

ORDINANCE NO. 2009-13

CITY OF DAYTON

**AN ORDINANCE TO AMEND THE DAYTON CITY CODE BY
REPEALING SECTION 800 IN ITS ENTIRETY AND ADOPTING
THE PUBLIC PEACE AND SAFETY ORDINANCE**

THE CITY COUNCIL OF THE CITY OF DAYTON DOES ORDAIN:

SECTION 1. REPEAL. The Dayton City Code Section 800 is hereby repealed in its entirety.

SECTION. 2. ADOPTION. The following language is hereby adopted as part of the Dayton City Code:

800 PUBLIC PEACE AND SAFETY

801. GENERAL PROVISIONS

801.01 FINDINGS AND PURPOSE.

The purpose of this Chapter of the City Code is to prohibit certain conduct that is harmful to the health, safety, and welfare of the community and to prevent and abate nuisance conduct, events, characteristics or conditions and their deleterious effects on City neighborhoods by maximizing the means and methods by which public officers can efficiently and effectively enforce the law and by imposing and collecting service call fees from the owner or occupant, or both, of real property to which public officers are repeatedly called to respond to nuisance violations as set forth in this Article of City Code. The City Council finds that excessive noise, disruption and other public nuisance activities are injurious to the public health, safety and welfare and interfere with the quiet enjoyment of life and property and that excessive nuisance service calls unduly divert law enforcement resources from general crime prevention and law enforcement. The excessive nuisance service call fee is intended as a cost recovery mechanism for excessive law enforcement services, over and above the cost of normal law enforcement services to the public, attributable to unabated nuisance conduct, conditions or characteristics occurring, maintained or permitted to exist on the private property. It is not intended to constitute punishment separate from or in addition to any criminal prosecution for the conduct underlying the nuisance or excessive nuisance service calls. Nothing herein is meant to limit constitutional rights under the federal or state constitution.

801.02 DEFINITIONS.

When used in this Chapter, the following words, terms, and phrases shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Abatement notice - notice served upon property owner and/or interested party by the City Administrator or designee of law enforcement responses to two (2) or more nuisance

service calls within a 365-day period on property in which they have an interest pursuant to Section 810.03 of this City Code.

- (2) Alcoholic beverage - any beverage containing more than one-half of one (1) percent alcohol by volume.
- (3) Clandestine lab site - any structure of conveyance or outdoor location occupied or affected by conditions or chemicals typically associated with the manufacture of methamphetamine or any other unlawful manufacture of a controlled substance.
- (4) Disorderly house - any residential property which due to the following nuisance conduct, events, characteristics or conditions is likely to disturb, injure or endanger the peace, comforts, health, welfare, safety or character of the neighborhood or community:
 - (A) The unlawful sale, furnishing, use, or possession of intoxicating liquor or non-intoxicating malt liquor in violation of Minnesota law;
 - (B) The possession or use of gambling devices or the conduct of any gambling in violation of Minnesota law;
 - (C) Prostitution in violation of Minnesota law or acts relating to prostitution, or the conduct of unlicensed escort services, sexually-oriented business or massage or massage services, in violation of Minnesota law;
 - (D) The unlawful sale, use, or possession of controlled substances as defined in Minnesota Statutes, Section 152.02; or
 - (E) Three (3) or more verified incidents or unlawful gatherings, as set forth in subsection (n) of this Section within a 365-day period.
- (5) False report to public officer - a report to any public officer that a violation of City Code or state law has been committed, knowing that the conduct or conditions reported do not constitute a crime or that the report is false and intending that the public officer act in reliance upon the report.
- (6) Incident - single behavioral incident as defined by Minnesota Statutes Section 609.035, as may be amended from time to time. In the case of property conditions or characteristics constituting a nuisance, a single behavioral incident constitutes those violations, the existence of which is the result of a single illegal objective or coincident errors of judgment.
- (7) Interested party - any known lessee or tenant of the residential property or affected portion of the residential property; any known agent of an owner, lessee, or tenant; any known mortgage holder or holder of any secured interest in the residential property; any known person holding an unrecorded contract for deed, being a mortgagee or vendee in physical possession of the residential property, insurer of the property; or, any other person who maintains or permits a nuisance on the residential property and is known to the City.
- (7.5) Nudity - the showing of the human male or female genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola.
- (8) Nuisance incident notice - notice served upon property owner and/or interested party by the City Administrator or designee of a law enforcement response to a nuisance service call to property in which they have an interest pursuant to Section 810.03 of this City Code.
- (9) Nuisance service call - public officer response to a verified incident of any activity, conduct or condition occurring on private property that is likely to unreasonably interfere with the quiet enjoyment of neighboring properties or the safety, health, morals, welfare, comfort, or repose of the residents therein, including without limitation:
 - (A) Unlawful gathering, as defined in subsection (o) of this Section.
 - (B) Disorderly conduct, as defined by Minnesota Statutes Section 609.72, as may be amended from time to time.
 - (C) Assault, as defined by Minnesota Statutes Sections 609.221, 609.222, 609.223, 609.2231, and 609.224, as may be amended from time to time, excluding domestic assaults.
 - (D) Public nuisance, as defined by Minnesota Statutes Sections 609.74 - .745, as may be amended from time to time.
 - (E) Noise.
 - (F) Unlawful consumption of alcoholic beverages.

- (G) The unlawful furnishing, sale, use, or possession of intoxicating liquor or non-intoxicating malt liquor in violation of Minnesota law.
 - (H) The possession or use of gambling devices or the conduct of any gambling in violation of Minnesota law.
 - (I) Prostitution in violation of Minnesota law or acts relating to prostitution, or the conduct of unlicensed escort services, sexually oriented business or massage or massage services, in violation of Minnesota law.
 - (J) The unlawful sale, use, or possession of controlled substances as defined in Minnesota Statutes Section 152.02, as may be amended from time to time.
 - (K) Indecent exposure in violation of Minnesota Statutes Section 617.23, as may be amended from time to time.
 - (L) Unlawful use or possession of a firearm in violation of Minnesota law.
 - (M) Failure to comply with dangerous dog requirements in violation of Minnesota Statutes Chapter 347.
 - (N) Failure to comply with animal noise regulations.
 - (O) Failure to restrain a domestic animal.
 - (P) Cruelty to animals.
 - (Q) Excess number of domestic animals.
 - (R) Illegal possession of a wild animal.
 - (S) Unlicensed dog.
 - (T) Illegal open burning.
 - (U) Illegal refuse.
 - (V) Illegal litter.
 - (W) Abandoned or junk vehicles as defined by Statute.
 - (X) Illegal exterior storage.
 - (Y) Illegal parking or storage of recreational.
 - (Z) Illegal parking or storage of.
 - (AA) False report to public officer.
 - (BB) Illegal home occupation.
- (10) Private property - any real property the legal ownership of which, as officially recorded by Hennepin or Wright Counties, is held by one or more natural persons, a partnership, including a limited partnership, a corporation, including a foreign, domestic or non-profit corporation, a trust, or any other organization, but not including the State of Minnesota or any of its political subdivisions, the federal government or any other governmental agency or entity. The existence of any public easement, right-of-way or other limited right of access on the property not, for the purpose of this Article of the City Code, be deemed to transform private property to public property.
 - (11) Property - means a parcel or contiguous parcels of real property, including buildings and other structures thereon owned by the same legal entity and under common management. In the case of multi-unit residential or commercial property, the term shall apply to the entire complex.
 - (12) Public officer - a police officer, fire marshal or inspector, animal control officer, building inspector, or environmental health inspector, each of whom, for the purposes of this Article, shall be considered law enforcement officers.
 - (13) Public place - an area generally visible to public view, including streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not) and buildings open to the general public, including those buildings in which food or drink is served or entertainment or lodging is provided.
 - (14) Residential property - any real property containing a structure suitable for affording shelter for human beings, including any appurtenant or connected structure, including trailers, mobile homes, multiple family dwellings, buildings containing multiple dwelling units, and any property situated within a residential zoning district as defined by this City Code.
 - (15) Unlawful gathering - any party or gathering where there is any of the following conduct or behavior:

- (A) The unlawful sale, furnishing, use, or possession of intoxicating liquor or 3.2 percent malt liquor in violation of Minnesota law and Code;
 - (B) The unlawful sale, use, or possession of controlled substances as defined in Minnesota Statutes, Section 152.02, as may be amended from time to time;
 - (C) The unlawful sale, use, or possession of tobacco-related products in violation of Minnesota law or City Code;
 - (D) Any conduct, activity or condition constituting a violation of Minnesota laws or this City Code prohibiting or regulating prostitution, gambling, firearms, disorderly conduct, public nuisance, or permitting a public nuisance;
 - (E) Any conduct or activities likely to disturb non-participating persons by:
 - (1) Noise of sufficient volume, or of such nature by virtue of its type, persistence, time of day or location, to disturb; the peace, quiet, or repose of non-participating persons nearby in the manner and according to the standards set forth in Section 806 of this City Code;
 - (2) Assaultive behavior;
 - (3) Unlawful consumption of alcoholic beverages in violation of City Code;
 - (4) Urinating in public;
 - (5) Public indecency as defined in Section 811 of this Code or indecent exposure, in violation of Minnesota Statutes Section 617.23, as may be amended from time to time.
 - (6) Excessive pedestrian or vehicular traffic and parking problems or congestion.
- (16) Verified incident - an incident where there is a law enforcement response and a public officer, having completed a timely investigation, is able to find evidence of nuisance conduct, conditions or characteristics as set forth in City Code. It shall not be necessary that criminal charges be brought or convictions obtained relative to the incident. Multiple offenses verified during a single response shall count as one response for the purpose of imposing an excessive nuisance call service fee. Verified incidents shall be attributable separately to the source of the nuisance conduct, condition or activity, as follows:
- (A) The same tenant or lessee or persons acting in conjunction with or with the acquiescence of, or under the control the same tenant or lessee;
 - (B) The same rental unit while occupied by the same tenant or lessee or within two or more rental units by the same tenant or lessee;
 - (C) The property owner or persons acting in conjunction with or under the control of the property owner who either actively participated in the creation of the nuisance conduct, condition or characteristic or who knew or should have known of the ongoing nuisance conduct, condition or characteristic and failed to take reasonable steps to abate it.
- (17) Verified incident follow-up - where there has been a prior verified incident of property conditions or characteristics constituting a nuisance, each subsequent response to those same conditions or characteristics initiated by the City as follow-up during a course of remediation, shall not constitute an additional verified incident unless additional nuisance conditions or characteristics constituting additional incidents are found to exist.

