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CHAPTER 90: STREETS AND SIDEWALKS

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GENERAL PROVISIONS**90.01 JURISDICTION AND REGULATORY CONTROL OF CITY.**

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

CITY. The City of Halfway, Oregon.

PERSON. Individual, corporation, association, firm, partnership, joint stock company, and similar entities.

PUBLIC RIGHTS-OF-WAY. Include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including subsurface and air space over these areas.

WITHIN THE CITY. Territory over which the city now has or acquires jurisdiction for the exercise of its powers.

(B) *Jurisdiction.* The city has jurisdiction and exercises regulatory control over all public rights-of-way within the city under authority of the city Charter and state law.

(C) *Scope of regulatory control.* The city has jurisdiction and exercises regulatory control over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way. The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or other means.

(D) *City permission requirement.* No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises, licenses, and permits.

(E) *Obligations of the city.* The exercise of jurisdiction and regulatory control over a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

(Ord. 2-97, passed 3-13-1997)

90.02 MAINTENANCE OF SIDEWALKS AND PUBLIC WAYS.

(A) *Non-liability for defective or un-maintained sidewalks, streets, avenues, alleys, or other public ways, within the city.* Maintenance of sidewalks includes, but is not restricted to, removal of snow and ice. No recourse shall be had against the city, for damage or loss to person or property suffered or sustained by reason of the defective condition of any sidewalk, street, avenue, lane, alley, or other public way, whether any of said defects originally existed, or whether they were occasioned by construction, excavation, or otherwise; nor shall there be any recourse against the city, for want of repair or maintenance of any sidewalk, street, avenue, lane, alley, or other public way; nor shall there be any recourse against the city for damage to person or property suffered or sustained by reason of accident or other casualty occurring in, upon, near, or in any manner connected with any sidewalk, street, avenue, lane, alley, or other public way within the city.

(B) *Duty of owners to maintain and make sidewalk repairs and power of the Council to require the same.* It is hereby made the duty of all the owners of land adjoining or adjacent to any street in the city to maintain in good repair and condition the sidewalks in front of said land. The Council shall have the power and authority to determine the grade and width of all sidewalks, material to be used, and the specifications for the repair and maintenance thereof, upon any street or part thereof, or within any district in the city.

(C) *Notice of defective sidewalks.* If the owner of any lot or part thereof, or parcel of land within the city, shall suffer any sidewalk along the same to become out of repair or maintenance, the City Engineer, or any person appointed by the Council for that purpose, when ordered to do so by the Council, shall post a notice on the adjacent property headed "AA Notice to Repair/Maintain Sidewalk" and said notice shall direct the owner, agent, or occupant of said property to immediately repair/maintain the said sidewalk in a good and substantial manner, and the person posting said notice shall file with the City Recorder an affidavit of the posting of such notice stating the date when and the place where such notice was posted. The City Recorder shall upon receiving the affidavit of the person posting said notice, send by mail, with postage prepaid on the envelope, a notice to repair/maintain said sidewalk to the owner, if known, and directed to the post office address of such owner or agent, when such post office address is known to the City Recorder, and if such post office address be unknown to the City Recorder, such notice shall be directed to such owner or agent at Halfway, Baker County, Oregon. A mistake in the name of the owner or agent, or a name other than that of the true owner or agent of such property, shall not render void such notice, but in such case the posted notice shall be sufficient.

(D) *Permit for repairs.* The owner, agent, or occupant, before making said repairs shall obtain from the City Engineer or Public Works Director a permit so to do, which shall prescribe the kind of repair to be made, the material to be used, and specifications therefor, and the owner, agent, or occupant shall make said repairs within 30 days from the date of the posting of said notices. Removal of snow and ice does not require a permit, but such maintenance is expected to be performed immediately upon notification.

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(E) *Repairs by city, record and report.* If the owner or agent of any such lot or part thereof, or parcel of land, shall fail, neglect, or refuse to make the sidewalk repairs or required maintenance within the time designated, the City Engineer or Public Works Director shall make the same and keep an accurate account of the cost of the labor and materials used in making the repairs/maintenance in front of each lot or parcel of land, and shall report monthly to the Council, the cost of such repairs/maintenance and a description of the lot or part thereof or parcel of land fronting or abutting on the sidewalk upon which such repairs are made.

(F) *Assessment for sidewalk repairs/maintenance.* The Council shall, at least once each year, by ordinance assess upon each of the lots or parts thereof or parcels of land fronting upon sidewalks which have been so repaired, constructed, or maintained the cost of making such repairs, constructing the same, or performing the required maintenance, including legal, administrative, and engineering costs attributable thereto. In each case, all such assessments may be combined in one assessment roll and the same shall be entered in the docket of city liens and collected in the same manner as is provided by ordinance for collection of special assessments for local improvements.

(G) *Council authority over sidewalks.* The Council shall exercise the same general authority and supervision over sidewalk repairs/maintenance that it shall have in the matter of street improvements. The Council of the City of Halfway, Oregon, shall inspect the reports of sidewalk repairs/maintenance and the cost thereof, as made by the City Engineer or Public Works Director and if it deems the same to be reasonable it shall approve the same and make the assessments herein above referred to, in the event that the property owner does not pay for the same immediately after such repairs/maintenance have been made and the costs determined and assessed in connection with the making of such repairs/maintenance.

(H) *Advances from the General Fund.* Moneys to repair sidewalks when the repairs shall be made by the City Engineer may, in the discretion of the Council, be advanced from the General Fund to be reimbursed by the special assessment when collected.

(I) *Liability of owners for damages and negligence.* It is not only the duty of all owners of land within the city to keep in repair and maintained all sidewalks, constructed or existing in front of, along or abutting upon their respective lots or parts thereof and parcels of land owned by such owners, but such owners are hereby declared to be liable for all damages suffered or sustained by any person, whether to person or property, resulting or arising from or incurred by reason of the failure or neglect of such owners to keep in repair and maintenance any such sidewalks, or any reason of any defect, including removal of snow and ice, in any sidewalk adjacent to, abutting upon or along any property owned by such persons. (Ord. 2-3, passed - -1977; Ord. 1-3.94, passed 10-13-1994; Ord. 2-3.04, passed 1-15-2004) Penalty, see ' 90.99

' 90.03 CURB LINE ESTABLISHED; OBSTRUCTIONS PROHIBITED.

(A) A curb line or parking strip line is hereby established in and upon all the public streets of the city which said line shall run parallel with the property line abutting upon the respective streets and at a distance of 15 feet within the street therefrom, except that at the street intersections or corners the line intersecting shall be curved upon an arc with a radius which shall be hereafter determined by the City Council.

(B) It shall be unlawful for any person, persons, firm, or corporation to deposit within any street, alley, or public place within the limits of the city any box or boxes, can or cans, papers, trash, refuse, manure, bottle or bottles, glass of any nature, straw, or rubbish, or old pieces of machinery or automobiles, or other worthless matter that may be stacked or piled at the outer edge of the parking strip, between the curb line and the sidewalk line directly front of the real property owned or occupied by the owner of said waste or refuse matter for a period of time not exceeding 48 hours. No such matter shall be permitted to interfere with the free passage of pedestrians or to be upon the sidewalk or footpath along said street.

(C) It shall be unlawful for any person or persons, firm, or corporation to allow any lumber, wood, or other materials to be piled upon and remain in or upon any street, alley, or public place with the city for a period longer than 48 hours.

(D) It shall be unlawful for any person, persons, firm, or corporation to pile, stack, leave, or deposit any wood, lumber, or other material of any nature which is to be sold to others, or is for commercial use or sale, or which has been sold and is awaiting commercial delivery, in any street, alley, or public place, or upon the parking strip of any street within the limits of the city.

(E) If at any time it shall become necessary for any person or persons, firm, or corporation to use the public street directly in front of abutting property upon which any building or construction work is being or about to be done, for the storing or piling of building material during such construction, such person, persons, firm, or corporation shall make application to the City Council for a permit to make such use of said street, and if the said Council shall deem such use necessary and proper, it shall direct the issuance of a permit therefor, stating the termination of said permit and the material to be stored or piled together with the amount of street space which may be so used. Such permit may be renewed at the discretion of the Council upon proper showing of necessity therefor.

(F) It shall be the duty of the Marshal whenever he or she shall find any material or refuse matter of any nature or kind in any street or alley or public place within the city contrary to the provisions of this section, to notify the owner or person in possession of the abutting premises and order the same removed within 48 hours of such notification; and if the same be not removed within such time, the Marshal shall then proceed to have the same removed and the expense of such removal shall, if not immediately paid, be taxed as costs against the person, persons, firm, or corporation who shall be found guilty of a violation of this section in the placing, depositing, or leaving or piling of said material or refuse matter of any nature in said street, alley, or public place.

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

' 90.04 MANNER AND PROCEEDINGS FOR VACATING OR CLOSING STREETS AND

ALLEYS.

