal control officer may deliver a notice directly to the person named in the notice in addition to mailing it.

(D) If Person in Possession is Unknown or Address is Unknown. If, in the exercise of reasonable diligence, the animal control officer is unable to ascertain the person in possession of an animal or is unable to obtain an address for the person by any of the means specified in division (B) above, the posting of the notice shall be sufficient notice.

(E) Calculation of Time Periods. For purposes of this chapter, a notice shall be considered "sent" or "delivered" on the latter of:

(1) The date it is posted; or

(2) The date it is mailed; or, if the notice is mailed and delivered on the date it is mailed; but if the notice is delivered but not mailed, on the date it is delivered.

Any time period required by this chapter shall exclude the date the notice is mailed or posted.
(Ord. 607, passed 12-18-00)

' 91.32 METHOD OF DISPOSITION OF AN ANIMAL.

If the license for a dog or cat is revoked pursuant to this chapter and the dog or cat is not removed from the city or transferred to another person who obtains a license for the dog or cat, as required by ' 91.24 of this code, or if an impounded animal is not reclaimed in the manner required by ' 91.28 of this code, the animal control office may dispose of the animal by transfer to the Humane Society of Wichita County or a similar charitable organization or destruction of the animal. All euthanasia shall be done humanely by injection of sodium phenobarbital administered by the animal control officer or his or her appointed agent.
(Ord. 607, passed 12-18-00)

VICIOUS DOGS

' 91.40 DEFINITIONS.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

AOWNER.@ Any person in possession of a dog or animal as defined by ' 91.01.

AOWNING.@ The act of being in possession of a dog or animal as defined by ' 91.01.

AVICIOUS DOG.@ Any dog:

(1) Without provocation, that bites or attacks a human being or domestic animal, either on public or private property, or that, in a vicious or terrorizing manner, approaches any person on the streets, sidewalks or other public places in an apparent attitude of attack;

(2) With a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

(3) Owned or harbored primarily or in part for the purpose of dog fighting, or trained for dog fighting.
(Ord. 762, passed 7-20-09)

' 91.41 EXEMPTIONS.

(A) No dog shall be deemed vicious if the bite, injury or damage was sustained by a person who at the time was committing a willful

trespass upon the premises occupied by the owner or harborer of the dog or by a person who has tormented or abused the dog.

(B) Dogs under control of the police department or other proper governmental agency are exempt from this division.
(Ord. 762, passed 7-20-09)

' 91.42 LICENSE REQUIRED.

Any person owning a vicious dog must obtain a license. Written application for such license shall be made to the animal control officer and shall include the applicant's name and address, a description of the animal, proof of current rabies vaccination, and the payment of a fee set by the animal control officer and approved by the Board of Commissioners. The expiration date of the license shall coincide with the current rabies tag. Before the license is issued, the owner shall have his or her driver's license number or state identification number permanently tattooed on the inner surface of one ear of the dog by a licensed veterinarian. The owner of a vicious dog must be at least 18 years old. Not later than 30 days after a person learns that the person is the owner of a vicious dog as defined in this chapter, the person shall obtain liability insurance coverage of at least \$100,000.00 to cover damages resulting from an attack by the vicious dog causing bodily injury to a person or a person's property and the person shall provide proof annually of the required liability insurance coverage to the animal control officer.
(Ord. 762, passed 7-20-09)

' 91.43 DECLARATION OF VICIOUS DOG.

The owner or harborer may voluntarily declare that he has a vicious dog and apply for a vicious dog license, or the animal control officer, acting on information it has received, may declare a dog vicious after adequate investigation.
(Ord. 762, passed 7-20-09)

' 91.44 INVESTIGATION OF COMPLAINTS.

If the animal control officer receives a complaint that a dog is vicious and the complainant will give a sworn statement with particulars concerning the complaint, a thorough investigation shall be made. If it is determined by the animal control officer that an animal is vicious and presents a substantial danger to the public health, safety and welfare of the community, the animal may be impounded immediately, and its owner promptly notified. The owner of such animal shall have five calendar days in which to file a written appeal of this determination to the Chief of Police. If the release of the dog is allowed, impoundment and other fees shall be paid prior to release.
(Ord. 762, passed 7-20-09)

' 91.45 DESTRUCTION.

(A) Any dog determined to be vicious by the animal control officer may be destroyed if:

(1) Written appeal of the determination that the dog has been found to be vicious is not made to the chief of police within five calendar days from receipt, by the owner, of the notice of such determination and that such animal is to be destroyed;

(2) After written appeal by the owner of such animal it is determined by the police chief that the animal is or remains a substantial danger to the public health, safety and welfare of the community and should be destroyed; or

(3) The owner of such animal fails or refuses to destroy the animal as requested by official notice or order of the animal control officer or the chief of police (if the case has been appealed to the chief of police).

(B) The owner of the vicious animal shall have the opportunity for a hearing if the owner files a written request with the chief of police within five days of receiving written notice of intent to destroy. The owner will be granted a hearing within ten days of receipt of a request for hearing. If no request for a hearing is received the animal will be destroyed.

(C) A notice as required in these rules is properly served when it is delivered to the owner, caregiver or possessor of the animal, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the owner, caregiver or possessor of the animal. A copy of the notice shall be filed in the records of the Police Department.

(D) The Chief of Police shall conduct the hearings provided for in these rules at a time and place designated by the chief of police. Based upon the recorded evidence of such hearing, the chief of police shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the owner or caretaker by the animal control officer.

(E) Any person refusing to relinquish a vicious animal for destruction shall upon conviction be punished by fine as provided in ' 10.99. If the violation is continuing, each day shall be deemed a separate offense.
(Ord. 762, passed 7-20-09)

' 91.46 SEIZURE WARRANT.

If the harborer of a dog declared vicious refuses to release such animal to the animal control officer, it shall be the duty of the animal control officer to obtain a seizure warrant for seizure of the animal in accordance with Chapter 18 of the Texas Code of Criminal Procedure.
(Ord. 762, passed 7-20-09)

' 91.47 CONFINEMENT.

(A) It shall be the responsibility of the owner or harborer of a vicious dog to securely confine such animal. A vicious dog shall be

confined in an enclosure with the walls or fence at least six feet high and otherwise designed to prevent escape by the dog. The enclosure must be securely locked.

(B) It shall be unlawful for a vicious dog to be outside the dwelling of the owner or outside the enclosure unless it is necessary for the owner to obtain veterinary care for the vicious dog or to sell or give away the vicious dog or to comply with directions of the animal control officer. In such event, the vicious dog shall be securely restrained with a chain having a minimum tensile strength of 300 pounds and not exceeding three feet in length and shall be under direct control and supervision of the owner or harborer or humanely caged. Unless confined or restrained under conditions stated in this subsection, the vicious dog shall be considered at large and subject to the penalties of this chapter of the code.

(C) A vicious dog may not be chained to any object outside the dwelling or locked enclosure either on or off the property of the owner.

(D) If the animal is sold, given away or changes residence, the owner or harborer is to notify the local rabies control authority within five days. The owner must notify in writing on or before the date of possession or custody as transferred the person who receives the animal from the owner that the animal is a vicious animal and the requirements of a vicious dog license. If the owner fails to so notify the recipient the owner shall remain liable for all penalties in ' 91.40 through 91.50 of this chapter jointly and severally with the new owner.

(Ord. 762, passed 7-20-09)

' 91.48 SIGN.

The owner or harborer of a vicious dog shall display a sign on the premises warning that there is a vicious dog on the premises. The sign shall be visible and capable of being read from the public street or highway.

(Ord. 762, passed 7-20-09)

' 91.49 INSPECTIONS.

An inspection of the premises of the vicious dog and the vicious dog shall be made twice a year and at any other time deemed necessary by the animal control officer.

(Ord. 762, passed 7-20-09)

RABIES REGULATION OF DANGEROUS ANIMALS AND ANIMALS CAUSING HARM TO PERSONS

' 91.60 ANIMAL BITES PROCEDURE RABIES QUARANTINE PROCEDURES.

(A) Reports. A person commits an offense if the person (including owners or persons in possession of animals, veterinarians, or physicians) fails to report any of the following in the manner set forth in this section:

(1) If any person observes an animal which is displaying the symptoms of rabies it shall be reported immediately to the police department.

(2) If any person observes or becomes aware of facts indicating an animal has bit or scratched any person without breaking the skin of the victim and if said person has reason to believe that the animal is infected with rabies it shall be reported immediately to the police department.

(3) If any person is bitten or scratched or if any person observes or becomes aware of the fact that an animal has bitten or scratched any person in a manner which causes a break in the skin of the victim, said person (or the person's parent or guardian if the victim is a minor or incapacitated) shall report the incident to the police department and fill out a bite report.

(B) Quarantine of Animal. Following the receipt of a report under divisions (A)(1) or (2), the animal control officer shall, as soon as feasible, impound such animal for quarantine purposes if the symptoms of rabies described in the animal are verified by a veterinarian as indicating the animal may be a carrier of rabies. The animal control officer may seize an animal to facilitate its examination for this purpose. Upon receipt of a report under of division (A)(3) of this section, the animal control officer shall, as soon as feasible, impound the animal for quarantine purposes.

(C) Quarantine Procedures. The quarantine of an animal pursuant to this section shall be pursuant to the following procedures:

(1) Period of Quarantine. The quarantine shall be for a period of at least ten days from the day of the bite, or as required by State Law.

(2) Examination of Animal or Tissue in Absence of Owner. In the event the person in possession of the animal quarantined cannot be identified and located within reasonable length of time, the victim, at his or her option, may elect to have the animal examined by a veterinarian, or to have the tissue submitted for laboratory examination, and the costs so incurred shall be borne by the city.

(3) High Risk Animals. Any high risk animal such as skunks, bats, foxes, coyotes, canine hybrid breeds and raccoons, shall be humanely killed and tested for rabies. An animal that has inflicted multiple bites to a person on the neck, face, or head may be required by animal control officer to be immediately tested for rabies without prior notice to the person in possession of the animal.

(4) Place of Quarantine. The quarantine of an animal under this section shall take place, at the expense of the person in possession of the animal, at one of the following locations:

(a) A veterinary hospital selected by the person in possession of the animal; or

(b) The city's animal reclaim center if the person in possession of the animal does not: (i) timely notify the animal control officer of their choice of veterinary hospitals and (ii) make arrangements with said hospital for payment; or

(c) At the home of the person in possession of the animal but only if, in the opinion of the animal control officer, the following criteria has been fully met:

1. The person bitten is a family member and resides in the household where the animal is kept;

2. Secure facilities are available at the home;

3. The animal is currently vaccinated against rabies. An animal under four months of age may be home quarantined if it is unvaccinated as long as all other requirements are met;

4. The person in possession of the animal agrees that the animal control officer, his or her representative, and/or a veterinarian may observe the animal at least on the first and last days of the quarantine period (at the expense of the person in possession of the animal if it is a veterinarian) and at such other times as the animal control officer or veterinarian deems necessary;

5. The animal was not a stray or at large at the time of the bite;

6. If the animal becomes ill during the observation period, the person in possession must agree to notify the animal control officer; and

7. The person in possession agrees that the animal control officer can immediately impound the animal in the event if there is any failure to comply with any of the foregoing conditions or criteria or if required by a veterinarian.

(D) Release. No animal confined for quarantine purposes under the provisions of this section shall be released until: (i) the quarantine period is over, (ii) the animal is either vaccinated against rabies or proof (satisfactory to the animal control officer) has been provided that the animal has a current rabies vaccination, (iii) the person in possession of the animal provides proof of payment to a veterinarian for the rabies vaccination in the event the animal is vaccinated for rabies while in quarantine, and (iv) all boarding and impoundment fees, expenses, fines and penalties owing in connection with the animal have been paid. In addition to any fines or penalties which may be assessed in connection with the quarantine of an animal pursuant to this section, the city shall charge an impoundment fee in accordance with ' 91.29 of this chapter and a boarding fee (in accordance' with ' 91.29 of this chapter) for any animal quarantined in the city's animal reclaim center.

(E) City-wide Quarantine. When based upon a report of the Texas Board of Health or confirmed cases of rabies within the city, the Wichita County Health Department may recommend a city-wide quarantine. If a city-wide quarantine is so recommended the Chief of Police with the concurrence of the City Manager may impose a city-wide quarantine. During a city-wide quarantine a person commits an offense if the person: (i) allows any animal in the person's possession to be taken, whether restrained or not, to the streets, or any other public place and (ii) permits any animal (including cats) in the person's possession to be at large. A citywide quarantine may be invoked for a period of thirty (30) days but in the event there are additional positive cases of rabies occurring during this period of city-wide quarantine, such period of quarantine may be extended for an additional reasonable period of time by the Chief of Police with the concurrence of the City Manager upon the recommendation of the Wichita County Health Department.

(F) Animals Bitten During City-wide Quarantine. During any city-wide rabies quarantine every animal bitten (and thereby exposed to rabies) by an animal which has been or is determined to have rabies, shall be destroyed or the person in possession of the exposed animal may elect the following procedure at such person's sole expense as an alternative to the destruction of the bitten animal:

(1) If the exposed animal was currently vaccinated against rabies at the time of the exposure, it must be:

(a) Vaccinated against rabies immediately; and

(b) Placed in strict isolation for forty-five (45) days.

(2) If the exposed animal was unvaccinated against rabies at the time of the exposure, it must be treated as follows:

(a) Vaccinated against rabies immediately after the exposure;

(b) Given a second rabies vaccination three weeks after the exposure;

(c) Given a third rabies vaccination eight weeks after the exposure; and

(d) Placed in a strict isolation for ninety (90) days.

(3) The circumstances of the exposed animal's isolation must be approved by the animal control officer.

(G) Destruction of Animals Prohibited. A person commits an offense if the person: (i) kills, or causes to be killed, any rabid animal, any animal suspected of having been exposed to rabies, or any animal biting or scratching a human, or (ii) removes same from the city limits without written permission from the animal control officer or the Wichita County Health Department.

(H) Surrender of Certain Dead Animals. A person commits an offense if the person fails or refuses to surrender the carcass of any dead animal exposed to rabies upon demand by the animal control officer or the Wichita County Health Department.

(I) Exemptions for Certain Dogs. The following animals will not be required to be placed in quarantine: (i) currently vaccinated guide dogs in service and (ii) currently vaccinated police dogs that inflict a bite while in the line of duty.

(J) Local Rabies Control Authority. The Chief of Police or his designated representative is hereby designated as the local rabies control authority pursuant to Chapter 826 of the Texas Health and Safety Code.

(K) Construction with State Law. Nothing in this chapter shall be construed to limit the authority of the animal control officer to carry out or enforce the provisions of Chapter 826 of the Texas Health and Safety Code, the rules of the Texas Board of Health pertaining to rabies and the rules adopted by the Texas Board of Health under the area rabies quarantine provisions of Section 826.045 of the Texas Health and Safety Code.

(L) Seizure Warrant. If a person who is in possession of an animal which is subject to quarantine, testing or destruction under this ' 91.60 fails or refuses to release the animal to the animal control officer for quarantine; the animal control officer may apply to a magistrate for a seizure warrant authorizing seizure of such animal for the purpose of quarantine, testing or destruction in accordance with this section.

(Ord. 562, passed 9-21-98)

' 91.61 WILD ANIMALS PROHIBITED.

A person commits an offense if the person keeps or harbors any wild animal. For purposes of this chapter, a wild animal means a species, including each individual of a species, that normally lives in a state of nature and is not ordinarily domesticated; or which, because of its size, vicious nature and other characteristics, would constitute a danger to human life or property greater than that posed by domestic livestock or other animals permitted under this chapter. Such creatures shall include but are not limited to all forms of poisonous reptiles, and nonpoisonous snakes which will exceed a length of six (6) feet when mature, and nonhuman primates. Nonpoisonous snakes which will exceed a length of six (6) feet when mature will not be sold or imported within the city limits. Snakes over six (6) feet presently owned and maintained within the city limits will be exempt from this section, provided the snake is registered with the Animal Control Officer and the snake is maintained in a safe and secure manner. Hamsters, gerbils, ferrets and domesticated breeds of rabbits, guinea pigs, rats, mice, newts and salamanders shall not be considered wild animals for purposes of this chapter.

(Ord. 562, passed 9-21-98)

' 91.62 ADOPTION OF STATE LAW REGARDING DANGEROUS DOGS.

The city hereby adopts the provisions of Section 822.0422 of the Texas Health and Safety Code regarding procedures for determining whether a dog is dangerous and related matters.
(Ord. 562, passed 9-21-98)

TREATMENT OF ANIMALS' 91.80 HUMANE CARE AND TREATMENT REQUIRED.

(A) Food and Water. All animals shall be fed at least once daily. Water shall be available to the animals at all times. All water and food receptacles shall be kept clean and sanitary at all times. Food shall be wholesome, palatable, free from contamination, and of sufficient quantity and nutritive value shall be prepared with consideration to the age, species, size, condition, and temperament of the animal.

(B) Shelter.

(1) Dogs, Cats and Domestic Pets. Dogs, cats, and other domestic pets shall be provided with access to shelter to allow them to remain dry and protected from cold and wind. Shelter shall be enclosed fully on three sides, roofed, and have a solid floor. The entrance to the shelter shall be flexible to allow the animal's entry and exit, sturdy enough to block entry of wind and rain. It shall be small enough to retain the animal's body heat and large enough to allow the animal to stand and turn comfortably. The enclosure shall be structurally sound and in good repair. Bedding shall be provided. When sunlight is likely to cause overheating or discomfort, sufficient shade (artificial or natural) shall be provided to allow animals to protect themselves from the direct rays of the sun. If shade is provided by the enclosure, allowance shall be made for adequate ventilation.

(2) Livestock. All livestock shall have a shed of reasonable size for the number of livestock to allow them to remain dry, during wet weather and protected from severe chill factors. Such shelter shall have three sides and a roof. It shall be structurally sound and in good repair to protect the livestock from injury. Such shelter will provide minimum space to accommodate all livestock confined within the compound. Either natural or artificial shade is provided by the enclosure, allowance shall be made for adequate ventilation.

(C) Space Requirements. Any animal kept on a chain shall be placed so that the chain cannot become entangled with the chains of other animals or with any other objects. The chain shall be at least three times the length of the animal as measured from the tip of the nose to the base of the tail. The chain shall also be of sufficient length to allow the animal complete access to the shelter at all times. For animals not confined by chains, the enclosures shall be constructed and maintained so as to maintain physical condition. The animal must be able to make normal postural and social adjustments. There shall be ample room to prevent overcrowding, physical discomfort, or stress.

(D) Confining Animals to Motor Vehicles Prohibited. No animal shall be confined within or on a motor vehicle at any location under such conditions as may endanger the health or well-being of the animal, including but not limited to dangerous temperature, lack of food, water, or attention, or confinement with a dangerous animals. Any animal control or peace officer is authorized to remove any animal from a motor vehicle at any location when he reasonably believes it is confined in violation of this section. Any animal so removed shall be delivered to the animal reclaim center, after such removing of such animal, the officer shall leave a written notice of such removal and delivery, including his name, in a secure, conspicuous location on or within the vehicle. The animal shall be released from the animal reclamation center upon payment of any fines or penalties, the impoundment fee and any accrued boarding fees.

(E) Failure to Comply. A person commits an offense if they fail to comply with any of the provisions of divisions (A) through (D) of this section.

(Ord. 562, passed 9-21-98)

' 91.81 ANIMAL STRUCK BY MOTOR VEHICLE.

Any person who, while operating a motor vehicle, is involved in a collision with an animal shall stop at once, render such assistance as may be practicable, and report the accident to the police department. A person commits an offense if the person fails to comply with this section.

(Ord. 562, passed 9-21-98)

' 91.82 POISONING ANIMALS; TRAPS.

(A) A person commits an offense if the person exposes any known poisonous substance, whether mixed with food or, not, so than the same shall be liable to be eaten by any animal. It shall be a defense to prosecution under this section if the defendant demonstrates that he or she was engaging in the prudent use of herbicides, insecticides, or rodent control materials mixed only with vegetable substance on his or her own property.

(B) A person commits an offense if the person exposes an open jaw type trap, leg hold trap, snare trap, or any type trap able or liable to cause physical harm or injury to any animal or person.

(Ord. 562, passed 9-21-98)

' 91.99 PENALTY.

Any person violating any section of '' 91.40 et seq. shall, upon conviction, be punished as provided in ' 10.99, and the dog shall be impounded immediately in the animal reclaim center for a minimum of three days or until the violation has been corrected or other sections of this division have been met. An owner of an animal that without provocation bites or injures a person or animal shall be strictly liable for the harm caused by such animal.

(Ord. 762, passed 7-20-09)

CHAPTER 92: CABLE TELEVISION

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GENERAL PROVISIONS

' 92.01 DEFINITIONS.

For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

"AFFILIATE." An entity which owns or controls, is owned or controlled by, or is under common ownership with the grantee.

"BASIC CABLE." The tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

"CABLE ACT." The Cable Communications Policy Act of 1984, as amended.