801.03 Enforcement of this Chapter

Notwithstanding any other provision of this Chapter regarding enforcement and in conjunction therewith, any violation of this Chapter may be enforced by the City Administrator or designee sending a notice of violation in an attempt to have the violation voluntarily abated. If the violation continues the matter shall be presented to the City Attorney. The City Attorney shall send a Notice of Ordinance violation letter to the property owner and other interested parties. In the event the violation continues, the City Attorney is authorized to seek compliance by injunctive action or other appropriate civil remedy.

802. PROHIBITED CONDUCT

802.01 Public Nuisances

Subd. 1. PUBLIC NUISANCE PROHIBITED; VIOLATIONS; PENALTY.

In addition to those activities or conditions which fall within the definition of a nuisance in Minn. Stat. §609.74, all acts described, regulated and prohibited on in the provisions of this Section are hereby deemed to be, and are hereby declared to be, nuisances. Any person who shall cause or create any nuisance or permit a nuisance to be created to or to be placed upon or remain upon an premises shall upon conviction thereof be guilty of a misdemeanor. It shall be a misdemeanor for anyone to aid, abet, advise, encourage, or assist another to violate an of the provisions of this Section. All of such acts shall constitute misdemeanors. In addition, the City may enforce this Section by injunctive action or other appropriate civil remedy.

Subd. 2. PROPERTY CONDITIONS CONSTITUTING A PUBLIC NUISANCE.

The following property conditions are declared to be nuisances affecting public peace, welfare and safety:

- (1) All snow and ice not removed from public sidewalks within twenty-four (24) hours after the snow and ice has ceased to be deposited thereon.
- (2) All limbs of trees which are less than eight (8) feet above the surface of any public sidewalk, or nine (9) feet above the surface of any street.
- (3) All wires that are strung less than fifteen (15) feet above the surface of the ground.
- (4) All buildings, walls, and other structures which have been damaged by fire, decay, or otherwise to an extent exceeding one-half (1/2) their original value, and which are so situated as to endanger the safety of the public.
- (5) All explosives, inflammable liquids, and other dangerous substances stored in any manner or in any amount contrary to state law, federal law or this Code.
- (6) All use or display of fireworks except as permitted by this Code and state law.
- (7) Noises prohibited under Dayton City Code.
- (8) The allowing of rain water, ice or snow to repeatedly fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.
- (9) All barbed wire fences which are located within three (3) feet of any public sidewalk.
- (10) All dangerous unguarded machinery or materials, in any public place, or so situated or operated on private property to attract the public.
- (11) Any condition that interferes with, obstructs, or renders dangerous for passage a public roadway, highway or right-of-way or waters used by the public.
- (12) Deteriorated, wrecked or derelict property in unusable condition, which has no apparent value other than nominal scrap or junk value, if any, and which has been left unprotected from the elements, and shall include, without being so restricted, deteriorated, wrecked, inoperative or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furniture, cut trees, branches, building materials, general rubbish, tools, benches, or any other similar articles in such condition.
- (13) Encroachments onto publicly-owned property, including tax-forfeited property under public control, such as the placement of structures, materials, recreational equipment, lawn chairs, fire pits, the dumping of organic materials, the storing of privately-owned items, the undertaking of activities affecting the physical nature of the property, such as mowing, vegetation removal or the application of fertilizer, pesticides or herbicides without the express, written permission of the City.
- (14) A structure or portion of a structure located in a residential zoning district, if the exterior is not completed in accordance with City-approved construction plans within 180 days after the date that the City building permit was issued.

- (15) Construction materials, including, but not limited to, piles of dirt, sand, lumber, bricks, concrete blocks or sod, left in the open on property more than 60 days after construction has been completed or a certificate of occupancy has been issued, whichever occurred first or stored for off-site use and visible from public right-of-way.
- (16) Discarded construction material or other litter at a construction site that is not placed in an adequate waste container or that is allowed to blow around or off the site.
- (17) Buildings, fences, and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they are unsightly, decrease adjoining landowners' and occupants' enjoyment of their property and neighborhood, and adversely affect property values and neighborhood patterns. Standards to be considered in this determination shall include:
 - (A) All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.
 - (B) All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.
 - (C) Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight. All glazing materials shall be maintained free from cracks and holes.
 - (D) All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guestrooms shall tightly secure the door.
 - (E) All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.
 - (F) The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water may not be discharged in a manner that creates a public nuisance.
 - (G) All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
 - (H) All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.
- (18) A clandestine lab site.
- (19) Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure or discharging into a body of water.
- (20) An unsecured hole or opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, foundation, mine shaft or tunnel, or any other hole or opening in the ground of sufficient size or depth to pose a danger to the public or an attractive nuisance.

- (21) Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent proof, container designed or reasonably adapted for such purpose, except for the immediate time preceding pick-up by a refuse hauler.
- (22) Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of in a sanitary manner within 24 hours after death. This provision shall not apply if the animals, birds, or fish are intended for human consumption.
- (23) Accumulation of decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing material, scrap metal, tires or any other substances in which flies, mosquitoes, other disease carrying insects, rodents or other vermin can harbor; this definition does not include compost bins or compost sites which are being managed in accordance with acceptable standards.
- (24) Accumulations of animal feces, rubbish or junk remaining in any place as to become dangerous or injurious to the health and safety of any individual or to the public.
- (25) Accumulations in permanent dwellings to such an extent preventing emergency egress.
- (26) Any structure that has become dangerous for further occupancy because of structural or sanitary defects or grossly unsanitary conditions.
- (27) Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, or hookworm larvae.
- (28) Unnatural breeding grounds which support mosquito larvae and mosquitoes carrying West Nile Virus, La Crosse Encephalitis Virus, or any other disease causing microorganism.
- (29) All ponds or pools of stagnant water.
- (30) All noxious weeds and other rank growths of vegetation which are in violation of state statutes which regulate and/or control the growth of weeds and other vegetation and are in violation of this Code, including, but not limited to, Code §1001.24, subd. 9.
- (31) Accumulations or storage in the open (i.e., not contained within a building) of any of the following items or any parts or accessories thereto:
 - (A) All dangerous unguarded machinery, in any public place, or so situated or operated on private property as to attract the public;
 - (B) Household appliances or furnishings;
 - (C) Any motor vehicle which is inoperable, not currently licensed, or generally is not being driven;
 - (D) Items which are not generally or normally used on the particular premises;
 - (E) Firewood which is not neatly stacked in a compact manner;
 - (F) Any other materials or items of any kind or nature which tend to harbor rats, mice, snakes, or vermin or otherwise are a potential fire, health, or safety hazard from such accumulations;
 - (G) Pipe, lumber, forms, machinery or other occupational materials kept upon any property for more than 90 days except when in current use in construction or repair work; and
 - (H) Accumulations of any items that tend to cause an unsightly appearance of the premises and which cause discomfort for any other members of the public who may be using their own or public property.
- (32) To willfully oppose or obstruct a health officer or physician charged with the enforcement of the health laws, in performing any legal duty.
- (33) All signs, awnings, wires and other structures over the streets or sidewalks so situated or constructed as to endanger public safety.
- (34) Wastewater, excepting that of natural runoff rainwater or snow, which is cast upon or permitted to flow upon or over streets or other public property.
- (35) For any person to urinate or defecate on public or private property other than in facilities provided for such functions.
- (36) The intentional or negligent discharge of items such as leaves, grass clippings, solvents, antifreeze, oil, fireplace ashes, paint, or cement reinsate into a street, storm sewer system, or water resource such as a wetland, creek, pond or lake.
- (37) Temporary carport structures located in front of the footprint of the primary structure.

Subd. 3. DECLARATION AND NOTICE OF PUBLIC NUISANCE.

City officials may apply and enforce any provision of this ordinance relating to public nuisances within this jurisdiction. The City Administrator or other designated city official shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent danger to human life and safety, no peace officer or designated city official will enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident, or other person in control of the property, unless the officer or person designated has obtained a warrant or order from a court of competent jurisdiction authorizing entry.

