

ORDINANCE NO. 2330

AN ORDINANCE AMENDING CHAPTER 92 OF THE HERMISTON MUNICIPAL
CODE, ENTITLED “NUISANCES.”

Whereas, the staff of the City of Hermiston is conducting a major review of the City’s Code of Ordinances, now, therefore,

The City of Hermiston ordains as follows:

(New language is in red and underlined and repealed language has ~~a line through it.~~)

Section 1. Section 92.01 of the Hermiston Municipal Code is amended to read:

GENERAL PROVISIONS

92.01 DEFINITIONS.

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. The definitions in Chapter 135 also shall apply.

ABATEMENT. The act of removing, repairing, securing, vacating or taking other steps as may be necessary in order to remove a nuisance.

EXTERIOR or OUTDOOR AREA. The portions of a property outside the exterior walls and roof of a structure or building.

IMMEDIATE DANGER. Any condition posing a direct immediate threat to human life, health, or safety.

MAINTAINED COMPOST AREA. A small portion of a property set aside for the purpose of encouraging the rapid decomposition of yard debris and other vegetable matter into a suitable fertilizer for the soil on the property. A maintained compost area shows clear indicators that the yard debris placed there is being actively managed to encourage its rapid decomposition. Possible signs of such active management may include evidence of regular turning, a mixture of yard debris types, any woody material present having been chopped into small sizes, and the presence of internal heat in the composting mixture. A location where yard debris is placed primarily to store it or dump it without reasonable expectation of rapid decomposition is not a maintained compost area.

NATURESCAPE. Landscaping and gardening approaches that use predominately native plants for the purpose of creating improved outdoor habitat for native insects, birds, and mammals and reducing the need for pesticides, chemical fertilizers, and summer watering.

PERSON(S) RESPONSIBLE ~~PEOPLE.~~ The following persons are responsible for compliance

with this Chapter. The owner and person in charge of the property on which a nuisance is located or emanates are jointly and severally responsible and may be held responsible for abatement regardless of whether a third party created the nuisance on the property. ~~The persons jointly and severally for abating a nuisance and liable for penalties upon conviction of a violation of this subchapter include:~~

- ~~(1) The owner(s) of the property; on which the nuisance originated.~~
- ~~(2) The person(s) in charge of property; as defined in this section.~~
- ~~(3) The person(s) who caused a nuisance, as defined in this subchapter or another ordinance of the city, to come into or continue in existence.~~

PERSON. A natural person, firm, general partnership, limited partnership, association, foundation, trust, limited liability company, corporation or similar entity.

PERSON IN CHARGE OF PROPERTY. An agent, occupant, lessee, contract buyer or ~~other~~ a person having possession or control of property or supervision of a construction project.

PUBLIC PLACE. A building, way, place or accommodation publicly or privately owned, open and available to the general public.

Section 2. Section 92.02 of the Hermiston Municipal Code is amended to read:

92.02 ~~NUISANCES AFFECTING PUBLIC HEALTH~~ VIOLATION.

It shall be a violation of this Chapter for any person responsible to cause, permit, suffer the creation or continued existence of a nuisance on or emanating from property.

Section 3. Section 92.03 of the Hermiston Municipal Code is amended to read:

92.02~~3~~ ~~CREATING A HAZARD~~ NUISANCES AFFECTING EXTERIOR AREAS AND PUBLIC HEALTH.

It is the responsibility of the owner or person in charge of any property, improved or unimproved, to maintain the outdoor areas of the property and adjacent rights of way in a manner that complies with the applicable provisions of this Code, including the following requirements. Failure to comply also constitutes a nuisance affecting public health.

In particular, no person responsible shall permit any of the following:

~~No person shall cause or permit a nuisance affecting public health on property owned or controlled by him. The following are nuisances affecting public health and may be abated as~~

provided in this subchapter:

- (A) Open vaults, septic tanks, cesspools, cisterns or privies constructed and maintained within the City, except as provided in §51.003. ~~those constructed or maintained in connection with construction projects in accordance with State Health Division regulations.~~ Holes, excavations, open foundations, tanks and similar hazards with a depth of fourteen or more inches and a top width of 12 inches or more shall be removed, securely covered or filled where filling will abate the nuisance.
- (B) Accumulations of debris, rubbish, manure and other refuse that creates objectionable odors, any condition that provides a place or harborage where vectors or rodents gain shelter, feed or breed, or constitutes significant visual blight impacting neighboring properties. ~~that are not removed within a reasonable time and that affect the health of the city.~~
- (C) Stagnant water that affords a breeding place for mosquitoes and other insect pests.
- (D) Violation of Chapter 51, relating to sewers, including but not limited to disposing, discharging, or releasing any sewage or other regulated substance or failing to abide by a permit or approval issued pursuant to Chapter 51. ~~Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.~~
- (E) Decayed or unwholesome food offered for human consumption.
- (F) Premises that are in a state or condition as to cause an offensive odor or that are in an unsanitary condition.
- (G) Drainage of liquid wastes from private premises except as authorized by this Code or appropriate approval or permit.
- (H) Cesspools or septic tanks that are in an unsanitary or unsafe condition or that cause an offensive odor.
- (I) Brush, vines, overgrowth and other vegetation located within ten feet of a structure or a property line that are likely to obstruct or impede the necessary passage of fire or other emergency personnel; obstruction of emergency access. ~~Mastics, oil, grease or petroleum products allowed to be introduced into the sewer system by a user connected to the sewer system.~~
- (J) Thickets that conceal hazards, conceal trash and debris, create vector or rodent harborage, or harborage for people involved in criminal activity or for products used in criminal activity. Weeds and grass with a prevailing height of more than 15 inches located in areas where lawn grasses are used as ground cover or any area with ground covering vegetation is used as passage

to other areas on the property.

(K) Garbage, offal, dead animals, animal and human waste, and waste materials. All household garbage shall be stored as specified in Chapter 50 and §135.034.

(L) Accumulations of litter, glass, scrap materials (such as wood, metal, paper, and plastics), junk, combustible materials, stagnant water, or trash.