(A) (1) Any person, firm, or corporation desiring to have vacated any street or alley, or any part thereof, shall submit a petition to the City Council setting forth:

- (a) The particular circumstances of the case;
- (b) An accurate description of the property to be vacated;
- (c) A plat showing the property to be vacated; and
- (d) The names of all persons owning property abutting the property to be vacated.

(2) The petition shall be filed with the City Recorder, accompanied by a fee collected from the petitioner which reimburses the city for all publication and recording costs involved. Notice of the pendency of the petition shall be published at least once each week for three successive weeks in a public newspaper published in the city, or posted in three public places in the city for at least 30 days prior to a hearing by the City Council upon the petition.

(B) (1) The City Council, upon hearing the petition, may grant or deny the petition in whole or in part or the City Council may grant the petition with such conditions as would appear to be for the public interest.

(2) No vacation shall be granted unless the written consent of all persons owning property abutting the property to be vacated is obtained. The consent shall be acknowledged before an officer authorized to acknowledge deeds and shall be filed with the City Recorder.

(C) The vacated property shall vest in the abutting properties in equal proportions and the ordinance granting the vacation and the plat showing the vacation shall be recorded in the deed records in the County Clerk's office.

(D) All vacation of streets or alleys, or any part thereof, heretofore declared by the City Council are hereby declared valid and confirmed.

(Ord. passed - - ; Ord. 1-6.3, passed 8-10-2006) Penalty, see ' 90.99

' 90.05 FLOODING OF STREETS PROHIBITED.

(A) It shall be unlawful for any person or persons, corporations, or associations of persons to use or permit to be used any water ditch or conduit in any street, lane, alley, boulevard, or place within the corporate limits of the city in such manner as shall, at any time, flood any street or public place, or damage any private or public property within the corporate limits of the city, or to cause or permit or suffer any such ditch or water conduit to overflow in such manner as shall flood or injure or do damage to, or impair the use of any public street, lane, alley or place whatsoever.

(B) It shall be the duty of the Street Superintendent to cause the arrest of and file complaint against any person violating the provisions of this section.

(Ord. 110, passed 5-9-1918) Penalty, see ' 90.99

' 90.06 CLEANING OF DITCHES.

(A) *Ditches, removal of debris from.* All owners of ditches, whether irrigation or other ditches, within the corporate limits of the city, and all persons having charge of such ditches, whether by lease or otherwise shall, when cleaning out or causing to be cleaned out, any ditch or ditches within the corporate limits of said city, cause all rubbish of any kind taken therefrom that may be injurious to the public health and welfare of the city, including, but not limited to, removal of brush, litter, debris, logs, lumber, and any other refuse material, to be forthwith removed from within the corporate limits of the city.

(B) *Culverts.*

(1) No person shall install a culvert in a ditch in the city without first applying to the City Council for approval. As to placement and size, culverts shall be installed in accordance with ordinary irrigation engineering principles and shall not be smaller than 15 inches in diameter nor larger than 20 inches in diameter.

(2) Applications shall be made in writing to the City Council with a map of the proposed culvert location, the specification of the proposed culvert, and a statement by the proposed installer regarding his or her plans.

(C) *Exceptions.* This section shall not apply to lateral ditches constructed within a garden or yard, or other enclosures or private use for irrigation purposes.

(Ord. 109, passed 5-9-1918; Ord. 603, passed 4-14-1977; Ord. 134, passed - -) Penalty, see ' 90.99

' 90.07 TRIMMING OF TREES OVERHANGING STREETS OR SIDEWALKS.

(A) All persons owning or maintaining trees of any kind upon or in front of any premises owned or occupied by such person shall in all cases where such trees are situated in such proximity to any street or sidewalk that any limbs or branches of such trees extend in any manner over any such street or sidewalk keep such trees trimmed to a height of at least eight feet above the curb, over both street and sidewalk. In all cases such trees shall be kept so trimmed that no limb or branch thereof shall impede or interfere with the ordinary use and travel of or upon any such street or sidewalk. Where such tree or trees become so tall, or grow, or are displaced in any manner, so that they do, or might come in contact, with any telephone or power wire, the owner or owners of the tree or the persons maintaining such trees shall trim, cut down, or otherwise take care of them so that there will be no interference with said lines.

(B) Whenever any tree or trees mentioned or referred to in division (A) above shall not be trimmed as in said section provided, or whenever any limb or branch of any such tree or trees shall in any manner interfere with the ordinary use of or travel upon any such street or sidewalk, or telephone or power line, the official of said city shall cause notice in writing to be given to the owner or occupant of such premises

to trim such tree or trees as herein provided. If such owner or occupant shall fail or neglect to so trim such tree or trees within six days after serving or mailing of such notice, the official may thereupon cause such tree or trees to be trimmed as herein provided, and the costs and expenses thereof shall be charged to the owner or owners of the property upon or in front of which such tree or trees are situated, or to the persons maintaining such property upon or in front of which such tree or trees are situated.

(Ord. 5-10, passed 5-9-1918) Penalty, see ' 90.99

CONSTRUCTION REQUIREMENTS FOR PUBLIC WAYS

' 90.20 PERMIT REQUIRED; STANDARD SPECIFICATIONS.

(A) As used in this section, ***WORK AFFECTING THE PUBLIC WAY*** includes, but is not limited to: installation or construction of any structure, pipe, pole, conduit, culvert, facility, including a communications facility, or other wire line utilities in or on a public way; construction, reconstruction, grading, oiling, repair, opening, or excavation of a public improvement performed under a contract executed by the City Council or work performed by city employees under the City Council direction.

(B) No person, municipal utility, or operator of a communications system shall do work affecting a public way without first obtaining a permit from a city representative. A license issued pursuant to city land use ordinances shall not constitute authorization to perform work affecting a public way; all such work shall require a permit pursuant to this section.

(C) Work affecting a public way shall be performed in accordance with this subchapter, the standard specifications and design standards adopted pursuant previously adopted city land use ordinances, administrative rules issued by the City Council pursuant to the same land use ordinances, sound engineering and design practices, and such other reasonable conditions required by the City Council to protect the public health, safety, and welfare, including proof that the contractor performing the work is licensed and bonded.

(D) If an applicant for a permit or the contractor performing the work for the applicant:

(1) Is delinquent in performing the obligations required by previously issued permits, the City Council may refuse to issue a new permit for other work affecting a public way until the delinquency is corrected; and

(2) Has been delinquent in performing the obligations required by previously issued permits more than two times in the previous 24 months, the City Council may require a bond or other reasonable security, which may be a cash deposit, be posted with the city against which the city may collect its cost of enforcing this subchapter and the conditions of any permit issued thereunder against the permittee.

(Ord. 10-16, passed 2-10-2011)

' 90.21 PERMIT APPLICATION.

(A) Unless otherwise permitted, application for a permit to perform work affecting a public way shall be made to the City Council on forms provided by a city representative. The city representative may waive the requirement to complete the application form and pay the permit fees and restoration deposit when the amount of work to be done in the public way does not warrant the cost of processing the application.

(B) If the City Council determines that it is proper that the proposed work be done, the application shall be approved. After approval, and upon receipt of the required fee, deposit, and possibly proof of license and bond required, the City Council shall issue a revocable permit.

(C) The City Council may deny a permit for work affecting a public way if the applicant has failed to comply with the permit conditions or with provisions of this subchapter or applicable administrative rules on two or more occasions in the previous 24 months, or if the City Council determines that the work is incompatible with other uses of the public way.

(D) If the City Council denies a permit, or revokes a permit because of a failure to comply with the provisions of this chapter or because another public purpose is to be accomplished which is inconsistent with the permittee's use of the public way, the applicant or permittee shall have the right of appeal to the City Council.

(E) Permits issued pursuant to this section do not authorize vehicle parking in the public way. (Ord. 10-16, passed 2-10-2011) Penalty, see ' 90.99

' 90.22 INSURANCE REQUIREMENT; SAFETY.

(A) No permit shall be issued under this section unless an applicant agrees to save the city, its officers, employees, and agents harmless from all costs, damages, and liabilities, which may accrue or be claimed to accrue by reason of any work performed under said permit and provides proof of the license and bond required under ' 90.21. The acceptance of a permit under ' 90.20 shall constitute such an agreement by the applicant whether the same is expressed or not.

(B) A permittee shall preserve and protect from injury other permittees= facilities in the public way, the public using the public way and any adjoining property, and take other necessary measures to protect life and property, including, but not limited to, buildings, walls, fences, trees, or utilities that may be subject to damage from the permitted excavation. A permittee shall be responsible for all damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

(Ord. 10-16, passed 2-10-2011) Penalty, see ' 90.99

' 90.23 PERMIT SUSPENSION OR REVOCATION.

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(A) The City Council may suspend or revoke a permit issued under ' 90.21 if:

- (1) The permittee fails to restore the public way in a safe and timely manner;
- (2) The permittee fails to comply with any condition of the permit or any requirement of this subchapter adopted by the City Council;
- (3) An error or omission is discovered in the plans;
- (4) New conditions at the location of the work are discovered that require changes to design, capacity, or location of the work subject to the permit; or
- (5) The work that is the subject of the permit is not completed in a timely manner.