Subd. 4. ENFORCEMENT PROCEDURE.

(A) **Procedure.** Whenever the City Administrator or other designated official determines that a public nuisance is being maintained or exists on the premises in the city, the official shall notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice shall state:

1. the property location of the public nuisance
2. the nature of the public nuisance, with reference to the appropriate code provision
3. the steps to be taken to abate the nuisance and a reasonable amount of time within which the nuisance is to be abated
4. that if the owner, occupant or other responsible party does not comply with the notice within the time specified, the City may provide for abating the nuisance
5. that the owner, occupant or other responsible party has the right to appeal the designation as a public nuisance by submitting a writing to the city clerk before the date by which abatement must be completed or within seven (7) calendar days after service of the notice, whichever comes first
6. that the City may assess its costs against the property in accordance with this Section.

Without affecting any other penalty provision in this Section, if the notice of violation is not complied with within the time specified or no written notice requesting a hearing is timely received, the City Administrator or other designated official may initiate an immediate abatement of the violation. If written notice for a hearing is timely received, there shall be a hearing before the City Council. A notice of the hearing must state the date, time and location of the city council hearing, must be served in the same manner as the abatement notice and must be given at least ten (10) days before the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

(B) **Notice.** Written notice of the violation; notice of the time, date, place, and subject of any hearing before the City Council; notice of the City Council order; and notice of motion for summary enforcement hearing shall be served by a peace officer or designated official on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or if the owner of record or occupant refuses to accept notice, notice of the violation shall be served by posting it on the premises.

(C) **Emergency procedure; summary enforcement.** In cases of emergency, where delay in abatement required to complete the procedure and notice requirements as set forth in subdivisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health, safety, or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the peace officer or other designated official shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement will unreasonably endanger public health, safety, or welfare. The officer or designated official shall notify in writing the occupant or owner of the premises of the nature of the nuisance, whether public health, safety, or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in subdivision (A) of this section and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

(D) **Immediate abatement.** Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

(E) **Unlawful parties or gatherings.** When law enforcement determines that a gathering is creating such a noise disturbance as prohibited under this Section, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disburse immediately. No person shall refuse to leave after being ordered to do so by law enforcement. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped.

(F) **Judicial remedy.** Nothing in this section shall prevent the city from seeking a judicial remedy when no other adequate administrative remedy exists.

Subd. 5. RECOVERY OF COSTS.

(A) **Personal liability.** The owner of the premises on which a nuisance has been abated by the city, or a person who has caused a public nuisance on property not owned by that person, shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the city clerk or other city official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk.

(B) **Assessment.** After notice and hearing as provided in Minn. Stat. 429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the city clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other such charges as well as other charges for current services to be assessed under Minn. Stat. 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and any other pertinent statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the City Council may determine in each case.

803. Abandoned Junk Property

803.01. PURPOSE.

This section is enacted for the purpose of protecting and promoting the public health, sanitation, safety and general welfare in the city; suppressing disease and contamination; protecting against and lessening the danger to human life, health, and property from fire, explosion, noxious fumes, infestations of insects and rodents, accidents, and other hazards on private and public premises; and protecting against and prohibiting the creating or continuance of nuisances.

803.02. DEFINITIONS.

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

- (1) Abandoned property means deteriorated, wrecked or derelict property in unusable condition, which has no apparent value other than nominal scrap or junk value, if any, and which has been left unprotected from the elements, and shall include, without being so restricted, deteriorated, wrecked, inoperative or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furniture, cut trees, branches, building materials, general rubbish, tools, benches, or any other similar articles in such condition.
- (2) Enforcement officer means a police officer, building inspector, or member of the staff of the city authorized by the city to enforce the provisions of this section.
- (3) Private premises means any premises for which ownership is not within the category described as public premises in this section, and shall include, but not be limited to, that property on which the owner has a place of business or a residence.
- (4) Public premises means any premises owned by or in possession of the United States of America, the state, the county, or the city, or any agency or political subdivision of any of such governmental bodies.

803.03. DECLARATION OF NUISANCE.

The existence of abandoned property on public or private premises is declared to be a hazard to public health, sanitation, safety and welfare, and a public nuisance.

803.04. ABANDONMENT AND STORAGE RESTRICTED.

No person shall place or leave, or cause to be placed or left, abandoned property on public premises within the city, or keep, store, or cause or permit to be placed, left, kept or stored abandoned property on private premises within the city, except as permitted under the city code pertaining to zoning.

803.05. REMOVAL FROM PUBLIC PREMISES.

- (1) Attachment of notice. When an enforcement officer shall find an article of

abandoned property on public premises within the city, he shall cause a notice to be placed upon such article in substantially the following form:

NOTICE

TO: The last registered owner and all persons interested in the following described property: (setting forth brief description) located unlawfully on public property known as (setting forth brief description of location): This property is improperly stored and is in violation of section 803 of the Dayton Code. This property must be removed within 20 days from the date of this Notice unless within said 20-day period authority has been granted by the city council to permit it to remain so stored; otherwise it will be presumed to be abandoned property and will be removed and destroyed by order of the city, and the expense therefor shall be assessed against the property from which it is removed pursuant to Dayton Code.

If you have any questions, please call at the Dayton City Hall, (763) 427-4589, during regular business hours.

Name and address of property owner: (if known by the agent of the City of Dayton)
A copy of this Notice was mailed to the above-mentioned property owners on the _____ day of _____, 20_____.

THE CITY OF DAYTON
12260 S. Diamond Lake Road
Dayton, Minnesota 55327
(763) 427-4589

- (2) Form of posted notice; mailing of notice. Such notice shall be not less than eight by ten inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the enforcement officer shall make reasonable efforts to ascertain the name and address of the owner of the article, and if such is reasonably available to the enforcement officer, he shall mail a copy of such notice to the owner on or before the date of posting.
- (3) Removal and disposition by city.
 - (A) If at the end of 20 days after posting such notice the owner or any person interested in the abandoned article described in such notice has not appealed to the city council and been duly authorized to permit the property to remain thereon, nor has the owner removed the article from the public premises or shown reasonable cause for failure to do so, the enforcement officer may cause the article of abandoned property to be removed, destroyed and disposed of, and the salvage value, if any, of such article shall be retained by the city to be applied against the cost of removal, storage, handling, destruction and disposal thereof.
 - (B) If the proceeds from the salvage of the abandoned property should be less than such cost, any deficiency, together with a certification processing fee in the amount set forth in city ordinance, shall be assessed and levied as a special assessment against the premises from which the abandoned property was removed, in like manner as other special

assessments, payable in one sum, assessed, levied and collected by the city.

- (C) If the salvage proceeds exceed the cost of removal, storing, handling, destruction and disposal of the abandoned property, such excess shall be held for a period of six months for the benefit of the former owner of the property, upon proof of such ownership within six months of such removal, destruction, or disposal of the property.

803.06 REMOVAL FROM PRIVATE PREMISES.

Any article of abandoned property on private premises within the city in violation of this section shall be dealt with in the manner set forth in Section 803.05.

803.07. REQUEST TO PERMIT PROPERTY TO REMAIN IN LOCATION.

Any person who has an interest in the property upon which a posted notice has been made as described in this section shall have the right, within the 20-day period prior to mandatory removal by the city, to request of the council authority to permit the property to remain in its location. If the council grants such authority the notice to remove the property shall be declared null and void.

804. Garbage and Refuse

804.01. DEFINITIONS.

For purposes of this section, the terms defined in this subsection have the meanings given them.

- (A) "Approved" means acceptable to the health authority following the determination as to compliance with established public health practices and standards.
- (B) "Compost" means the product of biological decomposition of organic matter accomplished by mixing and piling. "Compost" also means the physical structure in which the composting process takes place. Plant material that is neither contained nor maintained as provided in this section is not compost.
- (C) "Dumpster" means a four-sided steel container or "roll-off" for temporary storage of refuse.
- (D) "Garbage" means all putrescible animal, vegetable, or other matter that attends the preparation, consumption, display, dealing in or storage of meat, fish, fowl, birds, fruit or vegetables, including the cans, containers or wrappers wasted along with such materials.
- (E) "Health authority" means the environmental health specialist or designated official public health sanitarian.
- (F) "Administrator" means the City Administrator.
- (G) "Owner" means any person, firm, corporation, or other partnership or organization who alone, jointly, or severally with others may be in ownership of, or have charge, care, or control of, any premises or business within the City as owner, employee or agent of the owner, or as trustee or guardian of the estate or person of the title holder.
- (H) "Pests" means any insects, vermin, rodents, birds or any other living agent capable of reproducing itself that causes or may potentially cause harm to the public health or