(M) All dead or diseased bushes, dead or diseased trees, and stumps except for such material which:

(1) Is being maintained as part of a naturescaped property;

(2) Does not result in a nuisance as otherwise defined in this Chapter; and

(3) Is located on a property which is otherwise substantially in compliance with this Chapter.

(N) Accumulations of dead organic matter and yard debris, except for small accumulations of such material in a maintained compost area on the property and only if such material does not result in a nuisance, such as creating rodent harborage, as otherwise defined in this Chapter.

(O) Accumulations of clothing and any other items not designed for outdoor storage.

(P) Permitting any irrigation water or water used for domestic or other purposes to run across or upon any City street as specified in Chapter 94.

(Q) Accumulation of wood pallets. Accumulation of firewood that is not stacked and useable. Useable firewood has more wood than log and is cut to lengths that will fit in a lawful fireplace or wood stove on the property.

(R) Accumulation of vehicle parts or tires.

(S) Accumulation of construction materials, except those that are stored in a manner to protect their utility and prevent deterioration and are reasonably expected to be used at the site.

(T) All appliances or appliance parts except for storage of appliances that are reasonably expected to be used at the site and that are stored in a manner to protect their utility and prevent deterioration and are secured as from entry.

(U) All indoor furniture except that which is stored in a manner to protect its utility and prevent deterioration and is reasonably expected to be used at the property.

(V) All recycling materials except for reasonable accumulations (amounts consistent with a policy of regular removal) that are stored in a well-maintained manner.

(W) All other items that:

(a) Are a type or quantity inconsistent with normal and usual use; or

(b) Are likely to obstruct or impede the necessary passage of fire or other emergency personnel or to create a health or safety hazard, or harborage for vectors or rodents, or harborage for people involved in criminal activity or for products used in criminal activity.

(X) Junk, including disabled vehicles. No person shall keep junk outdoors on a street, yard, lot, or premises or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress. This includes a motor vehicle or vehicles unless currently registered and operable, or an accumulation of any of the following: old motor vehicle parts, tires, abandoned automobiles, old machinery, old machinery parts, old appliances or appliance parts, old iron or other metals, glass, paper, lumber, wood or other waste or discarded material. This section does not apply to junk kept, salvaged, used or resold as part of a business being conducted on property in compliance with all City zoning laws and permits. Whenever a disabled vehicle, which has been tagged by the City, is removed from real property and placed on the public right-of-way, the owner, person in charge or lawful occupant of the property from which the vehicle was moved to the right of way shall be responsible for that vehicle and for compliance with this Code.

(Y) Any obstruction to adjacent right of way. All adjacent right of way shall be kept clear as provide in this Chapter and Chapter 94.07.

(Z) Any damaged, failing or failed on-site sewage disposal system, private sewer line or rain drain system. All such items shall be maintained in accordance with Chapters 51 and 52 of this Code.

(AA) Any other substance, material or condition which is determined by the City to endanger neighboring property, the health or safety of the public, or the occupants of the property.

(BB) Any graffiti, which under this Chapter is defined as any inscription, word, figure, or design that is marked, etched, scratched, drawn or painted on any surface that is not authorized by the owner or person in charge of the property, where the markings are visible from premises open to the public; such as public rights-of-way or other publicly owned property.

~~92.03 CREATING A HAZARD:~~

~~No person shall create a hazard by:~~

~~(A) Maintaining, leaving, abandoning, discarding or storing in the open, in a place accessible to~~

children, a container with a compartment of more than one and one half cubic feet capacity and a door or lid that locks or fastens automatically when closed and that cannot be easily opened from the inside, including but not limited to ice boxes, refrigerators or freezers.

(B) — Being the owner or otherwise having possession of property on which there is a well, cistern, cesspool, excavation, or other hole of a depth of four feet or more, and a top width of 12 inches or more and failing to cover or fence it with a suitable protective construction.

Section 4. Section 92.04 of the Hermiston Municipal Code is amended to read:

92.04 VEGETATION AND NOXIOUS VEGETATION.

(A) No owner or person in charge of property shall permit grass, weeds or brush to grow on property, including a landscape or parking strip or similar public right of way adjacent to property, over 15 inches high. No person shall permit grass, weeds, brush or dead, dying or decomposing trees to create a fire hazard. ~~within 100 feet of a public access, roadway, adjacent or abutting streets, alleys, other adjacent or abutting properties, or from any combustible structure, including a fence, shall permit weeds or other noxious vegetation to grow upon his property over 15 inches high. The owner or person in charge of property shall cut down, destroy or remove grass, shrubbery, brush, weeds, or other noxious vegetation as often as necessary to prevent them from becoming a fire hazard, or from maturing or going to seed.~~

(B) No owner or person in charge of property shall permit vegetation to become a health hazard or a traffic hazard that impairs the view of a public thoroughfare or otherwise impedes travel makes travel hazardous, including impeding use of a sidewalk. In addition to vegetation, this responsibility includes but is not limited to earth, rock or any other debris or obstruction prohibited by Chapter 94.07.

~~For purpose of this section, NOXIOUS VEGETATION means: (1) — Vegetation that is, or is likely to become: (a) A health hazard; (b) A fire hazard; or (c) A traffic hazard, because it impairs the view of a public thoroughfare, or otherwise makes use of the thoroughfare hazardous.~~

(C) No owner or person in charge of property shall plant, grow or allow to remain any noxious vegetation, defined as any weeds commonly known as puncture vines, sand-burs, bull thistles, Canadian thistles, and star thistles or designated as noxious by the City Council regardless of their height or distance from public access, roadway, adjacent or abutting streets, alleys, other adjacent or abutting properties. It includes blackberry bushes that extend into a public way or a pathway frequented by children or across a property line.

