

## **TITLE IX: GENERAL REGULATIONS**

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## CHAPTER 90: ANIMALS

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### § 90.01 RUNNING AT LARGE PROHIBITED.

No person owning, keeping or harboring any domestic animal of any kind, shall permit the same to run at large or be unattended off the premises of the person in the city at any time, whether or not the running at large or being unattended is the result of escape from confinement.  
(1985 Code, § 90.01) (Ord. 1599, passed 8-30-1982) Penalty, see § 90.99

### § 90.02 PROHIBITING DOGS FROM RUNNING AT LARGE.

(A) No owner, keeper or harbinger of any dog shall permit such dog to go beyond the premises of such owner, keeper or harbinger unless such dog is properly on a leash or under the control of the owner, keeper or harbinger.

(B) It shall be prima facie evidence that a dog is not under the required control if such dog chases, injures or kills any person or domestic animal, or damages or commits any nuisance, including defecation, upon property other than that of its owner, keeper or harbinger.

(C) For the purpose of this section **CONTROL** means that the dog is within sight and hearing, and will respond instantly to a call or order; or that the dog is in a conveyance for travel, such as an automobile or train, or is confined to a travel crate or carrying case.  
(1985 Code, § 90.02) (Ord. 1599, passed 8-30-1982) Penalty, see § 90.99

**§ 90.03 ANIMALS OR FOWL DAMAGING GARDENS AND LAWNS.**

No person owning or harboring one or more cats, dogs, other animals or fowl shall permit such cats, dogs, other animals or fowl to run at large so as to do damage to gardens, lawns, shrubbery or other public or private property.

(1985 Code, § 90.03) (Ord. 1599, passed 8-30-1982; Ord. 10-15, passed 8-23-2010) Penalty, see § 90.99

**§ 90.04 PEACE DISTURBANCES.**

(A) No owner, keeper or harbinger of any animal shall negligently permit or allow such animal to disturb unreasonably, the peace and quiet of the neighborhood in which the animal is kept by frequent or continuing barking, howling, yelping or making any other animal noise.

(B) As used in this section, *NEGLIGENTLY* has the same meaning as defined in § 130.08(D) of the code of ordinances.

(1985 Code, § 90.04) (Ord. 1599, passed 8-30-1982; Ord. 95-65, passed 9-18-1995) Penalty, see § 90.99

**§ 90.05 REPORTING ESCAPE OF CERTAIN ANIMALS REQUIRED.**

(A) If a dangerous wild animal or restricted snake escapes, the person that possesses the animal or snake immediately shall notify both of the following:

(1) The Sheriff of the county and the chief law enforcement officer of the township or municipal corporation where the escape occurred;

(2) The division of animal health in the department of agriculture by means of the 24-hour telephone number that is maintained by the division.

(B) (1) A law enforcement officer or natural resources law enforcement officer may destroy a dangerous wild animal or restricted snake that has escaped and that poses a threat to public safety.

(2) A law enforcement officer or natural resources law enforcement officer that destroys an escaped dangerous wild animal or restricted snake pursuant to division (B)(1) of this section is not liable for damages in a civil action for any injury, death, or loss to person or property that allegedly arises from the destruction of the animal or snake.

(C) The person that possesses a dangerous wild animal or restricted snake that escapes is responsible for all reasonable costs associated with the capture or destruction of the animal or snake. The person shall reimburse the political subdivision that employs the law enforcement officer who captured or destroyed the dangerous wild animal or restricted snake for the costs incurred in capturing or destroying

the animal or snake. However, if the law enforcement officer is a state highway patrol trooper or if a natural resources law enforcement officer captured or destroyed the dangerous wild animal or restricted snake, the person shall reimburse the state highway patrol or department of natural resources, as applicable, for those costs.

(D) (1) Except as provided in division (D)(2) of this section, money collected under division (C) of this section shall be credited to a special fund, which is hereby created in the applicable political subdivision. Money in the special fund shall be used exclusively for the administration and enforcement of this chapter and rules.

(2) Money collected under division (C) of this section for costs incurred by a state highway patrol trooper or a natural resources law enforcement officer under this section shall be deposited in the state treasury to the credit of the dangerous and restricted animal fund created in R.C. § 935.25.

(3) If law enforcement officers from more than one jurisdiction assist in the capture or destruction of a dangerous wild animal or restricted snake, the money collected shall be proportionally distributed to each political subdivision's special fund and the dangerous and restricted animal fund, if applicable.

(R.C. § 935.16) (1985 Code, § 90.05)

## § 90.06 DANGEROUS DOGS AND ANIMAL CONTROL.

### (A) *Purpose.*

(1) It is the purpose of this regulation to reduce the potential harm to persons and property that may be caused by dogs and other animals. It is the intent of this regulation to identify dogs that are not properly trained to respect persons and property or which exhibit inappropriately aggressive behaviors. Such dogs, once identified, must be controlled in a way that reasonably protects persons and properties.

(2) It is the further purpose of this regulation to provide sufficient penalties for persons who fail to control their animals as required, and additional penalties if any animal causes property damage or personal injury without reasonable justification.

(3) Finally, it is desired that all animals be kept and treated in a humane manner, but the destruction of property or to cause injury to persons by any animal that is not engaged in law enforcement or protection of its owner or home shall not be permitted.

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

**CITY MANAGER.** The person appointed by the City Council in accordance with the City Charter. For purposes of this chapter, it is the person who is to review the correctness of the DCS's determination that a dog should be designated as potentially dangerous.

***DANGEROUS DOG.*** Any dog that has been found to have been engaged in any of the behaviors specified in division (C)(2) of this section.

***DOG.*** Includes both domestic breeds of dogs and wolf-dog hybrids. A wolf-hybrid shall be deemed to be a ***DOG*** for all purposes of this section.

***DOG AT LARGE.*** Any dog:

(a) On private property without the permission of the owner or person entitled to possession and not in a kennel or restrained by a physical control device and under the control of a capable person; or

(b) On public property and not in a kennel or restrained by a physical control device which is under the control of a capable person.

***DOG CONTROL SPECIALIST (DCS).*** A person appointed by the City Manger to act under this section.

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

***KENNEL.*** An enclosure of sound structural strength in good repair capable of containing the dog enclosed and preventing the entrance of other animals.

***OWNER.*** Any person having a possessory property right in a dog or who harbors, cares for, exercises control over or knowingly permits a dog to remain on premises occupied by that person.

***PERSON.*** Any natural person, association, partnership, firm or corporation.

***PHYSICAL CONTROL DEVICE.*** A sufficiently strong collar connected to a leash or tether made of chain links, or other material that is suitably strong, so as to prevent the escape of a dog by the breaking of the device.

***POTENTIALLY DANGEROUS DOG.*** Any dog that the DCS has determined to be so designated after the DCS has considered its behavior based on factors set forth in division (C)(1) of this section.

***SERIOUS INJURY.*** Any physical injury that results in a broken bone or which requires stitches or which causes a disfiguring laceration or cosmetic surgery.

(C) *Classification of levels of dangerousness.* The DCS shall make the determination of whether a dog should be designated as a potentially dangerous dog.

(1) A dog shall be classified as potentially dangerous based upon specific behaviors exhibited by the dog, including but not limited to the following:

(a) It is at large and menaces, chases, aggressively bites, causes physical injury, displays threatening or aggressive behavior or otherwise threatens or endangers safety of any person or domestic animal;

(b) While off the property of the owner, and on a physical control device, it menaces, chases, aggressively bites, causes physical injury, displays threatening or aggressive behavior or otherwise threatens or endangers the safety of any person or domestic animal;

(c) While in or on a motor vehicle and not physically restrained or otherwise physically prevented from reaching any area outside the perimeter of the vehicle, it menaces, aggressively bites, causes physical injury, displays threatening or aggressive behavior or otherwise threatens or endangers the safety of any person or domestic animals;

(d) When the dog is outside but on its own property, it barks in an aggressive fashion at most persons on nearby property or in the right-of-way;

(e) The dog is aggressive toward most other dogs that are not kept in the same household;

(f) The dog exhibits stalking behaviors;

(g) The dog and owner have not attended dog obedience classes and has not been certified that it exhibits acceptable social behavior;

(h) The dog has gone off-premises to attack another dog or some other domestic animal, or a person without provocation. The DCS need not actually witness this behavior, but may consider reports by victims or witnesses; and

(i) The dog does not cease its aggressive behavior upon voice command of its owner.

(2) Subject to division (C)(3)(c) of this section, a dog shall be classified as a dangerous dog if:

(a) It causes the serious injury or death of any person;

(b) It is at large and kills any domestic animal;

(c) It is off the property of the owner but on a physical control device and kills any domestic animal; or

(d) It has previously been classified as a potentially dangerous dog because it aggressively bit or caused physical injury to any person, the owner has received notice of such classification and the dog again aggressively bites or causes physical injury to any person.

(3) The DCS shall have the authority to refrain from classifying a dog as a dangerous dog or potentially dangerous dog, even if the dog has engaged in the behaviors specified in divisions (C)(2)(a)

through (C)(2)(c) of this section, if the DCS determines that the behavior was caused by abuse or torment of the dog or other provocation, including but not limited to the following factors or aggressive behaviors:

(a) The dog or animal was protecting or defending a person within the immediate vicinity of the dog or animal from an attack or assault;

(b) At the time the person was committing a crime or offense upon the property of the owner or custodian of the dog;

(c) The person attacked by the dog was teasing, tormenting, abusing or assaulting the dog or animal, or in the recent past has teased, tormented, abused or assaulted the dog or animal;

(d) The dog or animal was attacked or menaced by an animal, or the domestic animal was on the property of the owner or custodian of the dog;

(e) The dog was responding to pain or injury, or protecting itself, its owner's property or its offspring; or

(f) The person or animal was disturbing the dog or animal's natural function such as sleeping or eating.

(4) The breed of the dog, by itself, shall not be a reason to classify a dog as dangerous or potentially dangerous.

(5) 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 law enforcement officer at the time it exhibits behavior under divisions (C)(2)(a) through (C)(2)(c) of this section.

*(D) Identification and determination; administrative review of dog behavior.*

(1) Persons who observe a dog behaving in an aggressive manner, which occurs without provocation and under circumstances that could lead to property damage or personal injury caused by that dog, may report the matter to the city administration or Police Department. Upon receiving such report, the Dog Control Specialist shall be notified and shall investigate the matter.

(2) The DCS shall attempt to either view the property where the dog is kept or contact the owner to make an appointment to evaluate the dog's behavior. The DCS may request the evaluation to take place at a neutral site other than the home in order to reduce the natural tendency of a dog to protect the home and owners. If there is reasonable cause to believe that a dog is a threat to persons or property, but, after reasonable efforts, the DCS is unable to get the owner's cooperation to evaluate the dog, the DCS may seek an administrative search warrant.



(3) The DCS shall have authority to determine whether any dog has engaged in the behaviors specified in divisions (C)(2)(a) through (C)(2)(c) of this section. The determination shall be based upon an investigation that includes observation of the dog's behavior by DCS or by other witnesses who personally observed the behavior, and who sign a written statement attesting to the observed behavior and agree to provide testimony regarding the dog's behavior if called upon to do so.

(E) *Notice; appeal of findings.* The DCS shall give the dog's owner written notice by regular mail or personal service. The notice shall include the behavior of the dog on which the DCS relies in making the determination of the dog's classification as a dangerous dog or potentially dangerous dog and of the additional restrictions applicable to that dog by reason of its classification. If the owner denies that the behavior in question occurred, the owner may appeal the DCS's decision to the City Manager by filing with the City Manager, within ten business days of the date the notice was mailed to the owner by regular mail or the owner was personally served, a written request for a hearing.

(F) *Hearing.* The City Manager shall hold a hearing within a reasonable period of time (not later than 30 days) on any appeal from the DCS's decision to classify a dog as dangerous or potentially dangerous. The owner, the DCS and any other person having relevant evidence concerning the dog's behavior as specified in this section shall be allowed to present testimony. The City Manager shall determine whether behavior specified in this section was exhibited by the dog in question. The City Manager shall issue an order containing his or her determination, which shall be final.

(G) *Notice; compliance required.* Once the owner has received notice of the dog's classification pursuant to this section, the owner shall comply with the restrictions specified in the notice until such time as the DCS'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.

(H) *Impoundment.* If the Director finds that a dog is a dangerous dog, the dog shall be impounded pending the completion of all appeals. If there is no appeal, or if the DCS's decision is upheld on appeal, the dog's owner shall be liable for the cost of the dog's impoundment.

(I) *Regulation of potentially dangerous dogs.* The DCS, upon determining the dog is a potentially dangerous dog, shall order that the owner comply with those requirements to reduce the risk of future harm. The DCS shall identify those requirements that are appropriate from the following list:

(1) Physically 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) Fasten to a collar and keep on the dog at all times a suitable distinctive tag issued by the DCS identifying the dog as a potentially dangerous dog;

(3) Pay an annual fee of \$25 at the time the DCS issues the tag described in division (I)(2) of this section and a like fee each year thereafter, so long as the dog is alive. This fee shall be in addition to any other required license fee;

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(4) Notify the DCS by mail of any change of ownership or where the new location of the dog is within ten days of the change;

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

(6) Outdoors and unattended, the dog or animal must be kept within a locked, physically (not electronic, underground or invisible) fenced area, from which it cannot escape, completely within the back yard of the property;

(7) When outdoors the dog or animal must be attended and kept within a physically (not electronic, underground or invisible) fenced area, from which it cannot escape, completely within the back yard of the property;

(8) When outdoors, the dog or animal must be attended and kept on a leash no longer than six feet and under the control of a person 18 years of age or older;

(9) When outdoors the dog or animal must be attended and muzzled. Such muzzle shall not cause injury to the dog or animal or interfere with its vision or respiration but shall prevent it from biting any person or animal;

(10) Outdoors and unattended, the dog or animal must be confined to an enclosed, escape-proof kennel of the following description:

(a) Such kennel shall allow the dog or animal to stand normally and without restriction, and shall be at least three times the length of the dog or animal, and shall protect the dog or animal from the elements;

(b) Fencing materials shall not have openings with a diameter of more than two inches, and in the case of wooden fences, the gaps shall not be more than two inches;

(c) Any gates within such kennel shall be lockable and of such design as to prevent the entry of children or the escape of the animal, and when the dog or animal is confined to such kennel and unattended, such lock shall be kept locked; and

(d) The kennel may be required to have double exterior walls to prevent the insertion of fingers, hands or other objects.

(11) Placement of a sign or signs in places directed by the judge advising the public of the presence and tendencies of stipulated animal;

(12) Attendance by the dog or animal and its owner/custodian at training sessions conducted by a certified applied animal behaviorist, board certified veterinary behaviorist or other recognized expert

in the field and completion of training or any other treatment as deemed appropriate by such expert. The owners of the dog or animal shall be responsible for all costs associated with the evaluation and training ordered under this section;

(13) Procurement of liability insurance in an amount to be determined by the judge, but in no case in an amount of less than \$100,000, covering the medical and/or veterinary costs resulting from future actions of the dog or animal;

(14) Neutering or spaying of the dog or animal at the owner's expense unless medically contradicted;

(15) If further incident of attack occurs under such circumstance that the dog or animal, after a hearing as described above, is determined to be a dangerous dog or animal, the DCS may impose or re-impose any applicable directives listed above; additionally, humane destruction of the dog or animal may be ordered; and

(16) Remove the dog or animal in question from cohabiting with other dogs or animals in the same household.