- significant economic damage.
- (I) "Premises" means any dwelling, house, building or other structure or parcel of property.
 - (J) "Public health nuisance" means any activity or failure to act that adversely affects the public health.
 - (K) "Public place" means any and all streets, sidewalks, boulevards, alleys, parks, public buildings, and other public ways.
 - (L) "Recycling" means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.
 - (M) "Recyclable materials" means materials that are separated from mixed municipal solid waste for the purpose of recycling, including paper, glass, plastics, metals, automobile oil, and batteries. Refuse-derived fuel or other material that is destroyed by incineration is not a recyclable material.
 - (N) "Refuse" means all putrescible and non-putrescible solid waste (except body waste) including, but not limited to, garbage, rubbish, ashes, street cleanings, abandoned automobiles, automobile parts, tires, demolition and construction debris, and market and industrial solid waste.
 - (O) "Rubbish" means non-putrescible solid wastes such as wood, leaves, trimmings from shrubs, dead trees or branches thereof, shavings, sawdust, excelsior, wooden waste, printed matter, paper, paper board, paste board, grass, rags, straw, boots, shoes, hats and all other combustibles not included under the term garbage.
 - (P) "Swill" means garbage which is wholly or nearly edible and usable as a food and has food value for animals or fowl, accumulating from animal, vegetable, or other matter wasted from clubs, hotels, hospitals, restaurants, and public eating places.
 - (Q) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a thoroughfare including devices used exclusively upon stationary rails or tracks.
 - (R) "Waste matter" means non-putrescible solid waste such as soil, earth, sand, clay, gravel, loam, stone, brick, plaster, crockery, glass, glassware, ashes, cinders, shells, metal and all other noncombustible material which has been or is to be discarded.
 - (S) "Refuse enclosure" means an enclosure capable of containing all refuse and garbage stored by an establishment between pickups. All refuse enclosure construction plans shall be approved by the Building Official.
 - (T) "Refuse enclosure - food service" is an enclosure constructed for sanitary temporary storage of refuse generated by food establishments. Food service refuse enclosure construction plans shall be approved by the health authority.

804.02. REFUSE STORAGE AND DISPOSAL.

- (1) Containers required. The owner of any premises, and any other person having refuse as herein defined, must provide and keep on such premises sufficient containers for the storage of refuse accumulated on the premises between disposal or collection. Each such container must be water tight, must have tight fitting covers, must be impervious to pests, and absorption of moisture, and must not exceed 90 gallons in size unless otherwise specifically authorized in writing by the health authority. Refuse on any premises must be stored in the containers required. All refuse from demolition or construction sites must be stored in roll-off containers or dumpsters and may not be stored on the ground. Commercial, business, industrial, or other such establishments having a refuse volume in

- excess of two cubic yards per week and all six family and larger dwellings, must provide approved bulk or box type refuse storage containers or approved equivalent. These containers must be so located as to be accessible to collection equipment and so as not to require an intermediate transfer.
- (2) Sanitary disposal. Refuse must be disposed of in a sanitary manner as approved by the health authority and must not constitute a nuisance. Refuse must not be composted or buried except that composting in an approved rodent and fly-proof device or filling operations using approved fill materials and methods may be permitted. In no case may garbage be composted or buried.
 - (3) Frequency and manner of collection. The contents of refuse containers must be collected once every week, or more frequently if necessary or required by the provisions of any other ordinance of the City, by a collector licensed hereunder. The collector must transfer the contents of the containers to the vehicle without spilling them, or if any spilling occurs, the collector must clean it up immediately and completely. Collection must be conducted in such a manner as to not create a nuisance. Upon each collection, the containers must be completely emptied and returned to the racks or stands where they are kept, and the covers of the containers must be replaced.
 - (4) Placement of containers.
 - (A) Refuse containers shall be stored either inside a building or outside not more than three feet from a building.
 - (B) Containers stored outside of a building shall be placed and kept in a neat and orderly manner.
 - (C) Containers may not be placed or maintained in such a way as to unreasonably interfere with the use of adjoining property.
 - (D) Containers kept outside must be placed in such a manner as not to permit entry of or harborage for pests and so maintained as not to be tipped over.
 - (E) Containers must be maintained in a reasonably clean condition at all times
 - (F) Containers shall be placed at their assigned collection location the night before, or the day of collection. Containers shall be removed no more than 12 hours after the scheduled collection day.
 - (G) Containers must not be placed on public sidewalks or interfere with the removal of snow from roadways, except those properties with a sidewalk immediately behind the curb may place containers on that part of the sidewalk closest to the curb.
 - (5) Defective containers. If, upon inspection by the City, a container is found to be in poor repair, corroded or otherwise defective so as to permit pests to enter, or does not meet other requirements of this section, the City must notify the provider or user of the container of the deficiency and must require repair or replacement of the container and must state a compliance date in the notice. If the deficiency is not corrected by said compliance date, the City may condemn the deficient container and affix a tag so stating such condemnation. It is unlawful for any person to place or deposit refuse in a container which has been condemned.
 - (6) Dumpster location and requirements. A dumpster may not be located in any public place. A dumpster may not be located on any premises for more than three consecutive months during any 12-month period. The Administrator is authorized to issue temporary permits for placement of a dumpster on any premises for more than three consecutive months when in the Administrator's judgment special circumstances exist justifying the issuance of the temporary permit and the purposes of this section will not be impaired thereby. The permit must be

displayed on the dumpster or elsewhere on the premises. All dumpsters must have the current licensed collector's name, address and phone number in clearly legible letters no less than three inches in height. No fee is required for the temporary permit.

804.03. REFUSE STORAGE AND DISPOSAL - COMMERCIAL AND INDUSTRIAL.

- (1) Dumpsters. Exterior storage of refuse, including recyclables, and refuse containers, including dumpsters, at buildings in property zoned for commercial or industrial uses must conform to the following rules:
 - (A) The refuse must be contained in a refuse enclosure or in the case of food establishments, in a refuse enclosure - food service.
 - (B) The exterior storage area must be constructed in compliance with City code.

804.04. REFUSE LITTERING PROHIBITED.

It is unlawful to throw, scatter or deposit, or cause or permit to be thrown, scattered or deposited, any refuse, handbills, or other littering materials upon or in public or private lands, bodies of water, vehicles or structures within the City. A property owner must maintain the owner's premises and abutting sidewalks and boulevard areas free of refuse litter.

804.05. PUBLIC HEALTH NUISANCE AND ABATEMENT.

Unless stored in containers in compliance with this section, any accumulation of refuse at any time and on any premises creates a public health nuisance. Such accumulation of refuse may be abated by order of the health authority and the cost of abatement may be assessed against the property from which such accumulation was removed, as authorized in section 429.101 of the Minnesota Statutes.

804.06. COMPOSTING.

- (1) General rule. A compost must be maintained or contained in a manner to prevent it from becoming a habitat for pests and create objectionable odors.
- (2) Permitted contents. A compost may contain only plant material consisting of grass clippings, weeds, leaves, small twigs, evergreen cones and needles, wood chips, sawdust, and herbaceous garden debris.
- (3) Prohibited contents. The following materials may not be placed in a compost:
 - (A) garbage;
 - (B) refuse;
 - (C) rubbish;
 - (D) waste matter;
 - (E) fecal material;
 - (F) any matter of animal origin.
- (4) Compost; construction. A compost may be constructed of (i) wood, (ii) wire mesh, (iii) a combination of wood and wire, (iv) metal barrels with ventilation, or (v) commercially fabricated bins or barrels.
- (5) Compost; maintenance. The compost must periodically be mixed to incorporate

air, properly mix wet and dry material, and promote rapid biological degradation. The compost must provide for adequate air circulation to prevent objectionable odors. The contents of the compost must be completely removed at least once a year.

- (6) Compost; location. A compost may not be placed closer than five feet from a property line. The compost may be located only in the rear yard of a residential lot and in the rear of commercial and industrial properties.
- (7) Technical assistance. The Administrator is directed to prepare informational materials to assist persons operating a compost in the efficient and odor free operation of a compost and to offer technical assistance to those persons on the proper operation and maintenance of a compost.
- (8) Nuisance. The operation of a compost in a manner that results in objectionable odors and the placing of prohibited materials in a compost is a public nuisance and may be abated as such under Section 802.01, Subdivision 5 of this code.

804.07. WOOD PILES.

- (1) General rule. The outside storage of cut firewood for residential buildings is permitted in residential zoning districts of the City subject to the provisions of this subsection.
- (2) Number of stacks. There may be four separate stacks of wood on one residential lot.
- (3) Dimensions. Stacks of wood may not exceed five feet in height, four feet in width and ten feet in length. A stack must (i) provide for at least a four-inch space between the ground and the first layer of wood by using decay-resistant material, or (ii) be placed on a decay-resistant surface.
- (4) Location. Stacks of wood governed by this subsection may be located only in rear yards as defined in the zoning ordinance and may not be located on a property line.
- (5) Screening. A stack of wood located within five feet of the lot property line must be screened with a solid wall or fence.

804.08. PENALTY.

A violation of this section shall be punishable as a misdemeanor. In addition, the City may enforce this Section by injunctive action or other appropriate civil remedy.

805. Litter

805.01. DEFINITIONS.

For purposes of this section, the terms defined in this subsection have the meanings given them.

- (1) The term "litter" means:
 - (a) Garbage, refuse and rubbish as those terms are defined in Section 804.01 of this code;
 - (b) The meaning given by Minnesota Statutes, section 609.68;
 - (c) Abandoned property in the form of deteriorated, wrecked or derelict property in unusable condition or left unprotected from the elements. The term "abandoned property" includes, but is not limited to, deteriorated, wrecked, inoperable, unlicensed, partially dismantled, or abandoned motor vehicles, trailers, boats,

machinery, refrigerators, washing machines, household appliances, plumbing fixtures and furniture; and

(d) Abandoned vehicles, junk vehicles, and unauthorized vehicles as those terms are defined in Minnesota Statutes, section 168B.011.