~~Weeds commonly known as puncture vines, sandburs, bull thistles, Canadian thistles, and star thistles regardless of their height and/or distance from public access, roadway, adjacent or~~

~~abutting streets, alleys, other adjacent or abutting properties. Blackberry bushes that extend into a public way or a pathway frequented by children or across a property line.~~

Section 5. Section 92.05 of the Hermiston Municipal Code is amended to read:

92.05 DEPOSITING RUBBISH.

No person shall deposit, on public or private property, rubbish, garbage, trash, debris, refuse or any substance or material that would mar the appearance, create: a stench, a vector, a rodent harborage, or fire hazard, or detract from the cleanliness or safety of the property or would be likely to injure a person, animal or vehicle travelling on a public way.

Section 6. Section 92.06 of the Hermiston Municipal Code is amended to read:

92.06 TREES.

(A) No owner or person in charge of property that abuts on a street or other public right of way or public sidewalk shall permit trees or bushes on the property to interfere with vehicular, bicycle or pedestrian ~~street or sidewalk~~ traffic, including creating a visual obstruction. An owner or person in charge of property that abuts on a street or public sidewalk shall keep all trees and bushes on the premises, including the adjoining landscape or parking strip, trimmed so that they do not project over a sidewalk at an elevation of less than eight feet above the level of the sidewalk or over a public right of way at an elevation of less than 13 feet above the level of the right of way ~~street~~.

(B) No owner or person in charge of property shall allow a dead or decaying tree to stand if it is a hazard to the public or to persons or property on or near the property.

Section 7. Section 92.07 of the Hermiston Municipal Code is amended to read:

92.07 FENCES.

No owner or person in charge of property shall construct or maintain a barbed wire or razor wire fence, or permit barbed or razor wire to remain as part of a fence, along a sidewalk; except on commercial or industrial property wire may be placed above the top of other fencing not less than six feet, six inches high so long as it does not extend over the sidewalk. No person shall construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person. Any electric fence not prohibited shall be clearly labeled as such.

~~(A) No owner or person in charge of property that abuts on a street or public sidewalk shall permit trees or bushes on the property to interfere with street or sidewalk traffic. An owner or~~

~~person in charge of property that abuts on a street or public sidewalk shall keep all trees and bushes on the premises, including the adjoining parking strip, trimmed so that they do not project over a sidewalk at an elevation of less than eight feet above the level of the sidewalk or over a street at an elevation of less than 13 feet above the level of the street.~~

~~(B) No owner or person in charge of property shall allow a dead or decaying tree to stand if it is a hazard to the public or to persons or property on or near property.~~

Section 8. Section 92.08 of the Hermiston Municipal Code is amended to read:

92.08 RADIO AND TELEVISION INTERFERENCE.

(A) No person shall operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design.

(B) This section does not apply to devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission or the local regulation of which is otherwise preempted by law.

Section 9. Section 92.09 of the Hermiston Municipal Code is amended to read:

92.09 Reserved JUNK.

~~(A) No person shall keep junk outdoors on a street, yard, lot, or premises or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress.~~

~~(B) The term JUNK, as used in this section, includes a motor vehicle or vehicles unless currently registered and operable, or an accumulation of any of the following: old motor vehicle parts, tires, abandoned automobiles, old machinery, old machinery parts, old appliances or appliance parts, old iron or other metals, glass, paper, lumber, wood or other waste or discarded material.~~

~~(C) This section does not apply to junk kept, salvaged, used or resold as part of a business being conducted on property in compliance with all city zoning laws where zoning laws authorize the use.~~

Section 10. Section 92.10 of the Hermiston Municipal Code is amended to read:

92.10 ODORIFEROUS NUISANCES.

(A) *Odoriferous nuisances.* No owner or person in charge of property on which obnoxious, offensive or objectionable odors are created or generated shall cause or permit odors to escape

from that property so as to endanger the health of, cause significant discomfort to, or otherwise deleteriously affect the convenience, safety or welfare of any person within the City limits. All obnoxious, offensive and/or objectionable odors within the City limits are odoriferous nuisances affecting public health and safety, may be penalized as provided in § 92.99, and may be abated as provided in § 92.15, notwithstanding any governmental authorizations or permits issued to the odor-causing activity and irrespective of the location of the activity or the economic or social utility thereof.

(B) *Evidence of odoriferous nuisances.* All or any of the following shall be evidence of the existence of obnoxious, offensive or objectionable odors within the City limits:

(1) The oral or written complaint of three or more persons, within any 12-hour period, to the effect that odors emanating from any activity within or in the vicinity of the City are causing adverse health effects, significant discomfort, or serious inconvenience to the persons (or to minors within the custody or care of the persons) at a residence or place of business within the City limits; or

(2) The detection and measurement, by a qualified person employing appropriate technology, of one or more of the following odor constituents, at or above the following concentrations, within the City limits:

(a) Hydrogen sulfide at or in excess of six parts per billion (ppb);

(b) Ammonia at or in excess of 50 ppb; or

(3) The finding, by an odor panel, that odors emanating from a source inside or outside the City limits exceed two odor units at the property boundary or at the city limits (whichever is closest to the source.) The odor panel shall be comprised of six residents of the City appointed by the Mayor and confirmed by the City Council. The determination by the odor panel shall be based on substantial adherence to the following procedure: A sample is collected in a glass sampling bulb (25 to 10,000 ml in size) and delivered immediately to the odor panel for a series of dilutions and sniffing using the triangle olfactometer method, in which three samples are presented to each panelist from a series of glass sniffing ports. Two are test room air (blanks), and the third is odorous air diluted with test room air. The olfactometer supplies six dilution level. An odor unit is defined as the volumetric amount of the odorous gas which is detectable by only half the odor panel in 0.03m³ (1 cu. ft.) of odor-free air. The strength of an odor is determined by the number of dilutions with odor-free air needed to reduce an odor to a barely detectable level.

(C) *Abatement of odoriferous nuisances.* Notwithstanding any other provision of this Code, the creation or generation of any odoriferous nuisance may be ordered abated only upon the motion, petition or complaint of the City or any resident of the City:

- (1) By an order of the municipal court of the City enjoining an odor-causing activity within the City limits until such time as the person in charge of the property has given verifiable and enforceable assurances that the activity will no longer create an odoriferous nuisance;
- (2) By an order of the circuit court of the State of Oregon for Umatilla County enjoining an odor-causing activity either within or outside the City limits until such time as the person in charge of the property has given verifiable and enforceable assurances that the activity will no longer create an odoriferous nuisance within the limits of the City; or
- (3) By any other appropriate legal or equitable judicial remedy available to the City or its residents for the abatement of nuisances.