"CABLE SERVICE."

(1) The one-way transmission to subscribers of video programming or other programming service; and

(2) Subscriber interaction, if any, which is required for the selection of such video programming or any other lawful communication service.

"CABLE SYSTEM." A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide cable service and other service to subscribers.

"FCC." Federal Communications Commission, or any successor governmental entity thereto.

"FRANCHISE." The initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the cable system for the purpose of offering cable service or other service to subscribers.

"FRANCHISING AUTHORITY." The city or the lawful successor, transferee, or assignee thereof.

"GRANTEE." TCI Cablevision of Texas, Inc., or the lawful successor, transferee, or assignee thereof.

"GROSS REVENUES." The monthly cable service revenues received by the grantee from subscribers of the cable system; provided, however, that such phrase shall not include:

(1) Revenues received from any national advertising carried on the cable system;

(2) Any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the grantee on behalf of such governmental unit or agency.

"PERSON." An individual, partnership, association, joint stock company, trust corporation, or governmental entity.

"PUBLIC WAY." the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the franchising authority in the service area which shall entitle the franchising authority and the grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. "Public way" shall also mean any easement now or hereafter held by the franchising authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the franchising authority and the grantee to the use thereof for the purposes of installing or transmitting the grantee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system.

"SERVICE AREA." The present municipal boundaries of the franchising authority, and shall include any additions thereto by annexation or other legal means.

"SERVICE TIER." A category of cable service or other services, provided by the grantee and for which a separate charge is made by the grantee.

"SUBSCRIBER." A person or user of the cable system who lawfully receives cable services or other service therefrom with the grantee's express permission.

"VIDEO PROGRAMMING." Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(Ord. 501, passed 4-19-93)

' 92.02 DOCUMENTS INCORPORATED AND MADE A PART HEREOF.

The following documents shall be incorporated herein by this reference, and in the case of a conflict or ambiguity between or among them, the document of latest date shall govern:

(A) Any enabling ordinance in existence as of the date hereof; and

(B) Any franchise agreement between the grantee and franchising authority reflecting the renewal of the franchise, if any.

(Ord. 501, passed 4-19-93)

' 92.03 PREEMPTION.

If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the franchising authority, the jurisdiction of the franchising authority shall cease and no longer exist.

(Ord. 501, passed 4-19-93)

' 92.04 ACTIONS OF FRANCHISING AUTHORITY.

In any action by the franchising authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

(Ord. 501, passed 4-19-93)

' 92.05 NOTICE.

Unless expressly otherwise agreed between the parties, every notice or response to be served upon the franchising authority or grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

(Ord. 501, passed 4-19-93)

GRANT OF FRANCHISE

' 92.15 GRANT.

The city grants to the grantee a nonexclusive franchise which authorizes the grantee to construct and operate a cable system and

offer cable service and other services in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the service area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system.
(Ord. 501, passed 4-19-93)

' 92.16 TERM.

The franchise granted pursuant to this chapter shall be for an initial term of 15 years from the effective date of the franchise as set forth in ' 92.17, unless otherwise lawfully terminated in accordance with the terms of this chapter.
(Ord. 501, passed 4-19-93)

' 92.17 ACCEPTANCE: EFFECTIVE DATE.

The grantee shall accept the franchise granted pursuant hereto by signing this chapter and filing same with the City Secretary or other appropriate official or agency of the franchising authority within 60 days after the passage and final adoption of this chapter. Subject to the acceptance by the grantee, the effective date of this chapter shall be the 60th day after its passage and final adoption.
(Ord. 501, passed 4-19-93)

' 92.18 FAVORED NATIONS.

In the event the franchising authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the grantee to enter into the franchising authority's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.
(Ord. 501, passed 4-19-93)

STANDARDS OF SERVICE

' 92.25 CONDITIONS OF STREET OCCUPANCY.

All transmission and distribution structures, poles, other lines, and equipment installed or erected by the grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said public ways.
(Ord. 501, passed 4-19-93)

' 92.26 RESTORATION OF PUBLIC WAYS.

If during the course of the grantee's construction, operation, or maintenance of the cable system there occurs a disturbance of any public way by the grantee, it shall, at its expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance.

(Ord. 501, passed 4-19-93)

' 92.27 RELOCATION AT REQUEST OF FRANCHISING AUTHORITY.

Upon its receipt of reasonable advance notice, not to be less than five business days, the grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the grantee when lawfully required by franchising authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the franchising authority; but, the grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the grantee.

(Ord. 501, passed 4-19-93)

' 92.28 RELOCATION AT REQUEST OF THIRD PARTY.

The grantee shall, on the request of any person holding a building moving permit issued by the franchising authority, temporarily raise or lower its wires to permit the moving of such building, provided:

(A) The expense of such temporary raising or lowering of wires is paid by said person, including, if required by the grantee, making such payment in advance; and

(B) The grantee is given not less than ten business days advance written notice to arrange for such temporary wire changes.

(Ord. 501, passed 4-19-93)

' 92.29 TRIMMING OF TREES AND SHRUBBERY.

The grantee shall have the authority to trim trees or other natural growth overhanging any of its cable system in the service area so as to prevent branches from coming in contact with the grantee's wires, cables, or other equipment. The grantee shall be permitted to charge persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the utilities or the franchising authority for tree trimming. The grantee shall reasonably compensate the franchising authority or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any

construction of the System undertaken by grantee. Such replacement shall satisfy any and all obligations the grantee may have to the franchising authority or property owner pursuant to the terms of this subchapter.

(Ord. 501, passed 4-19-93)

' 92.30 USE OF GRANTEE'S EQUIPMENT BY FRANCHISING AUTHORITY.

Subject to any applicable state or federal regulations or tariffs, the franchising authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the grantee in any public way; provided that:

(A) Such use by the franchising authority does not interfere with a current or future use by the grantee;

(B) The franchising authority holds the grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs; and

(C) At the grantee's sole discretion, the franchising authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate the grantee for the use of such poles, conduits, or equipment; provided, however, that the grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the service area.

(Ord. 501, passed 4-19-93)

' 92.31 SAFETY REQUIREMENTS.

Construction, installation, and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

(Ord. 501, passed 4-19-93)

' 92.32 AERIAL AND UNDERGROUND CONSTRUCTION.

In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving the grantee's cable and other equipment without technical degradation of the cable system's signal quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are

both aerial and underground, the grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this section shall require the grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this chapter, the grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

(Ord. 501, passed 4-19-93)

' 92.33 REQUIRED EXTENSIONS OF SERVICE.

The cable system, as constructed as of the date of the passage and final adoption of this chapter, substantially complies with the material provisions hereof. The grantee is hereby authorized to extend the cable system as necessary, as desirable, or as required pursuant to the terms hereof within the service area. Whenever the grantee shall receive a request for service from at least 15 subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its cable system to such subscribers at no cost to the subscribers for system extension, other than the usual connection fees for all subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the cable system, or as provided for under ' 92.34.

(Ord. 501, passed 4-19-93)

' 92.34 SUBSCRIBER CHARGES FOR EXTENSIONS OF SERVICE.

No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his cable drop underground, existence of more than 150 feet of distance from distribution cable to connection of service to subscribers, or a density of less than 15 subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, cable service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by grantee and subscribers in the area in which cable service may be expanded, the grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential subscribers per 1,320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals 15 subscribers. Potential subscribers will bear the remainder of the construction and

other costs on a pro rata basis. The grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.
(Ord. 501, passed 4-19-93)

' 92.35 SERVICE TO PUBLIC BUILDING.

The grantee shall provide without charge one outlet of basic service to the franchising authority's office building(s), fire station(s), police station(s), and public school building(s) that are passed by the grantee's cable system. The outlets of basic service shall not be used to distribute or sell cable services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold the grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this section, the grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds 150 cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the cable system to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of basic service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of the grantee, the building owner may also be required to pay the service fees associated with the provision of basic service and the additional outlets relating thereto.
(Ord. 501, passed 4-19-93)

' 92.36 EMERGENCY OVERRIDE.

In the case of any emergency or disaster, the grantee shall, upon request of the franchising authority, make available its facilities for the franchising authority to provide emergency information and instructions during the emergency or disaster period. The franchising authority shall hold the grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the franchising authority, including, but not limited to, reasonable attorneys' fees and costs.
(Ord. 501, passed 4-19-93)

Cross-reference

Emergency management, see Ch. 93

REGULATION

' 92.45 FRANCHISE FEE.

(A) The grantee shall pay to the franchising authority a franchise fee equal to 5% of gross revenues received by the grantee from the operations of the cable system on an annual basis; provided, however, that the grantee may credit against any such payments:

(1) Any tax, fee, or assessment of any kind imposed by franchising authority or other governmental entity on a cable operator, or subscriber, or both, solely because of their status as such; and

(2) Tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operators and their services).

(B) For the purpose of this section, the 12-month period applicable under the franchise for the computation of the franchise fee shall be a calendar year, unless otherwise agreed to in writing by the franchising authority and grantee. The franchise fee payment shall be due and payable 90 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report from a representative of the grantee showing the basis for the computation.

(C) In the event the maximum allowable franchise fee is increased by law, the franchising authority may request an increase up to an amount equal to the maximum allowed by law. However, prior to the grantee having the obligation to pay that fee, the grantee must be notified in writing 90 days prior to that obligation occurring. The grantee has the right to pass through to the subscriber the franchise fee.
(Ord. 501, passed 4-19-93)

' 92.46 LIMITATION ON FRANCHISE FEE ACTIONS.

The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which payment by the grantee is due. Unless within five years from and after said payment due date the franchising authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the franchising authority shall be estopped from asserting any claims whatsoever against the grantee relating to any such alleged deficiencies.
(Ord. 501, passed 4-19-93)

' 92.47 RATES AND CHARGES.

The franchising authority may not regulate the rates for the provision of cable service and other services, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto. From time to time, and at any time, the grantee has the right to modify its rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that the grantee shall give notice to the franchising authority of any such modifications or additional charges 30 days prior to the effective date thereof.
(Ord. 501, passed 4-19-93)

' 92.48 RENEWAL OF FRANCHISE.

(A) The franchising authority and the grantee agree that any proceedings undertaken by the franchising authority that relate to the renewal of the grantee's franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

(B) In addition to the procedures set forth in said Section 626(a), the franchising authority agrees to notify the grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of the grantee under the then current franchise term. The franchising authority further agrees that such a preliminary assessment shall be provided to the grantee prior to the time that the four month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this section, the grantee and franchising authority agree that at any time during the term of the then current franchise, while affording the public appropriate notice and opportunity to comment, the franchising authority and grantee may agree to undertake and finalize negotiations regarding renewal of the then current franchise and the franchising authority may grant a renewal thereof. The grantee and the franchising authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act. (Ord. 501, passed 4-19-93)

' 92.49 CONDITIONS OF SALE.

(A) Except to the extent expressly required by federal or state law, if a renewal or extension of the grantee's franchise is denied or the franchise is lawfully terminated, and the franchising authority either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of or by its actions lawfully effects a transfer of ownership of the cable system to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the cable system valued as a going concern.

(B) The grantee and franchising authority agree that in the case of a lawful revocation of the franchise, at the grantee's request, which shall be made in its sole discretion, the grantee shall be given a reasonable opportunity to effectuate a transfer of its cable system to a qualified third party. The franchising authority further agrees that during such a period of time, it shall authorize the grantee to continue to operate pursuant to the terms of its prior franchise; however, in no event shall such authorization exceed a period of time greater than six months from the effective date of such revocation. If, at the end of that time, the grantee is unsuccessful in procuring a qualified transferee or assignee of its cable system which is reasonably acceptable to the franchising authority, the grantee and

franchising authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the grantee's continued operation of its cable system during the six month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the franchising authority or the grantee. Notwithstanding anything to the contrary set forth in this section, neither the franchising authority nor the grantee shall be required to violate federal or state law.

(Ord. 501, passed 4-19-93)

' 92.50 TRANSFER OF FRANCHISE.

The grantee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an affiliate, without the prior consent of the franchising authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the grantee in the franchise or cable system in order to secure indebtedness.

(Ord. 501, passed 4-19-93)

COMPLIANCE AND MONITORING

' 92.55 TESTING FOR COMPLIANCE.

The grantee shall comply with FCC mandated rules and regulations regarding technical and customer service standards. The franchising authority may perform technical tests of the cable system during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the grantee or the cable system in order to determine whether or not the grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the grantee reasonable notice thereof, not to be less than two business days, and providing a representative of the grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the grantee. In the event that such testing demonstrates that the grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the franchising authority. Except in emergency circumstances, the franchising authority agrees that such testing shall be undertaken no more than two times a year in the aggregate, and that the results thereof shall be made available to the grantee upon the grantee's request.

(Ord. 501, passed 4-19-93)

' 92.56 BOOKS AND RECORDS.

The grantee agrees that the franchising authority may review such of its books and records, during normal business hours and on a nondisruptive basis, as is reasonably necessary to monitor compliance

with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The franchising authority agrees to treat any information disclosed by the grantee to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

(Ord. 501, passed 4-19-93)

INSURANCE

' 92.65 INSURANCE REQUIREMENTS.

The grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Said insurance shall designate the franchising authority as an additional insured. Such insurance shall be noncancellable except upon 30 days prior written notice to the franchising authority.

(Ord. 501, passed 4-19-93)

' 92.66 INDEMNIFICATION.

The grantee agrees to indemnify, save and hold harmless, and defend the franchising authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the grantee's construction, operation, or maintenance of its cable system, including, but not limited to, reasonable attorney's fees and costs.

(Ord. 501, passed 4-19-93)

' 92.67 BONDS AND OTHER SURETY.

Except as expressly provided herein, the grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the franchise or continuing its existence. The franchising authority acknowledges that the legal, financial, and technical qualifications of the grantee are sufficient to afford compliance with the terms of the franchise and the enforcement thereof.

The grantee and franchising authority recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for cable services. In order to minimize such costs, the franchising authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. The franchising authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the franchise. Initially, no bond or other

surety will be required. In the event that one is required in the future, the franchising authority agrees to give the grantee at least 60 days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the franchise or afford compliance therewith.
(Ord. 501, passed 4-19-93)

ENFORCEMENT

' 92.75 NOTICE OF VIOLATION.

In the event that the franchising authority believes that the grantee has not complied with the terms of the franchise, it shall notify the grantee in writing of the exact nature of the alleged noncompliance.
(Ord. 501, passed 4-19-93)

' 92.76 GRANTEE'S RIGHT TO CURE OR RESPOND.

The grantee shall have 30 days from receipt of the notice described in ' 92.75:

(A) To respond to the franchising authority contesting the assertion of noncompliance; or

(B) To cure such default; or

(C) In the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the franchising authority of the steps being taken and the projected date that they will be completed.
(Ord. 501, passed 4-19-93)

' 92.77 PUBLIC HEARING.

In the event that the grantee fails to respond to the notice described in ' 92.75 pursuant to the procedures set forth in ' 92.76, or in the event that the alleged default is not remedied within 60 days after the grantee is notified of the alleged default pursuant to ' 92.75, the franchising authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the franchising authority which is scheduled at a time which is no less than five business days therefrom. The franchising authority shall notify the grantee of the time and place of such meeting and provide the grantee with an opportunity to be heard.
(Ord. 501, passed 4-19-93)

' 92.78 ENFORCEMENT.

(A) Subject to applicable federal and state law, in the event the franchising authority, after such meeting, determines that the grantee is in default of any provision of the franchise, the franchising authority may:

(1) Foreclose on all or any part of any security provided under this franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the franchising authority reasonably determines is necessary to remedy the default;

(2) Commence an action at law for monetary damages or seek other equitable relief;

(3) In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked; or

(4) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

(B) The grantee shall not be relieved of any of its obligations to comply promptly with any provision of the franchise by reason of any failure of the franchising authority to enforce prompt compliance.
(Ord. 501, passed 4-19-93)

' 92.79 ACTS OF GOD.

The grantee shall not be held in default or noncompliance with the provisions of the franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.
(Ord. 501, passed 4-19-93)

' 92.80 UNAUTHORIZED RECEPTION.

In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the cable system without the express consent of the grantee. Further, without the express consent of the grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the cable system or any means of receiving cable service or other services provided thereto. Subject to applicable federal and state law, the franchising authority shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which will enforce the intent of this section.
(Ord. 501, passed 4-19-93)

CHAPTER 93: EMERGENCY MANAGEMENT

Section

Emergency Management Plan

- 93.01 Organization
- 93.02 Emergency Management Director; powers and duties
- 93.03 Emergency management plan
- 93.04 Interjurisdictional program
- 93.05 Override
- 93.06 Liability
- 93.07 Commitment of funds
- 93.08 Severability
- 93.09 Conflict with state or federal regulations
- 93.10 Violations

Building Identification Numbers

- 93.20 Duty of property owner
- 93.21 Type of address number
- 93.22 Compliance required

- 93.99 Penalty

Cross-reference:

Emergency override of cable television system, see ' 92.36

EMERGENCY MANAGEMENT PLAN

' 93.01 ORGANIZATION.

There exists the office of Emergency Management Director of the city, which shall be held by the Mayor in accordance with state law.

(A) An Emergency Management Coordinator may be appointed by and serve at the pleasure of the Director;

(B) The Director shall be responsible for a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in this ordinance. He or she may delegate authority for execution of these duties to the Coordinator, but ultimate responsibility for such execution shall remain with the Director.

(C) The operational emergency management organization of the city shall consist of the officers and employees of the city so designated by the Director in the emergency management plan, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan.

(Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

' 93.02 EMERGENCY MANAGEMENT DIRECTOR; POWERS AND DUTIES.

The duties and responsibilities of the Emergency Management Director shall include the following:

(A) Conduct an ongoing survey of actual or potential hazards which threaten life and property within the city and an ongoing program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur.

(B) Supervision of the development and approval of an emergency management plan for the city, and shall recommend for adoption by the City Council all mutual aid arrangements deemed necessary for the implementation of such plan.

(C) Authority to declare a local state of disaster. The declaration may not be continued or renewed for a period in excess of seven days except by or with the consent of the City Council. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.

(D) Issuance of necessary proclamations, regulations or directives which are necessary for carrying out the purposes of this chapter. Such proclamations, regulations, or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede, promptly filed with the City Secretary.

(E) Direction and control of the operations of the Emergency Management organization as well as the training of Emergency Management personnel.

(F) Determination of all questions of authority and responsibility that may arise within the Emergency Management organization of the city.

(G) Maintenance of liaison with other municipal, county, district, state, regional or federal, Emergency Management organizations.

(H) Marshaling of all necessary personnel, equipment and supplies from any department of the city to aid in the carrying out of the provisions of the emergency management plan.

(I) Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which the city is located and with other municipalities within the county, for the county-wide coordination of emergency management efforts.

(J) Supervision of, and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the city.

(K) Authorizing of agreements, after approval by the City Attorney, for use of private property for public shelter and other purposes.

(L) Survey of the availability of existing personnel, equipment, supplies and services which could be used during a disaster, as provided for herein.

(M) Other requirements as specified in Texas Disaster Act 1975 (Art. 6889-7, V.T.C.S.).
(Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

' 93.03 EMERGENCY MANAGEMENT PLAN.

A comprehensive emergency management plan shall be developed and maintained in a current state. The plan shall set forth the form of the organization, establish and designate divisions and functions, assign responsibilities, tasks, duties, and powers, and designate officers and employees to carry out the provisions of this chapter. As provided by state law, the plan shall follow the standards and criteria established by the State Division of Emergency Management of the State of Texas. insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the State Division of Emergency Management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this chapter and have the effect of law during the time of a disaster.
(Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

' 93.04 INTERJURISDICTIONAL PROGRAM.

(A) The Mayor is authorized to join with the County Judge of Wichita County and the mayors of the other cities in the county in the formation of an Emergency Management Council for the county and shall have the authority to cooperate in the preparation of a joint emergency

management plan and in the appointment of a Joint Emergency Management Coordinator, as well as all powers necessary to participate in a county-wide program of emergency management insofar as the program may affect the city. (Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

(B) Therefore, it is hereby resolved that there is hereby established the Wichita County Emergency Management Organization which shall consist of the officers and employees of the city and of the county as designated in a coordinated Emergency Management Plan, together with such organized volunteer groups as that Plan may specify. It is further resolved that the Mayor of this city and the Wichita County Judge shall each appoint an Emergency Management Coordinator to coordinate between that city and county all aspects of the Burkburnett/Wichita County program of comprehensive emergency management, including the preparation and maintenance of an Emergency Management Plan for this city and Wichita County. (Joint Res. 123, passed 2-20-90)

' 93.05 OVERRIDE.

At all times when the orders, rules, and regulations made and promulgated pursuant to this ordinance shall be in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith. (Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

' 93.06 LIABILITY.