(B) The City Council shall suspend rather than revoke a permit under this section if it reasonably appears that cause for suspension or revocation can be remedied in a reasonable period of time. (Ord. 10-16, passed 2-10-2011) Penalty, see ' 90.99

' 90.24 PERMIT FEES.

(A) The fee for a permit required by ' 90.20 shall be set by the City Council pursuant to that established in a previous land use ordinance in an amount sufficient to fully recover all of the city=s costs related to processing the application for the permit and inspecting the work during and after completion of the work.

(B) Except when the permittee is a municipal utility, a franchisee, or a licensee otherwise obligated to compensate the city for ongoing use of the public way, in addition to the fee required in division (A) above, a fee for leaving any structure, pipe, conduit, culvert, or facility in the public way may be set by the City Council pursuant to this subchapter to provide a reasonable return to the public for the permitted on-going use of the public way.

(Ord. 10-16, passed 2-10-2011) Penalty, see ' 90.99

' 90.25 LOCATION OF FACILITIES.

The administrative rules issued by the City Council hereunder shall include, but are not limited to the following:

(A) Requirements for prior notice to other licensed providers before performing work, and establishment of criteria to address the frequency that street openings will be permitted;

(B) Location criteria and regulations for installation of above ground facilities, such as junction boxes, controllers, distribution centers, and the like, within the general right-of-way, including the ability

to require under-grounding;

(C) Standards for when and under what conditions existing above-ground utilities and telecommunications facilities shall be placed underground;

(D) Standards for conduit size, location, and capacity to be installed by providers, which may be different for different areas of the city. Class of street, location, and other factors are required;

(E) Standards that ensure initial providers in an area provide extra capacity for later providers and a procedure that enables the initial provider to recover a portion of its costs incurred, is not discriminatory, does not prevent competition in service delivery, or become a barrier to other providers;

(F) Criteria for providing exceptions to the requirement that later providers utilize the extra capacity of initial providers;

(G) The format for the manner in which data on the construction and location of services is provided to the city;

(H) Procedures that ensure providers belong to the local utility notification service and can document their ability to provide locating the service for their facilities;

(I) Requirements for public notice;

(J) Traffic control plans; and

(K) Requirements for indemnity, performance bonds, and project completion bonds.
(Ord. 10-16, passed 2-10-2011)

' 90.26 MUNICIPAL UTILITIES AND FRANCHISEE OPENING PERMITS AND INSPECTION.

If the applicant for a permit required by ' 90.20 is a municipal utility or a franchisee, the City Council's stamp of approval on the municipal utility's or franchisee's drawings for the proposed work shall constitute issuance of a permit. The work performed under such a permit shall comply with the requirements of ' 90.20(C). The municipal utilities or the franchisee's drawings shall designate in the permit, with accurate dimensions shown, the part of the public way to be used, and the municipal utility or franchisee shall strictly conform to the designation so made, unless re-approval is given by the City Council.

(Ord. 10-16, passed 2-10-2011) Penalty, see ' 90.99

' 90.27 REPAIR.

(A) Except where waived by the City Council, the permittee shall temporarily patch with asphalt

material any backfilled trench in any vehicle traffic lane the same day of trench backfill, until the final pavement repair is placed. Temporary trench repair shall be maintained sufficiently to prevent settlement or irregular surface. Within 60 days of completion of the work and at permittee's expense, the permanent pavement repair of the public way to city standards shall be done by a qualified contractor or by the permittee if the City Council has determined the permittee has the resources and trained personnel. If the permittee fails to make the permanent pavement repair within the time specified, the city may make the repair and charge the cost thereof to the permittee without prior notification.

(B) A permittee shall be responsible to promptly remove and clean all excess earth, stone, crushed rock, rubbish, debris, and any unused material from the public way surface that results from work performed. As work progresses, all public ways shall be thoroughly cleaned of all rubbish, excess earth, rock, and other debris resulting from such work. All cleanup shall be at the permittee's expense. (Ord. 10-16, passed 2-10-2011) Penalty, see ' 90.99

' 90.28 RESTORATION AND MAINTENANCE.

(A) If the work permitted is in an unimproved public way, the permittee shall be responsible for restoration and maintenance of the area of the public way affected by the work.

(B) If the work permitted is in an improved public way, the permittee shall be responsible for restoration and maintenance of the area of the public way affected by the work. If more than one permittee has performed work in the same area, the City Council shall allocate the responsibility and cost for restoration and maintenance taking into account the nature of the work done, and of the deterioration that has occurred, when each permittee performed the work, the kind of equipment and construction techniques used, and such other factors as the City Council deems relevant.

(C) Upon reasonable notice under the circumstances, if the permittee fails to restore and maintain the public way affected by its work, the city may perform the work and charge the cost to the permittee. (Ord. 10-16, passed 2-10-2011)

' 90.29 CULVERT INSTALLATIONS.

If the permit is for installation of a culvert for access to property, the culvert must be installed in the size designated by the City Council, are considered temporary, and may be removed at anytime. (Ord. 10-16, passed 2-10-2011) Penalty, see ' 90.99

' 90.99 PENALTY.

(A) Whoever violates any provision of this chapter, for which no specific penalty is otherwise provided, shall be subject to the provisions of ' 10.99.

(B) Any person, persons, firm, or corporation who shall violate any of the provisions of ' 90.03, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$50, or by imprisonment in the city jail for a period of not more than 25 days, or by both such fine and imprisonment; and each day during which a violation of ' 90.03 shall continue shall be and constitute a separate offense and violation of that section.
(Ord. 5-4, passed - -)

(C) Any person violating any of the provisions of ' 90.05 shall, upon conviction thereof, be punished for the first offense by a fine of not less than \$25; and for a second offense by a fine of not less than \$50. Each day=s continuance of such violation of any provision of ' 90.05 shall constitute a separate offense.
(Ord. 110, passed 5-9-1918)

(D) Any person violating the provisions of ' 90.06 shall, upon conviction before the municipal judge, be fined not less than \$10 nor more than \$100, and in default of payment thereof shall be confined in the county jail one day for each \$2 not exceeding 30 days.
(Ord. 109, passed 5-9-1918; Ord. 603, passed 4-14-1977; Ord. 134, passed - -)

(E) Any person violating any of the provisions of ' 90.07 shall upon conviction thereof before the municipal judge be punished by a fine of not less than \$10 nor more than \$25 for each offense, and in case of failure or refusal to pay such fine, such person so convicted may be imprisoned in jail one day for each \$5 of such fine.
(Ord. 5-10, passed 5-9-1918)

CHAPTER 91: ANIMALS

Section

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' 91.01 DEFINITIONS.

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

ANIMAL. Shall include dogs, both male and female, but not other common house pets, but includes livestock and fowl, both male and female.

ANIMAL CONTROL OFFICER. Any individual employed by the city to act and perform the duties set forth in this chapter.

AT LARGE. Off the premises of an owner and not restrained by a physical control device and under reasonable control or a capable person.

DANGEROUS ANIMAL. An animal that constitutes a physical threat to human beings or other domestic animals or bites any human being or another domestic animal. This does not include an animal which bites, attacks, or menaces a trespasser, or a person or animal that has tormented or abused the allegedly dangerous animal. Minors under 12 years of age should not be considered trespassers unless the property owner proves that the minor entered with the intent to commit a crime.

DANGEROUS DOG. Any dog that has been found to have engaged in any of the behaviors specified in ' 91.05(A)(2).

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EUTHANIZED. Put to death in a humane manner by a licensed veterinarian or certified euthanasia technician.

LIVESTOCK. Includes, but is not limited to, horses, mules, jennies, jackasses, cattle, sheep, hogs, goats, rabbits, chickens, ducks, geese, and turkeys.

MINIMUM CARE. Care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the owner, includes, but is not limited to, the following requirements:

(1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;

(2) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs. Snow or ice is not an adequate water source;

(3) In the case of pet or domestic animals, access to a barn, dog house, or other enclosed structure sufficient to protect the animal from wind, rain, snow, or sun and which has adequate bedding to protect against cold and dampness;

(4) Veterinary care deemed necessary by a reasonable prudent person to relieve distress from injury, neglect, or disease; and

(5) Pet or domestic animals shall not be confined to an area without adequate space for exercise necessary for the health of the animal or which does not allow access to a dry place for the animal to rest. The air temperature in a confinement area must be suitable for the animal involved. Confinement areas must be kept reasonably clean and free from excess waste or other contaminants which could affect the animal's health.

OWNER. Any person, firm, association, or corporation that has a possessory property right in an animal or who harbors, cares for, exercises control over, or knowingly permits an animal to remain on the premises occupied by that person, firm, association, or corporation.

PHYSICAL CONTROL DEVICE. A sufficiently strong collar connected to a leash or tether made of chain links, or other material as strong, or fenced or enclosed in a structure so as to prevent the escape of a dog by breaking of the device.