Section 11. Section 92.11 of the Hermiston Municipal Code is amended to read:

92.11 ATTRACTIVE NUISANCES

(A) For purposes of this Code, an attractive nuisance is any item or condition that may attract persons under 18 onto property and into a situation involving risk of harm. All persons responsible are charged with knowledge that such persons may not appreciate the risks that an item or condition may present. Attractive nuisances are presumed to constitute an immediate danger.

~~(A) Definition. The following definition shall apply to this section.~~

~~PERSON. Any natural person, firm, corporation, partnership, association or other legally identifiable group, whether he or it is acting for himself or itself or as the clerk, servant, employee or agent of another.~~

~~(B) . Unlawfully activity. No person~~ It shall be unlawful for any owner, lessee, occupant or any person having control, custody or management of any premises to shall suffer or permit to remain unsecured or unguarded upon the premises any attractive nuisance, including but not limited to:

(1) machinery, equipment or other device having the characteristics of an attractive nuisance or which is liable to attract children;

~~(2) It shall further be unlawful for any of the aforementioned persons to suffer or permit to remain unguarded upon the premises any pit, quarry, cistern, well or other excavation~~ or any unsecured abandoned or dangerous structure.

~~(3) any refrigerator, freezer, icebox, washing machine or other appliance or container with a compartment of more than one and one-half cubic feet capacity and a door or lid that locks or fastens when closed and that cannot be easily opened from the inside by a child. (4) A~~

swimming pool or pond not in compliance with Chapter 135.040 or the zoning code.

Section 12. Section 92.12 of the Hermiston Municipal Code is amended to read:

92.12 BLOWING DUST.

(A) For purposes of this section, dust includes but is not limited to dust, sand, dirt or similar material. No person responsible ~~It is unlawful for any owner, contractor, developer, or other person in charge of property,~~ who disturbs land, including, but not limited to, clearing, grading, grubbing, excavating, filling, landscaping, or erecting buildings, or allows, contracts for, or directs the disturbance of the land, shall ~~to~~ cause or permit dust ~~,sand, and dirt, etc.,~~ to blow ~~from blowing~~ from the disturbed land site to other real property, including streets and dry wells in sufficient quantities and of such characteristics and duration as to be inconvenient, annoying, or injurious to human health, plant or animal life, or property.

(B) No person shall disturb one acre or more of land without first obtaining approval of a Blowing Dust Control Plan. The City shall require such a plan as a condition of any development agreement, permit or public contract involving disturbance of one acre or more of land. ~~As part of any development agreement entered into between the city and a developer, or when another person intends to disturb one acre or more of land at any one time by one or more phases of development, and the disturbance is located on the same parcel of land or on contiguous parcels of land under the same ownership, or as part of any public improvement contract let by the city involving disturbance of one or more acres of land, a written Blowing Dust Control Plan, The City will approve the Blowing Dust Control Plan only if~~ must be filed with the city for review. ~~No Development Agreement or Notice to Proceed will be issued until the City~~ determines ~~has certified~~ that the Blowing Dust Control Plan contains reasonably acceptable control measures that, if followed, will prevent or substantially reduce blowing dust during high winds. A cash deposit, performance bond, letter of credit, or other security to secure performance of the Blowing Dust Control Plan, in an amount as established by resolution of the City Council, must be submitted with the Blowing Dust Control Plan.

(CD) ~~It is an affirmative defense to a blowing dust violation that the owner, contractor, developer, or other person in charge of property, who disturbs land made a good faith effort, to the maximum extent possible, to control dust, sand, and dirt, etc., from blowing from the disturbed land site to other real property, including streets and dry wells. The Blowing Dust Control Plan shall identify the reasonably acceptable control measures that will be utilized to prevent blowing dust, including persons who will check the site during weekends and holidays and have the ability and means to take corrective action. Corrective action must be available 24 hours per day, seven days per week. The names and phone numbers of such persons shall be included in the plan, and the City shall be advised immediately, in writing, if there are any~~

changes in the names or phone numbers of the person or persons to contact. The Blowing Dust Control Plan and security deposit shall remain in effect for the full period of the activity which disturbs the land. The City may require the Blowing Dust Control Plan and the security deposit to continue beyond the final completion of the land disturbance activity for up to, but not to exceed, two years if the extension is necessary to ensure that the disturbed soil has stabilized.

(~~D~~E) Actions by a public utility, the City, or other governmental agency to remove or alleviate an emergency condition, restore utility service, or reopen a public thoroughfare to traffic are exempt from controlling dust.

(E) In addition to issuance of a citation or complaint, the City may order that steps immediately be taken as are necessary to stop or mitigate blowing dust. This may be done notwithstanding compliance with an approved plan if the City determines that approved plan is ineffective, or the dust exceeds the amount of blowing dust anticipated by the plan. The order may include, but is not limited to suspension of all dust generating activity until sufficient control measures are in place. If the person responsible is unavailable, or is unwilling or unable to comply with such order within the time set forth in the order, ~~Where the occurrence of blowing dust can be reasonably attributable to a given site, the city shall notify the offender to immediately suppress the blowing dust. In addition the city may order the suspension of all activity on the offending site and require the immediate employment of sufficient efforts to control the blowing dust. If the person in possession or control of the site or the contact person or persons listed in the Blowing Dust Control Plan are unavailable or do not initiate sufficient dust control efforts within four hours of being notified to do so, the City may initiate such efforts as it deems reasonable to suppress the blowing dust,~~ provided that the City may not enter the property without the consent of the owner or person in charge, a warrant or lawful exception to obtaining a warrant. The costs incurred by the City for dust suppression efforts shall be borne by the person responsible ~~owner, developer, and other persons responsible for the land disturbance activity on the site.~~ The cost for labor and equipment used or hired by the city for dust suppression shall be in an amount set by resolution of the Council reasonably calculated to reimburse the City for all costs. The City may recover the costs from the ~~Such costs may be deducted from any~~ security filed with a Blowing Dust Control Plan or as otherwise provided by law. These costs are in addition to any penalty assessed against a violator.