(J) *Rehabilitation and withdrawal of determination.* An owner of a potentially dangerous dog may request the DCS to re-evaluate the dog if the owner and the dog have attended obedience training classes and believes that the dog's aggressive behaviors have been sufficiently modified. If, after evaluation, the DCS determines that the dog need not be designated as a dangerous dog, the DCS shall notify the owner and withdraw the dog's designation as potentially dangerous.

(K) *Euthanization.* Any dog that has been found to be a dangerous dog should be euthanized. If such dog is euthanized by a licensed veterinarian, the dog owner shall have delivered to the Director a certification by the veterinarian that the dog has been euthanized.

(L) *Liabilities.* An owner of a dog shall be liable for violations of this section if:

(1) The dog engages in any of the behaviors of a dangerous dog specified in division (C)(2) of this section;

(2) The owner fails to comply with the requirements applicable to a potentially dangerous dog; and

(3) The dog bites or causes other physical injuries to a person off the owner's premises. However, it shall be an affirmative defense if one or more of the factors described in division (C)(3) of this section existed at the time or immediately prior to the dog's biting or causing the physical injuries.

(M) *Other animals; control.* No person shall own or harbor any animal, other than a dog, and permit it to leave the premises where it is harbored unless it is caged, leashed or is ridden by a person

who is capable of controlling the animal. A violation of this division (M) shall be presumed if such an animal causes damage to property or injury to persons while it is off the premises where it is harbored. (1985 Code, § 90.06) (Ord. 03-24, passed 3-22-2004; Ord. 10-15, passed 8-23-2010) Penalty, see § 90.99

**§ 90.99 PENALTY.**

(A) Whoever violates any provision of this chapter for which no penalty is otherwise provided, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$50 for each offense.

(1985 Code, § 90.99)

(B) Violation of § 90.04 is punishable by a fine of up to \$100 for each day during which the offense is proven to have occurred.

(1985 Code, § 90.04)

(C) (1) Any person convicted of violation of § 90.06 shall be subject to a fine of not more than \$500, except that any owner of a dangerous dog shall be subject to a fine of not less than \$200 and not more than \$500. Each day that a violation continues shall be considered a separate offense.

(2) A person convicted of a violation of § 90.06(M) shall be subject to a fine of up to \$150 for each violation.

(1985 Code, § 90.06)

(Ord. 1599, passed 8-30-1982; Ord. 95-65, passed 9-18-1995; Ord. 03-24, passed 3-22-2004)

## CHAPTER 91: FIRE PREVENTION

### Section

#### *Fire Prevention Code*

- 91.01 Unified Fire Code of Hamilton County adopted
- 91.02 City Bureau of Fire Prevention established
- 91.03 Interpretation of certain terms in Code
- 91.04 Storage of flammable or combustible liquids
- 91.05 Conflict with zoning laws or other ordinances
- 91.06 Modifications of Fire Prevention Code
- 91.07 New materials and processes; permits

#### *Burning Regulations*

- 91.20 Definitions
- 91.21 Relations to other prohibitions
- 91.22 Open burning in the municipality

#### *Miscellaneous*

- 91.35 Smoking in bed prohibited; discarding cigarettes
- 91.99 Penalty

#### *Cross-reference:*

*Fire hydrant requirements in subdivisions, see § 151.089*

### ***FIRE PREVENTION CODE***

#### **§ 91.01 UNIFIED FIRE CODE OF HAMILTON COUNTY ADOPTED.**

The Unified Fire Code of Hamilton County, as it may be amended from time to time, is hereby incorporated by reference as if fully set forth herein and fully and completely established as the Fire Prevention Code of the city.

(1985 Code, § 91.01) (Ord. 1526, passed 6-15-1981; Ord. 88-34, passed 6-6-1988) Penalty, see § 91.99

**§ 91.02 CITY BUREAU OF FIRE PREVENTION ESTABLISHED.**

(A) (1) The Fire Prevention Code shall be enforced by the City Bureau of Fire Prevention, which Bureau is established and shall be operated under the supervision of the City Manager.

(2) The City Manager shall be the Chief of the Bureau.

(B) During such periods as the Madeira and Indian Hill Joint Fire District is in operation and is under contract with the city to provide fire protection services to the city, the City Manager shall delegate enforcement of the code to the Joint Fire District, acting by and through the Chief, employees and appointees of the Joint Fire District, and such persons shall serve as Inspectors of the Bureau.

(C) During such periods as the Joint Fire District is not in operation, the City Manager may detail members of the staff of the City Building Inspection Department to serve as Inspectors of the Bureau as he or she may see fit, and as shall from time to time be necessary.

(1985 Code, § 91.02) (Ord. 1417, passed 10-1-1979; Ord. 88-34, passed 6-6-1988) Penalty, see § 91.99

***Cross-reference:***

*City Manager, see § 31.03*

*Specific contracts with Madeira/Indian Hill Joint Fire District, see TSO IV*

**§ 91.03 INTERPRETATION OF CERTAIN TERMS IN CODE.**

Wherever the terms **CHIEF OF THE FIRE DEPARTMENT** or **CORPORATION COUNSEL** are used in the Code, they shall be held to mean the Chief of the Bureau and the Law Director of the city, respectively.

(1985 Code, § 91.03) (Ord. 1417, passed 10-1-1979)

**§ 91.04 STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS.**

(A) Storage of flammable liquids in outside aboveground tanks, of explosives and of blasting agents is prohibited, and the bulk storage of liquefied petroleum gas is restricted for the protection of all areas within the city.

(B) New bulk plants for flammable or combustible liquids are prohibited within the city.

(1985 Code, § 91.04) (Ord. 1417, passed 10-1-1979) Penalty, see § 91.99

**§ 91.05 CONFLICT WITH ZONING LAWS OR OTHER ORDINANCES.**

Provisions of the Fire Prevention Code relating to uses prohibited by the zoning laws or other ordinances of the city shall not be construed as permitting such uses.

(1985 Code, § 91.05) (Ord. 1417, passed 10-1-1979) Penalty, see § 91.99

***Cross-reference:***

*Zoning Code, see Ch. 150*

**§ 91.06 MODIFICATIONS OF FIRE PREVENTION CODE.**

The Chief of the Bureau shall have the power to modify any of the provisions of the Fire Prevention Code upon application in writing by the owner or lessee, or his or her duly authorized agent, when there are substantial practical difficulties in carrying out the strict letter of the Code. However, the intent of the Code shall be preserved, public safety secured and substantial justice done. The particulars of a modification, when granted or allowed, shall be entered upon the records of the Bureau, and a signed copy furnished the applicant. There shall be no administrative appeal from the decision of the Chief.

(1985 Code, § 91.06) (Ord. 1417, passed 10-1-1979) Penalty, see § 91.99

**§ 91.07 NEW MATERIALS AND PROCESSES; PERMITS.**

The Chief of the Bureau shall determine and specify, after hearing, any new materials, processes or occupancies that shall require permits, in addition to those now enumerated in the Fire Prevention Code. The Chief shall post a list of such new materials, processes and occupancies in a conspicuous place in his or her office.

(1985 Code, § 91.07) (Ord. 1417, passed 10-1-1979) Penalty, see § 91.99

***BURNING REGULATIONS*****§ 91.20 DEFINITIONS.**

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

***OHIO EPA.*** The Ohio Environmental Protection Agency Director or agencies delegated authority by the Director of the Ohio Environmental Protection Agency pursuant to R.C. § 3704.03 or the chief of any Ohio Environmental Protection Agency district office.

***OPEN BURNING.*** The burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney. ***OPEN***

**BURNING** includes the burning of any refuse or salvageable material in any device not subject to or designed specifically to comply with the requirements of O.A.C. Rule 3745-17-09 or 3745-17-10. (1985 Code, § 91.30) (Ord. 93-65, passed 2-7-1994)

#### § 91.21 RELATIONS TO OTHER PROHIBITIONS.

(A) Notwithstanding any provision in the code of ordinances, no open burning shall be conducted in an area where an air alert, warning or emergency under O.A.C. Chapter 3745-25 is in effect.

(B) Consistent with O.A.C. § 3745-19-02(B), no provisions of the Ohio Administrative Code which otherwise permits open burning, and no permission to open burn granted by the Ohio EPA shall exempt any person from compliance with the regulations of the city dealing with open burning. (1985 Code, § 91.31) (Ord. 93-65, passed 2-7-1994) Penalty, see § 91.99

#### § 91.22 OPEN BURNING IN THE MUNICIPALITY.

(A) No person or property owner shall cause or allow open burning in this municipality except as provided in divisions (B) to (E) of this section or in R.C. § 3704.11.

(B) Open burning shall be allowed for the following purposes without notification to or permission from the City Manager:

(1) Cooking for human consumption, (e.g., outdoor grills);

(2) Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots and similar occupational needs. Fires allowed by divisions (B)(1) and (B)(2) of this section shall not be used for waste or trash disposal purposes and shall be of minimum size sufficient for its intended purpose; the fuel shall be chosen to minimize the generation and emission of air contaminants; and

(3) Recreational fires which are contained in an outdoor fireplace of factory design for safety and size limit, burning clean-sawn or cut wood, that is continuously attended by competent persons and maintained in such a manner as to avoid ignition of nearby combustible materials or cause injury to attendees. The term **OUTDOOR FIREPLACE**, as used herein, is intended to describe a factory-made container, round, square or rectangular, of less than nine square feet, made of clay, ceramic or metal material, sometimes with a chimney and held off the ground on a stable base, and designed to safely contain a recreational or cooking fire.

(C) Open burning shall be allowed for the following purposes with prior notification to the Ohio EPA and the Madeira/Indian Hill Fire Department if the following conditions are met:



(1) Prevention or control of disease or pests, with written or verbal verification to the Ohio EPA from the local health department, cooperative extension service, Ohio Department of Agriculture, or United States Department of Agriculture, that open burning is the only appropriate disposal method; and

(2) Ceremonial fires provided the following conditions are met:

(a) The ceremonial fires shall be less than five feet by five feet in dimension and shall burn no longer than three hours;

(b) The ceremonial fires shall not be used for waste disposal purposes; and

(c) The fuel shall be chosen so as to minimize the generation and emission of air contaminants.

(D) Open burning shall be allowed for the following purposes upon receipt of written permission from the Ohio EPA and the Madeira/Indian Hill Fire Department provided that any conditions specified in the permission are followed:

(1) Disposal of ignitable or explosive materials where the Ohio EPA and the Madeira/Indian Hill Fire Department determine that there is no practical alternate method of disposal;

(2) Instruction in methods of firefighting or for research in the control of fires;

(3) In emergency or other extraordinary circumstances for any purpose determined to be necessary by the Ohio EPA and the Madeira/Indian Hill Fire Department;

(4) Recognized horticultural, silvicultural, range or wildlife management practices; and

(5) Prevention or control of disease or pests, with written verification from the local health department, county agricultural extension agency, Ohio Department of Agriculture or United States Department of Agriculture, that open burning is the only appropriate disposal method.

(E) (1) Open burning shall be allowed by contractors engaged in the construction of buildings for the purpose of providing a warming fire if the contractor obtains a permit from the City Manager which provides that the following conditions must be followed:

(a) The warming fire may only occur on the construction site, lot or recorded plat referred to in the permit application;

(b) Such burning shall be supervised by an employee of the contractor at all times;

(c) A warming fire shall not be used to burn construction debris;

(d) A warming fire may only be used when the outside temperature is below 40°F; and

(e) Any additional conditional conditions imposed by the City Manager, based on unique situations of the site, such as close proximity of occupied structures, wind velocity or unusually dry conditions.

(2) The City Manager shall revoke the permit if any provision of this section is violated.

(F) Annually, in accordance with a schedule specified by the Director of Environmental Protection, the City Manager shall cause a report to be made to the Director regarding the number of permits issued, renewed, and revoked for the preceding calendar year.

(1985 Code, § 91.32) (Ord. 93-65, passed 2-7-1994; Ord. 03-25, passed 12-8-2003) Penalty, see § 91.99

### ***MISCELLANEOUS***

#### **§ 91.35 SMOKING IN BED PROHIBITED; DISCARDING CIGARETTES.**

No person shall smoke, or ignite a lighter or match, while sitting or lying upon any bed. No person shall deposit or leave a lighted cigar, cigarette or pipe, or discard a lighted cigar or cigarette so that it comes to rest, or may be blown by the wind, upon, or within one foot of, any combustible material or substance, except in a noncombustible container or tray, or on a noncombustible surface shielded from adjacent combustible material or substance.

(1985 Code, § 91.50) Penalty, see § 91.99

#### **§ 91.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Any person who violates any of the provisions of the Fire Prevention Code, as adopted and enacted into law by §§ 91.01 through 91.07, or fails to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds a fire in violation of or noncompliance with any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder and from which no appeal has been taken, or who fails to comply with any order that is affirmed, or any order as modified, upon appeal to a court of competent jurisdiction, within the time fixed in the order, as extended by any appeal taken within such time, shall severally for each and every violation or noncompliance be fined not less than \$100 nor more than \$150. When not otherwise expressly provided, each ten days that violations, noncompliances or prohibited conditions continue, whether before or after the imposition of a penalty therefor under §§ 91.01 through 91.07,

shall constitute a separate offense. The imposition of a penalty under those sections shall not be held to prevent the forced removal or elimination of prohibited conditions.

(C) Any person convicted of violating the provisions of §§ 91.20 through 91.22 shall, for each conviction, be fined not more than \$150.

(D) Any person convicted of violating the provisions of § 91.35 shall be fined not more than \$150 for each occurrence.

(1985 Code, § 91.99) (Ord. 1417, passed 10-1-1979; Ord. 93-65, passed 2-7-1994; Ord. 04-21, passed 8-23-2004)



## CHAPTER 92: JUNK; RUBBISH; LITTERING; WEEDS

### Section

#### *Junk and Rubbish*

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### ***JUNK AND RUBBISH***

#### **§ 92.01 STORING INOPERATIVE MOTOR VEHICLES, REFUSE OR RUBBISH.**

(A) For the purpose of this section the term ***INOPERATIVE MOTOR VEHICLES*** shall be deemed to mean motor-driven vehicles that cannot, both physically and lawfully, under their own power, and without repair or replacement of parts, be operated on the public highways of this city and have remained in such inoperative condition for 30 or more consecutive days.