This chapter is an exercise by the city of its governmental functions for the protection of the public peace, health, and safety and neither the city, the agents and representatives of the city, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this chapter shall be liable for any damage sustained to persons as the result of the activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the city a license of privilege, or otherwise permits the city to inspect, designate and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice enemy attack or natural or manmade disaster shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such person. (Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

' 93.07 COMMITMENT OF FUNDS.

No person shall have the right to expand any public funds of the city in carrying out any emergency management activity authorized by this ordinance without prior approval by the City Council, nor shall any person have any right to bind the city by contract, agreement or otherwise without prior and specific approval of the City Council unless during a declared disaster. During a declared disaster, the Mayor may expend and/or commit public funds of the city when deemed prudent and necessary for the protection of health, life, or property. (Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

' 93.08 SEVERABILITY.

If any portion of this chapter shall, for any reason, be declared invalid such, invalidity shall not affect the remaining provisions thereof.

(Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

' 93.09 CONFLICT WITH STATE OR FEDERAL REGULATIONS.

This chapter shall not be construed so as to conflict with any state or federal statute or with any military or naval order, rule, or regulation.

(Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

' 93.10 VIOLATIONS.

(A) It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this chapter, or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this chapter.

(B) It shall likewise be unlawful for any person to wear, carry or display any emblem, insignia or any other means of identification as a member of the emergency management organization of the city, unless authority to do so has been granted to such person by the proper officials.

(C) Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a violation of this chapter and shall be subject to the penalties imposed by this chapter in ' 93.99. (Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93)

BUILDING IDENTIFICATION NUMBERS

' 93.20 DUTY OF PROPERTY OWNER.

It shall be the duty of the property owner or agents of business or residence buildings to properly number and correctly display identifying numbers on same. Identifying numbers shall be displayed on the property (other than the curb) no later than five days after the building is completed or occupied. The owners, agents, or other persons making repairs or additions to buildings shall cause the identifying numbers to be replaced immediately should repairs or improvements require temporary removal of numbers.

(Ord. 688, passed 2-21-05) Penalty, see ' 93.99

' 93.21 TYPE OF ADDRESS NUMBER.

All numbers on business or residence houses in the city shall be of a figure of not less than three inches in height and approximately two or more inches in width and shall be placed as to be seen plainly from the street. They shall be paid for by the owner or agent of the property. Each number shall be displayed in a manner so that it is visible from the street in front of the property. The numbers shall be of durable material, or they may be painted of neat design. New subdivisions, upon completion of street construction, shall have the address of each residence painted on the curb with letters on a white backing.

(Ord. 688, passed 2-21-05) Penalty, see ' 93.99

' 93.22 COMPLIANCE REQUIRED.

It shall be the duty of the owner or agents of property to comply with this subchapter within 90 days of the adoption of same. No municipal services shall be rendered to any parcel or buildings which do not comply with the addressing and number conditions set forth in this subchapter.

(Ord. 688, passed 2-21-05) Penalty, see ' 93.99

' 93.99 PENALTY.

(A) Convictions for violations of the provisions of '' 93.01 through 93.10 shall be punishable by fine not to exceed \$200.

(B) Any person, whether owner, agent, or occupant, who, after 20 days written notice, fails or refuses to number correctly any house or business under his/her control shall be deemed in violation of '' 93.20 through 93.22 and guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25 nor more than \$200. Each day of violation beyond the 20-day period shall be deemed a separate offense.

(Ord. 457, passed 2-20-89; Am. Ord. 502, passed 1-18-93; Am. Ord. 688, passed 2-21-05)

CHAPTER 94: FIRE PREVENTION; FIREWORKS

Section

General Provisions

- 94.01 Burning of trash or garbage
- 94.02 Storage and handling of agricultural anhydrous ammonia;
ANI Standard Number M-1 Code
- 94.03 Reward for arrest and conviction of person for arson

Fireworks

- 94.20 Definition
- 94.21 Discharge of fireworks
- 94.22 Sale of fireworks
- 94.23 Exceptions

- 94.99 Penalty

Cross-reference:

Parking of trucks and motor vehicles used in transportation of gasoline or liquified petroleum gas, see ' 72.07

GENERAL PROVISIONS

' 94.01 BURNING OF TRASH OR GARBAGE.

It shall be unlawful for any person, firm, or corporation, to burn trash or garbage within the city limits.
(Ord. 244, passed 7-25-60) Penalty, see ' 94.99

Cross-reference:

Garbage provisions, see Ch. 51

' 94.02 STORAGE AND HANDLING OF AGRICULTURAL ANHYDROUS AMMONIA;
ANI STANDARD NUMBER M-1 CODE.

(A) There is hereby adopted by the Board of Commissioners for the purpose of prescribing regulations governing the storage and handling of agricultural anhydrous ammonia, that a certain code known as ANI Standard Number M-1, recommended by the Agricultural Nitrogen Institute, successor to the Agricultural Ammonia Institute, being particularly the 1968 edition thereof, and the whole thereof and its future amendments of which code a copy has been and is now filed in the office of the City Clerk, and the same are hereby adopted and incorporated as fully as if set out at length herein, the provisions thereof shall be controlling within the corporate limits of the city.

(B) No person shall install any tank, container, or equipment for the storing or consumption of agricultural anhydrous ammonia, or install any piping for the transfer of agricultural anhydrous ammonia on any premises within the city, until such person shall have secured

a permit from the city. Prior to the installation of any agricultural anhydrous ammonia installation within the city, plans and specifications for such installation shall be submitted to the Fire Marshal's office for tentative approval. Final approval will follow a physical inspection of the completed installation by the Fire Marshal.

(C) Should any person, firm, or corporation fail to comply with the safety standards set out in the ANI Standard M-1 at any time, their permit will be revoked until such violations have been corrected. (Ord. 302, passed 10-29-69) Penalty, see ' 94.99

' 94.03 REWARD FOR ARREST AND CONVICTION OF PERSON FOR ARSON.

The city hereby offers a reward of \$250 to anyone who secures and furnishes information necessary to and which results in arrest and conviction of any person who commits the crime of arson within the corporate limits of the city. This reward is a standing offer, and shall be paid out of the General Fund of the city. (Ord. 262, passed 7-23-62; Am. Ord. 455, passed 12-19-88)

FIREWORKS

' 94.20 DEFINITION.

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

"PERSON." A human being, a firm, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers. (Ord. 427, passed 1-20-86)

' 94.21 DISCHARGE OF FIREWORKS.

No person shall throw or explode any firecrackers, Roman candles, skyrockets, torpedoes, grenades, or other combustible fireworks of any kind within the city limits, or within the extraterritorial jurisdiction for a distance of 5000 feet outside the city limits. (Ord. 427, passed 1-20-86) Penalty, see ' 94.99

' 94.22 SALE OF FIREWORKS.

No person shall exhibit or have in his possession with the intent to give away or sell or offer for sale any firecrackers, Roman candles, skyrockets, torpedoes, grenades, or other combustible fireworks within the city limits, or within 5000 feet of the city limits. However, this section shall not apply to the legitimate sale of any such articles by wholesalers to each other or to the sale of such articles at wholesale

entirely without the jurisdiction of the city, or to the sale by wholesalers for private or public demonstration as hereinafter provided.

(Ord. 427, passed 1-20-86) Penalty, see ' 94.99

' 94.23 EXCEPTIONS.

Nothing in this subchapter shall be construed to apply to the sale, storage, or use of railroad track torpedoes, or other signaling devices used by railroads; nor to the sale, storage, or use of flashlight composition by photographers or dealers in photographic supplies; or prevent any public or private demonstration or display of fireworks of any kind if conducted under proper police supervision after application has been made and a permit issued by the Chief of the Fire Department, for such demonstration or display, and shall be of such a character, and so located, discharged, or fired, as in the opinion of the Chief of the Fire Department after proper inspection so as not to be hazardous to property or endanger any persons.

(Ord. 427, passed 1-20-86)

' 94.99 PENALTY.

Any person, firm, or corporation violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$200 for each offense. Each day the violation continues shall constitute a new offense.

Section

United States Public Health Service Food
Service Sanitation Ordinance and Code

95.01 Adoption by reference; amendments

Meat, Meat Products, and Meat Food Products

95.15 Adoption of state rules, regulations, and standards
for inspection

Milk

95.25 Provisions regulated by state law

Food Vendors and Establishments

95.30 Definitions

95.31 Adoption of Texas food establishment rules

95.32 Cleaning standards for commercial cooking equipment
adopted

95.33 Compliance with applicable laws required

95.34 Permit required

95.35 Permit issuance

95.36 Compliance required; posting; term; fee

95.37 Review of plans

95.38 Suspension

95.39 Revocation of permit

95.40 Service of notice; conduct of hearings

95.41 Frozen dessert standards

95.42 Frozen dessert certification required

95.43 Suspension, revocation and reinstatement of frozen
dessert certification

95.44 Labeling

95.45 Vending without certification

95.46 Possession or receiving from manufacturer without
certification

95.47 Food handler training certificate

95.48 Application

95.49 Temporary receipt; issuance

95.50 Training courses accepted

95.51 Fee

95.52 Records to be kept

Mobile Food Vendors

95.60 Annual inspection required

95.61 Central preparation facility and records required

95.62 Mobile food establishment restrictions

95.63 Backing truck to make or attempt sale

95.64 Unauthorized persons prohibited in mobile food
establishment

Pushcarts and Vending Afoot

- 95.70 Compliance required
- 95.71 Permits required
- 95.72 Suspension and revocation of permits
- 95.73 Prohibited conduct
- 95.74 Standards
- 95.75 Advertising
- 95.76 Permit fees

- 95.99 Penalty

UNITED STATES PUBLIC HEALTH SERVICE FOOD SERVICE
SANITATION ORDINANCE AND CODE

' 95.01 ADOPTION BY REFERENCE; AMENDMENTS.

The definitions; the inspection of food service establishments; the issuance, suspension, and revocation of permits to operate food service establishments; the prohibiting of the sale of adulterated or misbranded food or drink; and the enforcement of this section shall be regulated in accordance with the unabridged form of the most current edition of the "United States Public Health Service Food Service Sanitation Ordinance and Code", three certified copies of which shall be on file in the office of the City Clerk, provided that:

(A) The words "municipality of _____" in said unabridged form shall be understood to refer to the City of Burkburnett, Texas.

(B) The words "Health Authority" shall mean the City of Burkburnett Health Officer, and/or the Wichita Health Unit of Wichita County, Texas or their designated representative or representatives. (Ord. 265, passed 2-4-63) Penalty, see ' 95.99

MEAT, MEAT PRODUCTS, AND MEAT FOOD PRODUCTS

' 95.15 ADOPTION OF STATE RULES, REGULATIONS, AND STANDARDS FOR INSPECTION.

(A) The rules, regulations, and standards for the inspection of meat, meat products, and meat food products, promulgated by the Commissioner of Health of the state, under authority of Art. 4418d,

V.T.C.S., and all future amendments made thereto, are hereby in all things adopted and made a part of this as if set forth in full herein, and the provisions, standards, rules, and regulations contained therein are made mandatory requirements for the inspection and labeling of meat and meat food products produced, sold, or offered for sale within the limits of the city, with the "Texas State Approved Meat for Human Food" label thereon. Any establishment desiring to sell or offer for sale meat, meat products, and meat food products in the city containing thereon the "Texas State Approved Meat for Human Food" label on such meat, meat products, and meat food products shall be governed by the

specifications and regulations promulgated by the Commissioner of Health as approved by the State Board of Health adopted herein, and all requirements specified therein shall be complied with.

(B) Only meats bearing the inspection mark, stamp, tag, or label of the United States Department of Agriculture, the State Department of Health, any municipality bearing Texas State Approved legend, or the city shall be acceptable for sale in the city.
(Ord. 305, passed 11-16-70)

MILK

' 95.25 PROVISIONS REGULATED BY STATE LAW.

The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products sold for the ultimate consumption within the city or its police jurisdiction; the inspection of dairy herds, dairy farms, and milk plants; the issuing and revocation of permits to milk producers, haulers, and distributors shall be regulated in accordance with the provisions of the "Texas Milk Grading and Labeling Law" and the "Texas Specifications and Requirements," thereunder authorized, and the applicable provisions of the 1965 "Public Health Service Milk Ordinance and Code," certified copies of which shall be filed in the office of the appropriate official; provided, that Section 9 of the "Texas Specifications and Requirements" shall be replaced with: "From and after 30 days from the date on which this ordinance is adopted, only Grade A milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments: Provided, that in an emergency the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the health authority; in which case, such milk and milk products shall be labeled ungraded."
(Ord. 278, passed - -)

FOOD VENDORS AND ESTABLISHMENTS

' 95.30 DEFINITIONS.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

AAUTHORIZED AGENT AND EMPLOYEE.@ An employee of the general environmental health division of the regulatory authority.

ACOMMISSARY.@ A central preparation facility for supplies, cleaning, food prep and servicing operations by mobile food establishments.

AEXTENSIVE REMODELING.@ Twenty percent or greater of the square footage of the food establishment is to be remodeled.

AFOOD.@ A raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

AFOOD ESTABLISHMENT.@

(1) An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(a) Such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(b) That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(2) Includes:

(a) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(b) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is, on or off the premises; and regardless of whether there is a charge for the food.

(3) Does not include:

(a) An establishment that offers only prepackaged foods that are not potentially hazardous as that phrase is defined by 25 Texas Administrative Code ' 229.162;

(b) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(c) A food processing plant;

(d) A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(e) An area where food that is prepared as specified in division (3)(d) above is sold or offered for human consumption;

(f) A "bed and breakfast limited" facility as that phrase is defined by 25 Texas Administrative Code '229.162; or

(g) A private home that receives catered or home-delivered food.

AFROZEN DESSERT(S).@ Soft serve and frozen yogurt.

AFROZEN DESSERT PRE-MIX.@ Any raw dairy-based product used to create a frozen dessert.

AFROZEN YOGURT.@ A food produced by the bacterial fermentation of milk and served frozen or partially frozen.

ALABORATORY.@ A biological, physical or chemical laboratory which is under the supervision of the state or local health authority.

AMOBILE FOOD ESTABLISHMENT.@ A vehicle-mounted food establishment that is readily moveable. AMOBILE FOOD ESTABLISHMENT@ includes carts or trailers that are on wheels and designed to be drawn by a motor vehicle, regardless of whether the cart or trailer is fastened to a motor vehicle at any given time.

APRIMARY PROCESS.@ The food preparation or vending process for which the majority of the square footage of a food establishment is used. For example, in a grocery store of 20,000 square feet where 18,000 square feet are used for the display of pre-packaged groceries and 2,000 square feet are used for a fresh fish market, the primary process of that food establishment is pre-packaged grocery sales.

APROCESS.@ The method or amount of preparation of food utilized by a food establishment before the food is provided to the individual who will consume it.

APUSHCART.@ A non-self-propelled mobile food establishment on wheels. APUSHCART@ includes a mobile food establishment on a bicycle. Readily moveable means on wheels at all time.

AREGULATORY AUTHORITY.@ The city-county public health district.

ASOFT SERVE.@ A food similar to ice cream which is created by the combination of air and dairy-based ingredients in a machine at the point of sale.

ASTATE RULES.@ The state rules found at 25 Texas Administrative Code, Chapter 229, ' 161C171 and 173-175. These rules are also known as the Texas Food Establishment Rules.

AVEND AND VENDING.@ To sell, serve or otherwise provide food for human consumption.

AVEND POINT.@ The time and place at which food is served, vended or transferred to a consumer directly, regarding of whether there is a charge for the food.

(Ord. 775, passed 3-15-10)

' 95.31 ADOPTION OF TEXAS FOOD ESTABLISHMENT RULES.

The city adopts by reference the provisions of the current rules or the rules as amended by the State Board of Health found in 25 Texas Administrative Code, Chapter 229, ' 161-171 and 173-175 regarding the regulation of food establishments.

(Ord. 775, passed 3-15-10)

' 95.32 CLEANING STANDARDS FOR COMMERCIAL COOKING EQUIPMENT ADOPTED.

The city adopts by reference the provisions of NSF (National Sanitation Foundation)/ANSI (American National Standards Institute) 4: NSF International Standard/American National Standard for Food Equipment - Commercial cooking, rethermalization, and powered hot food holding and transport equipment regarding the minimum food protection and sanitation requirements for the materials, design, construction, and performance of commercial cooking, rethermalization, and hot food holding and transport equipment and their related components. Standards applicable to the materials, design and construction of commercial cooking equipment shall apply only to equipment installed after October 1, 2009.

(Ord. 775, passed 3-15-10)

' 95.33 COMPLIANCE WITH APPLICABLE LAWS REQUIRED.

All persons who manage, operate, accept employment in, or are employed in any food establishment shall comply with all applicable federal and state statutes and regulations and with all applicable sections of this code and city ordinances.

(Ord. 775, passed 3-15-10)

' 95.34 PERMIT REQUIRED.

(A) A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this division. A valid permit must be posted per ' 95.36 in or on every food establishment regulated by this division.

(B) Application and renewal.

(1) Any person desiring to operate a food establishment must make written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the proposed food establishment, and any information required by ' 95.37. The application must be submitted with the applicable fee. An incomplete application will not be accepted.

(2) Failure to provide all required information or falsifying information required may result in denial or revocation of the permit.

(3) All permits issued under this subdivision shall remain in force for one year from the date of issuance unless revoked or suspended by the regulatory authority. Permit fees shall be paid to the regulatory authority at the time of application for initial permits and fifteen (15) days prior to permit expiration for renewal permits. All permit holders, including non-profits, that submit renewal applications and or fees after the permit expires will be assessed a late charge. A complete application with updated information is required for each renewal permit. Any changes to the physical facility, menu or equipment must be included in the renewal application.

(Ord. 775, passed 3-15-10)

' 95.35 PERMIT ISSUANCE.

Prior to the approval of an initial food establishment permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with applicable laws and state rules. A food establishment that does not comply with applicable laws and state rules will be denied a permit or the renewal of a permit.

(Ord. 775, passed 3-15-10)

' 95.36 COMPLIANCE REQUIRED; POSTING; TERM; FEE.

(A) Only persons who comply with the requirements of this division shall be entitled to receive and retain a permit required by this subdivision. Such permit shall be posted in a conspicuous place in public view in or on the food establishment. All permits issued under this subdivision remain in force one year from the date of issuance unless revoked or suspended.

(B) The following permits will be issued under this subdivision:

(1) Process 1: low to moderate risk. This process involves food sale with or without preparation and includes no cooking. Generally, the steps in this process are: Receive | Store | Prepare | Hold | Serve | Vend | Stock.

(2) Process 2: high risk. This process involves food preparation for same day service. Generally, the steps in this process are: Receive | Store | Prepare | Cook | Hold | Serve.

(3) Process 3: very high risk. This process involves complex food preparation. Generally, the steps in this process are: Receive | Store | Prepare | Cook | Cool | Reheat | Hot Hold Serve.

(4) Temporary events. These events last no more than seven consecutive days and applicants are limited to five temporary event permits per year. No annually permitted establishment shall allow temporary event food vending at their site unless a temporary event application has been submitted to the regulatory authority.

(Ord. 775, passed 3-15-10)

' 95.37 REVIEW OF PLANS.

(A) Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, plans and specifications properly prepared for such construction, remodeling or conversion shall be submitted to the regulatory authority for review before work is begun. The submitted plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. Every commissary shall additionally submit plans showing refrigerated and dry storage areas reserved for mobile unit use. Food establishments that have been closed and are being reopened under new management as the same type of establishment shall be required to submit new equipment specifications and a floor plan of the food establishment. The regulatory authority shall approve the plans and specifications if they meet the requirements of the rules adopted by this division. The approved plans and specifications must be followed in construction, remodeling or conversion.

(B) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.
(Ord. 775, passed 3-15-10)

' 95.38 SUSPENSION.

(A) The regulatory authority may, without warning, notice, or hearing, suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. A supervisor at the regulatory authority will confirm the hazard before suspension is effective when possible. Suspension is effective upon service of the written notice required by this subdivision. When a permit is suspended, food operations shall immediately cease. The regulatory authority may end the suspension at any time if the reason for suspension no longer exists.

(B) Whenever a permit is suspended, the holder of the permit or the person in charge of the food establishment at the time of suspension shall be notified in writing that the permit is, upon service of the notice, immediately suspended. Opportunity for a hearing will be provided if the holder of the permit files a written request with the regulatory authority within ten days of receipt of written notice of suspension. Whenever a permit is suspended and a request for hearing made, the holder of the permit shall be afforded a hearing within 20 days of the receipt by the regulatory authority of a request for a hearing. If no written request for a hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.
(Ord. 775, passed 3-15-10)

' 95.39 REVOCATION OF PERMIT.

The regulatory authority may, after providing opportunity for a hearing, revoke a food establishment permit for serious or repeated violations of any of the requirements of this division or for

interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge of the food establishment at the time of revocation, in writing, of the reason for which the permit is subject to revocation. The permit shall be revoked at the end of ten days following service of such notice unless the holder of the permit files a written request for a hearing with the regulatory authority within such ten-day period. If no request for a hearing is filed within the ten-day period, the revocation of the permit becomes final.