(F) Violation of this section involving a property of less than one acre is a Class B violation. Violation of this section involving a property of one acre or more, including failure to obtain or comply with the terms of an approved Blowing Dust Control Plan is a Class A violation. Failure to comply with an order to suspend operations or take other steps ordered by the City to abate blowing dust is a Class A violation. Except for failure to obtain a Blowing Dust Plan approval, it is an affirmative defense to a fine or civil penalty for a blowing dust violation if the responsible

person establishes that the person made a good faith effort, to the maximum extent practicable, to control dust from blowing from the disturbed site, to comply with any approved Blowing Dust Control Plan or comply with an order to cease the activity or suppress the dust.

(G) ~~Violation of division (A) involving a site of less than one acre is a Class A violation. Failure to notify the city within 24 hours of any changes in the names and phone numbers of persons listed in a Blowing Dust Control Plan who will check the site during weekends and holidays and have the ability and means to take corrective action is a Class A violation. Violation of division (A) involving a site of one acre or more, or failing to implement a Dust Control Plan, or sufficient dust control efforts within four hours of being notified to do so is punishable by a fine of up to \$2,500 per day per violation.~~ In addition, failure to pay the fine and the costs incurred by the City for dust suppression shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or licenses.

Section 13. Section 92.13 of the Hermiston Municipal Code is amended to read:

92.13 UNENUMERATED NUISANCES.

(A) The acts, conditions or objects specifically enumerated and defined in this Chapter § 92.02 et seq. are declared public nuisances.

(B) In addition to the nuisances specifically enumerated in this ~~subchapter~~ Chapter, or designated as a nuisance by any other Chapter or ordinance, every other thing, condition, substance or act that is determined by the Council to be injurious or detrimental to the public health, safety or welfare of the City is declared a nuisance and may be abated as provided in this ~~subchapter~~ Chapter.

Section 14. Section 92.14 of the Hermiston Municipal Code is amended to read:

92.14 DECLARATION OF NUISANCE AND APPEAL ~~ABATEMENT PROCEDURE.~~

(A) If the City Manager or designee has reason to conclude that a public nuisance exists, the City Manager or designee may, in their ~~in his or her~~ discretion:

1. Issue a warning, stating the nature of the nuisance, a deadline for abatement and such other information as deemed appropriate. It shall specify that failure to resolve the matter may result in issuance of a citation and fine or commencement of nuisance enforcement proceeding, including abatement;

2. Issue a citation or enforcement complaint as provided in Chapters 136 or 138;

3. Declare the existence of a public nuisance or refer the matter to the Code Hearings Officer, Council, or a court of law for consideration of declaring a public nuisance. The declaration shall describe the nature of the nuisance; the required abatement, the deadline for abatement and state that the order shall be final and effective if not timely appealed.

(B) If the City declares a nuisance, it shall be served on the person(s) responsible, and the owner of the property on which the nuisance exists, if different, by personal service or first-class mail, postage paid and return receipt requested. The property also may be posted. If the nuisance involves a disabled vehicle on public right of way or property, notice shall be mailed to the registered owner and any other persons appearing to have an interest in the vehicle. The property shall be posted with the notice if demolition or vacating the property is likely to be necessary. An error in the name or address of the owner or person, or failure of any person to actually receive notice, shall not make the notice void. If based on the information available at the time, there is reasonable grounds to conclude vacating or demolishing the property may be necessary or an order for such issued, the notice shall include a reference to and comply with Chapter 135 as applicable;

(C) Appeal from Nuisance Declaration:

(1) A person subject to a declaration of public nuisance issued by the City Manager or designee, may appeal the declaration to the Code Hearings Officer pursuant to Chapter 136 except that the appeal shall be filed within 10 days of mailing or service.

(2) Any review of a declaration of public nuisance issued by the City Council shall be by writ of review to the Circuit Court of Umatilla County, Oregon as provided in ORS 34.010 through 34.100.

(3) A person subject to a declaration of a public nuisance by a court may appeal as provide by state law.

(D) The declaration of a public nuisance shall be final if not properly appealed within the time specified in this Chapter or state law.

Abatement notice.

~~(1) Upon determination by the City Manager or his or her designate that a nuisance exists as defined in the Hermiston Code of Ordinances, a notice shall be posted on the premises liable for the nuisance directing removal or abatement.~~

~~(2) At the time of posting, the city shall mail notice to the owner or agent in charge of the property at the last known address of the owner or agent.~~

~~(3) — The notice to abate shall contain:~~

~~(a) — A description of the real property, by street address or otherwise, on which or adjacent to which the nuisance exists;~~

~~(b) — A direction to remove the nuisance within seven days from the date of the notice;~~

~~(c) — A description of the nuisance;~~

~~(d) — A statement that unless the nuisance is removed or abated, the city will do so and the cost thereof shall be a lien against the property;~~

~~(e) — A statement that the owner or agent in charge of the property may protest the action by actual delivery of notice to the City Manager within seven days from the date of the notice.~~

~~(4) — The person posting and mailing the notice as provided herein shall, upon completion of the posting and mailing, execute and file in the office of the Finance Director/Recorder a certificate stating the date and place of mailing and posting.~~

~~(5) — An error in the name or address of the owner or agent in charge of the property or the use of a name other than that of the owner or agent shall not make the notice void and in such case the posted notice shall be deemed sufficient.~~

~~(B) — Abatement by the owner.~~

~~(1) — Within the time allowed by the notice as provided in subsection (A)(3) of this section, the owner or agent in charge of the property shall remove and abate the nuisance or show that no nuisance exists.~~

~~(2) — Upon the city's determination that a nuisance does in fact exist, the owner or agent in charge shall within a reasonable time but not more than seven days, remove or abate the nuisance.~~