- (2) Prohibition; storage. It is unlawful to throw or deposit litter on private or public property in the City. Abandoned property may be stored on public or private property only in a garage or a storage building.

805.02. DUTIES OF OWNERS AND OCCUPANTS.

The owner, lessee or occupant of private property, whether occupied or vacant, must maintain the property free of litter.

805.03. AUTHORIZED STORAGE.

Nothing in this section prohibits the storage of litter on private property in receptacles or containers which meet the requirements of Section 804 of this code.

805.04. REMOVAL OF LITTER; PROCEDURE; COLLECTION OF COSTS.

- (1) Notice; service. When there exists litter on private property, a notice to remove the litter may be served upon the owner, lessee or occupant thereof by the health authority. The notice must be served by registered mail, or by personal delivery. When the property is occupied, service upon the occupant is deemed service upon the owner; where the property is unoccupied or abandoned, service may be by mail to the last known owner of record of the property.
- (2) Notice; contents. The notice required by subdivision 1 must state:
- (a) the nature and location of the litter;
 - (b) that the litter must be removed or properly stored within ten days of service of the notice; and
 - (c) that if the litter is not so removed or stored, it will be removed by the City and the cost of such removal assessed against the property.
- (3) Costs. The City must keep a record of all costs incurred by the City in the removal and disposition of litter pursuant to this section, including all administrative costs involved in the service of the notice required by this subsection, and must report such costs to the City Clerk annually not later than August 1.
- (4) Assessment. On or before September 1 of each year the Clerk must list the total costs incurred by the City under this section against each separate lot or parcel to which they are attributable. The City council will then spread the costs against each property as a special assessment for collection as other special assessments in the following year, all as authorized by Minnesota Statutes, section 429.101.
- (5) Notice; violation. Failure to comply with a notice to remove litter given pursuant to this subsection is a misdemeanor.

806. Noise Control

806.01. DEFINITIONS.

- (1) General. For purposes of this section, terms defined in this subsection have the meanings given them. Any other word or phrase used in this section and defined

in regulations of the Minnesota pollution control agency air quality and noise pollution control, Minnesota Rules, chapter 7010 have the meaning given in those regulations.

- (A) "Air circulation device" means a mechanism designed and used for the controlled flow of air used in ventilation, cooling, or conditioning, including but not limited to, central and window air conditioning units.
- (B) "L10" means the sound level, expressed in decibels (dBA) which is exceeded 10% of the time for a one-hour period, as measured by a sound level meter having characteristics as specified in the latest standards, S1.4, of the American National Standards Institute and using test procedures approved by the noise control officer.
- (c) "L50" means the sound level similarly expressed and measured which is exceeded 50% of the time for a one-hour period.

806.02. NOISES PROHIBITED.

- (1) General prohibition. It is unlawful to make or cause to be made any noise that unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety, or welfare of others or precludes their enjoyment of property or adversely affects the value of the property. This general prohibition is not limited by the specific restrictions of the following subdivisions.
- (2) Motor vehicles. It is unlawful to operate a motor vehicle in the City in violation of the motor vehicle noise limits of the Minnesota pollution control agency or in violation of the provisions of this section.
- (3) Horns, signaling devices, etc. It is unlawful to sound any signaling device on any vehicle except as a warning of danger.
- (4) Exhaust, except motor vehicles. It is unlawful to discharge or permit the discharge of any steam engine, stationary internal combustion engine, motor boat, motor vehicle or snowmobile except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with applicable state laws and regulations.
- (5) Exhaust, motor vehicles. Every motor vehicle must at all times be equipped with a muffler in good working order which blends the exhaust noise into the overall vehicle noise and is in constant operation to prevent excessive or unusual noise, and no person may use a muffler cutout, bypass, or similar device upon a motor vehicle or a street or highway. The exhaust system must not emit or produce a sharp popping or crackling sound.
- (6) Defective vehicles or excessive loads. It is unlawful to operate any vehicle in such a state of disrepair or overloaded so as to create loud and unnecessary grating, grinding, rattling, or other noise.
- (7) Loading, unloading, unpacking. It is unlawful to create loud and excessive noise in loading, unloading, or unpacking any vehicle.
- (8) Radios, phonographs, etc. It is unlawful to operate a radio receiving set, musical instrument, phonograph, stereo system, or other device for the production or reproduction of sound in such manner as to disturb the peace, quiet, and comfort of neighbors or others nearby. Operation of any such set, instrument, phonograph, machine or other device in such a manner as to be plainly audible at a property line or at 50 feet from a vehicle, structure or building in which it is located is prima facie evidence of a violation of this section.
- (9) Loud speakers, amplifiers for advertising, etc. It is unlawful to use or operate or permit the use or operation of any loud speaker, sound amplifier, or other device

for the production or reproduction of sound when the sound is cast upon a street or other public place for the purpose of commercial advertising or attracting the attention of the public to any commercial establishment or vehicle.

- (10) Schools, churches, hospitals, etc. It is unlawful to create any excessive noise on a street, alley, or public grounds adjacent to any school, institution of learning, church, or hospital when the noise unreasonably interferes with the working of the institution or disturbs or unduly annoys its occupants or residents.

806.03. HOURLY RESTRICTIONS ON CERTAIN OPERATIONS.

- (1) Recreational vehicles. It is unlawful to drive or operate any minibike, snowmobile or other recreational vehicle not licensed for travel on public highways except between the hours of 9 a.m. and 7 p.m. on any weekday or between the hours of 10 a.m. and 5 p.m. on Saturday, Sunday or holiday.
- (2) Outdoor power equipment. It is unlawful to operate a power lawn mower, power hedge clippers, chain saw, or other outdoor property maintenance equipment except between the hours of 7 a.m. and 10 p.m. on any weekday or between the hours of 9 a.m. and 9 p.m. on Saturday, Sunday or holiday. This subdivision does not apply to snow removal activities or to municipal or commercial outdoor property maintenance activities except that commercial activities must not unreasonably disturb the peace, quiet, and comfort of nearby residents. In the case of emergencies resulting from unforeseen causes such as snow or wind storms this section does not apply to reasonable and necessary remedial actions.
- (3) Refuse hauling. Garbage and refuse may not be collected or removed between the hours of 10 p.m. and 6 a.m. on a weekday or between the hours of 9 p.m. and 6 a.m. on Saturday, Sunday or a legal holiday.
- (4) Construction activities. It is unlawful to engage in or permit construction activities involving the use of any kind of electric, diesel, or gas powered machine or other power equipment except between the hours of 7 a.m. and 7 p.m. on any weekday and 9 a.m. and 4 p.m. on Saturday, Sunday or holiday.

806.04. RECEIVING LAND USE STANDARDS.

- (1) Maximum noise levels by receiving land use. It is unlawful to operate or cause to be operated any source of noise in such a manner as to create a noise level exceeding the limit set in table I for the receiving land use category specified when measured at or within the property line of the receiving land use.

Table I. Sound levels by receiving land use
 Day (7:00 a.m. - 10:00 p.m.) Night (10:00 p.m. - 7:00 a.m.)

Zoning district	L50	L10	L50	L10
Residential	60	65	50	55
Commercial	65	70	65	70
Industrial	75	80	75	80

In the event that the property on which an industrial or commercial noise source

is located abuts residential property, the noise source in question must not exceed an L10 noise level of 60 dBA in the daytime (7:00 a.m. to 10:00 p.m.) and an L50 noise level of 50 dBA in the nighttime (10:00 p.m. to 7:00 a.m.) as measured on the property line abutting the source.

- (2) Exemptions. The levels prescribed in subdivision 1 do not apply to streets owned, operated and maintained by the City.

806.05. MOTOR VEHICLE SOUND LEVEL REQUIREMENTS.

- (1) A motor vehicle operated or driven on any highway within the City must comply with the noise limits of the state of Minnesota.
- (2) Mufflers; noise limits. Minnesota Rules 7010.1000 to 7010.1600 are adopted and incorporated by reference.
- (3) A motor vehicle with a manufacturer's gross vehicle weight rating of 9,000 pounds or less operated or driven within the City, on any highway, public property, or private property within a City, must also comply with the following standards when a stationary testing procedure is used:

Automobiles, vans, light trucks (GVWR - 10,000 pounds or less)	95 dBA
Motorcycles	99 dBA

806.06. AIR CIRCULATION DEVICES.

It is unlawful to install or place any air circulation device except a window air conditioning unit in any location until the noise control officer determines that the device in that location will comply with the noise level standards prescribed in this section and issues a permit for the installation. The noise produced by any window unit and by any existing air circulation device must be attenuated by means deemed appropriate by the noise control officer, including, but not limited to, relocation of such device, if the noise results in or contributes to a violation of this section.