(Ord. 775, passed 3-15-10)

' 95.40 SERVICE OF NOTICE; CONDUCT OF HEARINGS.

(A) A notice as required in this subdivision is properly served when it is delivered to the holder of the permit or the person in charge of the food establishment at the time of the notice or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.

(B) The regulatory authority shall conduct the hearings provided for in this subdivision at a time and place designated by the regulatory authority. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings and shall sustain, modify or rescind any notice or order considered in the hearing. The regulatory authority shall furnish a written report of the hearing decision to the holder of the permit.

(Ord. 775, passed 3-15-10)

' 95.41 FROZEN DESSERT STANDARDS.

(A) All frozen desserts must meet the following standards:

(1) Maximum temperature: 41°F;

(2) Maximum total coliform; 150/ml.

(B) All soft serve must meet the following standard: Maximum standard plate count: 200,000/ml.

(Ord. 775, passed 3-15-10)

' 95.42 FROZEN DESSERT CERTIFICATION REQUIRED.

(A) Every food establishment that prepares, serves, provides, sells, displays or stores for future sale, or offers for sale frozen desserts for human consumption must have a frozen dessert certification in addition to its permit, regardless of permit category.

(B) In order to receive and maintain frozen dessert certification:

(1) One employee from each mobile, stationary, temporary, seasonal or permanent facility or location must attend and successfully

complete frozen dessert training annually. The regulatory authority will provide frozen dessert training four times a year to provide instruction in general operation, cleaning and maintenance procedures.

(2) At least three samples of any frozen dessert pre-mix and three samples of any final frozen dessert product shall be sampled annually by the regulatory authority from each machine operated by a food establishment. Each sample will be submitted to an approved laboratory for analysis of its content.

(3) If any samples collected from a food establishment are not within the standards established in ' 95.41, additional samples will be collected and an inspection of the equipment and facility will be conducted to determine the reason for the violation of the standards. No food establishment shall adopt any procedures that would result in repeated failures of the first samples collected for any annual inspection. Two consecutive frozen dessert samples determined by laboratory analysis to be above the limits of the standards will result in suspension of the permit to operate the food establishment or suspension of the frozen dessert certification. A resample and inspection fee will be charged for each consecutive inspection and sample tested after a permit or certification has been suspended.

(C) The certification shall be posted in a conspicuous place in public view.

(D) All certifications issued under this subdivision shall remain in force for one year from the date of issuance unless revoked or suspended.

(Ord. 775, passed 3-15-10)

' 95.43 SUSPENSION, REVOCATION AND REINSTATEMENT OF FROZEN DESSERT CERTIFICATION.

(A) A frozen dessert certification issued under this subchapter may be suspended or revoked by the regulatory authority upon the violation by the holder of any of the terms of this subchapter.

(B) Any person or food establishment whose frozen dessert certification has been suspended or revoked shall immediately discontinue the preparation, service, provision, sale, display or storage for future sale of frozen dessert until the defects that caused the suspension have been corrected and the certification reinstated. Following correction, the applicant may request reinstatement of the certification by the regulatory authority. The regulatory authority may require the certification holder to demonstrate proper cleaning procedures and maintenance of the frozen dessert equipment before reinstating the certification.

(C) Notice of suspension or revocation, and the conduct of hearing for any suspension or revocation of a frozen dessert certification shall be conducted under the procedures established in ' 95.38 through 95.40.

' 95.44 LABELING.

All frozen dessert products and frozen dessert pre-mix not sold at the point of manufactured origin must be properly labeled according to current Food and Drug Administration guidelines.

(Ord. 775, passed 3-15-10)

' 95.45 VENDING WITHOUT CERTIFICATION.

It shall be unlawful for any person to prepare, serve, provide, sell, display or store for future sale, or offer for sale frozen desserts at a food establishment that does not hold a current frozen dessert certification.

(Ord. 775, passed 3-15-10)

' 95.46 POSSESSION OR RECEIVING FROM MANUFACTURER WITHOUT CERTIFICATION.

It shall be unlawful for any person to receive into the city for sale or to offer for sale in the city or to have in storage for future sale ice cream mix or frozen dessert pre-mix without first applying for all required permits and certifications from the regulatory authority.

(Ord. 775, passed 3-15-10)

' 95.47 FOOD HANDLER TRAINING CERTIFICATE.

It shall be unlawful for any person to accept employment in any food establishment without securing from the regulatory authority a food handler's training certificate. It shall be unlawful for any person operating or managing any food establishment to employ or retain any person or allow any person to work as a food handler unless that person has obtained either a current temporary receipt issued under section 95.51 or a current food handler's training certificate.

(Ord. 775, passed 3-15-10)

' 95.48 APPLICATION.

Any person who is required to have a food handler's training certificate under this division shall make application to the regulatory authority. Every applicant shall attend and successfully complete a training course in sanitation and the handling of food. The course must be approved for this purpose by the regulatory authority.

(Ord. 775, passed 3-15-10)

' 95.49 TEMPORARY RECEIPT; ISSUANCE.

(A) When an applicant for a certificate required by this division makes application to the regulatory authority, a temporary receipt, valid for 30 calendar days, will be issued to the applicant to allow the applicant to continue employment at a food establishment while completing the course required by ' 95.48. Applicants are limited to three successive temporary receipts. If an applicant has not successfully completed the training course by the time the third temporary receipt expires, he cannot continue employment as a food handler.

(B) Upon successful completion of the training course, the regulatory authority will issue a food handler's training certificate, which shall expire two years from the date of the food handler's certificate application. The fourth consecutive food handler's training certificate shall become permanent, and attending future food handler's training courses is not required.

(Ord. 775, passed 3-15-10)

' 95.50 TRAINING COURSES ACCEPTED.

The regulatory authority shall accept training issued by all companies or programs approved by the Texas Department of State Health Services under 25 Texas Administrative Code ' 229.178. Persons who have completed such training shall make application to the regulatory authority for food handler's training certification and pay the appropriate fee to be registered as a food handler.

(Ord. 775, passed 3-15-10)

' 95.51 FEE.

A fee shall be charged by the health district for completing the food handler's training certificate and maintaining records. There shall be a charge for replacement cards.

(Ord. 775, passed 3-15-10)

' 95.52 RECORDS TO BE KEPT.

It shall be the duty of the regulatory authority to provide for the keeping of a permanent record, together with the date of issuance of all permanent food handlers' certificates issued to a person under this division. All other food handler's certificate records shall be kept for a period of not less than five years.

(Ord. 775, passed 3-15-10)

MOBILE FOOD VENDORS

' 95.60 ANNUAL INSPECTION REQUIRED.

The regulatory authority shall inspect every mobile food establishment during normal business hours at the Wichita Falls/Wichita County Local Public Health District, 1700 Third Street, Wichita Falls, Texas each year prior to the mobile food establishment's use for vending. Additional inspections shall be made when indicated. The regulatory authority shall inspect each mobile food establishment to determine whether it complies with this article and state and local laws, and whether it qualifies as a mobile food establishment.

(Ord. 775, passed 3-15-10)

' 95.61 CENTRAL PREPARATION FACILITY AND RECORDS REQUIRED.

(A) Mobile food establishments shall operate from a commissary or other fixed food establishment and shall report to such location daily for supplies and for daily cleaning and servicing operations. The

commissary or other fixed food establishment shall be permitted and inspected separately from the mobile food establishments it services.

(B) Mobile food establishments shall maintain, for a period of no less than 180 days, records of daily commissary reporting. Such records shall contain the name and address of the commissary and the name or identification number of the mobile unit. The records shall note the daily service of the water system, the daily service of the sewage system, the daily cleaning of the mobile food establishment interior, and the name of the person responsible for such. The records shall also note the frequency of the cleaning of the exterior of the unit. These records shall be provided to the regulatory authority upon request. (Ord. 775, passed 3-15-10)

' 95.62 MOBILE FOOD ESTABLISHMENT RESTRICTIONS.

(A) A person shall not vend on any portion of city streets where the speed limit exceeds 30 miles per hour or on four-lane divided roadways.

(B) A person shall not vend within 500 feet of any property used as a public or private elementary, junior high, middle or high school from one hour before the regular school day to one hour after the regular school day. This subsection shall not apply on days when children do not attend the school in question.

(C) A person shall vend only when the mobile food establishment is lawfully parked or stopped.

(D) A person shall vend only from the side of the mobile food establishment away from moving traffic and as near as possible to the curb or edge of the street.

(E) A person shall not vend from a mobile food establishment to a person standing in the roadway.

(F) A person shall not stop a mobile food establishment on the left side of a one-way street to vend.

(G) A person shall not vend from a mobile food establishment on a street unless there is a clear view of the mobile food establishment for a distance of 200 feet in each direction.

(H) A person shall not make any alteration, removal, attachments, placement or change in, under or upon a mobile food establishment that would prevent or otherwise reduce ready mobility. (Ord. 775, passed 3-15-10)

' 95.63 BACKING TRUCK TO MAKE OR ATTEMPT SALE.

The driver or operator of a mobile food establishment shall not back the vehicle or trailer to make or attempt a sale. (Ord. 775, passed 3-15-10)

' 95.64 UNAUTHORIZED PERSONS PROHIBITED IN MOBILE FOOD ESTABLISHMENT.

(A) The driver or operator of a mobile food establishment shall not permit any unauthorized person to ride in or on the vehicles or trailers comprising the mobile food establishment.

(B) A person shall not ride in or on a mobile food establishment unless employed by its owner or unless authorized in writing to do so by the owner or police department.
(Ord. 775, passed 3-15-10)

PUSHCARTS AND VENDING AFOOT' 95.70 COMPLIANCE REQUIRED.

It shall be unlawful for an individual to operate a pushcart or to vend food items afoot without complying with this subdivision and any applicable requirements of this subchapter.
(Ord. 775, passed 3-15-10)

' 95.71 PERMITS REQUIRED.

No person shall vend food items from a pushcart or vend food items from afoot who does not possess a license required by the city and all applicable permits which may be required under this subchapter.
(Ord. 775, passed 3-15-10)

' 95.72 SUSPENSION AND REVOCATION OF PERMITS.

Notice of suspension or revocation, and the conduct of hearing for any suspension or revocation of a permit for a pushcart or vending afoot shall be conducted under the procedures established in '' 95.31 through 95.40.
(Ord. 775, passed 3-15-10)

' 95.73 PROHIBITED CONDUCT.

No person shall:

(A) Operate a pushcart in any area other than that area bounded by the street curb (or edge of the pavement, if no curb is in existence) and the property line abutting the street right-of-way line.

(B) Operate a pushcart or vend any food within 25 feet of the street corner of an intersection.

(C) Operate a pushcart within ten feet of a driveway or alley and its approach.

(D) Operate a pushcart in such a manner as to obstruct or hinder the movement of pedestrian traffic. There shall be a clear pedestrian path with a minimum width of three feet at all times.

(E) Leave any mobile pushcart unattended or park a pushcart in one location for extended periods of more than 24 hours. It shall be

a defense to prosecution under this section that the pushcart was legally parked at its commissary for service or storage.

(F) Store or leave any pushcart overnight on any street or sidewalk or park any pushcart in any location other than in a lawful parking place in conformance with city and state parking regulations.

(G) Operate a pushcart or vend food items afoot while selling food for immediate consumption unless he or she has his or her own trash receptacle which is readily available for his patrons' use.

(H) Leave any location after operating a pushcart of vending food items afoot without first picking up, removing and disposing of all trash or refuse remaining from sales made by him or her.

(I) Set up, maintain or permit the use of any table, carton, rack, or any other device or item to increase the selling or display capacity of his pushcart.

(J) Set up, maintain or permit the use of any tables, chairs or benches for customer seating outside or near a pushcart.

(K) Solicit or conduct business from a pushcart or while vending afoot with persons in motor vehicles, other than motor vehicles which are legally parked.

(L) Sell anything other than that which he is licensed to vend.

(M) Employ or permit the use of artificial lighting devices on a pushcart, which would create a hazard to motorists.

(N) Solicit or conduct business within 100 feet of the place of business of any merchant who sells food for immediate consumption.
(Ord. 775, passed 3-15-10)

' 95.63 STANDARDS.

(A) A pushcart shall be no larger than four feet wide, five feet long, and four feet tall, excluding a shade umbrella.

(B) All equipment installed or stored in any part of a pushcart shall be secured in order to prevent movement during transit and to prevent detachment in an overturn or a collision.
(Ord. 775, passed 3-15-10)

' 95.64 ADVERTISING.

No advertising shall be permitted on any pushcart except for the posting of prices, the identification of the name of the product, and the name of the vendor.
(Ord. 775, passed 3-15-10)

' 95.65 PERMIT FEES.

The Wichita Falls/Wichita County Local Public Health District shall be authorized to collect fees for permits annually.
(Ord. 775, passed 3-15-10)

' 95.99 PENALTY.

Any violation of '' 95.31 through 95.53, 95.60 through 95.64 or 95.70 through 95.76, including a violation of the rules adopted by reference pursuant to '' 95.31 through 95.33, shall be a Class C misdemeanor punishable by a fine. Each day upon which a violation occurs shall constitute a separate violation.
(Ord. 775, passed 3-15-10)

CHAPTER 96: NUISANCES

Section

- 96.01 Definitions
- 96.02 Public nuisances prohibited
- 96.03 Abatement procedure; service of notice
- 96.04 Refusal to abate nuisance; costs to city; privilege lien
- 96.05 Enumerations of nuisances cumulative

- 96.99 Penalty

' 96.01 DEFINITIONS.

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

"ANY AND ALL OTHER OBJECTIONABLE, UNSIGHTLY, OR UNSANITARY MATTER OF WHATEVER NATURE." All uncultivated vegetable growth, objects and matter not included within the meaning of the other terms, and herein used, or any other matter or thing which is liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition.

"BRUSH." All trees or shrubbery under seven feet in height which are not cultivated or cared for by persons owning or controlling the premises.

"LOT, PARCEL or REAL ESTATE." In addition to those grounds within their respective boundaries, all lots or parcels of ground lying and being adjacent thereto and extending beyond the property line of any such lot or parcel of real estate to the curb line of adjacent streets where the curblines has been established and 14 feet beyond the property line where no curblines has been established and also to the center of adjacent alleys.

"RUBBISH." All refuse, tin cans, old vessels of all sorts, useless articles, discarded clothing, and textiles of all sorts, and in general all litter and other things usually included within the meaning of the term.

"WEEDS." All rank and uncultivated vegetable growth or matter which has grown to more than nine inches in height, or which, regardless of height, is liable to become an unwholesome mass or breeding place for mosquitoes or vermin.
(Ord. 432, passed - -86; Am. Ord. 509, passed 7-19-93; Am. Ord. 823, passed 11-19-12)

' 96.02 PUBLIC NUISANCES PROHIBITED.

(A) The existence of weeds, rubbish or any other objectionable, unsightly and unsanitary matter of whatever nature covering or partly covering the surface of any lot, parcel or real estate within the city is hereby declared a nuisance.

(B) The existence of any condition on any lot, parcel or real estate within the city which is liable to cause disease or produce, harbor or spread disease germs of any nature, or tends to render the surrounding atmosphere unhealthy, unwholesome, or obnoxious, is hereby declared a nuisance.

(C) It shall be unlawful for any person:

(1) To allow any condition deemed a nuisance to exist on any lot, parcel or real estate which is owned or occupied by such person, or

(2) To recreate a condition deemed a nuisance on any property located within the city limits.

(D) That no person, firm, or corporation shall hereafter deposit, place, or dump or cause to be deposited, placed or dumped, any trash, refuse, debris, tin cans, glass, worn out automobile parts, waste material of any kind or character upon the streets, alleys, or public lands within the city limits.

(E) That no person, firm or corporation shall hereafter intentionally deposit, place, or dump or cause to be deposited, place or dumped, any grass clipping, leaves, or yard waste material of any kind or character upon the streets, alleys, or public lands within the city limits.

(Ord. 432, passed - -86; Am. Ord. 509, passed 7-19-93; Am. Ord. 623, passed 11-19-01; Am. Ord. 823, passed 11-19-12) Penalty, see ' 96.99

' 96.03 ABATEMENT PROCEDURE; SERVICE OF NOTICE.

(A) Whenever the existence of any such nuisance, as herein defined, on any lot or parcel or real estate situated in the city shall come to the knowledge of the City Health Officer, or the Wichita County Health Unit, or the City Manager, or any designated agent appointed or employed by the City Manager, it shall be his duty and he shall cause a written notice identifying such property to be issued forthwith to the person owning or having possession or control of same requiring the abatement of such nuisance by grubbing and removing such weeds, brush, rubbish, or other objectionable, unsightly or unsanitary matter of whatever nature, as the case may be. Such notice shall also state that in default of abatement by him within ten days from the date of the notice, the city may cause the same to be done and pay therefore and charge the cost and expense incurred in having such work done for improvements made to the owner of such property and fix a lien on such property. The City Health Officer or his duly authorized representatives, shall compile the cost of such work done and improvements made in abating such nuisance, and shall charge the same against the owner or possessor of the property. Before the city files a lien on such property as hereinafter provided it shall send a statement to the property owners or persons having possession and/or control of said property, and thereafter if the charges are not paid, then the lien shall be filed, including a \$100 administration fee.

(B) The notice, as required above, shall be in writing and either served personally or sent by letter addressed to the owner of the lot or parcel of real estate at his post office address or publication in a newspaper of general circulation in the city two times within ten consecutive days, if personal service may not be had, as aforesaid, or if the owner's address be unknown.

(Ord. 432, passed - 86; Am. Ord. 509, passed 7-19-93; Am. Ord. 823, passed 11-19-12) Penalty, see ' 96.99

' 96.04 REFUSAL TO ABATE NUISANCE; COSTS TO CITY; PRIVILEGE LIEN.

(A) In the event the owner shall fail or refuse to abate the nuisance within the time required in ' 96.03, the city may cause the nuisance to be abated and when the same is done the City Health Officer or his duly authorized representatives shall compile the cost of such work done or improvements made in abating such nuisance and shall charge such costs against the owner of such premises, as provided for in ' 96.03.

(B) A certified copy of such costs shall also be filed with the County Clerk of Wichita County and when the same has so filed the city shall have a privilege lien upon such lot or parcel of real estate, second only to tax liens and liens for street improvements, to secure the expenditures so made, and 10% interest on the amount from the date of such payment, after the fixing any such lien, as aforesaid, and for any such expenditures, and interest, as herein before set out, suit may be instituted and recovery and foreclosure had in the name of the city in any court of competent jurisdiction, and in any such suit or action, the statement of charges, so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements.

(Ord. 432, passed - 86; Am. Ord. 509, passed 7-19-93; Am. Ord. 823, passed 11-19-12) Penalty, see ' 96.99

' 96.05 ENUMERATIONS OF NUISANCES CUMULATIVE.

The enumerations of the nuisances and the remedy for abating the same, as set out in this chapter, shall not be exclusive, but cumulative.

(Ord. 432, passed - 86; Am. Ord. 509, passed 7-19-93; Am. Ord. 823, passed 11-19-12)

' 96.99 PENALTY.

Any person, or persons, or firm, or corporation who violates any of the provisions of this chapter or who fails to comply with this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fine a sum of not less than \$25 and not more than \$200 for each offense and each day's continuance of failure to comply therewith shall constitute a separate and distinct offense for each day.

(Ord. 432, passed - 86; Am. Ord. 509, passed 7-19-93; Am. Ord. 823, passed 11-19-12)

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GENERAL PROVISIONS

' 97.01 HOURS OF OPERATION; OVERNIGHT CAMPING.

(A) All city parks shall be closed every day from 12:00 midnight until 5:00 a.m.; and it shall be unlawful for anyone: (i) to use, occupy or camp overnight in a city park, (ii) to walk, jog, run, or drive through a city park, (iii) to be present in a city park or (iv) to use any improvements in a city park during such period when they are closed. However, if anyone applies for permission to carry out an activity in a park during such hours, and the City Manager or his designee determines, in his sole discretion, that such activity will not create a disturbance or public nuisance, the City Manager or his designee shall have authority to issue a special permit for such activity.

(B) The Burkburnett Skate Park will be open from 8:00 a.m. until 12:00 midnight unless otherwise posted. The skate park may be closed during inclement weather, as to the discretion of the Parks and Recreation Department.

(Ord. 629, passed 3-4-02; Am. Ord. 656, passed 4-21-03) Penalty, see ' 97.99

' 97.02 DESIGNATION OF CITY PARKS.