~~(C) — Abatement by the city.~~

~~(1) — If within the time fixed, as provided in this chapter, the nuisance has not been abated by the owner or agent in charge of the property, the city shall cause the nuisance to be abated.~~

~~(2) — The city shall maintain an accurate record of the expense incurred by the city in abating the nuisance and shall include therein an overhead charge of ten percent of the total cost for administration.~~

~~(3) — The total cost, including the administrative overhead, shall thereupon be assessed to the property as hereinafter provided.~~

~~(D) — Assessment of cost.~~

~~(1) — A notice of the assessment shall be forwarded by certified mail with return receipt to the owner or agent in charge of the property by the Finance Director/Recorder. The notice shall contain:~~

~~(a) — The total cost, including the administrative overhead, of the abatement.~~

~~(b) — A statement that the cost as indicated will become a lien against the property unless paid within 60 days.~~

~~(c) — A statement that if the owner or agent in charge of the property objects to the cost of the abatement as indicated, he may file a notice of objection with the Finance Director/Recorder within 30 days from the date of the notice.~~

~~(d) — Notice that fee for recording in County Deed Records may be added.~~

~~(2) — Objections to the proposed assessment shall be heard and determined by the City Manager or his or her designate. Owners or agents in charge of the property who show total household income below the current year federal poverty threshold may receive 50% reduction in the cost of the assessment indicated.~~

~~(3) — An assessment for the cost of the abatement as determined by the City Manager or his designate and adopted as a matter of record by resolution of the Council shall thereupon be entered in the docket of city liens, and upon the entry being made, it shall constitute a lien against the property from which the nuisance was removed or abated. Also, it may be recorded in the County Deed Records.~~

~~(4) — The lien shall be collected in the same manner as improvement liens are collected and shall bear interest at a rate as established by resolution of the City Council. The interest shall commence to run 30 days after the entry in the lien docket.~~

~~(5) — An error in the name of the owner or agent in charge of the property shall not void the assessment nor will a failure to receive the notice of the assessment render the assessment void, but it shall remain a valid lien against the property.~~

~~(E) — Supplemental nature of provisions. The procedure provided by this section is not exclusive but in addition to procedure provided by other ordinances, and furthermore, the city may proceed summarily to abate a sanitary or other nuisance which exists and from which there is imminent danger to human life or property.~~

Section 15. Section 92.15 of the Hermiston Municipal Code is amended to read:

92.15 ~~GRAFFITI~~ ABATEMENT.

(A) The person(s) responsible shall cause the nuisance to be abated, at the person's own expense, within the time specified in the declaration of nuisance if not appealed or within the time specified in any order on appeal.

(B) If a nuisance is not abated or removed within the time specified in the declaration of nuisance, if not appealed, or within the time specified in any order on appeal, the City shall cause the nuisance to be abated. The City Manager or designee may file an action to obtain such warrants and orders from a court, as necessary, for the City to enter on to property and to abate or remove the nuisance and recover its costs from the person or property owner, including imposition of a lien on the property.

(C) Unless provided otherwise in the order for City abatement, including for demolition, the City Manager or designee may cause the nuisance items or debris to be removed pursuant to the order and disposed of in an approved manner whenever the City Manager or designee, in their sole discretion, finds that the fair and reasonable value of the items or debris would be less than the cost of storing and selling the items. In making the above determination, the City Manager or designee may include in the costs of sale: the reasonable cost of removing items or debris to a place of storage, storing the items of resale, holding the resale including reasonable allowances for costs of staff, and any other reasonable and necessary expenses of holding a sale.

(D) Notwithstanding any other provision of this Chapter, if the City Manager, designee or Council determines that the public nuisance constitutes an immediate danger to the occupants of a property or to the public and immediate action is necessary, the City may summarily and without notice, abate the nuisance. Notice of the abatement, including the reason for it, shall be given to the person(s) responsible for the nuisance as soon as reasonably possible. The costs of the summary abatement shall be charged to the person(s) responsible and become a lien upon the property in accordance with the provisions of this Chapter applicable to costs of non-summary abatements.

~~Any inscription, word, figure or design that is marked, etched, scratched, drawn or painted on any surface that is not authorized by the owner or person in charge of the property is deemed a public nuisance.~~

Section 16. Section 92.16 of the Hermiston Municipal Code is amended to read:

92.16 ABATEMENT COSTS and APPEAL.

(A) The City shall maintain an accurate record of the expense incurred by the City in abating the nuisance and shall include therein an overhead charge, as established by resolution of the City

Council, of the total cost for administration.

(B) The total cost, including the administrative overhead, shall thereupon be assessed to the property as hereinafter provided, except that persons responsible who demonstrate to the City that the total household income is below the current year federal poverty threshold shall receive 50% reduction in the cost of the assessment indicated unless the person responsible has been the subject of an abatement order within the previous five years.

(C) A notice of the assessment shall be forwarded, by certified mail with return receipt, to the person responsible and the owner of the property, if different. The notice shall contain:

(1) The total cost, including the administrative overhead and lien recording, of the abatement.

(2) A statement that the cost, as indicated, will become a lien against the property unless paid in full, or payment arrangements are made, within 60 days.

(3) A statement that if the person responsible or owner of the property objects to the cost of the abatement as indicated, they may appeal to the Code Hearings Officer, within 10 days of mailing, as provided in Chapter 136, unless otherwise specified in an order of abatement issued by a court.

(D) An appeal of the cost proposed assessment may be filed with the Code Hearings Officer as provided in Chapter 136, or to the circuit court if the abatement was ordered by the court. The proposed assessment shall be final if not appealed within the time provided by this Code or the court order.

(E) Once final, an assessment for the cost of the abatement shall thereupon be entered in the docket of City liens, and upon the entry being made, it shall constitute a lien against the property from which the nuisance was removed or abated. Also, it may be recorded in the County Deed Records. The lien shall be collected in the same manner as improvement liens are collected and shall bear interest at a rate as established by resolution of the City Council. The interest shall commence to run 30 days after the entry in the lien docket.