PHYSICAL INJURY. Impairment of physical condition or substantial pain.

POSSESS. To have physical possession or otherwise to exercise dominion or control over property.

POTENTIALLY DANGEROUS DOG. Any dog that has been found to have engaged in any of the behaviors specified in ' 91.05(A)(1).

SERIOUS PHYSICAL INJURY. Physical injury which creates a substantial risk of death or which causes serious and protracted loss or impairment of the function of any bodily organ, or any other medical condition determined by the Municipal Judge, in consultation with the County Health Officer, the County Health Officer's designee or a licensed physician, to be of equal or greater severity. (Ord. 6-89, passed 6-8-1989)

91.02 DUTIES OF OWNER.

(A) Licensing of dogs.

(1) It shall be unlawful for any person to own, keep, or harbor either for himself or herself or any other person, a dog in the city without first securing a current dog license, in the actual owner's name, therefore; said license shall be for a period of one year, commencing July 1; provided, however, a license shall not be required in the following circumstances:

- (a) A dog less than six months old;
- (b) An owner temporarily residing in the city less than 30 days; and/or
- (c) A blind person who uses the dog as a guide.

(2) An animal control officer shall consider a dog not displaying a valid and current license as probable cause that the dog is unlicensed unless the owner shows a valid and current license to the officer, or the officer is able to ascertain the validity of the licensing through records.

(3) If a dog that has been impounded for license violation is later found to have been licensed properly at the time of the impoundment, then that dog shall be released to the owner, after payment of impoundment costs if the dog was transported to Baker City, unless the dog was also impounded for another violation of this chapter.

(B) Disease control.

(1) No owner shall permit any animal or bird that is afflicted with a communicable disease to come in contact with another animal, bird, or human that is susceptible to the affliction.

(2) No owner shall permit the body of an animal to remain upon the public streets or private property for a period of time longer than is reasonably necessary to remove such carcass.

(3) No owner shall cause or allow any stable or place where any animal is, or may be kept, to become unclean or unwholesome.

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(4) Any animal that is placed under quarantine by a licensed veterinarian shall be kept separated from any other animals or people other than the owner's family or pets for a period of not less than ten days.

(5) Whenever any animal bites a person, the owner of said animal shall immediately notify an animal control officer or County Sheriff's Department, who shall order the animal held on the owner's premises or shall have it impounded for a period of not less than ten days if it has been determined that there is no proof of proper rabies inoculation which is current. The animal shall be examined immediately after it has bitten anyone and again at the end of the quarantine period for signs of disease or injury. If at the end of the quarantine period the licensed veterinarian is convinced that the animal is then free from rabies, the animal shall be released from quarantine or from impoundment as the case may be, unless it is being held for another violation of this chapter, cost to be borne by the animal owner. If the animal dies during quarantine, its head shall be examined for rabies at the owner's expense.

(6) No person shall own, keep, or harbor any dog over six months of age unless the dog is vaccinated for rabies. The provisions of this section do not apply to animals owned by a licensed research facility, or government operated or licensed animal shelter.

(C) *Animal housing and restraint.*

(1) Housing structures shall be sound and maintained in good repair to protect animals from injury, safely confine any animal housed therein, and prevent entry of other animals that may be dangerous to the animals the enclosure is meant for.

(2) Housing structures for dogs shall, in addition to division (C)(1) above, be dry and adequately sealed to prevent cold air and moisture from entering the enclosure.

(3) Outdoor facilities shall provide protective shading and adequate shelter areas designed to minimize harmful exposure to weather conditions for those animals not acclimatized to the environment.

(4) The primary enclosure for dogs shall be of sufficient size to permit each dog housed therein to stand freely, sit, turn about, and lie in a comfortable normal position.

(5) When restraining devices are used in connection with a primary enclosure intended to permit movement outside the enclosure, such devices shall be installed in a manner to prevent entanglement with the devices or other animals or objects and shall be fitted to the animal by a harness or well-fitted collar, other than a choke type collar, and shall not be shorter than three times the length of the animal as measured from the tip of its nose to the base of its tail.

(6) Excrement shall be removed from primary enclosure and areas as often as necessary to prevent contamination, reduce disease hazards, and minimize odors. Storage of food supplies and bedding materials shall be designed to prevent vermin infestation.

(Ord. 6-89, passed 6-8-1989; Ord. 6-89/B, passed 5-15-1991; Ord. 6-89/C, passed 5-14-1992) Penalty, see ' 91.99

' 91.03 DUTIES OF THE PUBLIC.

(A) *Aiding injured animals.*

(1) Any person operating a vehicle, as defined by the Motor Vehicle Act of the State of Oregon, who runs over, strikes, injures, maims, or kills any domestic animal shall immediately stop and take one of the following actions:

(a) Notify the owner of the animal, if known;

(b) If the person feels that aid may be given to the animal without danger of the animal injuring or biting the person, the person may take the animal directly to a veterinary hospital; or

(c) Notify the local animal control or other law enforcement agency and remain at the scene until such time as an animal control or peace officer arrives.

(2) The liability for any injuries caused to an animal in any such situation shall be that of the animal's owner.

(3) The responsibility of the responding animal control or law enforcement agency will be to insure that any report of an injured animal is investigated. If the owner of the injured animal cannot be immediately located, and/or the person responsible for injury cannot be found, then the animal control officer or peace officer may remove the animal to an animal care facility for emergency treatment. If the owner or person responsible for the injury is later located, the agency responding shall be released from responsibility for any and all fees and charges for the care of the injured animal. If the responding agency has already paid fees for the care of the injured animal then the owner will be held responsible for said fees.

(4) Any animal control officer or peace officer who cares or provides for any animal pursuant to this section and any person into whose care an animal is delivered by an animal control officer or peace officer acting under this section shall be immune from civil or criminal liability based upon an allegation that such care was negligently provided.

(5) Failure to render aid to an injured animal is a Class B traffic infraction.

(B) *Victims of animal bites.* Any person who is bitten by an animal in such a manner that the bite causes blood to appear shall immediately notify the animal control or other law enforcement agency and give such details as are required.

(Ord. 6-89, passed 6-8-1989; Ord. 6-89/B, passed 5-15-1991) Penalty, see ' 91.99

' 91.04 PROHIBITED ACTIVITIES.

(A) *Exhibition of fighting or animal fighting.* A public or private display of combat between two or more animals in which the fighting, killing, maiming, or injuries of animals is a significant feature, is prohibited by this chapter. Any and all equipment used for this activity is also prohibited. This section does not include demonstrations of the hunting or tracking skills of an animal or the lawful use of animals for hunting, tracking, or self-protection.

(B) *Interference with an officer.* It shall be unlawful for any person to interfere with, hinder, or molest an animal control officer or peace officer while in the exercise of his or her duties in enforcing this chapter.

(C) *Removal of animal.* It shall be unlawful for any person to remove or cause the removal of any animal from Baker County for which the owner has been cited under ' ' 91.02(B), 91.04(A), 91.05, 91.06, or 91.07 of this chapter until the Municipal Court of the city has made a final ruling on the offense. The Court may grant exception to this upon the request of the animal owner if the owner can show just cause for the removal.

(D) *Animals at large.* It shall be unlawful for any owner to negligently permit an animal to run at large. An animal found at large will be considered to be prima facie evidence of negligent conduct on behalf of the owner. Domestic cats are exempt from the definition of Aat large.@

(E) *Public nuisances.* It shall be unlawful to keep or maintain within the city limits any animal which is a nuisance. An animal is a nuisance as described if it:

(1) Causes a disturbance by excessive barking or noise making plainly audible from inside any neighboring building, vehicle, or residence;

(2) Habitually chases vehicles or persons;

(3) Damages or destroys property of a person other than the owner or custodian of the animal;

(4) Scatters garbage; and/or

(5) Molests, attacks, or interferes with persons or other domestic animals on property other than the owner's property.

(F) *Court ordered removal.*

(1) The Municipal Court by written notice shall order the owner or keeper of an animal to remove that animal from the city permanently if, upon a complaint signed by two separate householders made to the Court, the Court finds that the animal is a nuisance as herein defined and that the animal's owner knew, or should have known that the animal has created the nuisance and permitted that nuisance to continue or be repeated; or upon a third conviction of any section of this chapter, the Court may declare an animal a public nuisance and order that animal's owner or keeper to remove the animal from the city permanently.

(2) The notice shall state the cause of its issuance, order the owner of the animal to immediately confine the animal, and, within five days, to remove the animal from the city permanently. The notice shall be sent by certified mail to the owner of the animal or shall be posted prominently upon the property on which the animal is kept. After delivery or posting of the notice, it is unlawful not to immediately confine the animal, or to release the animal or permit it to be kept anywhere within the city. (Ord. 6-89, passed 6-8-1989; Ord. 6-89/A, passed 12-14-1989) Penalty, see ' 91.99

' 91.05 DANGEROUS OR POTENTIALLY DANGEROUS ANIMALS.