806.07. EXCEPTION FOR EMERGENCY WORK; PUBLIC IMPROVEMENTS.

Noise created exclusively in the performance of emergency work to preserve the public health, safety, or welfare or in the performance of emergency work necessary to restore a public service or eliminate a public hazard is exempt from the provisions of this Section for a period not to exceed 24 hours after the work is commenced. Persons responsible for such work must inform the noise control officer of the need to initiate such work, if the work is commenced during non-business hours of the City, then at the beginning of business hours of the first business day thereafter. A person responsible for such emergency work must take all reasonable actions to minimize the amount of noise. Noise created exclusively in the performance of completing a public improvement project is exempt from the provisions of this Section.

806.08. POWERS AND DUTIES OF NOISE CONTROL OFFICER.

- (1) Administering officer. The noise control program established by this section is administered by the noise control officer, who is appointed by the City Administrator.

- (2) Testing procedures. The noise control officer must adopt guidelines establishing the test procedures and instrumentation to be used in enforcing this section. A copy of such guidelines must be kept on file in the Clerk's office and must be available to the public for reference during office hours.
- (3) Studies, etc. The noise control officer must conduct such research, monitoring, and other studies related to sound as are necessary or useful in enforcing this section and reducing noise in the City. The officer may make such investigations and inspections in accordance with law as required in applying ordinance requirements.
- (4) Noise impact statements. The noise control officer may require any person applying to the City for a change in zoning classification or a permit or license for any structure, operation, process, installation or alteration, or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the officer. The officer must evaluate each such statement and make appropriate recommendations to the council or other agency or officer authorized to take the action or approve the license or permit.
- (5) Other powers and duties. The noise control officer may exercise such other powers and perform such other duties as are reasonable and necessary to enforce this section.

806.09. VARIANCES.

- (1) Authority. The City council may grant variances from the requirements of this section.
- (2) Application. A person seeking a variance must file an application therefore with the noise control officer on a form prescribed by the officer. The application must state the dates during which the variance is proposed, the location of the noise source and times of operation, the nature of the noise source, reasons why the variance is sought, steps taken to minimize the noise level, and such other information as is required by the noise control officer. If the application is for a variance for more than three days, the noise control officer must give mailed notice of the requested variance to all property owners within at least 500 feet of the noise source. Any person claiming to be adversely affected by the variance applied for may, within ten days of mailing of the notice, file a statement with the noise control officer in support of the claim.
- (3) Action on application. The council may grant a variance only if it finds that full compliance with the sound level requirements of this section would constitute an unreasonable hardship on the applicant, on other persons, or on the general public. In determining whether to grant or deny the application, the council is to balance the hardship to the applicant against the adverse impact on the health, safety, and welfare of the persons affected, the adverse impact on property affected, and any other adverse effects of granting the variance. The variance may be granted subject to conditions, including a time limit.

806.10. ENFORCEMENT.

- (1) Notice of certain violations. When the noise control officer determines that a noise exceeds the maximum sound level permitted under this section, the officer must give written notice of the violation to the owner or occupant of the premises where the noise originates and order such person to correct or remove each specified violation within such reasonable time as is prescribed in the notice.

The failure to remove or correct any such violation within the time so prescribed is a violation of this section. Before issuing citations for violations of this section, the noise control officer must provide the violator with notice and an opportunity to comply, unless the officer determines that the violation is not of a continuing or ongoing nature such that compliance can be readily confirmed at the end of a reasonable period.

- (2) Penalty. Violation of this section is a petty misdemeanor and, upon conviction, the violator may be punished by a fine not to exceed \$100, plus the costs of prosecution. Each act of violation and each day a violation occurs or continues constitutes a separate offense. The imposition of one penalty for any violation of this section does not excuse the violation, or permit it to continue.
- (3) Civil remedies. This section may be enforced by injunction, action for abatement, or other appropriate civil remedy.

807. Recycling

807.01. DEFINITIONS.

For purposes of this section, the following terms defined in this subsection have the meanings given them.

- (1) "Carryout collection service" means the collection of recyclable materials accumulated in recycling containers from a location at a dwelling unit other than the location designated by the recycling authority for regular collection.
- (2) "Dwelling unit" means a residential structure in the City that is designated by the recycling authority to receive recycling collection services.
- (3) "Generator," "mixed municipal solid waste," "recyclable materials," and "recycling" have the meanings given those terms in Minnesota Statutes, section 115A.03, subdivisions 12, 21, 25a and 25b, respectively.
- (4) "Recycling authority" means the official designated by the City Administrator to perform the powers and duties of the recycling authority as provided in this section.
- (5) "Recycling container" means a receptacle designated by the recycling authority for the accumulation and collection of recyclable materials at a dwelling unit.
- (6) "Recycling collection services" means the collection of recyclable materials accumulated in recycling containers from a location at a dwelling unit that is designated by the recycling authority for regular collection.
- (7) "Recycling services" means recycling collection services, carryout collection services, and any other services provided to a dwelling unit in accordance with this section.

807.02. RECYCLING AUTHORITY; POWERS.

The recycling authority is responsible for supervising and controlling the collection, removal, and disposal of recyclable materials from all dwelling units in the City. The recycling authority may contract with one or more collectors or haulers for the collection, removal and disposal of some or all types of recyclable materials from dwelling units. The recycling authority may adopt and enforce additional rules not inconsistent with this section as necessary for the collection, removal, and disposal of recyclable materials, including but not limited to rules governing the days and hours of collection, the types of recyclable materials to be collected, the manner in which generators must prepare

recyclable materials for collection, the recycling containers to be used, and the location of recycling containers for collection. The rules of the recycling authority are not effective until approved by the council.

807.03. OWNERSHIP OF RECYCLABLE MATERIALS; SCAVENGING PROHIBITED.

- (1) Ownership. Recyclable materials are the property of the generator until collected by authorized City employees, collectors or haulers. Recyclable materials become the property of the City, authorized collector, or authorized hauler upon collection.
- (2) No scavenging. It is unlawful for a person, other than authorized employees of the City, or authorized collectors or haulers to distribute, collect, remove or dispose of recyclable materials after the materials have been placed or deposited for collection.
- (3) Penalty. A violation of this subsection is a misdemeanor and may be punished as provided by law. The City is authorized to enforce the provisions of this subsection.

807.04 MULTIFAMILY DWELLINGS.

- (1) Recycling services. Owners of multifamily dwellings containing more than eight dwelling units must provide recycling collection services to all residents of the dwelling. Recyclable materials must be collected at least once per month.
- (2) Definitions. The term "multifamily dwelling" means a multiple dwelling, as that term is defined by City code. The term "recyclable materials" has the meaning given by Minnesota Statutes, section 115A.03, subdivision 25a.
- (3) Recycling; notice. Owners of multifamily dwellings must provide notice to all new tenants of the opportunity to dispose of recyclable materials as well as the location of the disposal site.
- (4) Recycling; preparation. Owners of multifamily dwellings must provide information to all new tenants related to the proper preparation of recyclable materials for collection.
- (5) Recycling containers. Owners of multifamily dwellings must insure that stolen or broken containers for recyclable materials are replaced within a reasonable time.
- (6) Landfilling prohibited. It is unlawful for an owner of a multifamily dwelling or an agent or contractor of an owner, to transport for disposal or to dispose of recyclable materials in a solid waste disposal facility, or to contract for such transportation or disposal.
- (7) Penalties. Violation of subdivisions 1, 3, 4 or 5 of this subsection is punishable as a petty misdemeanor. Upon a third or subsequent violation of subdivisions 1, 3, 4 or 5 by the same owner, the violation is punishable as a misdemeanor. Violation of subdivision 6 of this subsection is punishable as a misdemeanor.

808. Fireworks

808.01. RESTRICTIONS ON THE DISCHARGE OF FIREWORKS.

- (A) The use, display, possession, discharge or sale of any fireworks not expressly permitted by Minnesota Statutes Section 624.20, subd. 1(c) is strictly prohibited.
- (B) All use, display or discharge of those non-explosive, non-aerial pyrotechnic entertainment devices only containing the limited amounts of pyrotechnic chemical compositions described in and permitted by Minnesota Statutes Section 624.20, subd. 1(c), hereinafter “permitted consumer fireworks”, is strictly prohibited in the area on, below, above or within or in close proximity to:
 - (1) Recreational areas, roadways, streets, highways, bicycle lanes, pedestrian paths, sidewalks, rights of way, lakes, rivers, waterways and all other property owned or leased by the City of Dayton, Counties of Hennepin and Wright, Three Rivers Park District, State of Minnesota or federal government and located in whole or in part within the City limits.
 - (2) Private property within the City limits that has conspicuously posted a written sign or notice that no fireworks discharge is allowed.
 - (3) Within three hundred (300) feet of any consumer fireworks retail sales facility or storage area that has properly posted a written sign or notice that no fireworks discharge is allowed.
 - (4) Any property, area, structure or material that by its physical condition or the physical conditions in which it is set would constitute a fire or personal safety hazard.
- (C) All other use, display or discharge of permitted consumer fireworks must be conducted in a manner that minimizes the risk of fire or injury to other persons or property.

809. Trespassing

809.01. PURPOSE.

To enable private owners of real property situated within the City and to which the public has some implicit right of access to exclude persons from that property where the person has committed a crime on the premises or violated the properly posted rules of conduct for the property.