(B) No person or corporation shall store or place any used building materials, inoperative motor vehicles, motor vehicles parts, scrap metal, refuse or rubbish on any property, or allow such materials, vehicles, parts or substances to remain on any property, except to the extent that materials, vehicles, parts or substances so stored, placed or allowed are not visible from any point on any other property, including any point on any structure on any other property, public or private. This section, however, shall not prohibit the accumulation of materials in a manner designed for the composting of materials, provided the materials contained therein are comprised primarily of yard waste and other materials recognized as acceptable for composting. All such materials must be kept and maintained in accordance with § 92.49 of this code.

(1985 Code, § 92.01) (Ord. 94-43, passed 9-19-1994) Penalty, see § 92.99

#### **§ 92.02 STORING BUILDING MATERIALS.**

It shall not be unlawful for any person or corporation to store or place used building materials on any property when the materials are to be used by the owner of the property in construction on the property or on any other property owned by him or her. However, the materials shall not be allowed to remain unused on the property for more than 30 days prior to the commencement of construction of the building in the construction of which they are to be used, or for more than six months in any event.

(1985 Code, § 92.02)

#### **§ 92.03 ACCEPTABLE HOURS OF PRIVATE TRASH PICKUP.**

No person shall collect, pickup, remove or empty receptacles of junk, trash, garbage refuse or rubbish from any property, public or private, except between the hours of 6:00 a.m. to 7:00 p.m. All operations shall be conducted in conformity with § 112.15.

(1985 Code, § 92.03) (Ord. 89-36, passed 7-17-1989) Penalty, see § 92.99

***LITTERING*****§ 92.15 DEFINITIONS.**

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

***COMMERCIAL HANDBILL.*** Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature:

- (1) Which advertises for sale any merchandise, product, commodity or thing;
- (2) Which directs attention to any business or mercantile or commercial establishments, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or
- (3) Which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind, for which an admission fee is charged for the purpose of private gain or profit.

***GARBAGE.*** Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

***LITTER, GARBAGE, REFUSE and RUBBISH.*** As defined herein, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to the public health, safety and welfare.

***NONCOMMERCIAL HANDBILL.*** Printed or written matter, any sample, or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet or any printed or otherwise reproduced original or copies of any matter of literature not included in the definition of a ***COMMERCIAL HANDBILL.***

***PARK.*** A park, reservation, playground, beach, recreation center or any other public area in the city, owned or used by the city, and devoted to active or passive recreation.

***PRIVATE PROPERTY or PRIVATE PLACE.*** All property not included in the definition of ***PUBLIC PROPERTY,*** including but not limited to vacant land or any land, building or other structure designed or used for residential, commercial, business, industrial, institutional or religious purposes, together with any yard, grounds, walk, driveway, fence, porch, steps, vestibule, mailbox and other structure appurtenant thereto.

***PUBLIC PROPERTY*** or ***PUBLIC PLACE***. All property owned, operated or controlled by any governmental agency, including but not limited to streets, sidewalks, tree lawns, parks, playgrounds, parking lots, schools, libraries, post offices, municipal transit facilities and other public lands and buildings.

***REFUSE***. All putrescible and nonputrescible solid wastes, except body wastes, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and solid market and industrial wastes.

***RUBBISH***. Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, dirt, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

***VEHICLE***. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway.  
(1985 Code, § 92.20)

#### **§ 92.16 LITTER IN PUBLIC PLACES.**

No person shall throw or deposit litter in or upon any streets, sidewalk or other public place within the city, except in public receptacles or in authorized receptacles for collection.  
(1985 Code, § 92.21) Penalty, see § 92.99

#### **§ 92.17 PLACEMENT OF LITTER IN RECEPTACLES TO PREVENT SCATTERING.**

Persons placing litter in public receptacles or in private receptacles shall do so in a manner to prevent it from being carried or deposited by the elements on any street, sidewalk or other public place, or on private property.  
(1985 Code, § 92.22) Penalty, see § 92.99

#### **§ 92.18 UPSETTING PUBLIC OR PRIVATE RECEPTACLES.**

No person shall upset a public or private receptacle designated or used for the deposit of litter, or cause or permit its contents to be deposited or strewn in or on public or private property.  
(1985 Code, § 92.23) Penalty, see § 92.99

#### **§ 92.19 SWEEPING LITTER INTO GUTTERS PROHIBITED.**

No person shall throw, deposit or sweep into any gutter, sidewalk, street or other public place within the city the accumulation of litter from any building or lot, or from any public or private sidewalk or



driveway. Persons owning, controlling or occupying property shall keep the sidewalk in front of their premises free of litter.

(1985 Code, § 92.24) Penalty, see § 92.99

**§ 92.20 DUTY TO KEEP SIDEWALKS FREE OF LITTER.**

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Any person, being the owner, agent, lessee, occupant or person otherwise in charge or control of any premises abutting a city street shall, after notification by a police officer, remove, with reasonable promptness, from the sidewalk area along the premises all debris, rubbish, litter and other matter which may at any time accumulate or be deposited thereon from any cause whatsoever.

(1985 Code, § 92.25) Penalty, see § 92.99

**§ 92.21 LITTER THROWN BY PERSONS IN VEHICLES.**

No person, while a driver or a passenger in a vehicle, shall throw or deposit litter upon any street or any public place within the city, or upon private property.

(1985 Code, § 92.26) Penalty, see § 92.99

**§ 92.22 TRUCK AND VEHICLE LOADS CAUSING LITTER.**

No person shall drive or move any truck or other vehicle within the city unless the vehicle is constructed and loaded to prevent any load, contents or litter from being thrown or deposited upon any street, alley or other public place. No person, being the owner, driver or other person in charge of a vehicle hauling excavated material, coal, coke, construction or building materials, or other materials within the city shall permit any part of the material to fall, drop or be blown therefrom on a city street, alley or other public place. When a vehicle carries trash, sawdust, ashes or cinders, sand, earth, lime, manure or other substance liable to be blown away, the owner, driver or other person in charge shall, before driving or operating it on any street, alley or public place, cause the substance, or substances to be completely covered with a canvas, tarp or other substantial covering in such manner that the same cannot fall or be blown from a vehicle.

(1985 Code, § 92.27) Penalty, see § 92.99

**§ 92.23 TRACKING MUD, DIRT OR OTHER SUBSTANCES ON STREETS.**

(A) No person shall operate on any street, alley or other public place a vehicle with mud, dirt, sticky substances, litter or foreign matter on its wheels or other parts if such operation results in the depositing

or tracking of the mud, dirt, substances, litter or foreign matter on any street, alley or other public place. No person, being the owner of real property or a prime contractor in charge of a construction site, shall maintain the property or construction site so that vehicles upon the property or construction site pick up mud, dirt, sticky substances, litter or foreign matter on the wheels or other parts, and deposit or track mud, dirt, sticky substances, litter or foreign matter onto any street, alley or other public place.

(B) Where mud, dirt, sticky substances, litter or foreign matter has been tracked or deposited on any street, alley or other public place in violation of § 92.21, the City Manager is authorized to cause the mud, dirt, substances, litter or foreign matter to be cleaned from the street, and to charge the cost thereof to the person responsible. The cost of cleaning shall be collected by civil suit. The term **RESPONSIBLE PERSON** as used in this section, shall mean the driver of the vehicle which deposited or tracked the mud, dirt, substance, litter or foreign matter on the street, or his or her employer, or the owner of the real property or prime contractor in charge of a construction site from where the deposited or tracked mud, dirt, substance, litter or foreign matter on the street, alley or other public place originated.

(1985 Code, § 92.28) Penalty, see § 92.99

#### **§ 92.24 LITTER IN PARKS.**

No person shall throw or deposit litter in any park within the city except in public receptacles, and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all litter shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere as provided herein.

(1985 Code, § 92.29) Penalty, see § 92.99

#### **§ 92.25 LITTER IN LAKES AND FOUNTAINS.**

No person shall throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the city.

(1985 Code, § 92.30) Penalty, see § 92.99

#### **§ 92.26 THROWING OR DISTRIBUTING HANDBILLS IN PUBLIC PLACES.**

No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the city. No person shall hand out, distribute or sell any commercial handbill in any public place. However, it shall not be unlawful on any sidewalk, street or other public place within the city for any person to hand out or distribute, without charge to the receiver

thereof, any noncommercial handbill to any person willing to accept it, except within or around the city hall building.

(1985 Code, § 92.31) Penalty, see § 92.99

**§ 92.27 PLACING HANDBILLS ON VEHICLES.**

(A) No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle.

(B) However, it shall not be unlawful in any public place for a person to hand out or distribute, without charge, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

(1985 Code, § 92.32) Penalty, see § 92.99

**§ 92.28 DEPOSITING HANDBILLS ON UNINHABITED OR VACANT PREMISES.**

No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

(1985 Code, § 92.33) Penalty, see § 92.99

**§ 92.29 PROHIBITING DISTRIBUTION OF HANDBILLS WHERE POSTED.**

No person shall throw, deposit or distribute any commercial or noncommercial handbill upon any private premises if requested by anyone thereon not to do so, or if there is placed on the premises in a conspicuous position near the entrance thereof, a sign bearing the words: "No Trespassing," "No Peddlers or Agents," "No Advertisement" or any similar notice, indicating in any manner that the occupants of the premises do not desire to be molested or have their right of privacy disturbed, or have any handbills left upon the premises.

(1985 Code, § 92.34) Penalty, see § 92.99

**§ 92.30 DISTRIBUTING HANDBILLS AT INHABITED PRIVATE PREMISES.**

(A) (1) No person shall throw, deposit or distribute any commercial or noncommercial handbill in or upon the private premises which are inhabited, except by handing or transmitting any handbill directly to the owner, occupant or other person then present in or upon the private premises.

(2) In the case of inhabited private premises which are not posted as provided in this subchapter, the person, unless requested by anyone upon the premises not to do so, may place or deposit any handbill in or upon the inhabited private premises, if the handbill is placed or deposited to secure or prevent the handbill from being blown or drifted about the premises or sidewalks, streets or other

public places, except that mailboxes may not be used when prohibited by federal postal law or regulations.

(B) The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers, except that newspapers shall be placed on private property in a manner to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place, or upon private property.

(1985 Code, § 92.35) Penalty, see § 92.99

#### **§ 92.31 POSTING NOTICES PROHIBITED.**

No person shall post or affix any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamppost, public utility pole or shade trees, or upon any public structure or building, except as may be authorized or required by law.

(1985 Code, § 92.36) Penalty, see § 92.99

#### **§ 92.32 LITTER ON OCCUPIED PRIVATE PROPERTY.**

No person shall throw or deposit litter on any occupied private property within the city, whether owned by the person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place, or upon any private property.

(1985 Code, § 92.37) Penalty, see § 92.99

#### **§ 92.33 OWNER TO MAINTAIN PREMISES FREE OF LITTER.**

The owner or person in control of any private property shall at all times maintain the premises free of litter. However, this section shall not prohibit the storage of litter in authorized private receptacles for collection.

(1985 Code, § 92.38) Penalty, see § 92.99

#### **§ 92.34 LITTER ON VACANT LOTS.**

No person shall throw or deposit litter on any open or vacant private property within the city, whether owned by the person or not.

(1985 Code, § 92.39) Penalty, see § 92.99

***WEEDS***

**§ 92.45 WEEDS AND GRASSES; NUISANCE.**

Council hereby finds and determines that the growth of grass to a height in excess of ten inches and any growth of rank vegetation, and noxious weeds, including but not limited to thistles, wild lettuce, wild mustard, ragweeds, milkweeds, poison ivy and any other weed or wild pollen or seeds spread or about to be spread by it, which by reason of the density of its growth, or by reason of its unsightliness, or dense growth, injuriously affects the public health, safety and welfare and the same, and any land covered thereby, are hereby declared to be a public nuisance.

(1985 Code, § 92.50) (Ord. 1256, passed 7-12-1976; Ord. 90-64, passed 9-17-1990) Penalty, see § 92.99

**§ 92.46 REMOVAL REQUIRED.**

Any person owning or having charge of land within the city shall keep the grass thereon cut to a height not in excess of ten inches and shall keep the same free and clear from all noxious weeds and rank vegetation and shall cut or cause to be cut all such weeds and vegetation on lots owned or controlled by him or her as required to prevent such growth and/or the maturing or spreading of seeds or pollen therefrom.

(1985 Code, § 92.51) (Ord. 1256, passed 7-12-1976; Ord. 90-64, passed 9-17-1990) Penalty, see § 92.99

**§ 92.47 NOTICE.**

Upon information that a nuisance exists as described in § 92.45, including grasses in excess of ten inches in height, or noxious weeds growing on the lands in the city or that such vegetation is about to spread or mature seeds and/or pollen, the City Manager shall cause notice to be served on the owners or persons having charge of such lands that such grass, weeds and/or vegetation shall be cut and destroyed within ten days after the date of such notice. Such notice may be served personally or by certified mail to the owner or person in charge of such land. If the City Manager determines that there is reason to believe that the owner or person in charge of the land cannot be so served with the notice, then such notice shall be given by publication in the newspaper of general circulation within the city and shall be sufficient if such owners and persons in charge are named therein.

(1985 Code, § 92.52) (Ord. 1256, passed 7-12-1976; Ord. 90-64, passed 9-17-1990) Penalty, see § 92.99

**§ 92.48 FAILURE TO COMPLY WITH NOTICE; ACTION BY CITY; ASSESSMENT.**

Should the owner or person having charge of any such land fail to comply with such notice provided by § 92.47 the City Manager shall cause such grass, weeds and/or vegetation to be cut and/or destroyed

and removed and all costs or expense thereof shall, when approved by Council, be assessed against such lands and certified and collected as provided by law in the case of other assessments levied by Council. The expense so to be assessed shall include the cost of any publication or publications, pursuant to this chapter, the cost and expense of calculating, levying and collecting such assessments and all other necessary expenses, as well as the cost of cutting and removing.  
(1985 Code, § 92.53) (Ord. 90-64, passed 9-17-1990)

#### § 92.49 COMPOST REGULATIONS.

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

**COMPOST.** The product of the composting process. **COMPOST** is characterized as chemically and biologically altered organic material which has become chemically and biologically stable, and is free from offensive odors.

**COMPOST PILE.** A place where composting occurs.

**COMPOSTING.** The controlled decomposition of organic solid wastes under aerobic conditions to produce relatively stable, inert material that may be incorporated into the soil without producing any adverse impact to the soil or the public health.

**RESIDENTIAL COMPOSTING.** Any composting activity conducted by the resident on his or her property.

**SOIL INCORPORATION.** The immediate plowing, disking or chiseling of organic residue into the soil.

**YARD WASTE** or **GREEN WASTE.** The residue generated from lawns, shrubs, gardens and other such vegetation. **YARD WASTE** may include grass clippings, shrub trimmings, brush, garden waste and tree wastes. **YARD WASTE** does not include materials, such as but not limited to meat, fish, dairy products, bones, pastas, cheeses, salad dressings.

(B) *Exemptions.* This section does not apply to any person who is disposing of yard waste through soil incorporation.