(A) Except for those regulations which apply specifically to River Creek Park (' 97.15 et seq.) and those regulations which apply specifically to the Community Center (' 97.35 et seq.), the regulations in this subchapter apply to the following parks:

- Friendship Community Park
- Freeman Park
- Hardin Park
- Skelton Park
- Burk Royalty Park
- Burkburnett Youth Soccer Complex
- Permian Park
- Pocket Park

Boy's Youth Baseball Complex
Girl's Youth Softball Complex
Burkburnett Skate Park

(B) This list of city parks may be amended, from time to time, and these regulations shall be applicable to any city park added to this list effective on the date such new park is added to the list. (Ord. 629, passed 3-4-02; Am. Ord. 656, passed 4-21-03)

' 97.03 REGULATION OF ALCOHOL AND CONTROLLED SUBSTANCES.

(A) The possession or consumption of alcoholic beverages, toxic drugs, narcotic drugs or any substance which is classified as a "controlled substance" under state or federal law is prohibited in all city parks and in all public street rights-of-way abutting such parks and at the Community Center except as follows:

(1) A person may possess or use prescription drugs which have been prescribed for that individual by a physician licensed to prescribe the particular drug or drugs being used, so long as such drug or drugs are only being used by the person for whom they have been prescribed and are being used in strict compliance with the instructions of the physician prescribing them; and

(2) A person or persons may possess or consume beer and/or wine if a permit has been obtained from the city in the manner set forth in division (B) of this section and if the person or persons possessing or consuming the beer and/or wine are doing so in strict compliance with the terms of the permit and any other applicable law.

(B) An event coordinator desiring to have beer or wine available for consumption for a special event in a city park may make application to the City Manager or his or her designee for a permit to do so. The "event coordinator" is the person making the application and who will be responsible for compliance with this chapter. In addition to the information required for other permits provided by this chapter, the city staff may request such additional information as may be reasonably required so that they can evaluate the application to insure that the consumption of beer and wine will not: violate any applicable law or regulation applicable to the use of the park or the Community Center or create a nuisance to adjoining areas. An application shall not be approved if it is determined that any persons involved in the function have been convicted of any felonies, Class A or Class B misdemeanors or any offense in violation of the Texas Alcoholic Beverage Code or any similar law regulating the use, consumption or possession of alcoholic beverages. The city may require the applicant and any other person involved in the proposed event to consent to a criminal history check as a condition for the issuance of a permit. The city may specify terms and conditions to the issuance of a permit which are in addition to the terms and conditions otherwise provided by this chapter (including additional insurance coverage) to accomplish the purposes of this division.

(1) The city may charge an application fee for each application submitted pursuant to this division (B). The amount of said

application fee shall be established, from time to time, by resolution of the Board of Commissioners based upon the recommendation of the City Manager. In addition, the city may charge, in advance, upon filing an application, an amount equal to its estimated cost which will be payable to third parties in processing an application, such as the cost of a criminal history check.

(2) The application for a permit shall be submitted to the Board of Commissioners for a determination as to whether the permit should be issued and as to what terms and conditions should be required for the issuance of the permit.

(3) The application for a permit for a private event shall be submitted to the City Manager for a determination as to whether the permit should be issued and as to what terms and conditions should be required for the issuance of a permit.

(4) For purposes of this division (B), a Apublic event@ includes any of the following:

(a) Any event which is advertised as being open to the public;

(b) Any event which is not restricted to a definable group of people so that the event coordinator is unable to estimate the maximum number of persons who will be permitted to participate in the event; or

(c) Any event for which a fee or any type of consideration is required for admission by participants. For purposes of this division (B), a Aprivate event@ is any event which is not a public event.

(Ord. 339, passed 10-18-76; Am. Ord. 629, passed 3-4-02; Am. Ord. 728, passed 11-20-06) Penalty, see ' 97.99

' 97.04 SPONSORSHIP AND NAMING RIGHTS.

No person, firm or organization may sponsor a city park or purchase or install equipment or improvements in a city park without approval of the city. Likewise, no city park or any equipment or improvements in a city park will be named after any person, firm or organization without approval of the city. Any person, firm or organization seeking approval under this section shall make application to the city manager who will then make a recommendation to the Board of Commissioners of the city for final action.

(Ord. 629, passed 3-4-02)

' 97.05 CERTAIN ACTS PROHIBITED.

(A) It shall be unlawful for any person, firm, or corporation using a city park to do any of the following acts or to permit any child or person under disability that is under their care, custody or control to do any of the following acts:

(1) Willfully mark, deface, disfigure, injure, tamper with, or displace or remove any trees or growing plants, building, bridges, tables, benches, fireplaces, railings, paving or paving material, waterlines or other public utilities, parts, or appurtenances thereof, signs, notices or placards whether temporary or permanent, monuments, stakes, posts, or other boundary markers, or other structures or equipment, facilities or park property or appurtenances whatsoever, either real or personal.

(2) Throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream or other body of water in or adjacent to any park or any tributary, stream, storm sewer, or drain flowing into such waters, any substance, matter, or thing, liquid or solid, which will or may result in the pollution of such water.

(3) Bring in, dump, or deposit: (i) garbage created from activities which take place outside of a park (such as household garbage or commercial garbage) at any location within a city park or a garbage receptacle located in the park, (ii) garbage created from activities which take place inside a particular park in any location within that park other than a garbage receptacle located in that park or if garbage receptacles are not provided or if they are full, such garbage shall be carried away from the park by the person responsible for its presence in the park, and properly disposed of elsewhere. For purposes of this section, a person who obtains any permit for the use of a park or any facilities within a park is the person responsible for compliance with this section. As used in this subsection, the term "garbage" shall have its usual meaning and shall include, without limitation, any bottles, glass containers, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, refuse, or other trash. No garbage shall be placed in any waters in or contiguous to any park.

(4) Disturb the peace, loiter, or use any profane, obscene, blasphemous language, or to be guilty of disorderly, lewd or lascivious conduct of any kind in any park.

(5) Endanger the safety of any person by any conduct or act.

(6) Commit any assault, battery, or engage fighting.

(7) Violate any rule for the use of the park, made or approved by the Board of Commissioners.

(8) Prevent any person from using any park or any of its facilities, or interfere with such use in compliance with this chapter and the rules applicable to such use.

(9) Failure to yield the right-of-way to any pedestrian by any person who is riding a bicycle, roller skates, roller blades, scooter or skateboard on a park trail, sidewalk or parking lot in any park.

(10) Placement or erection of any structure, sign, bulletin board, post, pole or advertising device of any kind whatever in any

park, or attaching any notice, bill, poster, sign, wire, rod or cord to any tree, shrub, fence, railing, post or structure therein without approval from the City Manager.

(11) Use of playground equipment or playground areas designated for children of a particular age by persons who are not in the designated age group.

(12) Parking a motor vehicle: (i) upon any park road, trail or sidewalk, (ii) in any area where signs are posted by the city prohibit parking and (iii) along any roadway within or adjacent to a park unless signs are posted by the city permitting parking in such areas. Parking lots are available for the public at baseball and softball complexes.

(13) Driving any motorized vehicle over or through any park or park trail or sidewalk except any city maintenance vehicle or private vehicles needed for special events which have been approved by the City Manager.

(14) Plying the vocation of a solicitor, agent, peddler, fakir, mendicant, beggar, strolling musician, organ grinder, exhorter or showman in any park without City Manager approval.

(15) Selling or offering for sale any goods or wares or staging musical events without permission from or by contract with the City Manager.

(16) Walking, skating, standing or sitting on any border, flowerbed, monument, vase, fountain, railing, or fence in any park.

(17) Practicing golf in any park not designated for that purpose.

(B) All references in this section to "park" shall refer to the city parks designated in ' 97.02 of this Code.

(C) The following are the rules and regulations for the Burkburnett Skate Park:

(1) Users of this facility assume all risk of personal injury or damage to personal property.

(2) No children under five years of age are allowed in the park.

(3) A safety helmet must be worn at all times when using the skate park, ANO HELMET, NO SKATE.@ Kneepads, elbow pads, wrist pads and shirts are highly recommended.

(4) No food, drinks, smoking, reckless, or improper behavior allowed in the skate park facility.

(5) The skate park and its ramps/rails are for use of skateboards and inline skates only.

(6) No personal ramps or rails are allowed.

(7) Alcoholic beverages are prohibited in the skate park.

(8) No pets allowed within skate park facility.

(9) Skating on bleachers is prohibited.

(10) No loitering allowed inside the skate park.

(Ord. 629, passed 3-4-02; Am. Ord. 656, passed 4-21-03) Penalty, see ' 97.99

' 97.06 ANIMALS IN CITY PARKS.

It shall be unlawful for any person to bring any dangerous animal into any city park; and it shall be unlawful to permit any dog to be in any city park unless such dog is on a leash not more than 12 feet long. Owners shall be responsible for cleanup and proper disposal of animal waste.

(Ord. 629, passed 3-4-02) Penalty, see ' 97.99

' 97.07 TETHERING OR PASTURING ANIMALS.

It shall be unlawful for any person to tether or pasture any cow, horse, mule or domestic animal in or upon any park.

(Ord. 629, passed 3-4-02) Penalty, see ' 97.99

' 97.08 HORSE BACK RIDING.

It shall be unlawful for any person to ride a horse on or across any park, park trail or sidewalk except for special events (such as pony rides, parades, etc.) with prior City Manager approval.

(Ord. 629, passed 3-4-02) Penalty, see ' 97.99

' 97.09 FRIENDSHIP COMMUNITY PARK POND.

(A) The pond at Friendship Community Park is intended for aesthetic use only; swimming or wading is prohibited. Any special activities that include use of the pond shall be authorized through the City Manager.

(B) Fishing will be allowed in the Friendship Community Park Pond under the supervision of the Texas Parks and Wildlife Department. All fishing regulations as set forth by the Texas Parks and Wildlife Department will be observed.

(Ord. 629, passed 3-4-02; Am. Ord. 650, passed 11-18-02; Am. Ord. 743, passed 10-15-07; Am. Ord. 868, passed 1-19-15) Penalty, see ' 97.99

' 97.10 SOFTBALL AND BASEBALL COMPLEXES.

Softball and baseball complexes are primarily intended for games and practices associated with organized leagues. Public use by individuals and organizations other than those which are a part of an organized league shall be permitted, however, an organized league game or practice will take priority for the use of these fields. Lights for these complexes are used for organized team practices and games and will not be used for individual practice purposes.

(Ord. 629, passed 3-4-02) Penalty, see ' 97.99

' 97.11 PARK PAVILIONS.

(A) Park pavilions are intended for public use. However special interest groups, families, and clubs or organizations may reserve the pavilions for special daily events or activities. Reservations for the pavilions may be made at City Hall in accordance with rules and procedures established by the city. On days when these pavilions are reserved they will be closed to the general public.

(B) Permission to use the park pavilions will be denied to any group whose purpose is illegal, whose conduct would generally be unsuitable for the surroundings due to noise or other factors, or for which satisfactory sponsorship is not provided.

(C) Reservations for use of the park pavilions can be made through the offices of the City Hall, 501 Sheppard Road and will be filled on a first come basis and should be made at least one week in advance. Reservations must be made in person and by a responsible representative of the individual, group or organizations requesting use of the park pavilions. Reservations require signing of rental agreement and a refundable deposit for the use of the park pavilions.

(D) To insure the longest possible use of the pavilions, reservations may not be made for more than two consecutive calendars years. After January 1 of each year, reservations will be accepted on a first come, first serve basis for any open dates.

(E) In accepting use of the park pavilions, the responsible person and/or organization making the reservations will be held responsible for proper conduct of those attending and for expenses caused from any damage. The city assumes no responsibility for any of the users property that may be damaged or lost. Users are responsible to turn out lights, empty trash and remove all their materials upon completion of their use.

(F) All pavilions require a \$25 deposit. Rental fees are as follows:

Rental Fees

	2 Day	All Day
Royalty Pavilion	\$15.00	\$ 25.00
Basketball Pavilion	\$50.00	\$100.00
Friendship Pavilion	\$25.00	\$ 50.00
Rotary Pavilion	\$25.00	\$ 50.00

(G) Renters needing chairs and tables in excess of the numbers present at the pavilion are required to rent additional seating and/or tables at their own expense. Sound equipment, lighting, trash removal, and any other equipment or services deemed necessary for the event for which the facility is rented are the sole responsibility of the renters, unless otherwise agreed in writing in the rental agreement. (Ord. 629, passed 3-4-02) Penalty, see ' 97.99

' 97.12 USE OF FRIENDSHIP COMMUNITY PARK AMPHITHEATER.

The following rules and regulations apply to the use of Friendship Community Park Amphitheater:

(A) Use, Admission Fees, Household Pets Prohibited. Friendship Community Park Amphitheater may be used by clubs, organizations, and other group activities. During these scheduled events at the amphitheater, admission fees may be charged to individuals attending these activities. Household pets will not be allowed on the premises during these activities, concerts or events.

(B) Reservations. Reservations for use of the amphitheater can be made through City Hall, 501 Sheppard Road and will be filled on a first come basis. Reservations shall be made at least seven business

days in advance and no more than 120 days in advance of the event. Reservations must be made in person and by a responsible representative of the individual, group or organizations requesting use of the amphitheater. Reservations require signing of rental agreement and a refundable deposit for the use of the amphitheater.

(C) Rental Agreement. A written rental agreement contract will be required. Policy rules and regulations will be stated on the rental agreement. All groups using the Amphitheater shall comply with all laws whether they are federal, state or local to include all ordinances of the city and all rules, regulations and requirements of the Police and Fire Departments. Fire lanes must remain clear at all times. A violation of any law or ordinance by any renter or guest of any Renter will subject renter to an immediate cancellation of the rental contract, forfeiture of rental deposit or discontinuation of the event in progress, in addition to any other applicable civil or criminal penalty.

(D) Prohibited uses. The following uses are prohibited:

(1) Conducting of private school, including but not limited to dance classes, aerobics, exercise classes, union activities, and cosmetic training sessions.

(2) Use of the amphitheater for religious functions is limited to special services only with approval of the City Manager.

(3) The use on any portion by any individual, firm or corporation for the purpose of selling merchandise, except the selling of merchandise by displaying, exhibiting or presenting of the merchandise under the sponsorship of a civic organization, antique club, or other charitable organization.

(4) Attaching decorations to walls, ceiling or cabinets.

(5) Consumption or possession of alcoholic beverages.

(6) Use of roller blades, skates or skate boards on amphitheater walkways and stage.

(7) Use of glass containers.

(E) Deposit. A refundable deposit shall be required in connection with each application to use the amphitheater as follows:

Non-profit groups or individuals: \$250.00

Profit groups or individuals: \$500.00

A reservation shall be confirmed by a deposit fee or it will be canceled. The deposit for the reservation must be made at the time of reservation. Forfeiture of the deposit fee shall occur:

(1) When cancellation of the reservations is not made prior to 72 hours to the reservations.

(2) If the keys to the facilities are not returned to City Hall within the allotted time.

(3) When the facilities are not left in as good a condition as upon arrival. Each tenant using the amphitheater shall be responsible for setting up and taking down all tables and chairs, cleanup and litter disposal.

(4) All utilities including lights, water, etc., must be turned off before leaving the amphitheater. In determining if the facilities are left in an unacceptable condition shall be at the sole discretion of the city staff.

(F) Insurance Requirements. Groups or individuals for profit are required to procure and maintain, at its sole cost and expense for the duration of this Facility Rental Agreement, Comprehensive General Liability insurance in the name of the renter, for limits of not less than \$500,000 for personal injury or death arising out of any one occurrence and property damage insurance in an amount of not less than \$500,000 for damage to property arising out of any one occurrence. This insurance policy must cover, in addition to the general public, all employees of the city working at the facility, all entertainers and their support staff and any other individual participating in or attending the event for which the facility is rented. The general liability insurance shall be written by a carrier licensed and admitted to do business in the State of Texas. Unless waived by the City Manager, the renter shall procure an endorsement to such policy naming the city as an additional insured during the term of the rental agreement. Renter must furnish proof of all required coverage through a certificate of insurance or other proof acceptable to the City Manger, prior to the event.

(G) Rental fees. Rental of the facilities includes entire premises. Outside patrons may not use the amphitheater when rented. Rental fees shall be paid prior to receiving keys to the facility. Rental fees shall be as follows:

Non-profit groups or individuals:

\$100.00 the first 2 hours and \$ 20.00 each hour there after.
2-hour minimum required.

Profit groups or individuals:

\$250.00 the first 2 hours and \$50.00 each hour there after.
2-hour minimum required.

(H) Hours of use. The hours in which the amphitheater can be used are from 6:00 a.m. until 12:00 midnight every calendar day of the year. All activities must end at 12:00 midnight.

(I) Tenants to indemnify city. All tenants of the amphitheater shall indemnify the city and hold the city harmless from: (i) Any and

all liabilities for any claim or claims resulting from their rental or use of the premises including all claims based upon the intentional conduct or negligence of the tenant's officers, agents, employees or invitees and (ii) all expenses incurred by the city in defending against any such claim or claims, including attorneys fees, court costs and expert fees. All rental contracts shall specifically include such provisions.

(J) Sanction. Any group or organization that has been found to be in flagrant violation of this policy shall be prohibited from the use of the facility for a period of time as determined by the City Manager.

(K) Additional chairs, tables; equipment. Renters needing chairs and tables in excess of the numbers present at the amphitheater are required to rent additional seating and/or tables at their own expense. Sound equipment, lighting, trash removal, and any other equipment or services deemed necessary for the event for which the facility is rented are the sole responsibility of the Renters, unless otherwise agreed in writing in the rental agreement.
(Ord. 629, passed 3-4-02) Penalty, see ' 97.99

' 97.13 APPLICATIONS AND RENTAL AGREEMENTS.

The City Manager is authorized and directed to prepare appropriate rental applications, rental agreements and other documents or contracts which are consistent with the rules stated in this chapter and is authorized to execute such agreements on behalf of the city.
(Ord. 629, passed 3-4-02)

' 97.14 UNLAWFUL USE.

It shall be unlawful for any person to use or occupy any city park in a manner inconsistent with the rules and regulations specified in this chapter or for any person to fail to comply with the rules and regulations specified in this chapter. Any person convicted of a violation of this section shall be punished by a fine in accordance with current City Code of Ordinances.
(Ord. 629, passed 3-4-02) Penalty, see ' 97.99

RIVER CREEK PARK

' 97.15 USE OF GROUNDS AND FACILITIES.

Each person, firm, or corporation, using the public parks and grounds shall clean up all debris, extinguish all fires when such fires are permitted and leave the premises in good order, and the facilities in a neat and sanitary condition.
(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.16 PICNIC AREAS AND USE.

(A) No person in a park shall picnic or lunch in a place other than those designated for that purpose. Attendants shall have the authority to regulate the activities in such areas when necessary to prevent congestion and to secure the maximum use for the comfort and convenience of all. Visitors shall comply with any directions given to achieve this end.

(1) Tables shall not be moved and open fires are not to be built without first securing permission from the park ranger.

(2) Motorcycles and horses will be permitted only in designated areas.

(B) No person in a park shall use any portion of the picnic areas or of any of the buildings or structures therein for the purpose of holding picnics to the exclusion of other persons, nor shall any person use such area and facilities for an unreasonable time if the facilities are crowded.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.17 HOURS OF OPERATION; OVERNIGHT CAMPING.

(A) River Creek Park shall be opened daily to the public during the hours of 9:00 a.m. to 10:00 p.m. of any one day.

(B) Any section, or part of the park, may be declared closed to the public by the park ranger at any time and for any interval of time, either temporarily or at regular or stated intervals.

(C) Overnight camping will not be permitted; and it shall be unlawful for any person, or persons (other than city personnel conducting city business therein), to occupy or be present in the park during any hours in which the park is not open to the public.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.18 GROUP ACTIVITIES; PERMIT REQUIRED.

(A) Whenever any group, association, or organization desires to use the park facilities for a particular purpose, such as, picnics, parties, or theatrical or entertainment performances, a representative of the group, association, or organization shall first obtain a permit from the park ranger for such purposes. The Board of Commissioners may adopt an application form to be used by the park ranger for such situations.

(B) The park ranger shall grant the application if it appears that the group, association, or organization will not interfere with the general use of the park by the individual members of the public and if the group, association, or organization meets all other conditions contained in the application. The application may contain a requirement for an indemnity bond to protect the city from any liability of any kind or character and to protect city property from damage.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.19 SPECIAL ACTIVITIES.

(A) It shall be unlawful to engage in special activities including flying model airplanes, golf practice, games, and picnics except at locations specifically designated for such activities by the park ranger. Areas for such activities may be reserved by groups for use at specified times.

(B) The golf course is off limits to park visitors and trespassing is prohibited.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.20 DRIVING OR PARKING VEHICLES IN PARK.

It shall be unlawful to drive or park any automobile except on a street, driveway, or parking lot in any park; or to park or leave any such vehicle in any place other than one established for public parking.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.21 CERTAIN ACTS PROHIBITED.

It shall be unlawful for any person, firm, or corporation using such parks to either perform or permit to be performed any of the following acts:

(A) Willfully mark, deface, disfigure, injure, tamper with, or displace or remove any trees or growing plants, building, bridges, tables, benches, fireplaces, railings, paving or paving material, waterlines or other public utilities, parts, or appurtenances thereof, signs, notices or placards whether temporary or permanent, monuments, stakes, posts, or other boundary markers, or other structures or equipment, facilities or park property or appurtenances whatsoever, either real or personal.