(F) An error in the name of the owner or agent in charge of the property shall not void the assessment nor will a failure to actually receive the notice of the assessment render the assessment void, but it shall remain a valid lien against the property.

(G) Supplemental nature of provisions. The procedure for declaration of a nuisance, abatement or assessment of costs in this Chapter is not exclusive and is in addition to the provisions of any other ordinance or statute.

Section 17. Section 92.17 is added to the Hermiston Municipal Code and is to read:

Section 18. Section 92.24 of the Hermiston Municipal Code is amended to read:

EXCESSIVE NOISE

92.24 FINDINGS.

The City Council of Hermiston finds that:

- (A) Loud or raucous noise degrades the environment of the City to a degree that is harmful to the health, welfare and safety of its residents and visitors; interferes with the comfortable enjoyment of life and property; interferes with the well-being, tranquillity and privacy of the home; and may cause or aggravate health problems.
- (B) The effective control of loud or raucous noise is essential to the health and welfare of the City's residents and visitors, and to the conduct of the normal pursuits of life, including recreation, work and communication.
- (C) The use of sound-amplification devices may create loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace and well-being of residents and visitors of the City.
- (D) Certain short-term easing of noise reductions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City.
- (E) The obligation to draft regulations that affect speech in a content-neutral fashion is of paramount importance to protect the freedom of expression under the Oregon and Federal Constitutions. This Chapter shall be construed and applied to establish ~~enacts~~ narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

Section 19. Section 92.25 of the Hermiston Municipal Code is amended to read:

92.25 DEFINITIONS.

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

ANIMAL or ANIMALS. Has the meaning as provided in § [90.02](#).

~~**CITY.** City of Hermiston.~~

~~**CITY MANAGER.** The City Manager of the city or the City Manager's designee.~~

CODE ENFORCEMENT OFFICIAL. The person appointed by the City Manager or designee to enforce the provisions of this Code or City ordinances or, by ~~his/her~~ their order, specifically designated peace officers.

EMERGENCY. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

EMERGENCY WORK. Any work performed to prevent or alleviate physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

HIGHWAY. Every public way, road, street, thoroughfare, and place, including bridges, viaducts, and other structures in the City, open, used, or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

NOISE-SENSITIVE AREA. Includes, but is not limited to, a sleeping facility, or real property normally used as a school, church, hospital, or public library within the service area of the City of Hermiston. Property used in industrial or agricultural activity is not a noise-sensitive area, unless it also meets the above criteria in more than an incidental manner.

PERSON. ~~Has the meaning as provided in § 10.05(B).~~

PLAINLY AUDIBLE. Any sound that can be heard by a reasonable individual of ordinary sensitivities using ~~his/her~~ their unaided hearing faculties, including, but not limited to, understandable spoken words, comprehensible musical rhythms, vocal sounds other than words, mechanical, or electronic noise.

PREMISES OPEN TO THE PUBLIC. Includes any premises open to the general public for the use of motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises.

PUBLIC RIGHT-OF-WAY. Any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

PUBLIC SPACE. Any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

RESIDENTIAL AREA. Any area of the City that is designated as residential land use in accordance with the terms and maps of the City's zoning ordinance.

SLEEPING FACILITY. Includes, but is not limited to, a residential dwelling, hotel, motel, or

residential care facility.

UTILITY SERVICE. The normal operation of utilities within the City, whether provided by the City or by another entity, including but not limited to water, wastewater, electricity, natural gas, telecommunications and garbage hauling.

Section 20. Section 92.26 of the Hermiston Municipal Code is amended to read:

(A) Scope. This subchapter applies to all sound originating within the jurisdictional limits of the City.

Section 21. Section 92.27 of the Hermiston Municipal Code is amended to read:

92.27 GENERAL PROHIBITION.

(A) It is unlawful and a public nuisance for any person to ~~No person shall~~ make, continue, suffer, or cause to be made or continued:

- (1) Any unreasonably loud or raucous noise within the jurisdictional limits of the City; or
- (2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable individuals of ordinary sensitivity, within the jurisdictional limits of the City; or
- (3) Within the jurisdictional limits of the City, any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any individuals within the residential area from which said noises are heard; or as to unreasonably interfere with, or detrimentally or adversely affect, the peace and comfort of residents or their guests, or operators or customers in places of business.

(B) Factors for determining whether a sound is unreasonably loud or raucous noise include, but are not limited to, the following:

- (1) The proximity of the sound to a noise-sensitive area;
- (2) The land use, nature, and zoning of the area from which the sound emanates and the area where it is heard;
- (3) The time of day or night the sound occurs;
- (4) The duration of the sound;
- (5) Whether the sound is recurrent, intermittent, or constant; and

- (6) Whether the sound is created by a sound-amplification device.

Section 22. Section 92.28 of the Hermiston Municipal Code is amended to read:

92.28 NOISES PROHIBITED.

The following acts are declared to be per se violations of this chapter. ~~It includes, but is not limited to:~~

(A) *Unreasonable noises.* The unreasonable making of, or unreasonably permitting to be made, any unreasonably loud, boisterous, or unusual noise, disturbance, commotion, or vibration in any residential dwelling, place of business or upon any highway, park or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent noise-sensitive areas or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

(B) *Sound-amplification devices.* Except as allowed by applicable City, state, or federal laws, a City special permit, or as a City hosted event, the unreasonably loud and raucous use or operation of a sound-amplifying device in the following areas:

(1) Within or adjacent to a residential or noise-sensitive area.

(2) Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates and is unreasonably loud or raucous.

(C) *Yelling, shouting, and similar activities.* Yelling, shouting, hooting, whistling, or singing at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable individuals of ordinary sensitivities. This subsection is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing, or other factors not based on content.

(D) *Construction and similar activities.*

(1) The construction, excavation, demolition, alteration, or repair of any building, street, highway or the like, other than between the hours of 7:00 a.m. and 7:00 p.m.; except in cases of urgent necessity in the interest of the public welfare and safety, emergency construction or repair noises are exempt from this provision.