(C) *Location of residential compost piles.* Residential compost piles shall be located:

- (1) In a rear yard or side yard;
- (2) In a location where it can be properly maintained;
- (3) A minimum of 50 feet from a private water supply system;

- (4) A minimum of ten feet from any private sewage disposal system; and
- (5) A minimum of 50 feet from any natural watercourse.

(D) *Prohibition against creating a public health nuisance.*

(1) No person shall create or maintain a residential compost pile in such a manner that it becomes a rodent or insect harborage.

(2) No person shall create or maintain a residential compost pile in such a manner that it produces offensive and noxious off-site odors.

(3) No person shall create or maintain a residential compost pile in such a manner that it causes any form of surface or groundwater pollution.

(E) *Construction of a residential compost pile.* The compost pile shall:

- (1) Be constructed and maintained to prevent off-site odor;
- (2) Not be allowed to become a nuisance, or to attract vectors (such as rodents, insects and the like) or to become a health or safety hazard; and
- (3) Have adequate drainage, such that any natural liquids generated by the decomposing yard wastes shall be absorbed into the soil.

(F) *Maintenance of residential compost piles.*

- (1) Residential compost piles shall be maintained in a safe and sanitary manner.
- (2) Residential household compost piles that are producing off-site odors shall be immediately remedied or removed.

(1985 Code, § 92.54) (Ord. 94-43, passed 9-19-1994) Penalty, see § 92.99

**§ 92.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Whoever violates any of the provisions of §§ 92.01 or 92.02 shall be fined not more than \$150, and a separate offense occurs or continues. In the event of any violation by a corporation, the violation shall be deemed equally committed by the president of the corporation, who shall in such event be

deemed personally amenable to the provision of those sections, and subject to fine hereunder by reason of the violation.

(C) Whoever violates any of the provisions of § 92.03 shall be fined not more than \$150, and each violation at each location or address shall be a separate offense and each day continuation shall be a separate offense.

(D) Any person violating any of the provisions of §§ 92.16 through 92.34 shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$150. Each day the violation continues shall constitute a separate offense, and shall be punishable as such hereunder.

(E) Every person who violates or fails to comply with the provisions of §§ 92.45 through 92.47 shall be deemed guilty of a minor misdemeanor.

(F) Whoever violates any provisions § 92.49 shall be deemed guilty of a minor misdemeanor. Each day the violation continues shall constitute a separate offense, and shall be prosecuted and punished accordingly.

(1985 Code, § 92.54)

(1985 Code, § 92.99) (Ord. 1401, passed 5-21-1979; Ord. 1405, passed 5-21-1979; Ord. 89-36, passed 7-17-1989; Ord. 94-43, passed 9-19-1994; Ord. 04-21, passed 8-23-2004)



## CHAPTER 93: STREETS AND SIDEWALKS

### Section

#### *Cutting Open Streets and Sidewalks*

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- 93.02 Specifications for opening and restoring streets
- 93.03 Backfilling after tapping sewers or utilities
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- 93.85 Blocking street for more than ten minutes
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***CUTTING OPEN STREETS AND SIDEWALKS***

**§ 93.01 PERMIT REQUIRED; FEE; BOND.**

(A) No person shall cut open the surface of any public street, sidewalk or other improved area within the public right-of-way, or cut any public curb, or construct a driveway across any public sidewalk or other improved area within the public right-of-way without a permit issued by the City Manager. No person shall perform any work in connection with any opening, cut or driveway, except in accordance with the specifications governing the same pursuant to this subchapter, to the extent that specifications exist and apply to such work. The foregoing shall apply to each person performing any part of the actual work involved in any violation of the foregoing, and any part of any following construction, installation, repair, restoration or other work related to the work involved in the violation, as well as to the person directing any part of the work, and the person at whose direction any work is done. Applications for permits shall be made in such form as may be prescribed by the City Manager, and shall be accompanied by plans and specifications as he or she may require. The fee for each permit shall be \$3, and a separate permit shall be required for each opening, cut or driveway.

(B) In addition, the applicant for any permit shall deposit with the city, prior to issuance of his or her permit, such sum as may be necessary, in the judgment of the Manager, to cover the costs of inspection by the city of the work to be performed under the permit, and to cover the costs of restoration of the affected public improvements, in accordance with the specifications governing the same pursuant hereto, in the event that the restoration, including re-restoration, in accordance with such specifications and with the directions of the Manager is not accomplished by the applicant, or that the Manager determines that the work of the restoration or re-restoration, or any part thereof, shall be done by the

city with its own forces. If the amount so deposited by the applicant receiving the permit is insufficient to cover all such costs, and the costs of any other work done by the city in default of his or her compliance with such specifications or with this chapter, he or she shall pay to the city, promptly upon receipt of invoice thereof, the full amount of any additional cost. If the total of the costs is in any given case less than the amount of his or her deposit, the excess amount shall be refunded to him or her upon determination by the Manager that no further costs will be chargeable hereunder against the deposit, and in no event later than 12 months from the date of completion of the work for which his or her permit was issued. Any work not timely done in compliance with such specifications or with this chapter may be done or caused to be done by the city.

(1985 Code, § 93.01) Penalty, see § 93.99

### **§ 93.02 SPECIFICATIONS FOR OPENING AND RESTORING STREETS.**

The Manager may establish specifications governing the types of materials to be used; the manner in which all openings and cuts are to be made; the manner in which all driveways within the public right-of-way are to be constructed; the manner in which all work is to be protected during the course thereof; and the manner in which all affected public improvements are to be restored upon the completion of the work, including, without limiting the generality of the foregoing, the procedures to be followed during construction operations for the purpose of preventing conditions prejudicial to the effectiveness of the restoration work executed in accordance with the specifications pertaining thereto. The specifications shall include provisions determining the time of commencement and the time of completion for the various operations and work covered, and the acts required, by the specifications, the nature or importance of which is such in the judgment of the City Manager as to justify regulating the time of performance thereof.

(1985 Code, § 93.02) Penalty, see § 93.99

### **§ 93.03 BACKFILLING AFTER TAPPING SEWERS OR UTILITIES.**

No backfilling shall be done in any opening made for the purpose or tapping sewers or other utilities owned by the city unless the openings are inspected by the city immediately prior to backfilling.

(1985 Code, § 93.03) Penalty, see § 93.99

### **§ 93.04 MAINTENANCE OF SURFACE FOR 12 MONTHS.**

(A) Each person to whom any permit is issued hereunder for the purpose of any opening or cut shall maintain for 12 months the surface restored by him or her, or caused by him or her to be restored, at the site of the opening or cut. If at any time during that period the restored surface settles to a point more than one-half inch below the level of the nearest uncut or unopened paved surface, he or she shall immediately, with or without notice from the Manager or the city, remove such portion of the backfill in his or her excavation at the site, or such portion of the restored surface, and shall immediately refill

the excavation and resurface the opening or cut, as the Manager may direct. All of the foregoing shall also apply with regard to settling within such period of re-restored surfaces.

(B) Each person shall be primarily liable and responsible for any personal injuries sustained by any and all third persons or their property and caused by the occurrence, within the maintenance period, of any settling of any surface which he or she restored or re-restored or caused to be restored or re-restored.

(C) If the work of any restoration or re-restoration, or any part thereof, is in any particular case done by the city with its own forces, the person to whom the permit is issued shall have no responsibility for maintenance, or liability in connection with settling, after the restoration or re-restoration, or part thereof, is completed by the city.

(1985 Code, § 93.04) Penalty, see § 93.99

#### **§ 93.05 NOTICE TO ABUTTING OWNERS TO INSTALL WATER OR SEWER PIPES.**

Prior to paving or resurfacing any public street, the City Manager shall cause notices to be sent to all abutting property owners requiring them to install any needed water or sewer service branches, or any other needed utility service branches for which permission for installation in a public street may be given by the city, or be thereafter barred from making any installation within the street pursuant to the provisions of this section. Notice shall also at that time be sent to all affected public utility companies, privately or publicly owned, to install all necessary mains, conduits, service branches and related subsurface structures, or be similarly thereafter barred from making such installations. Each property owner and public utility company wishing to make any installation shall notify the City Manager in writing within ten days after his, her or its receipt of the notice, and shall then be allowed such time as may be necessary for the making of an installation before the paving or resurfacing is done. No permit for making any opening in new or resurfaced pavement shall be issued for a period of three years, commencing with the date of the final completion of new or resurfaced pavement, except for, reasons of public necessity, or of countervailing public benefit, or of undue private hardship, and then only, as to any asserted hardship, in cases in which the circumstances that it is asserted will create hardship if the permit is denied are due to causes over which the applicant has and has had no control. Lack of foresight shall not be considered a cause over which an applicant has had no control.

(1985 Code, § 93.05) Penalty, see § 93.99

#### **§ 93.06 CONTRACTORS WORKING FOR THE CITY.**

Sections 93.05 through 93.07 shall apply to contractors working under contract with a bond to the city, but no contractor so engaged shall, in connection with such work for the city, be required to pay the costs of inspection, or make the deposit that would otherwise be required of him or her under those sections.

(1985 Code, § 93.06) Penalty, see § 93.99

**§ 93.07 EMERGENCY OPENING OR CUT IN STREETS.**

In any case in which any emergency opening or cut is necessary, the person requiring the same shall notify the police of the existence of the emergency as soon as possible after the emergency arises. The person shall apply for a permit for the opening or cut, retroactively, on the first day after the emergency on which the office of the Manager is open for regular business, and shall thereafter, in connection with an application for the permit, and in all other respects relative to the opening or cut, comply with all of the provisions of §§ 93.01 through 93.07, except to such extent as the application of such provisions may be waived by the Manager. The Manager shall in such cases also have the right to direct all emergency work, the manner in which it is done and protected, and, whether or not the work is done under his or her direction, to order that the work be redone as soon thereafter as it is possible to redo the work under normal conditions. All emergency work not done and protected at and in accordance with the directions of the Manager shall, insofar as the city and all third persons are concerned, be at the sole risk, liability and responsibility of the person doing the work or ordering the same to be done.

(1985 Code, § 93.07) Penalty, see § 93.99

***PAVEMENT OF ROADWAYS*****§ 93.20 PERMIT REQUIRED.**

No person or corporation shall pave or otherwise improve or cause to be paved or improved any part of the area within any public right-of-way for the accommodation of vehicles, whether for public or private purposes or use, without written permit issued by the City Manager, or unless ordered by public authority. Sections 93.20 through 93.22 shall not apply, however, to the construction of any private driveway, provided that the driveway is not intended for use as a means of ingress or egress to or from more than one permitted structure.

(1985 Code, § 93.10) Penalty, see § 93.99

**§ 93.21 CITY MANAGER TO SET SPECIFICATIONS IN PERMIT.**

The City Manager shall set forth in each permit, or refer therein to, the plans and specifications in accordance with which all work done under the permit shall be performed. Plans and specifications shall be prepared, prescribed or approved by the City Manager, and the requirements shown on and stated in the plans and specifications shall be such as will produce a pavement or improvement matching in design, kind and quality the main existing public roadway pavement located adjacent or nearest to the proposed private construction in the same right-of-way, and connecting to the main pavement, if the City Manager deems a connection desirable, in such manner as the City Manager may deem appropriate in the interests of public traffic. No person or corporation in whose name any permit is issued shall, in

performing work or causing work to be performed under the permit, deviate or suffer deviation from the plans and specifications prescribed in the permit.

(1985 Code, § 93.11) Penalty, see § 93.99

### **§ 93.22 VIOLATORS TO REMOVE AND RECONSTRUCT PAVEMENTS.**

(A) A person or corporation convicted of a violation of §§ 93.20 or 93.21 shall, at his, her or its own expense, and within ten days after conviction:

(1) Remove or cause to be removed the pavement or improvement, the construction of which or causing the construction of which constituted the violation, and restore or cause to be restored the public right-of-way over which the pavement or improvement was constructed to the condition in which the right-of-way existed immediately prior to construction; or

(2) Reconstruct the pavement or improvement, or cause the same to be reconstructed, as necessary to correct all deviations constituting the violation, as the case may be, if the removal and restoration, or the correction, has not earlier been accomplished.

(B) Each day that the pavement or improvement remains unremoved, and the right-of-way remains unrestored or the deviations remain uncorrected, after the expiration of the ten-day period, shall constitute a separate violation of those sections by such person or corporation. Each person or corporation convicted of a violation of §§ 93.20 or 93.21 with respect to the construction of the same pavement or improvement shall bear the full obligation of effecting the removal and restoration or the correction, separately and independently of any other person or corporation convicted of a violation with respect to the construction. He or she shall be subject to the penalties herein prescribed for failure to effect the removal and restoration or the correction, whether or not any other person or corporation is likewise and concurrently subject to such penalties for failure to effect the removal and restoration or the correction, and whether or not the period within which the removal and restoration or the correction must be effected by one person or corporation differs from that within which it must be effected by any other person or corporation.

(1985 Code, § 93.12) Penalty, see § 93.99

### ***SIDEWALK CONSTRUCTION***

### **§ 93.35 DEFINITIONS.**

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

***DIRECTED, REQUIRED, PERMITTED, ORDERED, DESIGNATED, PRESCRIBED OR WORDS OF LIKE IMPORT.*** Wherever in §§ 93.35 through 93.55 these words are used, the directions,

requirements, permission, order, designation or prescription of the City Manager is intended, and, similarly, the words ***APPROVED, ACCEPTABLE, SATISFACTORY OR WORDS OF LIKE IMPORT*** shall mean approved by, or acceptable or satisfactory to, the City Manager, unless otherwise expressly stated.

(1985 Code, § 93.20)

### **§ 93.36 APPROVAL BY CITY MANAGER.**

All sidewalk work within any public right-of-way within the city shall be done to the satisfaction of the City Manager, who shall in all cases determine the quality, acceptability and fitness of the kinds of work and materials used or to be used.

(1985 Code, § 93.21) Penalty, see § 93.99

### **§ 93.37 ORDERS TO CONTRACTOR.**

Every contractor performing any part of any work shall have on the work site at all times a foreperson, superintendents or other competent representative to whom orders and instructions may be given. Such orders shall have the same force and effect as if given directly to the contractor.

(1985 Code, § 93.22) Penalty, see § 93.99

### **§ 93.38 LINES AND GRADES.**

All work must be in accordance with the lines and grades directed or staked out by the City Manager. The general contractor for the work shall be responsible for the protection of all stakes until he or she is permitted to remove them.

(1985 Code, § 93.23) Penalty, see § 93.99

### **§ 93.39 ADJUSTMENT OF STOP-BOXES.**

No sidewalk shall be constructed, reconstructed or repaired with a grade or surface other than flush with the top of each of any and all gas and water stop-boxes located therein. If the work calls for a different grade, the general contractor shall request the City Manager to make or cause to be made such adjustments in the elevations of the boxes as will permit the establishment of the desired grade. The making of any request, and any failure, neglect or refusal of the City Manager to comply therewith, within any given period, shall not, however, excuse any violation of the provisions of the first sentence of this section.

(1985 Code, § 93.24) Penalty, see § 93.99

**§ 93.40 PROTECTION OF ELECTRICAL CONDUITS AND CABLES.**

The general contractor shall protect all affected electrical cable and conduit, and notify Duke Energy at least 48 hours before pouring the concrete for any sidewalk.