(B) Throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay, or other body of water in or adjacent to any park or any tributary, stream, storm sewer, or drain flowing into such waters, any substance, matter, or thing, liquid or solid, which will or may result in the pollution of those waters.

(C) Bring in or dump, deposit, or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, or refuse, or other trash. No such refuse or trash shall be placed in any waters in or contiguous to any park or left anywhere on the grounds thereof, but shall be placed in the proper receptacles where these are provided; where receptacles are not so provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.

(D) Disturb the peace, or use any profane, obscene, or blasphemous language.

(E) Endanger the safety of any person by any conduct or act.

(F) Commit any assault, batter, or engage in fighting.

(G) Violate any rule for the use of the park, made or approved by the Board of Commissioners.

(H) Prevent any person from using any park or any of its facilities, or interfere with such use in compliance with this subchapter and the rules applicable to such use.

(I) Appear in bathing costume at any place in the parks except within the limits of designated bathing places or areas, and all bathing costumes shall conform to commonly accepted standards.

(J) Dress or undress on any beach, or in any vehicle, toilet, or other place, except in such bathing houses or structures as may be provided for that purpose.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.22 ANIMALS.

It shall be unlawful to bring any dangerous animal into any park; and it shall be unlawful to permit any dog to be in any park unless such dog is on a leash not more than six feet long.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.23 SELLING OR PEDDLING IN PARK.

It shall be unlawful for any person other than employees and officials of this park district acting on behalf of this district, to vend, sell, peddle, or offer for sale any commodity or article within any park.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.24 SIGNS.

It shall be unlawful for anyone to paste, glue, tack, or otherwise post any sign, placard, advertisement, or inscription whatever; nor shall any person erect or cause to be erected any sign whatever on any public lands or highways or roads adjacent to a park.

(Ord. 367, passed 7-16-79) Penalty, see ' 97.99

' 97.25 EXCEPTION.

The provisions of this subchapter shall not apply to any properly authorized government official in pursuit of any official duty.

(Ord. 367, passed 7-16-79)

' 97.26 ENFORCEMENT OF REGULATIONS.

The park ranger shall enforce the provisions of this subchapter and any other ordinance relating to the use of this park.

(Ord. 367, passed 7-16-79)

COMMUNITY CENTER

' 97.35 DEFINITION.

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

"COMMUNITY CENTER." The Burkburnett Community Center and the entire premises thereof, including the auditorium, multi-purpose building, and all other parts or portions thereof.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.36 HOURS OF OPERATION.

The hours of operation for the community center shall be Monday through Sunday 6:00 a.m. until 12:00 midnight.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.37 CONTRACTS; RESERVATIONS; FEE.

(A) A written rental agreement contract will be required by the city.

(B) Reservations may be made by phone or in person.

(C) Friday, Saturday, and Sunday bookings of the community center shall not be made longer than four weeks in succession.

(D) Use of the community center by private schools for conducting school will be prohibited.

(E) The booking of religious functions shall apply to functions of the recreational, extracurricular type, excluding religious services, at which the purpose is the propagation of religious teachings or doctrines.

(F) Reservations may be made for dances and music concerts. The reservation fee for dances shall include a minimum of \$30 for a uniformed policeman per 100 participants if deemed necessary by the City Manager; \$60 for 200 participants, etc. Any group having between 50 and 100 minors involved would pay for one policeman. This \$30 is the rate for the first three hours for the policeman=s time. Each additional hour would cost \$10 per policeman. Police officers will be provided by the City Manager. This shall be applicable to music concerts.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93; Am. Ord. 673, passed 4-19-04)

' 97.38 BOOKING RATES FOR AUDITORIUM OR MEETING ROOM.

(A) Auditorium:

	<u>Rate</u>
Base category	\$150.00 2 day*
	250.00 all day*
Local service clubs (Local service clubs booked on a regular basis), local non-profit service clubs, non-profit fund raising; i.e. Chamber of Commerce, Rotary Club, Lions Club)	20.00 per hour

* 2 day = 5 hours or less; all day = 6 hours or more.

(B) Small meeting room.

	<u>Rate</u>
Base category	\$100.00 2 day*
	150.00 all day*
Local service clubs (Local service clubs booked on a regular basis), local non-profit service clubs, non-profit fund raising; i.e. Chamber of Commerce, Rotary Club, Lions Club)	10.00 per hour

* 2 day = 5 hours or less; all day = 6 hours or more.

(C) Kitchen.

	<u>Rate</u>
Base category	\$50.00 2 day*
	75.00 all day*

* 2 day = 5 hours or less; all day = 6 hours or more.

(Ord. 387, passed 11-16-81; Am. Ord. 401, passed 1-17-83; Am. Ord. 402, passed 2-9-83; Am. Ord. 520, passed 12-20-93; Am. Ord. 703, passed 9-12-05)

' 97.39 PAYMENT FOR USE OF CENTER.

Rental payment for use of the community center shall be due and payable to the city. Rental payment of the center must be paid in person by 5:00 p.m. of the previous day of the reservation. (Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.40 ESTABLISHMENT OF INSURANCE REQUIREMENTS.

The City Commission shall establish all insurance requirements pertaining to the use of the community center and its premises. (Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.41 TENANTS TO INDEMNIFY CITY.

All tenants of the community center shall hold the city harmless from any and all liabilities for any claim or claims resulting from their rental or use of the premises and shall indemnify the city in case of any claims resulting from their operations or occurring during their occupation of the premises, and all rental contracts shall specifically include such provisions. (Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.42 LIABILITY FOR DAMAGES.

Any person, firm, or corporation renting the community center shall be held liable for any damages to the center or any of its facilities. Damages to the facilities will not be tolerated, such as interior, exterior, furniture, fixtures, and the like (a renter will pay for damages if it exceeds deposit). Deliberate destruction will result in charges being filed and a permanent ban from use of the facility.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.43 REFUSAL TO RENT FACILITIES.

(A) Acting through its agent, the City Manager, the city hereby reserves the right to refuse to rent the facilities of the community center to any individual or group not acting in the best interest of the public or the city.

(B) The City Manager has full authority to refuse center privileges to any person, group, or organization who, in his opinion, will, or has nonpayment of previous rental time or otherwise violated the center rules and purposes.

(C) No individual, group, or organization will be allowed to use or make reservations in the community center, if that individual's, group's, or organization's name appears on the Attorney General's subversive list as published by the federal government.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.44 FREE USE PROHIBITED.

The minimum cost of operating fee for any and all events or attractions shall be determined and collected for use of the community center and premises. No free use thereof shall be permitted, extended, or granted to any individual, organization, or group except a governmental election.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.45 SPECIAL SERVICE AND EQUIPMENT.

All expenses for special services, equipment, and conveniences shall be charged to and paid by the tenant as part of the rental, in addition to other charges provided for in this subchapter.

(A) Police, guards, and the like. In any case where the services of police, guards, or watchmen are needed or desired incidental to the handling of a large crowd or for the protection of property, equipment, or people as in the opinion of the City Manager, are required to protect life and property, they shall be paid by the organization renting the community center and will be employed by and subject to the supervision of the City Manager. The number to be hired shall be left to the discretion of the City Manager.

(B) Each organization using the community center shall be responsible for setting up and taking down of all tables and chairs in the meeting room or auditorium.

(C) Each organization using the community center shall be responsible for setting up and taking down of all tables and chairs in the meeting room or auditorium.

(D) Decorations may be applied with tape only. All decorations and tape must be taken down by the renter.

(E) No tape shall be applied to the floors.

(F) The city will assist in the removal of snow from the parking lot of the community center only if personnel and money are available. (Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.46 BROADCASTING OR TELEVISIONING PERFORMANCES, LECTURES, AND THE LIKE.

No renter of community center facilities shall broadcast or televise any performance, lecture, concert, or public or private meeting by radio or television without written consent of the city. The lessee shall furnish and install all equipment necessary for the broadcast and for the control booth other than that furnished by the city.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93) Penalty, see ' 97.99

' 97.47 SALE OF MERCHANDISE.

The use of any portion of the community center by any individual, firm, or corporation for the purpose of selling merchandise is hereby prohibited, except the selling of merchandise by display, exhibit, or presence of the merchandise under the sponsorship of a civic organization, antique club, art club, or charitable organization.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93) Penalty, see ' 97.99

' 97.48 RULES OF CONDUCT.

(A) There shall be no alcohol on the premises except as permitted by ' 97.03.

(B) No one who is intoxicated (as that term is defined in the Texas Penal Code) will be admitted.

(C) Abusive language will not be tolerated.

(D) Anyone found abusing any part of the center or its equipment will be ejected immediately.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93; Am. Ord. 728, passed 11-20-06) Penalty, see ' 97.99

' 97.49 ADMINISTRATOR IN CHARGE OF CENTER.

The administrator in charge of the community center shall be the City Manager or other authorized personnel, subject to approval of the City Commission, and the terms, conditions, and duties of their employment shall be prescribed by the City Manager, subject to the approval of the City Commission.

(Ord. 387, passed 11-16-81; Am. Ord. 520, passed 12-20-93)

' 97.50 COMMUNITY SIGN AND USE POLICY.(A) Scope.

(1) Background. The city owns and operates a community sign. The sign is located at 735 Davey Drive. The sign is a computerized LED electronic message center.

(2) Purpose. The purpose of the community sign is to promote city and community organization events.

(B) Criteria/procedure.

(1) Eligible users. Not-for-profit, government organizations and customers who have reserved the Community Center, are eligible users of the community sign. Examples of not-for-profit and government organizations include but are not limited to: youth organizations, Lion Clubs, Rotary Clubs, religious institutions, government institutions, educational institutions, senior citizen clubs, and the like. For-profit organizations may use the community sign when hosting a non-profit community event with city approval from the City Manager. The community sign shall not be used for commercial advertising, nor to advertise or promote political candidates, political parties, or political issues.

(2) Application.

(a) Community sign use applications shall be submitted to the City Clerk at least 14 calendar days prior to the proposed start date of a message. Community sign use applications must be in writing, and must include the following:

1. Name of event to be promoted;
2. Name of sponsoring organization;
3. Contact person=s information, including complete address and daytime telephone number;
4. Date(s) of event; and
5. Time period requested for community sign use.

(b) Community sign use applications will be accepted and documented on a first-come-first-serve basis, based on receipt of completed applications. Incomplete applications will be denied. In the event that too many message requests are received for a particular date, the city reserves the right to adjust display dates or decide what messages will be displayed, in an attempt to honor all requests. The city will make a good faith effort to play messages in the order in which they were received.

(c) All messages must be of broad community interest. Applications for messages that contain, but are not limited to the following, will be denied: political campaign messages, for-profit advertising, religious messages, messages pertaining to illegal activities, and any message containing profanity or offensive language.

(d) The city shall also honor traditional events, which are held annually, by reserving the community sign for those purposes.

(3) Message. All messages should be as short as possible, with a maximum of 100 characters. Messages may not contain graphics. The message must be supplied by the applicant. The city will not create graphics. All messages are subject to change by the city, and the city is not responsible for errors.

(4) Duration. Messages for not-for-profit and government organizations shall be played no more than 14 days in advance of an event, with a 14-day maximum duration. Messages for customers who have reserved the Community Center may be posted for a maximum of 3 days prior to the event. The length of time a message is displayed and number of times a message is displayed in a given day is at the discretion of the city.

(5) Annual use. Organizations are limited to a maximum of ten messages per year.

(6) Message priority. The city reserves the right to prioritize the order of all messages played on the community sign. Messages from the city, along with any emergency notices, take precedence over community messages.

(7) Charge. A fee of \$10 per booking will be charged in advance by the city.

(8) Approval. Messages will be reviewed and approved by the City Manager or his/her designee.

(Ord. 472, passed 8-13-90; Am. Ord. 476, passed 10-15-90; Am. Ord. 520, passed 12-20-93; Am. Ord. 858, passed 8-18-14)

' 97.51 DEPOSIT RULES.

(A) A deposit fee of \$200 is required for the reservation.

(B) The deposit for the reservation must be made no later than one week after the request for a reservation has been made.

(C) Any reservation not confirmed by the \$200 deposit within a one week period will automatically be cancelled.

(D) Deposit will be forfeited if facilities are not left in as good condition as when rented.

(E) Deposit fee will be forfeited if cancellation notice is not given 72 hours prior to the reserved time, with the exception of a sickness or death in the family.

(F) Deposit will be returned to the renter upon verification by staff that facilities are left in good condition and keys have been returned.

(Ord. 520, passed 12-20-93; Am. Ord. 703, passed 9-12-05)

PARKS AND RECREATION BOARD

' 97.60 PURPOSE.

It is the purpose of this subchapter to provide a City Parks and Recreation Board to be located in the city.
(Ord. 800, passed 2-21-11)

' 97.61 ESTABLISHMENT.

A City Parks and Recreation Board is hereby established and created.
(Ord. 800, passed 2-21-11)

' 97.62 APPOINTMENT OF MEMBERS.

The City Parks and Recreation Board shall consist of seven members. The City Manager or his or her designated representative shall be an ex officio member. The ex-officio members shall have no voting privileges and obligations as do the seven regular members.

(A) The members of the City Parks and Recreation Board shall be appointed by the Board of Commissioners and the members of the Park and Recreation Board shall be resident citizens of the corporate limits of the city. The term of office of said members shall be two years; provided, however, at the first meeting following adoption of the ordinance from which this article is derived, three members of the park and recreation board shall draw by lot to determine which three members shall serve two-year terms; four members shall draw by lot to determine which four shall serve one-year terms; thereafter, all appointments will be made at the expiration of said terms, by the Board of Commissioners for a period of two years and until their successors in office are appointed. The Parks and Recreation Board shall elect a Chairperson, vice-chairperson, and secretary from among its members, who shall serve for a period of one year or until his or her successor is elected.

(B) Upon the death, resignation, removal or expiration of the term of office of any member of the Board, the Board of Commissioners shall appoint a successor as a member of the board, who shall hold his or her membership for the unexpired term of the member he or she is appointed to succeed, or for a period of two years when the appointment is made due to the expiration of a term of office.
(Ord. 800, passed 2-21-11)

' 97.63 COORDINATION WITH CITY STAFF.

The City Parks and Recreation Board shall receive reports, advice and available services from the various city departments as directed by the City Manager, or his or her designated representative. When directed by the City Manager, any department head or official of the city shall be available to the Board for advice and consultation, and they shall cooperate with and render such services for the board as shall come within the scope of the duties of the City Manager.
(Ord. 800, passed 2-21-11)

' 97.64 POWERS AND DUTIES.

The City Parks and Recreation Board shall have the power and authority and it shall be its duties:

(A) To make studies and project plans for the improvements and acquisition of the public park and open spaces with a view of its development and extension, and to recommend all matters for the development and advancement of the city park and open space facilities, layouts and appearance to perform the duties of advance planning for future acquisition and development of potential park and open space lands.

(B) To study and recommend plans of the development of parks and open spaces in any portion of the city, and any other land outside the city which in the opinion of the City Parks and Recreation Board bears a relation to the planning of the park and recreation program of the city and to recommend such changes in additions and extensions of plans or maps within the city as it deems advisable.

(C) To aid and assist the city manager in the procuring of financial and other aids and assistance for the city from the state and federal governments and their agencies for each and all of the purposes herein enumerated.

(D) To act with and assist all other municipal boards, governmental agencies, regional associations and especially the Board of Commissioners in formulating proper plans for municipal park and open space development.

(E) To plan and recommend the location, plan and extent of city parks, playgrounds, and other public grounds, and public improvements, for the location and planning of public buildings, schools and other properties, and of recreational facilities, including those public and privately owned improvements for water, lights, sanitation, sewer disposal, drainage, flood control and transportation, and for the removal, relocation, widening, extension, narrowing, vacation, abandonment or change of use of any of the foregoing public places, works, buildings, facilities or utilities as they may relate to parks and open spaces either now or contemplated for the future.

(F) To recommend general rules and regulations governing the use of parks, open spaces, community, recreational facilities and buildings.

(G) To recommend plans for improving, developing, expanding and beautifying the parks and to cooperate with the Board of Commissioners and other agencies of the city in advising, establishing, locating, improving, selecting, expanding and maintaining the public parks and playgrounds for public recreation.

(H) To aid and assist the Board of Commissioners by recommending plans for the development of civic or community centers.

(I) To recommend programs to the Board of Commissioners, in an advisory capacity, to originate, plan and coordinate a recreation program for all segments of the population, throughout all seasons of the year. Efforts by the board should be made to ensure that all recommendations will utilize existing facilities and organizations to provide recreational and leisure-time activities to the citizens. The board should consider possibilities of gaining cooperative use of non-city-owned facilities and implementing proven programs to attract participants for recreational activities.

(Ord. 800, passed 2-21-11)

' 97.65 RULES.

(A) Said park and recreation board shall make such rules and regulations for its own government and designate such time and place for holding regular meetings as it deems proper. Four members of the City Parks and Recreation Board shall constitute a quorum for transaction of business.

(B) Should any member of the park and recreation board be absent for four meetings during one 12-month period, it shall be the responsibility of the chairperson, or in his absence, the Secretary of the City Parks and Recreation Board to notify the Board of Commissioners, through the city manager, with a record of said absences and of any and all extenuating circumstances related to the absences.

(C) The City Parks and Recreation Board shall have the authority to consider and make recommendations to the Board of Commissioners in writing from time to time on any and all matters pertaining to the city's public parks and recreation system.

(D) All recommendations made by the Board to the Board of Commissioners shall be by the majority vote of the Board, and such recommendations shall normally be made through the City Manager.

(E) The City Manager shall confer with the City Park and Recreation Board during the preparation of his or her annual park department budget recommendation to the Board of Commissioners. The City Manager shall be required to inform the Board of Commissioners of the Board's recommendations concerning annual park and recreation appropriations, and in those instances where his recommendation differs from that of a majority of the Board, the board chairperson may have a hearing before the Board of Commissioners to directly report the majority's recommendation including the source of funds to support such recommendation.

(F) The City Parks and Recreation Board shall have no authority in the choice of employees who may be assigned to park and recreation activities nor in the establishment of salary ranges for such employees. The board may offer advice to the City Manager as to persons who may be available for employment and may advise the City Manager and Board of Commissioners as to needs in the area of park and recreation that might be met by additional employees.

(G) All revenues derived from park and recreation related activities which are under the direct control of the city shall be deposited to the city general fund and utilized as determined by the Board of Commissioners during the annual budgeting of funds for all city departments.

(Ord. 800, passed 2-21-11)

' 97.66 ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS.

The Parks and Recreation Board may accept gifts, grants, and donations of money, personal property, and real property for use in expanding and improving the park facilities and services available to the people of this city.

(Ord. 275, passed 1-3-66)

' 97.67 OBTAINING GRANTS.

The Parks and Recreation Board may negotiate with any agency of the United States and the state in order to obtain grants to assist in the expansion and improvement of park services available to the people of the city.

(Ord. 275, passed 1-3-66)

' 97.68 VACANCIES.

Vacancies on the Parks and Recreation Board may be filled by a majority vote of the remaining Board members for unexpired terms.

(Ord. 275, passed 1-3-66)

' 97.69 RECORDS TO BE KEPT.

The Parks and Recreation Board shall keep a record of its proceedings and the record shall be open to inspection by the public.

(Ord. 275, passed 1-3-66)

' 97.70 RESPONSIBILITY OF BOARD MEMBERS TO MAKE RECOMMENDATIONS.

The Parks and Recreation Board shall be responsible for making recommendations to the Board of Commissioners for the operation of city parks.

(Ord. 275, passed 1-3-66)

' 97.71 RULES TO BE MADE FOR ADMINISTRATION OF PARK SERVICES.

The Parks and Recreation Board may make rules, consistent with the purposes, policies, principles, and standards provided by this subchapter to regulate the administration of park services in the city.

(Ord. 275, passed 1-3-66)

' 97.99 PENALTY.

(A) Any person who is convicted of violating this chapter for which another penalty has not been provided shall be punished by a fine not exceeding \$200.

(B) Any person, firm, or corporation who violates any of the provisions of ' 97.15 through 97.26 shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum of not less than \$5 and not more than \$200 for each offense. Each day's continuance of a failure to comply therewith shall constitute a separate and distinct offense for each of those days.

(Ord. 367, passed 7-16-79)

CHAPTER 98: PUBLIC LIBRARY

Section

General Provisions

- 98.01 Purpose
- 98.02 Compensation and expenses
- 98.03 Detaining materials or property belonging to library;
injuring or defacing library materials

Burkburnett Library Trustees

- 98.15 Establishment
- 98.16 Composition; members
- 98.17 Terms
- 98.18 Election of officers
- 98.19 Meetings; quorum
- 98.20 Vacancies
- 98.21 Gifts, grants, and donations
- 98.22 Records
- 98.23 Librarian and assistant to be employed
- 98.24 Administration of library services

- 98.99 Penalty

GENERAL PROVISIONS

' 98.01 PURPOSE.