(A) *Classification of levels of dangerousness of dogs.*

(1) A dog shall be classified as potentially dangerous if it menaces, chases, bites, causes physical injury, displays threatening or aggressive behavior, or otherwise threatens or endangers the safety of any person or domestic animal while:

(a) It is at large;

(b) It is off the property of the owner and on a physical control device; or

(c) It is in or on a motor vehicle and not restrained or otherwise physically prevented from reaching any area outside the perimeter of the vehicle.

(2) A dog shall be classified as dangerous if it:

(a) Causes the serious physical injury or death of any person;

(b) While at large or off the property of the owner it kills any domestic animal; or

(c) Is a dog classified as a potentially dangerous dog because the dog bit or caused physical injury to any person that after the owner has received notice of the potentially dangerous dog classification, again bites or causes physical injury to any person.

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(3) The Municipal Judge shall have the authority to refrain from classifying a dog as dangerous or potentially dangerous, even if the dog has engaged in the behaviors specified in divisions (A)(1) or (A)(2) above, if the Municipal Judge determines that the behavior was caused by abuse or torment of the dog or other unjustifiable provocation.

(4) No dog shall be found to be dangerous or potentially dangerous if it is a dog trained for law enforcement purposes and is on duty under the control of a peace officer at the time it exhibits behavior under paragraph division (A)(1) or (A)(2) above.

(B) Identification of dangerous or potentially dangerous dogs; appeals; restrictions pending appeal.

(1) The Municipal Judge shall have authority to determine whether any dog has engaged in the behaviors specified in division (A) above. The determination shall be based upon an investigation that includes observation of the dog's behavior by an animal control officer or peace officer, or by other witnesses who personally observed the behavior. Observations must be in writing attesting to the observed behavior and witnesses must be willing to provide testimony to validate their statements, if called upon to do so.

(2) The Municipal Judge shall give the dog's owner written notice by certified mail or personal service of the dog's specific behavior, or the dog's classification as a dangerous or potentially dangerous dog and of the additional restrictions applicable to that dog by reasons of its classification. If the owner denies that the behavior in question occurred, the owner may appeal the Municipal Court's decision to the Circuit Court by filing with the Municipal Judge, within ten days of the date the notice was mailed or the owner was personally served, a written request for a hearing.

(3) The Circuit Court shall hold a public hearing on any appeal from the Municipal Court's decision to classify a dog as potentially dangerous. The owner and any other persons having relevant evidence concerning the dog's behavior as specified in division (A) above shall be allowed to present testimony. The Circuit Court shall determine whether behavior specified in division (A) above was exhibited by the dog in question. The Circuit Court shall issue an order containing the Court's determination, which shall be final.

(4) Once the owner has received notice of the dog's classification pursuant to division (B)(2) above, the owner shall comply with the restrictions specified in the notice until such time as the Municipal Judge's decision is reversed on appeal. Failure to comply with the specified restrictions pending the completion of all appeals shall be a violation of this section for which a fine can be imposed. Additionally, the Municipal Judge shall have authority to impound the dog pending completion of all appeals.

(5) If the Municipal Judge finds that a dog is a dangerous dog, the dog shall be impounded pending the completion of all appeals. If the Municipal Judge's decision is upheld on appeal, the dog's owner shall be liable for the cost of the dog's impoundment.

(C) *Regulations of potentially dangerous dogs.* In addition to complying with all other requirements of this section the owner of a potentially dangerous dog shall comply with the following requirements.

(1) Restrain the dog to prevent it from interfering with the public's legal access to the owner's property or from reaching any public sidewalk or road or adjoining property.

(2) Pay an annual fee of \$25 at the time the city issues the tag described in (b) above and a like fee each year thereafter so long as the dog is alive and kept within the city limits. This fee shall be in addition to any other required license fee.

(3) Notify the city by certified mail or personal service where the dog is kept within ten days of any change in location.

(4) Post a warning sign supplied by the owner at the location the dog is kept, in a conspicuous place visible from the public sidewalk or road adjoining the property or if no such public sidewalk or road adjoins the property then at the boundary line of the property where access is provided to the property.

(5) The requirements of this section shall apply to any person who is transferred ownership or who keeps a potentially dangerous dog.

(D) *Euthanasia for dangerous dogs.* Any dog that has been found to be a dangerous dog shall be euthanized. If such dog is euthanized by a licensed veterinarian, the veterinarian shall certify to the Municipal Court that the dog has been euthanized.

(E) *Dog owner regulations.* It is unlawful for any person to:

(1) Be an owner of a dangerous dog;

(2) Fail to comply with the requirements applicable to potentially dangerous dogs; or

(3) Be an owner of a dog which engages in any of the behaviors described in this section whether or not such behavior was caused by abuse, torment, or other provocation or is exempted under division (A)(4) above, if that behavior is deemed to be in violation of the intent of this section.

(F) *Dangerous animals generally.*

(1) It shall be unlawful to keep any animal that is dangerous in the city unless that animal is confined by its owner within a building or secure enclosure that is not accessible to the public in general.

(2) An animal control officer or peace officer is authorized to kill a dangerous animal when it is necessary to prevent imminent injury to any person.

(3) The Municipal Court may order that a dangerous animal be euthanized in addition to penalties for separate ordinance violations. The veterinarian may hold the animal until a determination has been made by the Municipal Court at the owner's expense.

(Ord. 6-89, passed 6-8-1989; Ord. 6-89/B, passed 5-15-1991) Penalty, see ' 91.99

' **91.06 CRUELTY TO ANIMALS.**

(A) *Animal abuse in the second degree.*

(1) A person commits the crime of animal abuse in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly, or recklessly causes physical injury to an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the second degree is a Class B misdemeanor.

(B) *Animal abuse in the first degree.*

(1) A person commits the crime of animal abuse in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly, or recklessly:

(a) Causes serious physical injury to an animal; or

(b) Cruelly causes the death of an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the first degree is a Class A misdemeanor.

(C) *Animal neglect in the second degree.*

(1) A person commits the crime of animal neglect in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly, or with criminal negligence fails to provide minimum care for an animal in such person's custody or control.

(2) Animal neglect in the second degree is a Class B misdemeanor.

(D) *Animal neglect in the first degree.* A person commits the crime of animal neglect in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly, or with criminal negligence:

(1) Fails to provide minimum care for an animal in such person's custody or control; and

(2) Such failure to provide care results in serious physical injury or death to the animal.

(E) *Animals confined in vehicles.*

(1) 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, a dangerous temperature, lack of food or water or attention, or a confinement with a dangerous animal.

(2) Any animal control officer or peace officer is authorized to remove any animal from a motor vehicle at any location when the officer reasonably believes it is confined in violation of division (E) of this section. Any animal so removed shall be delivered to an animal control shelter after the removing officer leaves written notice of the removal and delivery, including the officer's name, in a conspicuous secure location on or within the vehicle.

(3) No animal control officer or peace officer shall be held criminally or civilly liable for action under this division (E), provided the officer acts in good faith on probable cause and without malice.

(F) *Poisoned food.* No person shall knowingly place food of any description containing poison or other injurious ingredients in any area reasonably likely to be accessible to animals.

(G) *Treatment of livestock.* Unless gross negligence can be shown, the provisions of divisions (A) through (E) above shall not apply to the treatment of livestock being transported by owner or common carrier, animals involved in rodeos or similar exhibitions, or commercially grown poultry.

(H) *Entering premises.* If there is probable cause to believe that any animal is being subjected to treatment in violation of divisions (A) through (D) above, an animal control officer or peace officer, after obtaining a search warrant in the manner authorized by law, may enter the premises where the animal is being held, provide food and water, and impound such animal. If after reasonable search the owner or person having custody of such animal cannot be found and notified of the impoundment, such notice shall be conspicuously posted on such premises and within 72 hours after the impoundment such notice shall be sent by certified mail to the address, if any, at which the animal was impounded.

(I) *Animal abandonment.*

(1) A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly, or with criminal negligence leaves a domesticated animal at a location without providing for the animal's continued care.

(2) It is no defense to the crime defined in division (I)(1) above that the defendant abandoned the animal at or near an animal shelter, veterinary clinic, or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

(3) Animal abandonment is a Class C misdemeanor.

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(1) In addition to and not in lieu of any other sentence it may impose, the Municipal Court may require a defendant convicted under divisions (A) through (E) and (I) above to forfeit any rights of the defendant in the animal subjected to abuse, neglect, or abandonment, and to repay the reasonable costs incurred by any person or agency prior to judgement in caring for each animal subjected to abuse, neglect, or abandonment.

(2) When the Municipal Court orders the defendant's rights in the animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. This division shall not constitute or authorize any limitation upon the rights of the person or agency to whom rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this division constitutes a transfer of ownership.

(K) Arrest for violations of this section.

(1) Any person violating divisions (A) through (F) and (I) above may be arrested and held without warrant, in the same manner as in the case of persons found breaking the peace.

(2) The person making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owners of the animals found in the charge of the person arrested, and shall properly care and provide for such animals until the owners or their duly authorized agents take charge of them, provided, such owners or agents shall claim and take charge of the animals within 60 days from the date of said notice.