809.02. DEFINITIONS.

The following words and terms when used in this Section shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Covered premises - any improved real property, or portion thereof, to which the public has an implicit right of access including, but not limited to places of worship, shopping malls, retail sales facilities, hotels, motels, nursing homes, restaurants, multiple-family residential buildings, hospitals, medical and dental offices, clubs, lodges, office buildings, banks and financial institutions, transit stations, athletic and recreational facilities, personal service establishments, theaters, and day care facilities.
- (2) Tenant - any authorized occupant of a covered premises, or the agent thereof.
- (3) Property manager - any owner of a covered premises or the agent thereof who is authorized to exercise control over the property, including common areas. The term "property manager" includes any tenant who is an owner of the property or

agent of the owner and authorized to exercise control over the property, including common areas.

- (4) Common areas - all areas of the property which are maintained for the common use of its tenants or the general public incidental to the conduct of the normal and legitimate activities upon the premises, including but not limited to parking lots and ramps, private roadways, reception areas, rotunda, waiting areas, hallways, restroom facilities, elevators, escalators, and staircases.
- (5) Trespass notice - a written notice which contains minimally the following information:
 - (A) a verbatim copy of Section 809 of this Code;
 - (B) the name, date of birth, and address of the person to whom the notice is issued and the name of the person's custodial parent or guardian where that person is a juvenile;
 - (C) a description of the specific conduct which serves as a basis for the notice's issuance;
 - (D) a description of the specific property to which the trespass notice applies;
 - (E) the period during which the trespass notice is in effect, including the date of its expiration;
 - (F) the name, title and telephone number of a person with authority to modify, amend or rescind the trespass notice prior to its normal expiration;
 - (G) the method by which the trespass notice was served upon the person to whom it was issued.

809.03. PROHIBITED CONDUCT.

- (1) No person shall trespass in or upon any private property and, without claim of right, refuse to depart therefrom on demand of the property manager or tenant.
- (2) No person who has been served with a trespass notice in conformity with this ordinance shall enter the premises described therein during its effective period without the written permission of the issuing property manager or tenant or the authorized agent thereof named in the notice. Violation of the terms of the notice will result in criminal prosecution as a misdemeanor under Minnesota law.
- (3) No person shall enter any area of private property in violation of conspicuously posted signs prohibiting or restricting access thereto, including but not limited to the following signs, "No Trespassing", "Authorized Personnel Only", "Private", "Employees Only", "Emergency Exit Only".

809.04. ISSUANCE OF TRESPASS NOTICE.

- (1) A property manager or tenant may issue a trespass notice as provided under this ordinance only under the following circumstances:
 - (A) where there is probable cause to believe that the person has committed an act prohibited by state statute or City ordinance while on the covered premises, whether on common areas or a tenant's space; or
 - (B) where there is probable cause to believe that the person has violated the rules of conduct for the property which have been conspicuously posted at all public entrances to the property or have been personally provided to the person in writing by the property manager or tenant.

809.05. ADDITIONAL PROVISIONS.

- (1) Where a trespass notice is issued by a tenant, who is not the property manager, the notice is effective only as to that portion of the premises over which the tenant is entitled to exercise control.
- (2) No trespass notice shall be effective for more than one year from the date of its original issuance.
- (3) All trespass notices issued pursuant to this Section must be properly served upon the person named therein as follows:
 - (A) personal service documented by either a receipt signed by the person to whom it was issued or a written statement of the issuer;
 - (B) where the person named in the trespass notice is arrested by a police officer for an act prohibited by state statute or City ordinance, the arresting officer may personally serve the notice on behalf of the property manager or tenant and so document that fact in the officer's official police report detailing the incident.

809.06. PENALTY.

A violation of this section shall be punishable as a misdemeanor. . In addition, the City may enforce this Section by injunctive action or other appropriate civil remedy.

810. Conduct or Events Constituting a Public Nuisance

810.01. PARTICIPATION IN UNLAWFUL GATHERINGS.

- (1) No person shall congregate because of, or participate in, any unlawful gathering, as defined in Section 801.02 of this City Code.
- (2) No person shall keep or permit an unlawful gathering, as defined in Section 801.02 of this City Code, on any property owned, leased, controlled or occupied by that person.
- (3) Any person who is the property owner or other interested party in the property, who has actual or imputed knowledge of an unlawful gathering thereon and who fails to immediately abate the unlawful gathering shall be guilty of a misdemeanor.
- (4) Any person, other than the property owner, tenant, or person in control of a building, who refuses to leave an unlawful gathering thereon after being ordered to do so by a police officer or by an owner, tenant, or person in control of any building or other interested party in the property where an unlawful gathering is occurring shall be guilty of a misdemeanor.
- (5) Any person who is the property owner, tenant, or person in control of a building and refuses to admit public officers attempting to gain reasonable access to the premises for the purpose of investigating a suspected unlawful gathering on the property or any structure thereon or refuses to disperse an unlawful gathering at the building after being ordered to do so by a police officer shall be guilty of a misdemeanor.
- (6) A police officer, who has probable cause to believe an unlawful gathering is occurring on private property may make reasonable entry onto the property or structure thereon in a manner consistent with law for the purpose of investigating suspected law violations.
- (7) A police officer may order all persons present at any public or private place or building where an unlawful gathering is occurring to immediately disperse.

810.02. DISORDERLY HOUSE AND FALSE REPORT TO PUBLIC OFFICER PROHIBITED.

It shall constitute a misdemeanor under Minnesota law to do the following:

- (1) To keep, permit or be present in a disorderly house; as defined in Section 801.02 of this City Code;
- (2) Be an owner or person in control of any residential property and to permit the building to be used as a disorderly house; or
- (3) To provide a false report to any public officer.

810.03. EXCESSIVE NUISANCE SERVICE CALL.

- (1) **Nuisance Incident Notice.** Where the City Administrator designee determines that a specific premises or building is being operated in violation of this Code, public officers have been dispatched to private property on a nuisance service call, the City Administrator or designee may issue a written nuisance incident notice to the owner of the property, and may provide a copy thereof to any other interested parties. The nuisance incident notice may be served upon the owner of said premises by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address determined by the most recent property tax records maintained by Hennepin County for said premises. The service of a nuisance incident notice, as provided herein, shall be prima facie evidence that an owner or interested party served person in control of a building has knowledge of and has permitted subsequent conduct or behavior at said premises.
- (2) **Contents of the Notice.** The nuisance incident notice shall:
 - (A) Identify the type and specific location of nuisance service call(s), including tenant or lessee names where applicable;
 - (B) Summarize the evidence of the nuisance occurring on the property;
 - (C) Provide the dates on which the nuisance calls for service were made and the dates of any prior responses by public officers to nuisance incidents on the property; and
 - (D) Warn the owner, occupant and persons in control of the property that future nuisance service calls may subject them jointly and severally to an excessive nuisance service call fee in the amount of \$250.00 or more, up to \$2,000.00, based upon the actual cost of the law enforcement response.
- (3) **Abatement Notice.** Where the City Administrator or designee determines that public officers have been dispatched to two (2) or more nuisance service calls, as defined in Section 801.02, to the same property within a 365-day period, he or she shall cause a written abatement notice to issue to the owner of the property, and may provide a copy thereof to any interested parties. The abatement notice may be served upon the owner of said premises by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address determined by the most recent property tax records maintained by Hennepin or Wright Counties for said premises. The service of an abatement notice, as provided herein, shall be prima facie evidence that an owner or interested party served has knowledge of and has permitted subsequent conduct or behavior at said premises.
- (4) **Contents of the Abatement Notice.** The Abatement Notice shall:
 - (A) Identify the type and specific location of nuisance service calls, including tenant or lessee names, where applicable;
 - (B) Summarize the evidence of the nuisance occurring on the property;
 - (C) Provide the dates on which the nuisance service calls were made and the dates of any prior responses by public officers to nuisance incidents on the property; and
 - (D) Warn the owner and interested parties that future nuisance service calls will subject them jointly and severally to an excessive nuisance service call fee in the amount of \$250.00 or more, based upon the actual cost of the law enforcement response, up to \$2,000.00, for each separate call. The costs of providing the excess law enforcement services shall include without limitation the gross salaries, including all fringes, benefits and overhead paid to the public officers responding, the pro rata cost of all equipment, including vehicles and K-9 officers, and the cost of repairs to any City equipment or property damaged in responding to the nuisance service call. The civil penalty will issue in the manner set forth in Article II of Chapter 1 of this City Code and if left unpaid will be charged against the property and collected in the manner of a tax;
 - (E) Advise the owner and interested parties that subsequent conduct in violation of this Section of City Code may also subject them jointly and severally to criminal charges punishable by up to a \$1,000.00 fine and 90 days in jail for each separate violation.