It is the purpose of this chapter to provide a city public library to be located in the city.
(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.02 COMPENSATION AND EXPENSES.

The number of employees, the salaries, and the operating expenses of the library shall be as fixed in the city's budget each year.
(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.03 DETAINING MATERIALS OR PROPERTY BELONGING TO LIBRARY;
INJURING OR DEFACING LIBRARY MATERIALS.

No person shall willfully detain any book, magazine, newspaper, pamphlet, manuscript, audio-visual material, or other property belonging to the public library, for a length of time exceeding 20 days from the due date of such material, by writing, marking, tearing, breaking, or otherwise mutilating such materials or property.
(Ord. 350, passed 12-19-77; Am. Ord. 541, passed 2-19-96) Penalty, see ' 98.99

BURKBURNETT LIBRARY TRUSTEES

' 98.15 ESTABLISHMENT.

The Board of the Burkburnett Library Trustees is hereby established and created.

(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.16 COMPOSITION; MEMBERS.

The Board of the Burkburnett Library Trustees shall consist of ten members. Ex officio members shall be the County Commissioner representing the city, the City Manager, and the Superintendent of Schools. Ex officio members shall be non-voting members. The remaining seven members shall be appointed by the City Commissioners. After the initial appointment, members shall be appointed by the City Commissioners from nominees submitted by the Burkburnett Library Trustees.

(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.17 TERMS.

Each member holds office for a term of two years and until his successor is appointed and qualified, except that the first seven members appointed shall be appointed for a term so as to provide for various terms, so that all memberships shall not terminate in the same year.

(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.18 ELECTION OF OFFICERS.

The Board of Library Trustees shall elect a Chairperson, vice-chairperson, secretary and treasurer from among its members, who shall serve for a period of one year or until his successor is elected.

(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.19 MEETINGS; QUORUM.

(A) The Board of Library Trustees shall hold at least nine regular meetings per year in the city, on dates fixed by rule of the Board of Library Trustees. The Board of Library Trustees shall make rules providing for the holding of special meetings.

(B) Four voting members of the Board shall constitute a quorum for the transaction of business.

(C) All meetings of the Board shall be open to the public.

(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.20 VACANCIES.

Vacancies on the Board of Library Trustees may be filled by a

majority vote of the remaining Trustees for unexpired terms.
(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.21 GIFTS, GRANTS, AND DONATIONS.

(A) The Board of Library Trustees may accept gifts, grants, and donations of money, personal property, and real property for use in expanding and improving the library facilities and services available to the people of this city.

(B) The Board may negotiate with any agency of the United States and the state in order to obtain grants to assist in the expansion and improvement of Library services available to the people of this city.
(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.22 RECORDS.

The Board of Library Trustees shall keep a record of its proceedings and the record shall be open to inspection by the public.
(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.23 LIBRARIAN AND ASSISTANT TO BE EMPLOYED.

The City Manager shall employ a librarian, and assistants as deemed advisable, when funds are made available to the Board for such purpose.
(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.24 ADMINISTRATION OF LIBRARY SERVICES.

(A) The Board of Library Trustees may make rules, consistent with the purposes, policies, principles, and standards provided by this chapter to regulate the administration of library services in the city.

(B) The Board shall be responsible for the operation of a city library.
(Ord. 271, passed 7-19-65; Am. Ord. 549, passed 3-17-97)

' 98.99 PENALTY.

Whoever violates any provision of ' 98.03 shall be fined not more than \$200 for each offense. Each day a violation continues shall constitute a separate offense.
(Ord. 350, passed 12-19-77; Am. Ord. 541, passed 2-19-96)

CHAPTER 99: STREETS AND SIDEWALKS

Section

Construction and Improvements

- of
- 99.01 Use of streets in placing material used in construction of building and other improvements
 - 99.02 Cost of street improvement shall be assessed against property; notification; hearing
 - 99.03 Procedure for paving streets; installing curbs, gutters, and drainage

Obstructions; Advertisements

- 99.15 Posting of signs and the like on public ways and places
 - 99.16 Placement of obstructions prohibited
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 - 99.18 Removal of signs; cost to city
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CONSTRUCTION AND IMPROVEMENTS

' 99.01 USE OF STREETS IN PLACING MATERIAL USED IN CONSTRUCTION OF BUILDING AND OTHER IMPROVEMENTS.

(A) It shall be unlawful for any person, firm, copartnership, corporation, joint stock association, or others to place building materials and supplies to be used in the construction of any building or improvement on the sidewalk or in the streets of the city, except as is provided in division (B) of this section.

(B) No materials or supplies shall be placed upon any of the sidewalks, but the same shall be kept open for passage at all times; and any necessary sheds or passageways for the protection of pedestrians shall be erected over all sidewalks, and all materials and supplies used in the erecting or construction of any building or improvement shall be placed in the street at a distance of not to exceed one-third of the width of the street from the sidewalk.
(Ord. 47, passed 7-7-19) Penalty, see ' 99.99

' 99.02 COST OF STREET IMPROVEMENT SHALL BE ASSESSED AGAINST PROPERTY; NOTIFICATION; HEARING.

(A) (1) Whenever the Board of Commissioners shall determine to improve any street, avenue, alley, highway, public place, or square, or any portion thereof, within the corporate limits of the city, by excavating, filling, grading, raising, paving, or repaving same in a permanent manner, or by the construction or reconstruction of

sidewalks, curbs, and gutters to the extent and out of such materials as the Board of Commissioners may decide upon, and shall propose that part of the cost of such improvement shall be assessed against the property, and the owners of property abutting on said street, avenue, alley, highway, public square, or portion thereof so to be improved, in accordance with the provisions of applicable state law; and shall propose to assess against the owner of any railroad or street railroad occupying any such street, avenue, highway, public square, or portion thereof so to be improved, the cost of the improvement between and under the rails and tracks of that railroad or street railroad, and two feet on the outside thereof, as provided by that Chapter, then in all such cases, before a special assessment is actually levied, or finally determined upon, a full and fair hearing shall be given to the owners of property abutting on such street, avenue, alley, highway, public place, or square, or portion thereof, and to the owner or owners of any railroad or street railroad occupying any portion of the same, preceded by a reasonable notice thereof given to such owners, their agents, or attorneys.

(2) Such notice shall be by advertisement inserted at least three times in some newspaper published in the city, the first publication to be made at least ten days before the date of the hearing.

(B) In addition to the notice by publication as provided by division (A) of this section, the Board of Commissioners may, by resolution, provided also for the mailing to the owners a copy of such notice by registered letter deposited in the United States mail and directed to the owners, if known, or by the service upon such owners in person, or upon the president, general manager, or any agent of any such railroad or street railroad, in person, by any person over the age of 14 years, of a copy of the notice. However, the methods of notice provided by this section shall be merely cumulative of the service of notice by publication mentioned in division (A) of this section. The notice so to be served shall state the time and place of the hearing, the general character of improvements determined upon by the Mayor and Board of Commissioners, the street, avenue, alley, highway, public place, or square, or portion thereof, to be improved, and against the owners thereof, and an estimate of the portion of such cost proposed to be assessed against the owner or owners of any railroad or street railroad occupying such street, avenue, alley, highway, public place or square, or portion thereof.

(C) (1) On the day at the time stated in the notice, any person, firm, or corporation or association interest in any property that may be claimed to be subject to assessment for the purpose of paying the cost of any such improvement or any part thereof, including any railroad or street railroad against the properties of which and/or the owners of which an assessment is proposed, shall be entitled to and shall be afforded a full and fair hearing before the Board of Commissioners, as to all matters affecting the property or any claim of personal liability or objection to any

irregularity or invalidity of any of the proceedings with reference to the making of the improvements, or any other objection thereto. At such time such owner shall have the right to contest any assessment proposed to be levied and any personal liability, the regularity of the proceedings with reference to the improvement and the benefit of the improvement to their property, and no assessment shall be made against the owner of any abutting property or against his property in any event, in excess of the benefit to such owner in the enhanced value of his property by means of such improvement, as ascertained at such hearing.

(2) At the hearing aforesaid, the persons, firms, corporations, or associations making objections shall be afforded opportunity to appear in person or by representative or attorney, and produce evidence, and the hearing may be adjourned from time to time by the Board of Commissioners until fully completed, and the Board of Commissioners shall inquire into and determine all such objections.

(D) Nothing herein contained shall be construed as limiting or in any manner affecting any right or privilege granted or afforded any such owners of abutting property or of any railroad or street railroad by the provisions of applicable state law.
(Ord. 131, passed 4-21-24)

' 99.03 PROCEDURE FOR PAVING STREETS; INSTALLING CURBS, GUTTERS, AND DRAINAGE.

The following regulations and procedure shall be complied with on paving streets, installing curbs and gutters, and putting in drain pipes or dips at driveways.

(A) Any person, corporation, or company planning to change existing curbing, install culverts, drain pipe, or dips in driveways, must first get permission from the City Street Superintendent as to what type to install and the proper grade so as to provide suitable drainage.

(B) When curb and gutter is installed, it must be installed so as to provide proper drainage on the street and under the supervision of the Street Superintendent.

(C) Any person, company, or corporation desiring to have street paving done in new additions or subdivisions, must first make application to the City Manager's office for permission to install paving. He will then notify the County Commissioner who will determine the amount of footage to be paved and the total cost of the paving. The city will bill the developer for the amount and upon payment of the bill to the city, the Commissioner will be notified to proceed with the work.

(D) Any person, company, or corporation making application for paving must sign an agreement assuming all responsibility for damages from flying asphalt and the like and that the city or county will not be held responsible for such damages, of any kind.

(E) The deadline for making application for paving shall be December 31 for paving to be installed the following summer, in order to provide time for the work to be included in the following year's work program.

(F) Any person, corporation, or company may contract paving work to any contractor so long as it is performed under city supervision. (Ord. 237, passed 5-25-59)

OBSTRUCTIONS; ADVERTISEMENTS

' 99.15 POSTING OF SIGNS AND THE LIKE ON PUBLIC WAYS AND PLACES.

(A) No person shall paint, mark, or write on, or post or otherwise affix, any sign, handbill, poster, or advertisement of any nature to or upon any sidewalk, crosswalk, curb, curb stone, street lamp post, hydrant, tree, shrub, tree stalk or guide, railroad trestle, electric light or power or telephone pole, public bridge, drinking fountain, or any other public place in any manner.

(B) No off-premise sign (as that term is defined in Texas Local Government Code ' 216.002) shall be permitted in any SF-15, SF-10, SF-6, R-1 and R-2 District identified in Ord. 589, passed 4-17-00, and more commonly referred to as the Zoning Ordinance, as amended. (Ord. 390, passed 7-16-84; Am. Ord. 685, passed 11-15-04) Penalty, see ' 99.99

' 99.16 PLACEMENT OF OBSTRUCTIONS PROHIBITED.

No person shall erect, construct, assemble, affix, attach, put, or cause to be put upon any sidewalk, street, alley, or other public place within the city limits, a bench, sign, or other obstruction of any nature.

(Ord. 390, passed 7-16-84) Penalty, see ' 99.99

' 99.17 TRAFFIC VISIBILITY; REMOVAL OF OBSTRUCTIONS ON PUBLIC OR PRIVATE PROPERTY.

(A) Any person owning, occupying, or controlling any lot or other land within the corporate limits of the city, upon which there is planted or growing any tree, hedge, bush, or vine; or owning, occupying, or controlling any lot or other land abutting upon any street within the corporate limits of the city upon which land there is planted or growing any tree, hedge, bush, or vine, shall prune or train the branches or limbs of any such tree, hedge, bush, or vine so that

any of same projecting over any street, alley, sidewalk, or public passageway shall be not less than 13 feet above the surface of a street or alley or seven feet above a sidewalk or public (non-vehicle) passageway.

(B) (1) On any corner lot or parkway adjacent thereto, a fence, wall, structure, sign, hedge, tree, or obstruction of any nature erected, planted, or maintained so as to interfere with sight lines at elevations between two feet and eight feet above the top of the adjacent roadway curb, or if there be no curb then from the average street grade, within a triangular area formed by the intersection of the adjacent curb lines, or if none exists, the normal curb lines, 45 feet from the intersection, shall be prima facie evidence that such fence, wall, structure, sign, hedge, tree, or obstruction of any nature constitutes an obstruction to vision as regards public traffic on the streets.

(2) The triangular area of visibility shall be described and depicted by the drawing at the end of this Ordinance 290. Any such fence, wall, structure, sign, hedge, tree, or obstruction of any nature erected, planted, or maintained in violation of this section shall be removed upon written notice from the City Manager, served upon the owner, agent, or occupant of the premises where such obstruction has been erected, planted, or maintained. In the event the obstruction is not removed within ten days after notice, it may be removed by the city at the expense of the property owner.

(3) Any building or structure built in conformance with the building codes or requirements of the city which fall within this triangular area shall be exempt from the provisions of this section. (Ord. 290, passed 8-26-68; Am. Ord. 760, passed 2-16-09) Penalty, see ' 99.99

' 99.18 REMOVAL OF SIGNS; COST TO CITY.

Any handbill or sign found posted, or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the Police Department or any other city official. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof and the City Manager or his duly authorized representative is hereby authorized to effect the collection of that cost.

(Ord. 390, passed 7-16-84)

' 99.19 EXCEPTIONS.

(A) Nothing contained in this subchapter shall apply to the installation of terrazzo sidewalks or sidewalks of similar construction, sidewalks permanently colored by an admixture in the material of which the same are constructed, and for which the City Manager or his authorized representative has granted a written permit.

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(B) Nothing contained in this subchapter shall apply to merchant sidewalk sales, so long as such sales are temporary in nature (not to exceed 24 hours in duration) and so long as such merchandise, displays, or either of them are not placed in such a manner as to interfere with the free use of such sidewalks or other public place.

(C) Nothing contained in this subchapter shall apply to the installation of a metal plaque or plate or individual letters or figures in a sidewalk commemorating an historical, cultural, or artistic event, location, or personality for which the City Manager, with the approval of the Board of Commissioners, has granted a written permit.

(D) Nothing contained in this subchapter shall apply to the painting of house numbers upon curbs done under permits issued by the City Manager or his duly authorized representative.
(Ord. 390, passed 7-16-84)

' 99.20 CIVIL ACTION.

In addition to all the other remedies set out in this subchapter, any person, firm, or corporation placing a sign or failing to remove a sign in violation of this subchapter may be prosecuted for violation of this subchapter. Civil actions may be instituted by the City Attorney to enforce the provisions of this subchapter.
(Ord. 390, passed 7-16-84)

' 99.99 PENALTY.

(A) Any person, firm, copartnership, corporation, joint stock association, or others violating any of the provisions of ' 99.01 shall be fined in a sum not to exceed \$200, provided that each day any material or supplies placed on the streets or sidewalks in violation of this section shall constitute a separate offense. (Ord. 47, passed 7-7-19)

(B) Any person, firm, or corporation violating any provision of'' 99.15 and 99.16 shall be fined not less than \$5 nor more than \$200 for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. (Ord. 390, passed 7-16-84)

(C) Any owner, agent, or occupant violating any of the provisions of ' 99.17 shall be subject to a fine of not more than \$200. Each day that such owner, agent, or occupant suffers the obstruction to remain shall be deemed a separate offense. (Ord. 290, passed 8-26-68)

CHAPTER 100: REGULATION OF PUBLIC POOLS

Section

- 100.01 Adoption of public pools
- 100.02 Definitions
- 100.03 Offense; penalty for violation
- 100.04 Permit, certification of Manager of Operations
- 100.05 Inspections
- 100.06 Maintenance and operation
- 100.07 Regulations in pool and spa area; suspension of permit
- 100.08 Construction compliance

' 100.01 ADOPTION OF RULES AND REGULATIONS.

The city adopts by reference the provisions of the current rules or rules amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 265 - General Sanitation, Subchapter L regarding the regulations for public pools and spas in the city entitled, AStandards for Public Pools and Spas.@ The city also adopts by reference the Texas Health and Safety Code, Title 5, Subtitle A, Chapter 341, AMinimum Standards of Sanitation and Health Protection Measures@ Subchapters D, E, and F, '' 341.064.-341.091. The adoption of the AStandards for Public Pools and Spas@ and the AMinimum Standards of Sanitation and Health Protection Measures@ by this section shall automatically include, without further action of the City Council, any subsequent amendments to such regulations.
(Ord. 781, passed 5-17-10)

' 100.02 DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

AAUTHORIZED AGENT OR EMPLOYEE.@ The Director of Health of the regulatory authority, which shall have the enforcement responsibility for this chapter.

ACOLIFORM TESTING.@ Refers to total coliform not fecal coliform.

AMANAGER OF OPERATIONS.@ The person primarily responsible for the safe, sanitary maintenance of a public pool, spa, or other water-related activity.

APERMIT HOLDER.@ A local person who has the ultimate responsibility for the operation of any pool, spa, or other related water activity regulated in this chapter, and who shall, in all respects, act as the representative for any entity having an ownership interest in the same.

AREGULATORY AUTHORITY.@ The Wichita Falls-Wichita County Public Health District.
(Ord. 781, passed 5-17-10)

' 100.03 OFFENSE: PENALTY FOR VIOLATION.

A violation of any of the rules or regulations established by this chapter shall constitute an offense. An offense under this chapter is a Class C misdemeanor, punishable by a fine not to exceed \$2,000. In addition thereto, such person may be enjoined from continuing such violations. Each day upon which such violation occurs constitutes a separate violation or offense.

(Ord. 781, passed 5-17-10)

' 100.04 PERMIT, CERTIFICATION OF MANAGER OF OPERATIONS.

(A) Permit required; transferability; posting. A person may not operate a public swimming pool or spa without a permit issued by the regulatory authority. Permits are not transferable from one person to another person or from one location to another location. A valid permit must be posted at every establishment regulated by this chapter. Therapeutic pools and Class E pools as defined in the standards are not exempt from this section.

(B) Application for permit. A person desiring to operate a public swimming pool or spa must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the pool, the name and address of each manager of operations and the application fee. An incomplete application will not be processed. Failure to provide all required information or falsifying information required may result in denial or revocation of the permit. All permits will expire March 31 of each year; the same information is required for a renewal permit as for an initial permit. Each pool and spa at each location will be charged a separate permit fee as determined by the regulatory authority.

(C) Certification of Manager of Operations.

(1) A Manager of Operations of a public pool or spa shall obtain certification from the regulatory authority. A Manager of Operations may obtain certification by successfully completing a training course conducted by the regulatory authority. Upon the successful completion of two training courses, a manager of operations will not be required to attend further training courses and shall be certified upon proof of the completion and payment of the annual fee. It is the responsibility of the individual to show proof of completion; the health district will only retain training records for five years. No person will be allowed to act as the Manager of Operations without first having obtained certification.

(2) At least two certification training programs will be conducted per year. The fee for certification of a Manager of Operations shall be determined by the regulatory authority and the certification shall expire one year following its issuance.

(3) A person showing a current certificate as a Certified Aquatic Facility Operator (AFO), Certified Pool-Spa Operator (CPO), a

Pool Operator on Location (POOL) or any other training approved by the regulatory authority, may be exempt from the health district training as long as they are able to pass a written exam administered by the regulatory authority and pay the certification fee.
(Ord. 781, passed 5-17-10)

' 100.05 INSPECTIONS.

The regulatory authority is authorized to conduct inspections as necessary to ensure compliance with all sections of this chapter. The regulatory authority shall have the right of entry at any reasonable hour upon the premises where a public pool or spa is located. The regulatory authority shall have the authority to collect water samples from the pool or spa for laboratory analysis.
(Ord. 781, passed 5-17-10)

' 100.06 MAINTENANCE AND OPERATION.

(A) Every public pool or spa shall be under the supervision of the permit holder, who shall be responsible for compliance with all parts of this chapter relating to pool or spa maintenance, pool or spa operation and safety of swimmers. It shall be unlawful for such permit holder to cause or permit the existence of a condition which is in violation of any section of this chapter.

(B) All pumps, filters, sanitizers and chemical feeders, drains, ladders, lighting, ropes and appurtenant equipment used in the operation of all public pools and/or spas, shall be maintained in a good state of repair.

(C) All public pools and/or spas shall be treated and maintained in accordance with current State Department of Health standards unless otherwise stated:

(1) Every pool shall contain a minimum sanitizer concentration equivalent to a free chlorine residual of 2.0 ppm. Every spa shall contain a minimum sanitary concentration equivalent to a free chlorine residual of 3.0 ppm minimum. If a pool or spa contains less than the required minimum ppm free chlorine residual, then the pool or spa shall be immediately closed to the public. A test kit for measuring the concentration of the free chlorine shall be present at each pool or spa. The regulatory authority must approve use of any sanitizer other than chlorine.