(3) The person making such arrest shall have a lien upon the animals for the expense of such care and provisions.

(4) Any animal control officer or peace officer who cares or provides for an animal pursuant to this section and any person into whose care an animal is delivered by an animal control officer or peace officer acting under this section shall be immune from civil or criminal liability based upon an allegation that such care was negligently provided.

(L) Duty to arrest and prosecute.

(1) It shall be the duty of any animal control officer to arrest and prosecute any violator of divisions (A) through (F) and (I) above for any violation which comes to the knowledge or notice of the officer.

(2) The Municipal Judge shall have concurrent jurisdiction over all offenses committed under this section.

(Ord. 6-89, passed 6-8-1989) Penalty, see ' 91.99

' 91.07 INVOLVEMENT IN ANIMAL FIGHTING.

(A) *Involvement in animal fighting.* A person commits the crime of involvement in animal fighting if the person does any of the following:

(1) Owns, keeps, possesses, breeds, trains, buys, sells, or offers to sell a fighting dog;

(2) Promotes, conducts, participates in, or performs a service in the furtherance of an exhibition of animal fighting, including, but not limited to, refereeing, handling of animals at a fight, transportation of spectators to a fight, organizing a fight, advertising a fight, providing or serving concessions at a fight, or serving as a stakes holder for any money wagered on a fight;

(3) Keeps or uses, or in any way is connected with or interested in the management of, or receives money for the admission of, any person to any place kept or used for the purpose of an exhibition of fighting; or

(4) Knowingly suffers or permits any place over which he or she has possession or control to be occupied, kept, or used for the purpose of an exhibition of fighting.

(B) *Advertising.* For the purposes of this section, any person who knowingly places an advertisement to breed or sell a fighting dog, or who knowingly causes their name to appear in any such advertisement or other article in any publication that promotes, reports on, or advertises animal fighting or the sale of fighting dogs shall be considered to be in violation of division (A) above.

(C) *Impoundment of fighting animals.* When a person is arrested for a violation or involvement in animal fighting, the Municipal Court may order that in lieu of impounding any alleged fighting dogs or animals involved in fighting, at the county or humane society facility, the animals may be impounded on the property of their owner or keeper. In such cases, the Municipal Court shall require the owner or keeper to provide all necessary care for the animals, to allow regular and continuing inspection of the animals by licensed veterinarians, animal control, humane society, and law enforcement officials, at the owners cost, and not to sell or otherwise dispose of any of the animals until a judgement is made by the Municipal Court.

(D) *Aiding or abetting animal fighting.* A person commits the crime of aiding or abetting animal fighting if a person:

(1) Is knowingly present as a spectator or bettor, or has knowingly paid any admission to any place, building, or other site where preparations are being made for an exhibitions of fighting or where such an exhibition is taking place; or

(2) Knowingly places an advertisement to sell or offers to sell equipment used for training or

handling a fighting dog, regardless of whether that person has been convicted of involvement in animal fighting, when such an advertisement appears in any publication that promotes, reports on, or advertises animal fighting or the sale of fighting dogs.

(E) *Forfeiture.*

(1) In addition to and not in lieu of any other sentence it may impose, the Municipal Court shall order a defendant convicted under any violation of this section to forfeit to the city any rights of the defendant in any equipment used for training or handling a fighting dog, any equipment used for transporting a fighting dog, any concession equipment, any equipment used to promote or advertise an animal fight, any equipment used to stage an animal fight, and any fighting animals.

(2) When the Municipal Court orders the defendant's right in any fighting dog to be forfeited, the court shall further order that the dog be destroyed in accordance with state law by an animal control agency, a humane society or a licensed veterinarian. No fighting dog shall be released or given to any other person or agency. All costs incurred by any person or agency in caring for fighting dogs held as evidence prior to judgement shall be the responsibility of the owner or keeper of the dogs, upon conviction. If the owner or keeper is not convicted, the costs shall be the responsibility of the city. (Ord. 6-89, passed 6-8-1989) Penalty, see ' 91.99

' 91.08 IMPOUNDING PROCEDURES.

(A) *Violations.* Any animal which is:

- (1) Unlicensed;
- (2) Running at large;
- (3) A public nuisance;
- (4) Diseased;
- (5) Dangerous or potentially dangerous;
- (6) Subject to abuse, neglect, or abandonment;
- (7) Improperly housed or restrained;
- (8) In violation of land use restrictions;
- (9) Involved in animal fighting;
- (10) Chasing or harassing wildlife; or is

(11) Sick, injured, or dead as provided herein is in violation of this chapter and may be impounded by any animal control officer of the city.

(B) *Shelter regulations.* Whenever any animal is impounded pursuant to the provisions of this chapter at a suitable shelter facility:

(1) In case the owner or custodian of the animal is known to the person doing the impounding, that person shall forthwith give notice of the impounding by personal service or by registered or certified mail upon the owner or custodian, and if the owner or custodian does not within five days after the date of service of the notice, claim the animal and pay any fees assessed by the city, the animal may be euthanized or released to a person who agrees to provide the animal a suitable home; or

(2) In case the owner or custodian of the animal is not known to the person doing the impounding, that person shall post a notice of impoundment on the door of city hall. Said notice shall state the date, time, and place the animal was picked up, give a brief description of the animal, state the date of deadline, five days from date of impoundment, for claiming. If neither the owner nor custodian claims the animal and pays any fees assessed by the city, the animal may be euthanized or released to a person who agrees to provide the animal a suitable home.

(C) *Appeal.* An animal owner, believing himself or herself aggrieved by the seizure and impounding of his or her animal, may petition the Municipal Court for the release of his or her animal and the Municipal Court shall thereupon set a time and place for hearing the petition and notify the impounding officer. Upon a hearing, the Municipal Court shall have full power to determine whether the animal was wrongfully impounded and whether the animal should be returned to the owner and upon what terms.

(D) *Fees.*

(1) Impoundment fee will be set at \$50 plus a \$6.50 per day assessment fee while the animal is impounded.

(2) All fees that are to be collected for the impounding of an animal shall be collected regardless of whether or not the animal is claimed by its owner. An owner who has been properly notified of an impoundment and who fails to acknowledge the notification by paying all necessary fees for the impoundment shall be considered to have illegally abandoned the animal. Impoundment fees and assessment fees will be collected at city hall before the impounded animal can be claimed.

(3) Impoundment fees and per day assessment fees may be amended as needed by resolution of the City Council.

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(E) *Liability*. No animal control officer, euthanasia technician, or employee of the city shall be held criminally or civilly liable for impounding, releasing, handling, or euthanizing an animal pursuant to this section provided the officer or employee acts in good faith and without malice.

(Ord. 6-89, passed 6-8-1989; Ord. 6-98/D, passed 1-12-1995; Res. 1.6-89, passed 11-16-2004) Penalty, see ' 91.99

' 91.09 POWERS AND DUTIES OF ANIMAL CONTROL OFFICER.

(A) *Entry onto private land*. Any animal control officer, in the course of his or her duties in enforcing this chapter, shall have the privilege of entering onto private land without permission, but shall not enter into any dwelling or building without permission, authorization, or search warrant.

(B) *Specific powers*. The powers and duties of an animal control officer shall be as follows:

(1) To have full authority in the enforcement of all provisions of this chapter including, but not limited to:

- (a) Impounding of animals;
- (b) Citing violators of this chapter as prescribed; and
- (c) Seizing evidence related to violations of this chapter;

(2) To utilize available shelters within Baker County where all animals subject to impoundment may be kept and held safely and provided with proper and sufficient food, water, shelter, and care;

(3) To receive and collect any costs and charges herein set forth by this chapter as deemed necessary by the city.

(Ord. 6-89, passed 6-8-1989) Penalty, see ' 91.99

' 91.99 PENALTY.

(A) *Separate violations*. Each day=s violation of a section or division of this chapter constitutes a separate offense.

(B) *Fines (excluding state assessments)*.

(1) Violation of ' 91.02(A), Licensing of Dogs, shall be punishable by a minimum fine of \$50 and a maximum fine of \$100. Assessment fees will be added to minimum and maximum fines.

(2) Violations of the following sections are violations punishable by a minimum fine of \$100, maximum fine \$200, and/or community service. Assessment fees will be added to minimum and maximum fines.

- (a) ' 91.02(B), Disease Control.
- (b) ' 91.02(C), Animal Housing and Restraint.
- (c) ' 91.03(B), Victims of Animal Bites.
- (d) ' 91.04(C), Removal of Animal.
- (e) ' 91.04(D), Animals at Large.
- (f) ' 91.04(E), Public Nuisances.

(3) Violation of ' 91.03(A), Aiding Injured Animals, is a Class B traffic infraction and is punishable by a fine not to exceed \$250, and/or community service.

(4) Violation of ' 91.06(I), Animal Abandonment, is a Class C misdemeanor and is punishable by a fine not to exceed \$500, and/or community service.