(2) In nonemergency situations, the City Manager or designee may issue a permit, upon application, if the City Manager or designee determines that the public welfare and safety, as

affected by loud and raucous noise caused by construction, excavation, demolition, alteration or repair of buildings, streets and highways between the hours of 7:00 p.m. and 7:00 a.m. will not be impaired, and if the City Manager **or designee** further determines that loss or inconvenience would otherwise result. The permit shall grant permission, in nonemergency cases, for a period of not more than 30 days. The permit may be renewed once, for a period of 30 days or less.

(E) *Noise-sensitive areas.* The creation of any unreasonably loud and raucous noise adjacent to any noise-sensitive area while it is in use, and which unreasonably interferes with the workings of the noise-sensitive area or which disturbs the individuals within the noise-sensitive area.

(F) *Blowers and similar devices.* In a residential area or noise-sensitive area, between the hours of 9:00 p.m. and 7:00 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine; provided, that the noise from the blower, power fan or internal combustion engine can be heard across the property line from which it emanates.

(G) *Commercial establishments adjacent to residential property.* Unreasonably loud or raucous noise from the premises of any commercial establishment, including any outdoor area which is a part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m., which is plainly audible at the nearest property line of a noise-sensitive area within the service area of the City of Hermiston.

(H) *Vehicle horns, signaling devices and similar devices.* The sounding of any horn, signaling device, or other similar device, on any motor vehicle on a highway or premises open to the public otherwise than as a reasonable warning or makes any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device. The sounding of any horn, signaling device, or other similar device, as a danger warning, is exempt from this prohibition.

(I) *Loading or unloading.* The creation of unreasonably loud, raucous and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

(J) *Nonemergency signaling devices.* Sounding or permitting the sounding of any amplified signal from any bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place. The reasonable sounding of such devices by houses of religious worship, seasonal contribution solicitors, or by the City for traffic control purposes are exempt from the operation of this subsection.

(K) *Emergency signaling devices.* The intentional sounding or permitting the sounding of any emergency signaling device, including fire alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections (H)(1) and (2) of this section.

(1) The testing of an emergency signaling device occurring between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in any calendar month.

(2) Sounding or permitting the sounding of any alarm system shall terminate within 15 minutes of activation unless an emergency exists. If a false alarm occurs more than twice in a calendar month, then the owner or person responsible for the alarm system shall be in violation of this chapter.

(L) *Radios, televisions, boomboxes and similar devices.* The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any individual other than the player or operator of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of residents in a residential area or noise-sensitive area.

(M) *Animals and birds.* Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls, or otherwise cares for the animal or bird.

Section 23. Section 92.29 of the Hermiston Municipal Code is amended to read:

92.29 EXEMPTIONS.

Sounds caused by the following are exempt from the prohibitions of § [92.28](#) and are in addition to the exemptions specifically set forth in that section:

(A) Motor vehicles on highways or premises open to the public; provided, that the prohibition in §§ [92.28](#)(H) and (K)(2) continues to apply.

(B) Repairs of utility structures which pose a clear and immediate danger to life, health or significant loss of property.

(C) Sirens, whistles, or bells lawfully used by emergency vehicles, or alarm systems used to signal an emergency, provided the prohibition under § [92.28](#)(K) continues to apply.

(D) The emission of sound for the purpose of alerting individuals to the existence of an emergency or the emission of sound in the performance of emergency work.

(E) Repairs or excavations of bridges, streets or highways by or on the behalf of the City, state, or federal government, between the hours of 7:00 p.m. and 7:00 a.m., when public welfare and convenience render it impractical to perform the work between 7:00 a.m. and 7:00 p.m.

(F) Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to school athletic and school entertainment events.

(G) Outdoor gatherings, public dances, shows, and sporting events, and other similar outdoor events; provided, that a special permit has been obtained, beforehand, from the City's proper permitting authority; or the event is being sponsored by the City; or the event has been sanctioned by the City on City owned property.

(H) Noise emanating from the combustion, detonation, or concussion caused by using lawful fireworks or other similar devices, from July 1 until July 5 of each year.

Section 24. Section 92.30 of the Hermiston Municipal Code is amended to read:

92.30 ENFORCEMENT.

The City Manager, Police Chief, Code Enforcement Official, or any designee(s) thereof will have primary responsibility for the enforcement of the noise regulations contained in this subchapter. Nothing in this subchapter shall prevent the City Manager, Police Chief, ~~or~~ Code Enforcement Official, or any designee(s) from obtaining voluntary compliance by way of warning, notice, or education.

Section 25. Section 92.99 of the Hermiston Municipal Code is amended to read:

92.99 PENALTY.

In addition to abatement or any other remedy provided by law, unless otherwise provided in this Chapter:

(A) Anyone who violates any provision of §§ 92.01 through 92.10, § 92.12, ~~or~~ and § 92.13 commits a Class A B violation. ~~The court may, in addition to the fine, order the convicted person to reimburse the city for the actual expenses incurred by the city in abating the nuisance and to order the person to abate the nuisance. Each day's violation of a provision of the sections constitutes a separate offense.~~

(B) Violation of any provision of § 92.11 is a Class A violation. ~~The court may order the convicted person to pay court costs, assessments, and restitution, when applicable. Any person who shall attempt to commit any of the offenses mentioned in § 92.11, but who for any reason is prevented from consummating the act, shall be guilty of an offense of attempt to commit as to that offense.~~

(C) Violation of any provision of §§ ~~§§ 92.27 through 92.28~~ 92.23 through 92.29 shall

constitute a Class ~~B~~A violation.

(D) Any person who shall attempt to commit a violation of this Chapter but who for any reason is prevented from consummating the act, commits a Class C violation.

(E) Each day's violation of a provision of this Chapter constitutes a separate offense.

Section 26. Effective date. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 25th day of October 2021.

SIGNED by the Mayor this 25th day of October 2021.

Dr. David Drotzmann, Mayor

ATTEST:

Lilly Alarcon-Strong, CMC City Recorder