(2) Every pool or spa shall have water with a pH of not less than 7.2 and not more than 7.8. An adequate pH test kit shall be present at each pool or spa. If a pool or spa test shows an acid reaction less than 7.2 or basic reaction over 7.8, then the pool or spa shall be immediately closed to the public.

(3) The presence of microorganisms of the total coliform group in any water sample shall be deemed unacceptable water quality. Two consecutive samples showing microorganisms of total coliform will be grounds for immediate closure of the pool or spa.

(4) Every pool or spa shall have water clarity sufficient for the main drain or a six-inch diameter turbidity test disk placed at the deepest part of the pool or spa, to be clearly visible from the sidewalks of the pool at all distances up to ten yards, measured from a line drawn across the pool through the disc. Failure to meet this requirement shall be sufficient cause for immediate closure of the pool or spa.

(5) A 15-minute maximum timer will be installed and operational at each spa. The timer must be located so that it cannot be reached unless a person exits the spa.
(Ord. 781, passed 5-17-10)

' 100.07 REGULATIONS IN POOL AND SPA AREA; SUSPENSION OF PERMIT.

(A) A person commits an offense if he or she violates any portion of this chapter or the standards set forth by the state department of health.

(B) Failure to comply with any section of this chapter may result in the immediate closure of the pool or spa and/or the initiation of legal action. Upon determination that the pool or spa does not comply with the provisions of this chapter, the regulatory authority shall notify the permit holder or manager of operations of the existing violations. If the regulatory authority determines that the condition of the pool or spa may be hazardous to the health or safety of the swimmers or to the general public, the pool or spa shall be immediately closed. A new water sample and inspection of the pool or spa will be conducted from 8:00 a.m. to 2:00 p.m., Monday through Thursday at the request of the pool manager of operations or the permit holder. The pool or spa water must completely turnover through the filtration and chlorination system at least once before reinspection and resampling. If compliance has been achieved, the permit holder shall be notified that the pool or spa may be opened.

(C) When the regulatory authority has ordered that a pool or spa be closed due to noncompliance with any provision of this chapter, the permit holder shall not allow the pool or spa to be used for swimming, diving or bathing purposes and shall immediately take every reasonable step to prevent the use of such pool or spa for such purposes. By way of example and without limiting such duty, the permit holder shall immediately:

(1) Post notices reasonably likely to come to the attention of potential users of the pool or spa advising of the closure; and

(2) Lock all gates and doorways in any fence or other enclosure surrounding such pool.

(3) Failure to, immediately comply with ,the above will result in the regulatory authority posting a sign at the pool, which states, APool Closed by Order of the Wichita Falls-Wichita County Public Health District.@ It shall be unlawful to remove, cover or mutilate such sign without the approval of the regulatory authority.

Use of the pool or spa by an individual for swimming, diving or bathing purposes after the regulatory authority has ordered such pool or spa to be closed shall be deemed prima facie evidence that the permit holder of such pool or spa has knowingly allowed the pool or spa to be used for such purposes.

(D) The regulatory authority shall suspend a permit to operate a public pool or spa if:

(1) A permit holder fails to designate a certified manager of operations as specified in this chapter;

(2) The condition or operation of a pool or spa is considered to be hazardous or constitutes an imminent health hazard to the health or safety of swimmers or the general public; or

(3) The permit holder fails to keep all spa equipment and devices working properly.

(4) The suspension shall continue until the regulatory authority has conducted a new inspection and the cause of suspension is corrected.

(Ord. 781, passed 5-17-10)

' 100.08 CONSTRUCTION COMPLIANCE.

The construction of public swimming pools and spas shall comply with the current design standards as established by the state Department of Health. A copy of the standards shall be maintained in the office of the regulatory authority. Any extensive remodeling or repair, including the replacement of filters, pumps or piping, shall comply with state department of health standards. All public swimming pools and or spas shall be installed with an indirect utility connection in accordance with the current International Building Code or other applicable codes.

(Ord. 781, passed 5-17-10)

' 100.09 PLAN REVIEW.

(A) Whenever public swimming pools and spas are constructed or extensively repaired, properly prepared plans and specifications for such construction or repair shall be submitted to the regulatory authority for review before work is begun. Extensive repair means that 20% or greater of the area of the public swimming pool and spa to be repaired.

(B) The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical and plumbing plans and construction of materials of work of, work area, and the model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of the rules adopted by this division. The approved plans and specifications must be followed in construction, remodeling or conversion.

(C) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.
(Ord. 781, passed 5-17-10)

CHAPTER 101: CHILD SAFETY AREAS

Section

101.01	Findings, purpose and intent
101.02	Definitions
101.03	Sex offender prohibited from establishing residence or loitering in or near child safety area
101.04	Solicitation of trick or treaters
101.05	Property owners prohibited from renting real property within child safety area to registered sex offenders
101.06	Evidentiary matters
101.07	Exceptions
101.99	Penalty

' 101.01 FINDINGS, PURPOSE AND INTENT.

(A) The Board of Commissioners of the city finds:

(1) That the available evidence indicates that the recidivism rate for sex offenders is alarmingly high, especially for those sex offenders whose victims are children; and

(2) That the regulations and penalties established by this chapter are necessary to promote the public health of the city's citizens, particularly the physical and mental health of the children who reside within the City, and to regulate circumstances which are a threat to public health and to punish violations of those regulations, as contemplated by Tex, hoc. Govt. Code ' 54.001(b).

(B) The regulations established by this chapter serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein sex offenders are prohibited from loitering or prohibited from residing and by prohibiting contact by Sex Offenders with children who trick or treat.

(Ord. 783, passed 7-19-10)

' 101.02 DEFINITIONS.

For the purposes of this chapter, the following terms, words and the derivations thereof shall have the meaning given herein.

ACHILD.@ Any person under the age of 18.

ACHILD CARE FACILITY.@ A facility which provides care, training, education, custody or supervision for at least four children who are not related by blood, marriage, or adoption to the owner or operator of the facility, for part of the 24-hour day, at least three days per week, whether or not the facility is operated for profit or charges for the services it offers.

ACHILD SAFETY AREA.@ Any tract or parcel of land on which any of the following facilities are located: public parks, private and public schools, public libraries, amusement arcades, video arcades, indoor and

outdoor amusement centers, amusement parks, public or commercial swimming pools, child care facilities, public or private youth soccer or baseball field or other areas where youth sports activities occur, crisis center or shelter, skate park or rink, public or private youth center, movie theater, bowling alley, scouting facilities and offices for Texas Department of Family and Protective Services.

ADATABASE.@ The Texas Department of Public Safety's Sex Offender Database or the Sex Offender Registration files maintained by the Sex Offender Registration Officer of the Burkburnett Police Department.

AGUARDIAN.@ An individual who has been formally appointed as the guardian of a child by a court of competent jurisdiction pursuant to Chapter XIII of the Texas Probate Code or similar statute of another state and whose appointment is valid and effective in this state at the time it is relied upon pursuant to the regulations of this chapter.

ALOITER.@ Standing, sitting idly, whether or not the person is in a vehicle or remaining in or around an area.

APUBLIC WAY.@ Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.

ARESIDE.@ To live, dwell, abide, stay, or lodge for a period of more than one day.

ARESIDENCE.@ Any house, apartment, mobile home, manufactured home, or structure capable of human habitation.

ASCHOOL.@ A private, public, or charter elementary or secondary school.

ASEX OFFENDER.@ An individual who has been:

(1) Convicted of, or placed on deferred adjudication for, a sexual offense involving a person under 17 years of age for which the individual is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure or

(2) Civilly committed as a sexually violent predator under Chapter 841 of the Texas Health and Safety Code and is subject to outpatient treatment and supervision under that chapter.
(Ord. 783, passed 7-19-10)

' 101.03 SEX OFFENDER PROHIBITED FROM ESTABLISHING RESIDENCE OR LOITERING IN OR NEAR CHILD SAFETY AREA.

(A) A sex offender may not intentionally or negligently reside within 1,000 feet of a child safety area. The distance of 1,000 feet from a child safety area shall be measured on a straight line from the closest boundary line of the sex offender's residence to the closest boundary line of the nearest child safety area. If a sex offender has

multiple residences, the distance from the child safety area shall be measured from the property line of the residence or structure nearest the child safety area.

(B) A sex offender may not intentionally or negligently enter a child safety area or intentionally or negligently loiter on a public way within 300 feet of a child safety area. The distance of 300 feet shall be measured on a straight line from the closest boundary of the child safety area.

(Ord. 783, passed 7-19-10)

' 101.04 SOLICITATION OF TRICK OR TREATERS.

A sex offender to whom this chapter applies shall not, on each October 30 and 31 or any other date set by the city for trick-or-treaters, between the hours of 4:00 p.m. and 11:00 p.m., leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises where the sex offender resides or that the sex offender is occupying.

(Ord. 783, passed 7-19-10)

' 101.05 PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY WITHIN CHILD SAFETY AREA TO REGISTERED SEX OFFENDERS.

(A) It is unlawful for any person to knowingly let or rent any residence or part thereof, located within 1,000 feet of a child safety area to any sex offender or to any person who will allow a sex offender to occupy the residence.

(B) Any person who rents or leases a residence located within 1,000 feet of a child safety area must inform the owner or leasing agent of the owner if the person intends to allow or will likely allow any person who is a sex offender to occupy the residence at any time during the tenancy.

(Ord. 783, passed 7-19-10)

' 101.06 EVIDENTIARY MATTERS.

(A) It shall be prima facie evidence that this chapter applies to a person if that person's record appears in or on the database and the database indicates that the person's victim was less than 17 years of age.

(B) A map depicting all child safety areas shall be created by the Chief of Police of the Burkburnett Police Department showing each child safety area within the city and showing the area within 300 feet of such child safety areas and the area within 1,000 feet of such child safety areas. The map will be available to the public at City Hall and the Police Department and may be posted on the city website. The areas within 300 feet of such child safety areas and the areas within 1,000 feet of such child safety areas shown on such map shall be prima facie evidence of the areas referred to in this chapter.

(Ord. 783, passed 7-19-10)

' 101.07 EXCEPTIONS.

(A) The regulations established by ' 100.03(A) above (prohibiting a sex offender from residing in certain areas) shall not apply to:

(1) A sex offender who established their residence within 1,000 feet of a child safety area prior to the adoption of these regulations; provided such person has not abandoned such residence at any time after adoption of these regulations; or

(2) A sex offender who established their residence within 1,000 feet of a child safety area prior to the time the area was designated as being within 1,000 feet of a child safety area; provided such person has not abandoned such residence at any time after the designation of the area as a child safety area.

(B) The regulations established by ' 100.05 (prohibiting the rental of residences located within 1,000 feet of a child safety area to a sex offender or to be occupied by a sex offender) shall not apply to:

(1) An owner, landlord or lessor who, prior to the adoption of these regulations, rented a residence to a sex offender or to any person who allows it to be occupied by a sex offender; provided, however, if the rental or lease is terminated or the sex offender vacates the residence after the designation of the area in which the residence is located as being within 1,000 feet of a child safety area, such residence may not knowingly be re-rented or re-let to a sex offender or to any person intending to allow a sex offender occupy the residence and the regulations established by this chapter shall apply; or

(2) A residence rented or let to a sex offender or to a person who allows a sex offender to occupy the residence under circumstances where such residence was designated as being within 1,000 feet of a child safety area after it was rented or leased; provided, however, if the rental or lease is terminated or the Sex Offender vacates the residence after the designation of the area in which the residence is located as being within 1,000 feet of a child safety area, such residence may not be re-rented or re-let to a sex offender or to any person intending to allow a sex offender to occupy the residence and the regulations established by this chapter shall apply.

(C) This chapter shall not apply to a sex offender who is under 18 years of age or whose offense for which the sex offender registration was required, reversed on appeal or pardoned.

(D) Notwithstanding the prohibition on occupancy provided by these regulations, nothing in this chapter shall require a Sex Offender to sell or otherwise dispose of any residence acquired or owned by them prior to the conviction of the person as a sex offender.

(E) The regulations established by ' 100.03(B) above (prohibiting a sex offender from entering child safety areas and within 300 feet of child safety areas) shall not apply to a sex offender:

(1) Who is attending scheduled religious services, classes or events at a church or house of worship; or

(2) Who schedules and attends a meeting with clergy or other religious leaders or staff at a church or house of worship.

(F) The regulations established by ' 100.03(B) above (prohibiting a sex offender from entering child safety areas and within 300 feet of child safety areas) shall not apply under the following circumstances where the sex offender is related (in the manner specified below) to a student who is enrolled or eligible to be enrolled in a school or day care center (herein referred to as a AStudent@):

(1) A sex offender who is the parent or guardian of a Student may schedule a meeting with a teacher or school administrator at a school or day care center if that is done prior to the time of the meeting and may attend the meeting to discuss matters pertaining to the student or the student's enrollment in said school or day care center, and

(2) A sex offender may attend a scheduled event at a school or day care center if a Student that is participating in the scheduled event is the child, grandchild, or sibling of the sex offender, or a child for whom the sex offender is a guardian.
(Ord. 783, passed 7-19-10)

' 101.99 PENALTY.

(A) The violation of any of the regulations established by this chapter shall constitute an offense.

(B) Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof may be fined an amount not to exceed \$2,000.00 as allowed by law. Each day that a violation is permitted to exist shall constitute a separate offense and shall be punishable as such.
(Ord. 783, passed 7-19-10)

CHAPTER 102: SMOKING IN PUBLIC PLACES

Section

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' 102.01 DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ABAR.@ An area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages and where minors are not allowed admission. A restaurant that contains a bar is not included, as minors are admitted in these areas.

ADIRECTOR.@ Chief administrative officer of the city-county public health district.

AELECTRONIC SMOKING DEVICE.@ Any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

AEMPLOYEE.@ A person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

AEMPLOYER.@ Any person, including a municipal corporation, or nonprofit entity who employs the services of one or more individual persons.

AENCLOSED AREA.@ A space that is enclosed on all sides by solid partitions that extend from the floor to the ceiling, including but not limited to screens, walls, windows, and doors.

AOPERATOR.@ The owner or person in charge of a public place or workplace, including an employer.

APUBLIC PLACE.@ An enclosed area or any portion thereof to which the public is invited or in which the public is permitted or allowed access, including but not limited to: banks, bars, bingo halls, educational facilities, fraternal organizations, health care facilities, hotel and motel rooms, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, waiting rooms, and workplaces. A private residence is not a "PUBLIC PLACE" unless it is used as a child care, adult day care, or health care facility.

ARETAIL TOBACCO STORE@ or ARETAIL ELECTRONIC CIGARETTE STORE.@ A retail store whereby 75% of quarterly sales are from tobacco products and accessories, to include electronic cigarettes, in which the sale of other products is merely incidental.

ASMOKE.@ To inhale, to exhale, to burn or to carry any lighted cigar, pipe, cigarette, weed or other plant in any manner or form, or to use an electronic smoking device.

AWORKPLACE.@ An enclosed area under the control of a public or private employer in which employees work or have access to during the course of their employment.
(Ord. 882, passed 7-20-15)

' 102.02 SMOKING PROHIBITED IN PUBLIC PLACES.

(A) A person commits an offense if the person smokes in a public place.

(B) A person commits an offense if the person smokes in an enclosed area in a building or facility owned, leased, or operated by the city.

(C) A person commits an offense if the person smokes in an enclosed area of a workplace.

(D) A person commits an offense if the person smokes within:

(1) Twenty feet of an entrance or open window of a public place, if the operator of the public place allows entry to children under the age of 18 years; or

(2) Five feet of an entrance or open window of a public place, if the operator of the public place does not allow entry to children under the age of 18 years.

(E) The owner or operator of a public place commits an offense if said owner or operator witnesses a person smoking in the public place and:

(1) Within five minutes of witnessing the smoker, fails to request the smoker to cease smoking;

(2) Provides further service to the smoker; or

(3) Within five minutes of witnessing the smoker, fails to request the smoker to leave the premises if the smoker has been requested to cease smoking and the smoker continues to smoke in the public place.

(F) A person commits an offense if the person smokes in or within 20 feet of an area designated as a city park in ' 97.02 of the Code of Ordinances.

(G) A person commits an offense if the person smokes in or within 20 feet of the Boomtown Aquatic Center.

(H) A person commits an offense if the person smokes on a side walk in front of, behind, next to or adjacent to a public place.
(Ord. 882, passed 7-20-15)

' 102.03 EXEMPTIONS.

This chapter does not apply to:

(A) A private residence, except when used as child care, adult day care or health care facility;

(B) A retail tobacco store;

(C) A retail electronic cigarette store;

(D) Before June 17, 2016, a public place that was a bar;

(E) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20% of rooms rented to guests in a hotel or motel may be designated as smoking rooms. All smoking rooms must be on the same floor, must be contiguous and must be clearly marked as smoking rooms. Nonsmoking rooms must also be clearly marked as nonsmoking rooms. Smoke must not infiltrate into any area where smoking is otherwise prohibited under this chapter. The status of rooms as smoking or nonsmoking may not be changed, except to use a designated smoking room as a nonsmoking room. Smoking is prohibited in all common areas of the hotel or motel, including the hallways adjacent to smoking rooms.

(F) Buildings or portions of buildings owned by fraternal organizations (as that term is defined by Sec. 32.11 Texas Alcoholic Beverage Code) that received the certificate of occupancy prior to July 1, 2015 and are used solely for the use of their members.
(Ord. 882, passed 7-20-15)

' 102.04 VOLUNTARY DESIGNATION OF A NON-SMOKING CAMPUS.

Nothing in this chapter shall be construed to prohibit the owner or operator of an enclosed or outdoor public place from voluntarily designating his or her property as non-smoking.
(Ord. 882, passed 7-20-15)

' 102.05 SMOKING IN TAXICABS PROHIBITED.

(A) It shall be an offense for any individual to smoke in a taxicab.

(B) An owner or holder of a taxicab franchise commits an offense if the owner or his designee permits any individual to smoke in a taxicab.

(C) The holder of a taxicab service franchise shall conspicuously post a sign in each taxicab that indicates smoking is prohibited.
(Ord. 882, passed 7-20-15)

' 102.06 SIGNS REQUIRED.

(A) The owner or operator of a public place shall conspicuously post a "No Smoking" sign, the international "No Smoking" symbol (depiction of a burning cigarette enclosed in a red circle with a red bar across it), or other sign containing words or pictures that could reasonably be understood as an intent to prohibit smoking:

(1) In each public place and workplace where smoking is prohibited by this chapter; and

(2) At each entrance to a public place or workplace where smoking is prohibited by this chapter.

(B) The operator of a public place shall conspicuously post signs in areas where smoking is permitted through an exemption under this chapter.

(C) The operator of a public place or an employer shall remove any ashtrays or other smoking accessories from a place where smoking is prohibited.

(D) It is not a defense to prosecution under this chapter that an operator failed to post a sign required under this section.
(Ord. 882, passed 7-20-15)

' 102.07 RETALIATION PROHIBITED.

(A) A person commits an offense if the person discharges, refuses to hire, or retaliates against a customer, employee, or applicant for employment because the customer, employee or applicant for employment reports a violation of this chapter.

(B) An employee who works in a setting where an employer permits smoking under this chapter does not waive or otherwise surrender any legal right the employee may have against the employer or any other party.

(Ord. 882, passed 7-20-15)

' 102.08 ENFORCEMENT.

(A) This section is cumulative of other laws providing enforcement authority.

(B) A person may report a violation of this chapter to the Director of the Health District or his/her designee.

(C) The Director or his/her designee may enforce this chapter and may seek injunctive relief in addition to any civil or criminal penalties associated with a violation.

(D) The Director or his/her designee may suspend or revoke a permit or license issued by the Director to the operator of a public place or workplace where a violation of this chapter occurs, in addition to any other available remedies.

(Ord. 882, passed 7-20-15)

' 102.09 PUBLIC EDUCATION.

(A) The Director or his/her designee shall:

(1) Obtain or develop a comprehensive tobacco education program to educate the public about the harmful effect of tobacco and its addictive qualities;

(2) Conduct informational activities to notify and educate businesses and the public about this chapter; and

(3) Coordinate the city's tobacco education program with other civic or volunteer groups organized to promote smoking prevention and tobacco education.

(B) To implement this section, the Director or his/her designee may publish and distribute educational materials relating to this chapter to businesses, their employees, and the public.

(Ord. 882, passed 7-20-15)

' 102.10 MINOR ACCESS TO TOBACCO PRODUCTS.

A retail establishment shall only place tobacco products and electronic smoking devices for sale behind a sales counter or in another secure location that prevents minors from accessing the products without the intervention of an employee.

(Ord. 882, passed 7-20-15)

' 102.99 PENALTY.

Any person, firm, or corporation who violates any provision of this code for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding \$200. However, if the maximum penalty provided by this code for any such offense is greater than the maximum penalty provided for the same or a similar offense under the laws of the state, then the maximum penalty for violation as provided by state statute shall be the maximum penalty under this code. Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense.
(Ord. 882, passed 7-20-15)