(5) Violation of the following sections are Class B misdemeanors and are punishable by a fine not to exceed \$1,000, and/or community service:

- (a) ' 91.05, Dangerous or Potentially Dangerous Animals;
- (b) ' 91.06(A), Animal Abuse Second Degree;
- (c) ' 91.06(c), Animal Neglect Second Degree; and
- (d) ' 91.06(E), Animals Confined in Vehicles.

(6) Violation of the following sections are Class A misdemeanors and are punishable by a fine not to exceed \$2,500, and/or community service:

- (a) ' 91.06(b), Animal Abuse First Degree;
- (b) ' 91.06(d), Animal Neglect First Degree;
- (c) ' 91.06(f), Poisoned Food;
- (d) ' 91.07, Involvement in Animal Fighting;

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(e) ' 91.04(a), Exhibition of Fighting or Animal Fighting; and

(f) ' 91.04(b), Interference with an Officer.

(C) *Penalty for ' 91.07.*

(1) Involvement in animal fighting is a Class A misdemeanor as set forth in division (B) above. In addition to this criminal penalty, the Municipal Court shall prohibit any person convicted of involvement in animal fighting with dogs from owning a dog for a period or at least two years, not including any time served in a jail or prison.

(2) Aiding or abetting animal fighting is a Class A misdemeanor.
(Ord. 6-89, passed 6-8-1989; Ord. 6-89/B, passed 5-15-1991; Ord. 6-89/C, passed 5-14-1992; Ord. 6-89-96A, passed 12-12-1996)

CHAPTER 92: PUBLIC NUISANCE

Section

- 92.01 Adoption of county ordinance by reference
- 92.02 Enforcement

' 92.01 ADOPTION OF COUNTY ORDINANCE BY REFERENCE.

The city hereby adopts the Baker County Public Nuisance Ordinance No. 07.2015.01 by reference as though fully incorporated within this code.

(Ord. 2007-01, passed 4-12-2007; Ord. 07.2015.01, passed 7-9-2015)

' 92.02 ENFORCEMENT.

(A) Upon receiving a written complaint of a possible nuisance within the city, the Mayor or his or her designee shall investigate the possible nuisance. If determined that a potential nuisance exists, the city shall send a letter by certified mail to the property owner stating that the City Council is planning to take action and stating time and place of such action. The City Council in open public meeting declares that a nuisance exists and requests that Baker County enforce the city ordinance. This procedure is set forth by Baker County and shown as attachment A of the Baker County Nuisance Ordinance #2006-02.

(B) If an emergency situation is deemed to exist by the Mayor or his or her designee, the City Council hereby grants to the Mayor or his or her designee the authority to immediately notify the property owner to have the emergency situation abated. If the property owner does not abate the situation within a given time frame, the Mayor or his or her designee has the authority to notify the proper authorities and see that the situation is taken care of.

(Ord. 2007-01, passed 4-12-2007)

CHAPTER 93: FAIR HOUSING

Section

General Provisions

93.01 Fair housing resolution

Prohibiting Discrimination

93.15 Declaration of policy

93.16 Definitions

93.17 Unlawful practices

93.18 Exemptions

93.19 Procedure

93.20 Other remedies

GENERAL PROVISIONS

93.01 FAIR HOUSING RESOLUTION.

(A) Within the resources available to the city through city, county, state, federal, and community volunteer sources, the city will assist all persons who feel they have been discriminated against because of race, color, religion, national origin, sex, disability, familial status, sexual orientation, marital status, and source of income in the process of filing a complaint with the Oregon Civil Rights Division or the U.S. Department of Housing and Urban Development, Seattle Regional Office Compliance Division, that they may seek equity under federal and state laws.

(B) The city shall publicize this resolution and through this publicity shall cause real estate brokers and sellers, private home sellers, rental owners, rental property managers, real estate and rental advertisers, lenders, builders, developers, home buyers, and home or apartment renters to become aware of their respective responsibilities and rights under the Fair Housing Amendments Act of 1988 and any applicable state or local laws or ordinances.

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(C) The Fair Housing Program, for the purpose of informing those affected by their respective responsibilities and rights concerning Fair Housing Law and Complaint procedures, will at a minimum include, but not be limited to:

- (1) The printing, publicizing, and distribution of this resolution;
- (2) The distribution of posters, flyers, pamphlets, and other applicable fair housing information provided by local, state, and federal sources, through local media of community contacts; and
- (3) The publicizing of locations where assistance will be provided to those seeking to file a discrimination complaint.
(Res. 2.14/08 A, passed 2-26-2008)

PROHIBITING DISCRIMINATION

‘ 93.15 DECLARATION OF POLICY.

It is hereby declared to be the policy of the city in the exercise of its police power for the public safety, public health, and general welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, national origin, sex, disability, familial status, sexual orientation, marital status, and source of income and, to that end, to prohibit discrimination in housing any persons.

(Ord. 1-8, passed 9-13-1984)

‘ 93.16 DEFINITIONS.

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

DISCRIMINATION or ***DISCRIMINATORY HOUSING PRACTICE***. Any difference in treatment based upon race, color, religion, sex, or national origin; or any act that is unlawful under this subchapter.

FINANCIAL INSTITUTION. Includes any person, as defined herein, engaged in the business of lending money or guaranteeing losses.

HOUSING ACCOMMODATION or **DWELLING**. Any building, mobile home or trailer, structure, or portion thereof which is occupied as, or designed, or intended for occupancy, as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure, or portion thereof or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this subchapter.

MORTGAGE BROKER. An individual who is engaged in or who performs the business or services or a mortgage broker as the same are defined by Oregon Statutes.

OPEN MARKET. The market which is informed of the availability for sale, purchase, rental, or lease of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs, or by any other advertising methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental, or lease.

OWNER. Includes a lessee, sublessee, co-tenant, assignee, managing agent, or other person having the right or ownership or possession, or the right to sell, rent, or lease any housing accommodation.

PERSON. Includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

REAL ESTATE BROKER or **REAL ESTATE SALESPERSON**. Includes any individual, qualified by law, who, for a fee, commission, salary, or for other valuable consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents, or leases any housing accommodations, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds himself or herself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he or she undertakes to promote the sale, purchase, rental, or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

REAL PROPERTY. Includes buildings, structures, lands, tenements, leaseholds, cooperatives, and condominiums.

(Ord. 1-8, passed 9-13-1984)

' 93.17 UNLAWFUL PRACTICES.

In connection with any of the transactions set forth in this section which effect any housing accommodation on the open market, or in connection with any public sale, purchase, rental, or lease of any housing accommodation, it shall be unlawful within the city for a person, owner, financial institution, real estate broker, real estate salesperson, or any representative of the above, to:

(A) Refuse to sell, purchase, rent, or lease, or deny to, or withhold, any housing accommodation from a person because of his or her race, color, religion, national origin, sex, disability, familial status,

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sexual orientation, marital status, and source of income;

(B) Discriminate against a person in the terms, conditions, or privileges of the sale, purchase, rental, or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith;

(C) Refuse to receive or transmit a bona fide offer to sell, purchase, rent, or lease any housing accommodation from or to a person because of his or her race, color, religion, national origin, sex, disability, familial status, sexual orientation, marital status, and source of income;

(D) Refuse to negotiate for sale, purchase, rental, or lease of any housing accommodation to a person because of his or her race, color, religion, national origin, sex, disability, familial status, sexual orientation, marital status, and source of income;

(E) Represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental, or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation, because of his or her race, color, religion, national origin, sex, disability, familial status, sexual orientation, marital status, and source of income;

(F) Make, publish, print, circulate, post, or mail, or cause to be made, published, printed, circulated, posted, or mailed, any notice, statement, or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease, or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease, or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease, or financing of any housing accommodation, which indicate any discrimination or any intent to make a discrimination;

(G) Offer, solicit, accept, or use a listing of any housing accommodation for sale, purchase, rental, lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental, or lease, or in the furnishing of facilities or services in connection therewith;

(H) Induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental, or lease, or the listing for any of the above, or any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, national origin, sex, disability, familial status, sexual orientation, marital status, and source of income in the area to be affected by such sale, purchase, rental, or lease will or may result in:

- (1) The lowering of property values in the area;
- (2) An increase in criminal or antisocial behavior in the area; or
- (3) A decline in the quality of schools serving the area;

(I) Make any misrepresentations concerning the listing for sale, purchase, rental, or lease, or the anticipated listing for any of the above, or the sale, purchase, rental, or lease of any housing accommodation in any area in the city for the purpose of including or attempting to induce any such listing or any of the above transactions;

(J) Engage in, or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play upon fear, with the purpose of either discouraging or inducing, or attempting to induce, the sale, purchase, rental, or lease, or the listing for any of the above, of any housing accommodation;

(K) Retaliate or discriminate in any manner against a person because he or she has opposed a practice declared unlawful by this subchapter, or because he or she has filed a complaint, testified, assisted, or participated in any manner in the investigation, proceeding, hearing, or conference under this subchapter;

(L) Aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by this subchapter, or to obstruct or prevent any person from complying with the provisions of this subchapter; or any order issued thereunder;

(M) By canvassing to commit any unlawful practices prohibited by this subchapter;

(N) Otherwise to deny to, or withhold any housing accommodation from a person because of his or her race, color, religion, ancestry, national origin, sex, or place of birth;

(O) For any bank, building and loan association, insurance company or other corporation, association, firm, or enterprise whose business consists in whole or in part, in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other terms or conditions of such loans or other financial assistance, because of the religion, national origin, sex, disability, familial status, sexual orientation, marital status, and source of income of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; or

(P) Deny any qualified person access to or membership or participation in any multiple-listing service, real estate brokers= organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or access, membership, or participation, on account of race, color, religion, sex, or national origin.