(1985 Code, § 93.25) Penalty, see § 93.99

**§ 93.41 INSPECTION.**

The general contractor shall furnish all labor necessary in handling materials for inspection. All materials rejected shall be immediately hauled from the vicinity of the work. This section and supervision by the City Manager shall not operate to release any contractor from any of his or her contract obligations. Defects of materials or workmanship shall be immediately remedied by the contractor regardless of previous inspection. If the contractor fails to comply promptly with these requirements, the City Manager may revoke the permit.

(1985 Code, § 93.26) Penalty, see § 93.99

**§ 93.42 GUARANTEE.**

The general contractor shall keep all work done by him or her in good condition and repair for one year from the date of final inspection and approval by the City Manager, and any portion of the work that becomes defective, through settlement, cracking, breaking of surface or otherwise, shall be removed and replaced with new work by the contractor at his or her own expense.

(1985 Code, § 93.27) Penalty, see § 93.99

**§ 93.43 CLEANING UP.**

As fast as any sidewalk is laid, all rubbish and surplus material that has accumulated during the progress of the work shall be removed from the public right-of-way by the contractor, and the completed portion of the work left clean and in good condition.

(1985 Code, § 93.28) Penalty, see § 93.99

**§ 93.44 ESTOPPEL.**

The city shall not be precluded or estopped by any return or certificate made or given by it from showing at any time, before or after the final completion and acceptance of the work and payment therefor pursuant to any return or certificate, the true and correct amount and character of the work done and materials furnished by any contractor or other person, or that any return or certificate is untrue and incorrect or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the requirements of §§ 93.35 through 93.55. The city shall not be precluded or



estopped, notwithstanding any return or certificate or payment in accordance therewith, from demanding and recovering from any contractor such damages as it may sustain by reason of his or her failure to comply with the requirements.

(1985 Code, § 93.29) Penalty, see § 93.99

**§ 93.45 RESPONSIBILITY.**

During the progress of the work, the general contractor shall assume the risk of, and be responsible for, any and all damages to persons or property caused by or in any way resulting from performance of the work or the work itself.

(1985 Code, § 93.30) Penalty, see § 93.99

**§ 93.46 GRADING.**

(A) If a sidewalk is to be constructed in any part upon fill, the contractor shall place the fill in four-inch layers, and thoroughly roll or tamp each layer.

(B) The width of each layer shall be as directed.

(C) After a walk is laid, the areas on each side thereof shall be filled or excavated, as the case may be, and shall be finish-graded to the width as directed.

(1985 Code, § 93.31) Penalty, see § 93.99

**§ 93.47 TREES.**

Any trees which interfere with the construction of sidewalks shall be carefully taken down by the general contractor to avoid damage of any kind, and the stump shall be grubbed out by the contractor one foot below grade.

(1985 Code, § 93.32) Penalty, see § 93.99

*Cross-reference:*

*Trees, see Ch. 95*

**§ 93.48 CEMENT CONCRETE WALKS.**

All sidewalks shall be constructed of portland cement class “D” concrete, and shall be five inches thick and of single-course construction laid directly on prepared subgrade.

(1985 Code, § 93.33) Penalty, see § 93.99

**§ 93.49 CONSTRUCTION.**

(A) Excavation for a sidewalk shall be made to a depth of five inches below the proposed finished grade and to a width of three inches more on each side than the width of the proposed walk. All tree roots exposed by excavation shall be cut off at least three inches outside the lines of the proposed walk and three inches below the subgrade. The subgrade shall be evenly fine-graded and thoroughly compacted with a five-ton roller. Where the use of a roller is impracticable, the subgrade shall be compacted by heavy tamping. If springs are encountered, drains shall be laid as directed.

(B) Forms shall be either steel or sound two-inch plank and shall be straight, true and clean. Forms shall be set true to line and grade and firmly staked down. Where curved walks are to be constructed, thin strips or forms that will produce a smooth, regular curve shall be used. The alignment, elevation and slope of all walks shall be subject to special directions from the City Manager. Sidewalk adjoining a curb shall be one-fourth inch higher than the top of the curbing at the line of the junction. The slope of a full width walk shall be five-sixteenth inch per foot up from the curb to the building line. Any proposed variation from the foregoing shall be shown on the plans and approved by the City Manager, or shall be directed by the City Manager.

(C) The concrete shall be of plastic consistency, and placed on the prepared subgrade in one operation. It shall be struck off and truly straightened, then neatly hand-floated until all coarse aggregate is entirely covered. Before the concrete sets, the surface of the walk shall be cut into blocks with a jointer, and the edges tooled until they are firm and smooth. The blocks shall be cut to straight lines generally rectangular, measuring usually not less than two nor more than five feet on the side. The design of the blocking shall be subject to the special direction of the City Manager. After the walk has been blocked out, the concrete shall be carefully floated to a smooth and uniform surface. The margin of each block shall then be tooled with the edger or jointer to a smooth, dense finish. The final edger or jointer marks shall not be floated out.

(D) Around street sign and stop sign posts, the walk shall be blocked out in one-foot squares.

(E) Expansion joints shall be provided at such intervals, not exceeding 30 feet, as may be directed. The joints shall be made of preformed material one-half inch thick and five inches wide.

(F) Joints shall also be constructed at all joints between new sidewalk and adjoining curb, between new sidewalk and all new entrance walks and drives, and between curb and all new entrance walks, and the same preformed material, one-fourth inch thick and five inches wide, shall also be installed around all poles, fire hydrants, cellar holes, inlets and other street items. Where cement walks are laid along steel plate curbs, the joints shall be aligned with the joints in the curbs. The breaking or displacement of curbs or the buckling of walks due to lack of proper joints shall be made good by the contractor at his or her own expense.

(G) All work shall connect with adjoining work in a reasonable and satisfactory manner.  
(1985 Code, § 93.34) Penalty, see § 93.99

**§ 93.50 CURING.**

(A) As soon as the concrete has taken its initial set, all exposed surfaces shall be sealed by spraying thereon, in a fine mist, a uniform application of waterproof white membrane curing compound in a manner to provide a continuous, uniform, water-impermeable film without marring the surfaces.

(B) The containers of the compound shall be agitated thoroughly prior to and during the spraying operation as may be necessary to assure that all ingredients of the compound are in solution or in well-dispersed suspension when applied. The compound shall be considered to be sufficiently agitated when no gummy deposit adheres to the end of a rod scraped across the bottom of the container. The compound shall be applied by approved pressure-spraying equipment at a rate not exceeding 200 square feet per gallon. De Vilbiss Type NU 503 Spray Gun with a No. 54 Air Cap and FF Fluid Tip, together with a ten-gallon De Vilbiss QM 5664 Pressure Feed Paint Tank, or equal, shall be acceptable if in first class condition. The orifice of the jet or jets of the equipment shall not be held less than eight inches nor more than 15 inches from the surface of the concrete during the spraying operation. The compound shall be applied in one or more separate coats, as necessary to avoid any runoff or sagging of the membrane. If the film is broken or damaged at any time during the specified curing period, the area or areas affected shall be given a complete duplicate application of the compound.

(C) As soon as the forms have been removed and all honeycomb corrected, the edges of the walks shall be sealed with the compound.

(D) Unless satisfactory precautions are taken to protect the surface of the membrane, all persons, materials, and equipment shall be kept off the membrane during the curing period, which shall be 72 hours.

(E) When the surface temperature of the concrete is in excess of 110°F, satisfactory protection against exposure to the direct rays of the sun shall be provided for at least three days following application of the compound.

(1985 Code, § 93.35) Penalty, see § 93.99

**§ 93.51 COLD WEATHER.**

(A) When the temperature is below 40°F or predicted to go below 36°F in the next 24 hours, or predicted to go below 32°F in the next 72 hours, no concrete shall be poured unless expressly permitted. Any permission shall be for a single day and a specific location only.

(B) When permission is granted:

(1) No concrete shall be poured until adequate covering material is on the site, and a sufficient number of workers are present to keep the finishing and covering immediately behind the spreading; and

(2) All forms shall be cleaned of all frost. In no case shall concrete be poured on frozen ground, or on subgrade on which there is frost.

(1985 Code, § 93.36) Penalty, see § 93.99

#### **§ 93.52 FINISHING UP.**

The contractor shall, after removing the strips used in screening the walk, fill the spaces left by the removal with fine earth well compacted. Any lawn space between curb and walk shall be neatly dressed to conform to the grade of the walk and curb.

(1985 Code, § 93.37) Penalty, see § 93.99

#### **§ 93.53 REINFORCED WALKS.**

Reinforced concrete walks shall be constructed only according to approved plans. Walks shall be designed to carry a live load of 250 pounds per square foot or an 8,000-pound concentrated load, whichever produces greater stress. The concrete shall be proportioned, mixed and laid as specified for one-course walks. Reinforced walks shall not be cut into blocks.

(1985 Code, § 93.38) Penalty, see § 93.99

#### **§ 93.54 CONDEMNATION OF CRACKED OR DEFECTIVE SIDEWALKS.**

The following sidewalks, or parts of walks, now or thereafter existing, shall be condemned:

(A) Any block or segment having a crack in it more than five-eighths inch wide at the surface;

(B) Adjoining blocks or portions thereof whose adjacent edges differ in vertical elevation by more than five eighths inch;

(C) Blocks that have holes in them five-eighths inch or more in diameter, or that are broken so that substantial fragments are missing or loose;

(D) Blocks having depressions such as to impound mud or water;

(E) Blocks having a slope away from the street in excess of three-fourths inch vertical per one foot horizontal;

(F) Blocks that cause an abrupt change in the longitudinal grade of a sidewalk; and

(G) Blocks that are very rough, with the coarse aggregate protruding, by reason of raveling or spalling.

(1985 Code, § 93.39) Penalty, see § 93.99

**§ 93.55 ABUTTING OWNER RESPONSIBLE FOR SIDEWALKS.**

(A) On and after January 6, 1973, the city will no longer be responsible for the construction, repair and maintenance of any and all sidewalks in the city.

(B) The construction, repair and maintenance of sidewalks in the city shall be the responsibility of the owner of the property on which the sidewalk abuts.

(1985 Code, § 93.40) Penalty, see § 93.99

***DEBRIS AND SNOW*****§ 93.70 SIDEWALK TO BE IN REPAIR AND FREE FROM DEBRIS OR SNOW.**

The occupant, or, if unoccupied, the owner, of each lot, parcel or tract of land abutting a public sidewalk within the city shall at all times keep the portion of the sidewalk which abuts his or her lot, parcel or tract in repair, free from snow or any nuisance, and clear and clean of weeds, grass, dirt or any objectionable substance. Where the occupants or owners, as the case may be, of any lot, parcel or tract are more than one, they shall be jointly and severally responsible for compliance herewith.

(1985 Code, § 93.50) Penalty, see § 93.99

***Cross-reference:***

*Littering, see §§ 92.15 through 92.34*

*Littering public ways, see § 139.05*

*Sidewalks to be kept free of rubbish, see § 139.09*

**§ 93.71 NOTICE TO CLEAN OR REPAIR SIDEWALK.**

(A) Whenever the City Manager notifies any responsible party by registered or certified mail or by written notice otherwise delivered to the party's residence that the sidewalk on which his or her property abuts is in need of any repair, clearing or cleaning, the party shall comply with the notice, and cause the repairs described in the notice to be made, and shall cause the sidewalk to be cleared and cleaned as required by the notice. All clearing and cleaning shall be completed within 48 hours, and all repairs shall be completed within five days after receipt of the notice. The notice shall specifically and particularly describe the work to be done, and the portion of sidewalk in need thereof.

(B) Property whose occupants are absent at the time the notice is sought to be delivered and who are not expected to return within three days shall be deemed unoccupied.

(C) All repair shall be done in accordance with the specifications of this chapter. The notice need not set forth the specifications, but they shall be available for examination by the recipient of any notice. (1985 Code, § 93.51) Penalty, see § 93.99

**§ 93.72 REPAIR OF SIDEWALK BY CITY.**

(A) The City Manager shall have the right to inspect all sidewalks, or parts of walks, and to condemn the following sidewalks, or parts of walks:

- (1) Any block or segment having a crack in it more than five-eighths-inch wide at the surface;
- (2) Adjoining blocks or portions thereof whose adjacent edges differ in vertical elevation by more than five-eighths inch;
- (3) Blocks that have holes in them five-eighths inch or more in diameter, or that are broken so that substantial fragments are missing or loose;
- (4) Blocks having depressions such as to impound mud or water;
- (5) Blocks having a slope away from the street in excess of three-fourths inch vertical per one foot horizontal;
- (6) Blocks that cause an abrupt change in the longitudinal grade of a sidewalk; and
- (7) Blocks that are very rough, with the coarse aggregate protruding by reason of raveling or spalling.

(B) (1) (a) After the City Manager has condemned a sidewalk, or a part thereof, the owner of the property which abuts the condemned sidewalk shall be sent a letter notifying him or her of the action taken by the City Manager.

(b) The notice shall be sent by certified mail.

(2) This letter of notice shall inform the property owner that:

(a) He or she shall, within 30 days of the date of the letter, apply for a permit from the Building Inspector to do the work ordered by the City Manager, and have the required work completed within 60 days of the date of the letter; and

(b) If he or she fails to apply for a permit within the three days or fails to have the work completed within 60 days, the city shall proceed to have the necessary work performed, and charge and collect from the property owner the cost of the work, plus administrative charges incident thereto.

(C) All work ordered or performed under the provisions of this chapter shall be in conformity with the provisions and requirements of §§ 93.35 through 93.55.

(1985 Code, § 93.52) Penalty, see § 93.99

***RAILROAD CROSSINGS***

**§ 93.85 BLOCKING STREET FOR MORE THAN TEN MINUTES.**

It shall be unlawful for any railroad company to operate its locomotives, cars or trains of cars in a manner to block a street crossing for more than ten minutes.

(1985 Code, § 93.60) Penalty, see § 93.99

**§ 93.99 PENALTY.**

(A) Whoever violates any of the provisions of §§ 93.01 through 93.07 shall be fined not more than \$150, and each person failing to take any action required of him or her by or pursuant to those sections shall be deemed to commit a separate offense hereunder each day on which he or she fails or continues to fail to take such action.

(B) Whoever violates §§ 93.20 through 93.22 shall for each violation be fined not more than \$150.

(C) Whoever violates any provision or fails to comply with any requirements of §§ 93.35 through 93.55 shall be fined not more than \$150; and corporations, partnerships, and other firms shall be subject to the foregoing, and natural persons shall be subject thereto whether or not acting as officers, members, agents or employees of any corporation, partnership or other firm. The same person shall not be fined more than once relative to or in connection with the same sidewalk project, regardless of the number of such provisions or requirements violated or not observed, but the City Manager shall have the right and authority, whether or not any fine is imposed, to order the removal of each and every portion of a sidewalk not constructed in full compliance with all such provisions and requirements. The City Law Director may apply to the proper court for the enforcement of any such order by means of injunction.

(D) Whoever violates any provision of §§ 93.70 through 93.72 shall be fined not more than \$150 for each offense, and a separate offense shall be deemed to have been committed each day the violation continues after a period of ten days following the first conviction thereof.

(1985 Code, § 93.99)

(E) Any railroad company superintendent, agent or other employee thereof who directly or indirectly violates any of the provisions of § 93.85 shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$150.

(1985 Code, § 93.60)

(Ord. 04-21, passed 8-23-2004)





## CHAPTER 94: CITY PARKS

### Section

- 94.01 Regulations applicable to city parks, property and buildings
- 94.02 Traffic laws apply in parks
- 94.03 Athletic field fees
- 94.04 Recreation field management
  
- 94.99 Penalty

### § 94.01 REGULATIONS APPLICABLE TO CITY PARKS, PROPERTY AND BUILDINGS.

The following rules and regulations are to apply to parks, property and buildings owned, leased or operated by the city, and are to have the full force and effect of law.

(A) *Meetings*. No person, except with the written permission of the City Manager, shall hold or attend any public meeting, discussion, debate, picnic or gathering of any kind on or within park premises or property; provided that this rule shall not apply to family parties or small groups of picnickers.

(B) *Concerts*. No person, except with the written consent of the Manager, shall play upon or operate any musical instrument or hold any musical concert on or within park premises or property.

(C) *Flags*. No person, except with the written consent of the Manager, shall display any banner, flag, target, sign or device on or within park premises or property.

(D) *Parades*. No person, except with the written consent of the City Manager, shall engage in any parade, drill or procession of any kind on or within park premises or property.

(E) *Damage*. No person shall take, carry away, disturb, molest, destroy, mar, deface, mutilate, mark or damage any public or private property on or within park premises or property.

(F) *Refuse*. No person shall drop or throw paper, lunch boxes, bottles, cans, refuse or litter on or within park premises or property, but shall place the same in receptacles provided therefor.

(G) *Ball and golf*. No person shall throw or bat a hard ball, or drive, putt or play with a golf ball, on or within park premises or property, except at such places as may be set aside therefor by the Manager.

(H) *Sales.* No person shall sell or expose anything for sale on or within park premises or property, or on any sidewalk bounding park premises, except with written permission of the Manager.

(I) *Animals.* No person shall take a dog on or within park premises or property where a sign is posted prohibiting dogs, and no person shall permit any animal owned by him or her to run at large within park premises or property under any circumstances, or tie any animal to any tree or plant or other object, except such as may be particularly provided for such purpose by the city.

(J) *Firearms.* No person shall carry or discharge, on or within park premises or property, firearms, slings or bows, or any other devices by which persons, animals or birds may be injured or frightened, and no person shall throw stones or other missiles on or within park premises or property.

(K) *Liquor.* No person shall take or imbibe any intoxicating liquor upon or within any city park premises, city property or city buildings unless a proper permit has been obtained from the City Manager. The City Manager shall establish written guidelines for the issuance of such permits. No alcoholic beverages except beer and wine shall be permitted.

(L) *Fireworks.* No person, except with the written consent of the City Manager, shall bring, display, use or discharge any fireworks on or within park premises or property.

(M) *Lakes.* No person shall bathe, swim or fish in, or send or throw anything whatsoever into any lake, pool, stream or fountain, or in any manner disturb waterfowl, birds or animals, on or within park premises or property.

(N) *Cycles and horses.* No person shall use or ride any bicycle, motorcycle or horse on any walk or footpath on or within park premises or property, except on paths or roads provided for that purpose.

(O) *Conduct.* Loud, boisterous, threatening, insulting or indecent talk, language or noise, or disorderly conduct or behavior of any kind, or any act in breach of the public peace, is prohibited on or within park premises or property.

(P) *Signs.* Signs posted by the city on or within park premises or property shall be complied with by all persons entering upon park premises.

(Q) *Permits.*

(1) All permissions and consents issued and granted by the Manager shall be subject to these rules and regulations, the same as though these rules and regulations were fully set forth in each permit or consent.

(2) Every person claiming to have a permit or consent from the City Manager shall produce and exhibit the permit or consent upon the request of any official or employee of the city, and the official or employee shall have the right to examine same.

(R) *Closing and opening.*

(1) Park premises shall close at dusk unless otherwise posted.

(2) No person shall enter or remain within any park premises property after that time, or enter any park premises or property before sunrise, except with the written permission of the Manager or his or her designee.

(3) **DUSK** is defined as one hour after sunset.

(1985 Code, § 94.01) (Ord. 92-49, passed 5-4-1992; Ord. 00-20, passed 6-26-2000) Penalty, see § 94.99

***Cross-reference:***

*Comprehensive park and recreation plan, see Ch. 155*

*Recreation Board, see Ch. 33*

**§ 94.02 TRAFFIC LAWS APPLY IN PARKS.**

The traffic laws of the city shall apply to the use and operation of motor vehicles on or within park premises, and on or within premises owned, leased or operated by the city for recreational purposes.

(1985 Code, § 94.02) Penalty, see § 94.99

***Cross-reference:***

*Traffic Code, see Title VII*

**§ 94.03 ATHLETIC FIELD FEES.**

(A) There is hereby imposed the following fee schedule for any athletic teams/organizations that will regularly use the city fields for practice and/or any games:

(1) Ten dollars per player for Madeira recreational teams or organizations; and

(2) Twenty dollars per player for any other select teams.

(B) Each association shall be responsible for the collection of and payment of the fee to the city after registrations has been completed.

(C) Each association shall submit to the Recreation Director a list of those participants who have registered with each association.

(D) The fee shall be waived for any player who is being permitted to play by the corresponding association due to a financial hardship or for any families who are given reduced fees as a result of multiple players under the policy of those associations. For example, if an association awards a third

child to play for free, no player fee will be imposed on the third child. If the policy of the association reduces the fee for multiple players, the city's fee will be reduced by the same percentage.

(E) Fees collected hereunder shall be receipted into the SR-45 Park Fund.

(F) This section shall be reviewed by City Council on an annual basis.  
(1985 Code, § 94.03) (Ord. 05-26, passed 11-14-2005) Penalty, see § 94.99

#### **§ 94.04 RECREATION FIELD MANAGEMENT.**

(A) From time to time the city may officially close certain recreation fields due to weather, maintenance requirements or other reason determined by the City Manager or his or her designee.

(B) No person shall enter upon any recreation field that has been designated as closed by the posting of a sign on or within the recreation field property or premises.

(C) In addition to any penalties applicable under this chapter, it shall be the policy of the city that any person who enters upon any recreation field that has been designated as closed and thereby causes damage to the recreation field, as determined by the City Manager, shall be prohibited from using any and all park facilities until full restitution has been made to the city, as determined by the City Manager.  
(1985 Code, § 94.04) (Ord. 06-29, passed 8-28-2006) Penalty, see § 94.99

#### **§ 94.99 PENALTY.**

Whoever violates any of the provisions of this chapter shall be fined not more than \$150.  
(1985 Code, § 94.99) (Ord. 04-21, passed 8-23-2004)

## CHAPTER 95: TREES

### Section

- 95.01 Removal of trees within street right-of-way
- 95.02 Owner to bear cost of removal
- 95.03 Determination of hazard by City Manager
- 95.04 Prohibiting planting certain trees
  
- 95.99 Penalty

### § 95.01 REMOVAL OF TREES WITHIN STREET RIGHT-OF-WAY.

(A) Every owner, lessee or occupant of real property in the city shall promptly remove or cause to be removed any tree standing within such portion of the street right-of-way abutting his or her property as is contained within the side lines of the property projected to the centerline of the right-of-way, when the tree is a hazard to any person using the right-of-way or to any property, real or personal, in the vicinity. The side lines shall be such as meet or intersect the side line of the abutting right-of-way.

(B) When part of a tree constitutes the hazard, and the hazard can be eliminated by removing such part, the owner, lessee or occupant of the real property abutting the portion of the street right-of-way within which the tree stands shall promptly remove such part, or cause the same to be removed.

(C) When any tree, or part thereof, lies fallen within any portion of any right-of-way, the owner, lessee or occupant of the real property abutting such portion shall promptly remove the tree, or part thereof, or cause the same to be removed, except where the tree, or part thereof, shall have been felled by another whose duty it is to remove the same pursuant to the requirements of this chapter.

(D) A tree, or part thereof, shall, for the purposes of this chapter, be deemed a nuisance or hazard if it is dead, or if it is in danger of falling, or, if in blocking the view of drivers of motor vehicles it significantly reduces the safety of persons using any right-of-way.

(E) For purposes of this chapter ***STREET RIGHT-OF-WAY*** shall mean the entire area of any duly dedicated street right-of-way, including all unimproved, sodded or otherwise unsurfaced portions thereof, as well as the improved portions, and shall include the entire area, improved and unimproved, of easements used by the public for vehicular or pedestrian travel.

(F) **REMOVAL** shall mean removal from the right-of-way.  
(1985 Code, § 95.01) Penalty, see § 95.99

**Cross-reference:**

*Sidewalk construction, see § 93.35 through 93.55*

**§ 95.02 OWNER TO BEAR COST OF REMOVAL.**

When the City Manager issues a written order or certification for the removal of any tree, or part thereof, as referred to in § 95.01, the owner, lessee or occupant of the premises at the time of the required removal shall bear the full cost of removal.

(1985 Code, § 95.02) Penalty, see § 95.99

**§ 95.03 DETERMINATION OF HAZARD BY CITY MANAGER.**

Determination by the City Manager that any condition exists that is a hazard, and his or her determination of the amount constituting the reasonable cost of removal, shall be conclusive for the purposes of this chapter, but the requirements of § 95.01 shall apply whether or not any determination is made or any order is issued.

(1985 Code, § 95.03) Penalty, see § 95.99

**§ 95.04 PROHIBITING PLANTING CERTAIN TREES.**

(A) It shall be illegal to plant or have planted trees or shrubbery of the silver maple (*Acer saccharinum*) species and all varieties of the poplars (*Populus*) and willows (*Salix*) within the street right-of-way or between the sidewalk and street by the owner, lessee or occupant of the property within the city.

(B) If any trees or shrubbery of the above mentioned varieties are planted after November 5, 1973, within the street right-of-way or between the sidewalk and street by the owner, lessee or occupant, the trees or shrubbery shall be removed within 60 days upon receipt of notice by certified mail from the City Manager.

(C) When anyone fails to comply with the notice for removal of the above mentioned varieties of trees and shrubbery, the city shall have the trees and shrubbery removed, and the costs of removal shall be charged to the owner, lessee or occupant of the property.

(D) When anyone fails to pay the charges for removal of the above mentioned varieties of trees and shrubbery within 60 days after receipt of the notice of charges by certified mail from the City Manager, the owner, lessee or occupant who has violated any of this section shall be cited to the Mayor's Court, and, if found guilty, shall be fined.

(1985 Code, § 95.04) (Ord. 1132, passed 11-5-1973) Penalty, see § 95.99

**§ 95.99 PENALTY.**

(A) Whoever violates any provision of this chapter for which another penalty is not provided shall, upon conviction thereof, be fined not more than \$50, and each day the violation continues shall constitute a separate offense.

(1985 Code, § 95.99)

(B) Whoever violates § 95.04(D) shall be fined not more than \$50 plus the charge for removal of the varieties of trees and shrubbery as mentioned in § 95.04.

(1985 Code, § 95.04) (Ord. 1132, passed 11-5-1973)





## CHAPTER 96: WATERS AND WATERCOURSES

### Section

#### *Waters*

- 96.01 Abandoned wells and stagnant water
- 96.02 Artificial hole, well shaft or pit
- 96.03 Exceptions for current excavations

#### *Watercourses*

- 96.15 Removal of debris and obstructions
- 96.16 Notice to remove obstructions
- 96.17 Notice to owners by mail
  
- 96.99 Penalty

### **WATERS**

#### **§ 96.01 ABANDONED WELLS AND STAGNANT WATER.**

No person being the owner, part owner, lessee, agent or tenant having charge of land within the city shall permit any stagnant water to stand, or abandoned well or water-containing hole or other depression to exist greater in depth than in any ground surface dimension thereon for more than 30 days after the date of passage of this section, or the date that the person becomes the owner, part owner, lessee, agent, or tenant, or for more than ten days after the date on which any well is abandoned or any water first stagnates, or any water first accumulates, develops or comes into existence in any such hole or depression, whichever is later, without either draining the same and compactly filling with solid matter, or securely covering and capping and so maintaining during all times in which not put to active use. (1985 Code, § 96.01) Penalty, see § 96.99

#### **§ 96.02 ARTIFICIAL HOLE, WELL SHAFT OR PIT.**

No person being the owner, part owner, lessee, agent or tenant having charge of land within the city shall permit any artificial hole, well shaft or other shaft or pit greater in depth than in any ground surface

dimension to exist thereon for more than 30 days after the person becomes the owner, part owner, lessee, agent or tenant, or for more than ten days after the date on which the digging of any such hole, well shaft or other shaft or pit begins, whichever is later, without either compactly filling the same with solid matter, or securely covering and capping and so maintaining during all times in which not put to active use.

(1985 Code, § 96.02) Penalty, see § 96.99

### **§ 96.03 EXCEPTIONS FOR CURRENT EXCAVATIONS.**

Sections 96.01 and 96.02 shall not apply to excavations incident to construction work under current or active prosecution.

(1985 Code, § 96.03) Penalty, see § 96.99

***Cross-reference:***

*Excavating, grading or filling land, see Ch. 153*

## ***WATERCOURSES***

### **§ 96.15 REMOVAL OF DEBRIS AND OBSTRUCTIONS.**

Every person, natural or artificial, having the right to possession, alone or in common with others, of privately owned real property located within the city shall promptly remove from any and all natural watercourses traversing any part of his or her property, and from the banks of the watercourses, any and all matter which at any time substantially obstructs the natural flow of water therein to an extent that it is, or is likely to be, a substantial contributing factor to the backup and overflow of water, whether in time of flood or of normal flow, upon the property of any other person or of the public. For purposes of this section, **MATTER** shall, without prejudice to the generality of the foregoing, be held to include debris, whether of natural or artificial accumulation, drift, rocks, structures, roots, trees and growths of any kind.

(1985 Code, § 96.20) Penalty, see § 96.99

***Cross-reference:***

*Altering natural flow of water, see § 153.23*

### **§ 96.16 NOTICE TO REMOVE OBSTRUCTIONS.**

No person shall fail to remove any such matter within ten days after receiving a written notice from the City Manager, identifying the location and nature of the matter, and ordering its immediate removal.

(1985 Code, § 96.21) Penalty, see § 96.99

**§ 96.17 NOTICE TO OWNERS BY MAIL.**

The person shall be deemed to have received notice if a copy thereof is delivered to the person personally, or is left at the usual place of residence of the person within the city by the City Manager, or, if the person is not a resident of the city, but resides at a known address, if a copy of the notice is sent to such address by the City Manager by certified mail. The City Manager shall make return of the service, showing the time and manner thereof.