(Ord. 1-8, passed 9-13-1984) Penalty, see ' 10.99

' 93.18 EXEMPTIONS.

This subchapter shall not apply to:

(A) A religious organization, association, or society or any nonprofit institution or organization operating, supervised, or controlled by, or in conjunction with a religious organization, association, or society, which limits the sale, rental, or occupancy, of dwellings which it owns or operates for other than commercial purpose to persons of the same religion, or which gives preference to such persons, unless membership in such a religion is restricted on account of race, color, religion, national origin, sex, disability, familial status, sexual orientation, marital status, and source of income;

(B) A private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, and which limits the rental or occupancy of such lodgings to its members or gives preference to its members;

(C) Any single-family house sold or rented by an owner; provided, that such private individual owner does not own more than three such single-family houses at any one time; provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this section shall apply only with respect to one such sale within any 24-month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or served on his or her behalf, under any express or voluntary agreement, title to or any right to, all or a portion of the proceeds from the sale or rental or, more than three such single-family houses at any one time; provided further, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented:

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

(2) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of the provisions of 42 U.S.C. ' 3604(c) or of ' 93.17 of this chapter; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

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

(Ord. 1-8, passed 9-13-1984)

‘ 93.19 PROCEDURE.

Any person aggrieved by an unlawful practice prohibited by this subchapter may file a complaint with the City Recorder within 30 days after the aggrieved person becomes aware of the alleged unlawful practice, and in no event more than 60 days after the alleged unlawful practice occurred. The City Recorder, Mayor, and City Council shall investigate each complaint and attempt to resolve each complaint. Failure to achieve a resolution acceptable to both parties and in compliance with this subchapter shall cause the Mayor to forward the complaint and any and all findings to the appropriate state and federal officials.

(Ord. 1-8, passed 9-13-1984)

‘ 93.20 OTHER REMEDIES.

Nothing herein contained shall prevent any person from exercising any right or seeking any remedy to which he or she might otherwise be entitled or from filing his or her complaint with any appropriate governmental agency.

(Ord. 1-8, passed 9-13-1984)

CHAPTER 94: FIRE PREVENTION

Section

- 94.01 Regulating fires and dangerous burning situations
- 94.02 State laws regulating sale and use of fireworks adopted

- 94.99 Penalty

' 94.01 REGULATING FIRES AND DANGEROUS BURNING SITUATIONS.

(A) No person shall burn any material less than 20 feet from a building in the city limits, unless such burning is done in an incinerator or other enclosed burning device which is approved by the District Fire Chief. An incinerator or enclosed burning device shall be covered by wire mesh grating no greater than one-fourth inch mesh and located no closer than ten feet from any building.

(B) No person shall burn any material within the city limits, except, in the summer, during the hours between 6:00 a.m. and 10:00 a.m., beginning on the day Daylight Savings Time (DLST) begins and ending when DLST ends. Winter burning hours will be during the hours between 6:00 a.m. and 11:00 a.m., beginning when DLST ends and ending when DLST begins. All burning, and/or smoldering, must cease at 10:00 a.m. in summer season and 11:00 a.m. in winter season.

(C) No person shall burn wet garbage, or any materials that emit foul and nauseous odors when burned.

(D) No person shall engage in any burning, inside or outside of a building, which, in the opinion of the District Fire Chief, poses a threat to property in the city. All open burning and all burning in burn barrels and incinerators, shall require a burn permit issued at City Hall, by the city, with a copy to be sent to the District Fire Chief. During times of the year when the State Fire Marshal or Baker County has declared a fire danger, there will be "NO" open burning allowed.

(E) The District Fire Chief is empowered to issue a citation requiring an individual or a corporation in violation of this section to appear before the Municipal Court of the city, pursuant to the ordinances of the city.

(Ord. 5-11, passed 1-13-1994; Ord. 5-11A, passed 8-14-2003; Ord. 5-11.06, passed 4-13-2006; Ord. 5-11-07, passed 1-11-2007) Penalty, see ' 94.99

‘ 94.02 STATE LAWS REGULATING SALE AND USE OF FIREWORKS ADOPTED.

The following enumerated laws of Oregon as amended, are hereby adopted by reference and made a part of this code.

O.R.S. 480.110

O.R.S. 480.120

O.R.S. 480.130

O.R.S. 480.140 (1)

O.R.S. 480.150

(Ord. passed - -) Penalty, see ‘ 94.99

‘ 94.99 PENALTY.

Any person found guilty of violation of this chapter may be fined in an amount not less than \$50, but not to exceed \$250.

(Ord. 5-11, passed 1-13-1994)

CHAPTER 95: WEEDS

Section

- 95.01 Adoption of Baker County Policy on Mandatory Control of Noxious Weeds
- 95.02 Owners or occupants required to remove brush, grass, and weeds
- 95.03 Notice to remove
- 95.04 Abatement by city; costs

- 95.99 Penalty

' **95.01 ADOPTION OF BAKER COUNTY POLICY ON MANDATORY CONTROL OF NOXIOUS WEEDS.**

The Baker County Policy on Mandatory Control of Noxious Weeds is hereby adopted and made a part of this code as if set forth in full herein, with particular attention to "whitetop," as so stated within the policy. The city will notify the owners of property with noxious weeds by letter, with a copy of the notification also being sent to Baker County Weed Control Department as a means of notifying that department of location of noxious weeds for enforcement of the policy.

(Res. 7/2-03, passed 7-10-2003)

' **95.02 OWNERS OR OCCUPANTS REQUIRED TO REMOVE BRUSH, GRASS, AND WEEDS.**

(A) The owner, occupant, or person in custody of all lots and parcels of land in the city shall cut and remove or destroy all brush, weeds, thistles, grass, or other rank or noxious plant growth growing to the height of ten inches or more upon said lots or parcels, and also upon any parkway abutting said lot or parcel. For purposes of this chapter only, **PARKWAY** shall be defined to mean that portion of the street not used as a roadway or as a sidewalk.

(B) No person who has any property abutting a public street shall allow weeds, brush, grass, and rank or wild growth to in any manner infringe upon said street and said abutting land owner shall be responsible for removal of said growth pursuant to the terms of this chapter.

(Ord. 4-3, passed - -) Penalty, see ' 95.99

' 95.03 NOTICE TO REMOVE.

If any person, firm, or corporation owning, possessing, or having the care or custody of any lot or parcel of land within the city shall fail or neglect to remove said brush, grass, or weeds as hereinabove required, the Mayor or Fire Chief shall cause to be served upon said person, firm, or corporation a written notice to remove said brush, grass, or weeds within five days, or the city will cause the same to be done and charge the cost thereof as a lien against the property. Such notice shall be served upon such owner or occupant if he or she is found upon said premises or within the city, and in case said owner or occupant cannot be found within the city after reasonable diligence and inquiry, such notice shall be posted in a conspicuous place upon said premises and a copy thereof mailed by certified mail to the last known address of such owner or occupant.

(Ord. 4-3, passed - -)

' 95.04 ABATEMENT BY CITY; COSTS.

(A) If any person, firm, or corporation owning, possessing or having the care of any lot or parcel of land within the city shall fail or neglect to destroy the said brush, grass, or weeds thereon or on any parkway abutting said lot or parcel within five days of the mailing of said notice, the Mayor may go upon such lots, parcels, or parkways with such assistance as he or she may deem necessary and destroy and eradicate said brush, grass, or weeds in such manner as shall be most effective in his or her judgment.

(B) Upon the completion of said work, the Mayor shall file with the City Council an itemized statement of the cost thereof plus 10% to cover the expense of inspection, overhead, enforcement of this chapter, and the service or posting of the notice hereinabove required, but the minimum charge for any lot or parcel of land shall be \$1. After a reasonable opportunity to be heard in objection thereto, the City Council shall then by ordinance declare the correctness of said statement and declare the same to be a lien upon the property involved, to be entered in the minor lien docket and enforced against said property in the same manner provided for the enforcement of liens for street improvements.

(Ord. 4-3, passed - -)

' 95.99 PENALTY.

Any person, firm, or corporation violating any of the provisions of ' ' 95.02 through 95.04 shall, upon conviction thereof, be punished by a fine of not more than \$10.

(Ord. 4-3, passed - -)