(1985 Code, § 96.22) Penalty, see § 96.99

**§ 96.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Whoever violates any of the provisions of §§ 96.01 through 96.03 shall be fined not to exceed \$150, and each day that the person remains in violation of such sections by continuing to fail to comply with its requirements shall be deemed a separate offense.

(C) Whoever violates any of the provisions of §§ 96.15 through 96.17, or fails to comply with the notice as provided therein, shall be fined not more than \$150 for each offense.

(1985 Code, § 96.99) (Ord. 04-21, passed 8-23-2004)



## CHAPTER 97: INCOME TAX

### Section

- 97.01 Purpose; effective period
- 97.02 Definitions
- 97.03 Imposition of tax
- 97.04 Return and payment of tax
- 97.05 Collection at source
- 97.06 Declarations
- 97.07 Duties of the Tax Commissioner
- 97.08 Investigative powers of the Tax Commissioner; penalty for divulging confidential information
- 97.09 Interest and penalties
- 97.10 Time limitations on suits and refunds
- 97.11 Board of Review
- 97.12 Allocation of funds
- 97.13 Credit for tax paid to another municipality or joint economic development district
- 97.14 Exemptions
- 97.15 Reporting of resident deaths
  
- 97.99 Penalty

### **§ 97.01 PURPOSE; EFFECTIVE PERIOD.**

(A) To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and the capital improvements of the city there shall be, and is, levied a tax on qualifying wages, commissions and other compensation, and on net profits as hereinafter provided.

(B) The tax imposed by this chapter shall be levied, collected and paid with respect to all income and net profits subject to the tax earned during the annual periods commencing on January 1, 1979, and thereafter.

(1985 Code, § 97.01) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004)

**§ 97.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. The singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

**ADJUSTED FEDERAL TAXABLE INCOME.** A C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute adjusted federal taxable income as if the pass-through entity was a C corporation. This definition does not apply to any taxpayer required to file a return under R.C. § 5745.03 or to the net profit from a sole proprietorship.

**ASSOCIATION.** A partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.

**BOARD OF REVIEW.** The Board created by and constituted as provided in § 97.11.

**BUSINESS.** An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.

**CORPORATION.** A corporation or joint stock association organized under the laws of the United States, the state or any other state, territory or foreign country or dependency.

**DOMICILE.** A principal residence that the taxpayer intends to use for an indefinite time and to which whenever he or she is absent, he or she intends to return. A taxpayer has only one **DOMICILE** even though he or she may have more than one residence.

**EMPLOYEE.** One who works for wages, salary, commissions or other types of compensation in the services of any employer.

**EMPLOYER.** An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

**FISCAL YEAR.** An accounting period of 12 months ending on any day other than December 31.

**FORM 2106.** The Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

**GENERIC FORM.** An electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a

particular municipal corporation for the reporting of that municipal corporation's tax on income. Any municipality that requires taxpayers to file income tax returns, reports or other documents shall accept for filing a generic form of such a return, report or document if the generic form, once completed and filed, contains all of the information required to be submitted with the municipality's prescribed returns, reports or documents.

**GROSS RECEIPTS.** Total income of taxpayers from whatever source derived.

**INCOME FROM A PASS-THROUGH ENTITY.** Partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation or other distributive or proportionate ownership shares of income from other pass-through entities.

**INTANGIBLE INCOME.** Income of any of the following types: income yield, interest, capital gains, dividends or other income arising from the ownership, sale, exchange or other disposition of intangible property, including but not limited to investments, deposits, money or credits as those terms are defined in R.C. Chapter 5701, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies and appreciation on deferred compensation. **INTANGIBLE INCOME** does not include prizes, awards or other income associated with any lottery winnings or other similar games of chance.

**INTERNAL REVENUE CODE.** The Internal Revenue Code of 1986, Stat. 2085, 26 U.S.C. §§ 1, as amended.

**JOINT ECONOMIC DEVELOPMENT DISTRICT.** Districts created under R.C. §§ 715.70 through 715.83, as amended from time to time.

**LIMITED LIABILITY COMPANY.** A limited liability company formed under R.C. Chapter 1705 or under the laws of another state.

**MUNICIPALITY.** The City of Madeira, Ohio.

**NET PROFIT.** For a taxpayer other than an individual, means adjusted federal taxable income; **NET PROFIT** for a taxpayer who is an individual means the individual's profit, required to be reported on Schedule C, Schedule E or Schedule F.

**NONQUALIFIED DEFERRED COMPENSATION PLAN.** A compensation plan described in § 3121(v)(2)(C) of the Internal Revenue Code.

**NONRESIDENT.** An individual who is domiciled outside the city or an association, corporation or other entity which does not have a place of business within the city.

**OTHER PAYER.** Any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual.

**OWNER.** A partner of a partnership, a member of a limited liability company, a shareholder of an S corporation or other person with an ownership interest in a pass-through entity.

**OWNER'S PROPORTIONATE SHARE.** With respect to each owner of a pass-through entity, the ratio of:

(1) The owner's income from the pass-through entity that is subject to taxation by the municipal corporation to:

(2) The total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.

**PASS-THROUGH ENTITY.** A partnership, limited liability company, S corporation or any other class of entity, the income or profits from which are given pass-through treatment under the Internal Revenue Code.

**PERSON.** Individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities and any other entity.

**PLACE OF BUSINESS.** Any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his or her employees regularly in attendance.

**QUALIFYING WAGES.** Wages, as defined in § 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with R.C. § 718.03(A).

**RESIDENT.** A person, whether an individual, association, corporation or other entity, domiciled or having a place of business in the city.

**RETURN PREPARER.** Any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report or other document for or on behalf of the taxpayer.

**SCHEDULE C.** Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

**SCHEDULE E.** Internal Revenue Service Schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

**SCHEDULE F.** Internal Revenue Service Schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

**TAX COMMISSIONER.** The Tax Commissioner of the city, or the person executing the duties of the aforesaid Commissioner.



**TAXABLE INCOME.** Qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable and/or adjusted federal taxable income from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter.

**TAXABLE YEAR.** The corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

**TAXPAYER.** A person subject to a tax on income levied by a municipal corporation. **TAXPAYER** does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but **TAXPAYER** includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

(1985 Code, § 97.02) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004)

### § 97.03 IMPOSITION OF TAX.

(A) *Basis of imposition.* Subject to the provisions of § 97.14, an annual tax shall be levied, commencing on January 1, 1979, and thereafter, at the rate of 1% upon the following:

(1) On all qualifying wages, including sick and vacation pay, commissions, other compensation and other taxable income earned or received during the effective period of this chapter by residents of the municipality;

(2) On all qualifying wages, including sick and vacation pay, commissions, other compensation and other taxable income earned or received during the effective period of this chapter by nonresidents for work done or service performed in the municipality;

(3) (a) On the portion attributable to the municipality of the net profits of all resident associations, unincorporated businesses, professions or other entities derived from sales made, work done, services performed or rendered, or business or other activities conducted in the municipality; and

(b) On a resident partner's or owner's share of the net profits of a resident association or other unincorporated entity not attributable to the municipality earned during the effective period of this chapter, and not levied against the association or other unincorporated entity.

(4) (a) On the portion attributable to the municipality of the net profits earned during the effective period of this chapter of all nonresident associations, unincorporated businesses, professions or other entities derived from sales made, work done, services performed or rendered, or business or other activities conducted in the municipality, whether or not the association or other unincorporated entity has an office or place of business in the municipality; and

(b) On a resident partner's or owner's share of the net profits of a nonresident association or other unincorporated entity not attributable to the municipality earned during the effective period of this chapter, and not levied against the association or other unincorporated entity.

(5) On the net profits earned during the effective period of this chapter of all corporations derived from sales made, work done, services performed or rendered, or business or other activities conducted in the municipality, whether or not the corporations have an office or place of business in the municipality;

(6) No taxes shall be assessed or collected on any retirement benefits received by any taxpayer; and

(7) No tax shall be assessed or collected on any salary or other income that might be taxable under this chapter on any person under the age of 18.

(B) *Businesses both in and outside the municipal boundaries.* This section does not apply to taxpayers that are subject to and required to file reports under R.C. Chapter 5745. Except as otherwise provided in division (D) of this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) Multiply the entire net profits of the business by a business apportionment percentage formula to be determined by:

(a) 1. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the municipal corporation during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated; and

2. As used in the preceding division (B)(1)(a)1., **REAL PROPERTY** shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(b) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the municipal corporation to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under R.C. § 718.011;

(c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed; and

(d) Adding together the percentages determined in accordance with divisions (B)(1) with (B)(1)(a), (B)(1)(b) and (B)(1)(c) above, or such of the aforesaid percentages as are applicable to the particular taxpayer, and dividing the total obtained by the number of percentages used in deriving the total.

(2) A factor is applicable even though it may be apportioned entirely in or outside the municipality; and

(3) In the event a just and equitable result cannot be obtained under the business apportionment percentage formula provided for herein, the Board of Review, upon application of the taxpayer or the Tax Commissioner, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(C) *Definition.* As used in division (B) of this section, ***SALES MADE IN A MUNICIPAL CORPORATION*** mean:

(1) All sales of tangible personal property delivered within the municipal corporation, regardless of where title passes if shipped or delivered from a stock of goods within the municipal corporation;

(2) All sales of tangible personal property delivered within the municipal corporation, regardless of where title passes, even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the municipal corporation and the sales result from such solicitation or promotion; and

(3) All sales of tangible personal property shipped from a place within the municipal corporation to purchasers outside the municipal corporation, regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(D) *Net profit.*

(1) Net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.

(2) This section does not apply to individuals who are residents of the municipality and, except as otherwise provided in R.C. § 718.01, the municipality may impose a tax on all income earned by residents of the municipality to the extent allowed by the United States Constitution.

(E) *Operating loss carry-forward.*

(1) The portion of a net operating loss sustained in any taxable year, beginning April 1, 1975, apportioned to the municipality may be applied against the portion of the profit of succeeding tax years apportioned to the municipality, until exhausted, but in no event for more than five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) The portion of a net operation loss sustained shall be apportioned to the municipality in the same manner as provided herein for apportioning net profits to the municipality.

(3) The Tax Commissioner shall provide by rules and regulations the manner in which the net operating loss carry-forward shall be determined.

(F) *Consolidated returns.*

(1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Tax Commissioner.

(2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, the Tax Commissioner shall require information, in addition to the return hereinafter provided for, as he or she may deem necessary to ascertain whether net profits are properly apportioned to the municipality. If the Tax Commissioner finds net profits are not properly apportioned to the municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, he or she may require the filing of a consolidated return, or adjust the transactions so as to produce a fair and proper apportionment of net profits to the municipality.

(G) *Exception.* The tax provided for herein shall not be levied upon the military pay or allowances of members of the Armed Forces of the United States, or upon the net profits of any civic, charitable, religious, fraternal or other organization specified in R.C. Chapter 718, to the extent that net profits are exempted from municipal income taxes under that chapter, or any other exceptions contained within R.C. § 718.01(f) as the same may be amended from time to time.

(1985 Code, § 97.03) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004)

#### **§ 97.04 RETURN AND PAYMENT OF TAX.**

(A) *Dates and exemptions.* Each person who is engaged in business, or whose qualifying wages, commissions, other compensation or other taxable income are subject to the tax imposed by this chapter shall, whether or not a tax is due thereon, make and file a return with the Tax Commissioner on or before April 15 in each year. A taxpayer on a fiscal year accounting basis for federal income tax purposes shall, beginning with his or her first fiscal year, any part of which falls within the effective period of this chapter, file his or her return on or before the fifteenth day of the fourth month following the end of such fiscal year or period. The Tax Commissioner is authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by the employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him, her or them to the Tax Commissioner, shall be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such salary, wages, commissions or other compensation.

(B) *Return and contents thereof.* The city shall accept a generic form of any return, report or document required to be filed if the generic form, once completed and filed, contains all of the information required to be submitted with the city's prescribed returns, reports or documents, and if the

taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the city governing the filing of returns, reports or documents. The return shall be filed with the Tax Commissioner setting forth:

(1) The aggregate amounts of qualifying wages, commissions and other compensation earned, and the gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of the gross income, earned during the preceding year, and subject to tax;

(2) The amount of the tax imposed by this chapter on the earnings and profits; and

(3) Other pertinent statements, information returns or other information as the Tax Commissioner may require, including a statement that the figures used in the return are the figures used in the return for federal income tax, adjusted to set forth only such income as is taxable under the provisions of this chapter.

(C) *Extensions.* The Tax Commissioner, upon the request of the taxpayer, shall grant a request for an extension for filing an income tax return for a period not less than the period of the federal extension request. The Tax Commissioner may require a tentative return and will require at least 90% payment of the amount of tax due thereon by the date the return is normally due.

(1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a city tax return. The taxpayer shall make the request by filing a copy of the taxpayer's request for a federal filing extension with the Tax Commissioner.

(2) Any taxpayer not required to file a federal income tax return may request in writing an extension for filing a city tax return.

(3) The request for extension shall be filed not later than the last day for filing the city tax return as prescribed by ordinance or rule of the municipal corporation.

(4) A valid extension request extends the due date for filing a return to the last day of the month following the month to which the due date of the federal income tax return has been extended.

(5) The city may deny a taxpayer's request for extension if the taxpayer:

(a) Fails to timely file the request;

(b) Fails to file a copy of the federal extension request (if applicable);

(c) Owes the city any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax; and

(d) Has failed to file any required income tax return, report or other related document for a prior tax period.

(6) The granting of an extension for filing a city income tax return does not extend the last date for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by § 97.09. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period, provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Tax Commissioner shall be granted with the understanding that declaration filing and payment requirements have been fulfilled; however, if, upon further examination, it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

(D) *Payment with returns.*

(1) The taxpayer making a return shall at the time of the filing thereof pay to the Tax Commissioner the amount of taxes shown as due thereon. However, where the source, pursuant to the provisions of § 97.05, or where any portion of the tax has been paid by the taxpayer, pursuant to the provisions of § 97.06, or where an income tax creditable against the city tax pursuant to § 97.13 has been paid to another municipality, credit for the amount paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of filing the return.

(2) A taxpayer who has overpaid the amount of tax to which the municipality is entitled under the provisions of this chapter may have the overpayment applied against any subsequent liability hereunder, or, at his or her election indicated on the return, the overpayment, or part thereof, shall be refunded, provided that no additional taxes or refunds of less than \$1 shall be collected or refunded.

(E) *Amended returns.*

(1) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and limitations contained in §§ 97.09 and 97.13. Amended returns shall be on a form acceptable to the Tax Commissioner.

(2) Within three months from the final determination of any federal tax liability affecting the taxpayer's city tax return, such taxpayer shall make and file an amended tax return showing income subject to the municipal tax based upon the final determination of federal tax liability, and pay any additional tax shown thereon, or make a claim for refund of any overpayment.

(1985 Code, § 97.04) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

## § 97.05 COLLECTION AT SOURCE.

(A) *Withholding by employer.* Each employer, within the municipality, who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct at the time of the

payment of salaries, wages, commissions or other compensations due by the employer to each employee, and shall, on or before the last day of April, July, October and January of each year, beginning July 31, 1975, make a return and pay to the Tax Commissioner the amount of taxes so deducted during the preceding calendar quarter. The return shall be on a form or forms acceptable to the Tax Commissioner, and shall be subject to the rules and regulations prescribed therefor by the Tax Commissioner.

(B) *Withholding.* An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.

(C) *Failure of employer to withhold tax.*

(1) An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by a municipal corporation or by the employer's exemption from the requirement to withhold the tax.

(2) The failure of an employer to remit to the municipal corporation the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.

(D) *Employer considered as trustee.* Each employer, in collecting the tax, shall be deemed to hold the same, until payment is made by the employer to the municipality, as a trustee for the benefit of the municipality, and any tax collected by the employer from his or her employees shall, until the same is paid to the municipality, be deemed a trust fund in the hands of the employer. Each employee shall be liable for the payment of the tax required to be deducted and withheld, whether or not the tax, in fact, has been withheld.

(E) *Corporate officers' personal liability.* It shall be the responsibility, jointly and severally, of the president and treasurer of each corporation required to withhold the tax from qualifying wages of its employees under this section to see that all taxes so withheld are paid to the municipality in accordance with the provisions of this section. In the event taxes withheld by a corporation from the qualifying wages of its employees are not paid to the municipality in accordance with the provisions of this section, the president and treasurer of said corporation shall each be criminally liable under the provisions of § 97.99.

(F) *Employees' listings.* On or before February 28 of each year, beginning with the year 2004, each employer shall file a withholding return on a form or forms acceptable to the Tax Commissioner, setting forth the names and addresses of all employees from whose compensation the tax was withheld from the preceding calendar year, and the amount of tax withheld from the listed employees, and other information as may be required by the rules and regulations adopted by the Tax Commissioner.

(G) *Domestic servants.* No person shall be required to withhold the tax on the qualifying wages or other compensation paid domestic servants employed exclusively in or about the person's residence. However, domestic servants shall be responsible for filing and paying their own returns and taxes. (1985 Code, § 97.05) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

#### § 97.06 DECLARATIONS.

(A) *Requirement for filing.* Every person who anticipates any taxable income which is not subject to § 97.05, or who engages in any business, profession, enterprise or activity, shall file a declaration setting forth the estimated income or the estimated profit or loss from the business activity, together with the estimated tax due thereon, if any.

(B) *Dates for filing.*

(1) The declaration shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth day of the fourth month following the date the taxpayer first becomes subject to the provisions of this section.

(2) Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the fifteenth day of the fourth month following the start of each fiscal year or period.

(C) *Forms; credit for tax withheld or paid to another community.*

(1) The declaration shall be filed upon a form acceptable to the Tax Commissioner. Credit shall be taken in the declaration for the city tax to be withheld from any portion of such income, and for income taxes to be paid to another taxing municipality for which credit is allowed against the city tax under § 97.13.

(2) For taxpayers who are individuals, such declaration of estimated tax to be paid the municipality shall be accompanied by a payment of at least 22.5% of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year.

(3) For taxpayers that are not individuals, such declaration of estimated tax to be paid the municipality shall be accompanied by a payment of at least 22.5% of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth and twelfth months after the beginning of the taxable year.

(4) A declaration may be amended at any time, provided, however, that in case an amended declaration is filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.



(D) *Amended declaration.* An amended declaration may be filed with the filing of any quarterly return. If it appears that the original declaration and accompanying payment made during the year underestimated the taxpayer's income by 30% or more, the difference between 70% of the taxpayer's tax liability and the amount of estimated tax he or she actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of § 97.09.

(E) *Annual return required.* On or before the fifteenth day of the fourth month following the end of the calendar or fiscal year, an annual return shall be filed, and any balance which may be due the municipality shall be paid therewith in accordance with the provisions of § 97.04. (1985 Code, § 97.06) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

### **§ 97.07 DUTIES OF THE TAX COMMISSIONER.**

(A) *Collection and maintenance responsibility.*

(1) There is created an Income Tax Bureau for the administration of the provisions of this chapter. The Bureau shall consist of a Tax Commissioner and such clerical and secretarial personnel as may be determined to be necessary for the administration of this chapter. All personnel shall be appointed by the City Manager.

(2) It shall be the duty of the Tax Commissioner to collect and receive the tax imposed by this chapter in the manner prescribed herein, to keep an accurate record thereof and to report all monies so received.

(3) It shall be the duty of the Tax Commissioner to enforce payment of all income taxes owing the municipality, to keep accurate records for a minimum of five years, showing the amount due from each taxpayer required to file a declaration or make any return, including a return of taxes withheld, and to show the dates and amounts of payments thereof.

(B) *Enforcement authority.* The Tax Commissioner is charged with the enforcement of the provisions of this chapter, and is empowered, subject to the approval of Council, to adopt, promulgate and enforce rules and regulations authorized or required by this chapter relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns.

(C) *Determination of taxes.* In any case where a taxpayer has failed to file a return, or has filed a return which does not show the proper amount of tax due, the Tax Commissioner will determine the amount of tax appearing to be due the municipality from the taxpayer, and will send to the taxpayer a written statement showing the amount of tax determined, together with interest and penalties thereon, if any.

(D) *Compromise authority.* Subject to the consent of the Board of Review, or pursuant to regulation approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this chapter.

(1985 Code, § 97.07) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

#### **§ 97.08 INVESTIGATIVE POWERS OF THE TAX COMMISSIONER; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

(A) *Examination of taxpayers' records.* The Tax Commissioner, or his or her authorized agents, is authorized to examine the books, papers, records and federal income tax returns of any employer or taxpayer, or any person subject to, or whom the Tax Commissioner believes subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any withholdings due under this chapter. Every employer, supposed employer, taxpayer or supposed taxpayer is directed and required to furnish, upon written request of the Tax Commissioner, or his or her duly authorized agent or employees, the means, facilities and opportunity for making the examinations and investigations as are authorized.

(B) *Appearance orders to taxpayers.* The Tax Commissioner is authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Tax Commissioner, and to examine the person, under oath, concerning any income which was or should have been returned for taxation, or withheld, or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns, and the attendance of all persons before him or her, whether as parties or witnesses, whenever he or she believes the persons have knowledge of such income or information pertinent to the inquiry.

(C) *Result of refusal to submit information.* The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to an examination by any employer or person subject, or presumed to be subject, to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section, or with an order or subpoena of the Tax Commissioner authorized shall be deemed a violation of this chapter, punishable as provided in § 97.99.

(D) *Retention of records by taxpayer.* Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed, or the taxes required to be withheld are paid.

(E) *Confidential nature of information.* Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, and no disclosure thereof shall be made except to official purposes as the City Law Director shall determine, or except in accordance with proper judicial order. Any person divulging information in violation of this section shall be guilty of a misdemeanor of the third degree for each offense. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the municipality who

violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(F) *Landlord reporting requirements.* All landlords, owners and management companies of apartments, office complexes, mobile home parks and warehouse operations are required to remit, upon request of the city tax office, a current listing of tenants, showing names, addresses, telephone numbers, if available, and the date of occupancy or vacancy.

(1985 Code, § 97.08) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

### **§ 97.09 INTEREST AND PENALTIES.**

(A) If any taxpayer or employer required to file a return by this chapter fails to make and file the return by the dates prescribed therein, including any extension of time granted by the Tax Commissioner, whether or not a tax is due, unless it is shown that the failure is due to reasonable cause, and not to willful neglect, a penalty of not less than \$25 shall be assessed by the Tax Commissioner. If any employer or taxpayer fails to pay the amount of tax required to be paid under § 97.03 by the dates described therein, unless it is shown that the failure is due to reasonable cause and not to willful neglect, the higher of \$25 or 5% of the tax required to be shown on the return shall be assessed by the Commissioner for each month or fraction thereof elapsing between the date prescribed for payment, including extensions, and the date of payment, up to 25% of the tax. In addition, the taxpayer will be liable for interest on the unpaid taxes. Such interest shall be equal to the rate prescribed by R.C. § 5703.47. For purposes of this section, the tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date, including extensions thereof, prescribed for filing the return.

(B) The Commissioner shall make assessments against any persons liable if the tax is not paid or any deficiencies are found to be due. In each case the Commissioner shall give to the person assessed written notice of the assessment. Notice may be served upon the person assessed personally or by registered or certified mail.

(C) An assessment issued against either the employer or the taxpayer pursuant to this section shall not be considered an election of remedies, nor a bar to an assessment against the other for failure to report or pay the same tax. No assessment shall be issued against any person if the tax has actually been paid by another.

(D) Unless the person to whom the notice of assessment is directed files, within 30 days after service thereof, either personally or by registered or certified mail, a petition in writing, to the person assessed, or his or her authorized agent, having knowledge of the facts, objecting to the assessment, together with the reasons for the objections, and makes the payment of the full amount thereof shall be due and payable from the employer or taxpayer so assessed to the Tax Commissioner, with remittance made payable to the Treasurer of the city. When a petition for reassessment is filed, the Commissioner shall assign a time

and place for the hearing of the same, and shall notify the petitioner thereof by certified mail, but the Commissioner may continue the hearing from time to time, if necessary.

(E) The taxpayer or employer may appeal a determination of the Commissioner to the Board of Review in the time and manner provided in § 97.11(C).

(1985 Code, § 97.09) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

#### **§ 97.10 TIME LIMITATIONS ON SUITS AND REFUNDS.**

(A) *Time limitation on suits.* All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment shall be made after three years from the time of payment of any tax due hereunder. There shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of 25% of that required to be reported, or in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of a failure to file a return. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an additional assessment may be made by the Tax Commissioner shall be extended one year from the time of the final determination of the federal tax liability.

(B) *Time limitation on refunds.* Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which the payment was made or the return was due, or within three months after the final determination of federal tax liability, whichever is later.

(1985 Code, § 97.10) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

#### **§ 97.11 BOARD OF REVIEW.**

(A) *Composition.* A Board of Review consisting of four persons shall be appointed by Council, effective January 2 every two years in the even-numbered years. The individual acting as the local administrator of the tax shall act as Secretary of the Board. The Secretary shall have no vote.

(B) *Procedure.* A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules, and shall keep a record of its transactions. All hearings by the Board shall be conducted privately unless the taxpayer requests a public hearing, and the provisions of § 97.08 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(C) *Appeals.*

(1) Whenever the Tax Commissioner issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the city, the Tax

Commissioner shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(2) Any person who is aggrieved by a decision by the Tax Commissioner and who has filed with the city the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within 30 days after the Tax Commissioner has issued the decision.

(3) The imposition of penalty and interest as prescribed in the codified ordinances of the city is not a sole basis for an appeal.

(4) The Board of Review shall schedule a hearing within 45 days after receiving the request, unless the taxpayer waives a hearing.

(5) If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.

(6) The Board may affirm, reverse or modify the Tax Commissioner's decision or any part of that decision. The Board shall issue a decision on the appeal within 90 days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within 15 days after issuing the decision. The taxpayer or the Tax Commissioner may appeal the Board's decision as provided in R.C. § 5717.011.

(7) The Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under R.C. § 149.43. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to R.C. § 121.22. (1985 Code, § 97.11) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004)

#### **§ 97.12 ALLOCATION OF FUNDS.**

The funds collected under the provisions of this chapter shall be deposited in the General Fund. (1985 Code, § 97.12) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

#### **§ 97.13 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY OR JOINT ECONOMIC DEVELOPMENT DISTRICT.**

(A) *Limitation on amount paid.* Every individual taxpayer who resides in the municipality, and who receives salaries, wages, commissions or other compensation or net profits from sales made, work done

or services performed or rendered outside of the municipality, if it is made to appear that he or she has paid a municipal or a joint economic development district income tax on such income, taxable under this chapter, to another municipality or joint economic development district, shall be allowed a credit for such tax paid against the tax imposed by this chapter in an amount not to exceed .90 of 1 % effective January 1, 2008.

(B) *Credits and limitations thereof.* Notwithstanding the provisions of § 97.10 or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in such manner as the Tax Commissioner may provide by regulation. No claim for a refund or credit shall be allowed unless made on or before the date of filing the taxpayer's final return, unless the taxpayer's employer files with the Tax Commissioner a list showing the tax withheld from taxpayer's wages, salaries, or commissions for other municipalities or joint economic development districts.

(1985 Code, § 97.13) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004; Ord. 05-27, passed 11-14-2005; Ord. 07-09, passed 3-26-2007; Ord. 07-41, passed 11-26-2007) Penalty, see § 97.99

#### § 97.14 EXEMPTIONS.

This chapter shall not apply to any person, firm or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided.

(1985 Code, § 97.14) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004) Penalty, see § 97.99

#### § 97.15 REPORTING OF RESIDENT DEATHS.

The owners/managers of all nursing homes, homes for the aged, assisted care facilities and independent living facilities located in the city shall, within 30 days of the death of any resident of the facility, notify in writing the City Manager.

(1985 Code, § 97.15) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004)

#### § 97.99 PENALTY.

(A) *Violations.* Any person who shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) Make an incomplete, false or fraudulent return;
- (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;

(4) Fail, neglect or refuse to withhold the tax from his or her employees, and remit the withholding tax to the Tax Commissioner;

(5) Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his or her or his or her employer's books, records, papers and federal income tax returns;

(6) Fail to appear before the Tax Commissioner, and to produce his or her employer's books, records, papers or federal income tax returns upon order or subpoena of the Tax Commissioner;

(7) Refuse to disclose to the Tax Commissioner any information with respect to the person's or the person's employer's income or net profits;

(8) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Commissioner;

(9) Fail, neglect or refuse to make any payment on the estimated tax for any year as required by § 97.06;

(10) Fail, as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of the corporation pursuant to this chapter to be paid to the municipality in accordance with the provisions of § 97.05; or

(11) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter, shall be guilty of a misdemeanor of the third degree.

(B) *Time limitations on prosecutions.* All criminal prosecutions under this section must be commenced within three years, and all civil actions within five years following the date on which the final return for a taxable year was due, or five years from the time of any other offense complained of.

(C) *Failure to obtain forms not a defense.* The failure of any employer, taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him or her from making any information return or declaration, from filing such form, or from paying the tax.

(D) *Responsibility of corporation employees.* The term **PERSON**, as used in this section, shall, in addition to the meaning prescribed in § 97.02, include in the case of an association or corporation not having any partner, member or officer within the municipality, any employee or agent of the association or corporation who can be found within the corporate limits of the municipality.

(E) *Fine.* Whoever is found guilty of a violation of any part of this section may be punished by a fine of not more than \$500 and imprisonment of not more than 60 days.

(1985 Code, § 97.99) (Ord. 00-29, passed 12-11-2000; Ord. 04-23, passed 6-28-2004)