- (5) **Imposition of Excessive Nuisance Service Call Fee.** Property owners, tenants and other persons having control over a property shall be jointly and severally responsible for nuisance incidents occurring thereon and individually responsible for payment of any Nuisance Service Call Fee issued to that party hereunder. Where an abatement notice was properly served upon the owner and/or tenant of the property as set forth in subsection (c) hereof each successive nuisance service call within the same 365-day period shall result in an administrative citation to that party in the manner set forth in Article II of Chapter 1 of this City Code in the amount of \$250.00 or more based upon the actual cost of the law enforcement response, up to \$2,000.00 for each separate call. The costs of providing the excess law enforcement services shall include without limitation the gross salaries, including all fringes, benefits and overhead paid to the public officers responding, the pro rata cost of all equipment, including vehicles and K-9 officers, and the cost of repairs to any City equipment or property damaged in responding to the nuisance service call.
- (6) **Affirmative Defenses.** In the case of rental property, it shall constitute an affirmative defense to the issuance of an Excessive Nuisance Service Call fee by administrative citation that the property owner has commenced eviction proceedings against the tenant or tenants responsible for the nuisance conduct, conditions or characteristics. In the case of large public accommodations, it shall constitute an affirmative defense to the issuance of an Excessive Nuisance Service Call fee by administrative citation that the property owner or the owner's property manager has entered into and complied with a memo of understanding with regard to security with the Dayton Police Department.
- (7) **Appeal.** Any party issued an Excessive Nuisance Service Call fee by administrative citation may appeal the citation by filing a written request for a hearing with the City Clerk within ten (10) calendar days of the issuance of the citation. A hearing shall be held within forty-five (45) calendar days thereof.

810.04. PENALTY.

A violation of this Section shall be a misdemeanor under Minnesota law. Civil penalties shall be subject to assessment pursuant to state law and city code.

811. Public Indecency

811.01. PURPOSE.

The purpose of this Division is to prohibit public indecency in order to deter criminal activity, to promote societal order and public health, and to protect children.

811.02. FINDINGS.

The City Council of the City of Dayton makes the following findings regarding the need to prohibit public indecency:

- (1) Public indecency can increase the incidence of criminal activity, including but not limited to prostitution, disorderly conduct, and sexual assault.
- (2) Public indecency can expose children to an unhealthy and nurtureless environment.
- (3) Public indecency can disrupt the orderly operation of public events and public accommodations, thereby fostering societal disorder.
- (4) Public indecency can present health concerns in places of public accommodation and other public settings.

811.03. DEFINITIONS.

The following words and terms when used in this Division shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Nudity - the showing of the human male or female genitals or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any portion thereof below a point immediately above the top of the areola; or the depiction or showing of the covered male genitals in a discernibly turgid state.
- (2) Person - a natural person twelve (12) years of age or older, including employees or agents of a public accommodation.

811.04. PUBLIC INDECENCY PROHIBITED.

- (1) A person who knowingly or intentionally in a public place or setting:
 - (A) appears in a state of nudity;
 - (B) fondles the genitals of himself or herself;
 - (C) fondles the genitals of another person; or
 - (D) urinates or defecates commits public indecency and is guilty of a misdemeanor.
- (2) It is not a violation of this Section for a woman to breast feed.

812. Improper Display of Sexually-Oriented Materials

812.01. PURPOSE.

The purpose of this Division is to protect minors in public accommodations from exposure to materials that are harmful to children, thereby protecting the health, safety and welfare of the community.

812.02. DEFINITIONS.

The following words and terms when used in this Division shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Harmful to minors - that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
 - (A) predominantly appeals to the prurient, shameful or morbid interest of minors, and
 - (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (C) is utterly without redeeming social importance for minors.
- (2) Knowingly - having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:
 - (A) the character and content of any material which is reasonably susceptible of examination by the defendant; and
 - (B) the age of the minor, provided however that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.
- (3) Minor - any person under the age of eighteen (18) years.
- (4) Nudity - the showing of the human male or female genitals or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any portion thereof below a point immediately above

the top of the areola; or the depiction or showing of covered male genitals in a discernibly turgid state.

- (5) Public accommodation - a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.
- (6) Sadoomasochistic abuse - flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (7) Sexual conduct - acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks or, if such a person be a female, her breast.
- (8) Sexual excitement - the condition of human male or female genitals when in a state of sexual stimulation or arousal.

812.03. DISPLAY RESTRICTIONS.

- (1) **Sealed Wrapper.** No person shall commercially and knowingly exhibit or display any materials which is harmful to minors in its content in any public accommodation where minors are or may be present and where minors are able to view the material unless each item is kept in a sealed wrapper at all times.
- (2) **Opaque Cover.** No person shall commercially and knowingly exhibit or display any material the cover or packaging of which, standing alone, is harmful to minors in any public accommodation where minors are or may be present or allowed to be present and where minors are able to view the material unless each item is blocked from view by an opaque cover. The opaque cover requirement is satisfied if those portions of the cover or packaging containing the material harmful to minors are blocked from view by an opaque cover.
- (3) **Segregation of Materials.** Subparts (a) and (b) of this Section shall not apply to the exhibition or display of materials harmful to minors under circumstances where minors are not present or are not able to view the material or the material's cover or packaging. A person may comply with the requirements of this subpart (c) by:
 - (A) physically segregating the material in a manner that physically prohibits access to and view of the material by minors.
 - (B) prominently posting at the entrance to the restricted area: "Adults only - you must be 18 to enter"; and
 - (C) enforcing the restriction.

812.04. PENALTY.

Violation of this Section shall be a misdemeanor under Minnesota law. In addition, the City may enforce this Section by injunctive action or other appropriate civil remedy.

813. Juvenile Curfew

813.01. PURPOSE.

The purpose of this Section of the City Code is to protect the public safety and welfare by requiring a curfew for juveniles.

813.02. FINDINGS.

The City Council of the City of Dayton makes the following findings regarding the need to enact a juvenile curfew in the City.

- (1) Increased juvenile criminal activity, juvenile gang activity, and juvenile violence in the Twin Cities Metropolitan Area in recent years has taxed local law enforcement services and jeopardized the public safety.
- (2) Increased rates of juvenile victimization in the Twin Cities Metropolitan Area in recent years has endangered the emotional and physical well-being and safety of juveniles.
- (3) Because of their lack of maturity and experience, juveniles are particularly susceptible to participation in unlawful and gang-related activities.
- (4) Juveniles are particularly vulnerable at night time hours to become victims of crime due to their inability to make critical decisions in a mature and experienced manner.
- (5) A juvenile curfew seeks to minimize the dangers to which juveniles are subject when they are upon the streets and in public places and establishments unattended and unsupervised by adults at night time hours.
- (6) A juvenile curfew seeks to regulate juvenile activities carried out at night time hours upon the streets and in public places and establishments where the risk of danger to juveniles can be the greatest.
- (7) A juvenile curfew seeks to encourage parents and guardians of juveniles to supervise, control and know the whereabouts of their children during high-risk night time hours.
- (8) A juvenile curfew seeks to reduce juvenile criminal activities and juvenile gang activities during night time hours when local law enforcement services are already taxed.
- (9) A juvenile curfew seeks to diminish the undesirable impact juvenile unlawful conduct has on a community.

813.03. DEFINITIONS.

The following words and terms when used in this Division shall have the following meanings unless the context clearly indicates otherwise:

- (1) Guardian - an adult appointed pursuant to Minnesota Statutes, Section 525.6155 or 525.6165 who has the power and responsibilities of a parent as defined by Minnesota Statutes, Section 525.619.
- (2) Emergency - a circumstance or combination of circumstances requiring immediate action to prevent property damage, serious bodily injury, or loss of life.
- (3) Establishment - any privately-owned place of business to which the public is invited, including but not limited to any place of amusement, entertainment, or refreshment.
- (4) Juvenile - a person under the age of eighteen (18) years who is not married or who has not been legally emancipated.
- (5) Parent - birth parents, adoptive parents, and step parents.
- (6) Proprietor - any individual, firm, association, partnership, or corporation operating, managing, owning, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
- (7) Public Place - any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, alleys, parking lots, parks, and the common areas of libraries, schools, hospitals, apartment houses, office buildings, transport facilities, shopping malls, and shops.
- (8) Responsible Adult - a person over the age of eighteen (18) years specifically authorized by the parent or guardian of the juvenile to have custody and control of the juvenile.

- (9) Serious Bodily Injury - bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any body part or organ.

813.04. PROHIBITED ACTS.

- (1) Juveniles Under the Age of 12. It is unlawful for a juvenile under the age of twelve (12) years to be present in any public place or establishment within the City of Dayton:
- (A) From 9:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. on the following day.
- (B) From 10:00 p.m. on any Friday or Saturday until 5:00 a.m. on the following day.
- (2) Juveniles Under the Age of 15. It is unlawful for a juvenile under the age of fifteen (15) years to be present in any public place or establishment within the City of Dayton:
- (A) From 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. on the following day.
- (B) From 11:00 p.m. on any Friday or Saturday until 5:00 a.m. on the following day.
- (3) Juveniles, Age 15, 16 or 17 Years of Age. It is unlawful for a juvenile, age 15, 16 or 17, to be present in any public place or establishment within the City of Dayton:
- (A) From 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. on the following day.
- (B) From 12:01 a.m. to 5:00 a.m. on any Saturday or Sunday.
- (4) Law enforcement Officers. A law enforcement officer may not detain a juvenile beyond the time reasonably necessary for the law enforcement officer to investigate whether or not a violation occurred, issue a citation or take a juvenile into custody based upon a violation of this section unless the law enforcement officer, after speaking with the juvenile and considering the surrounding facts and circumstances, reasonably believes that the juvenile has violated this Section and that none of the defenses set forth apply.
- (5) Parents or Guardians. It is unlawful for a parent or guardian of a juvenile to knowingly, or through negligent supervision, permit the juvenile to be in any public place or establishment within the City of Dayton during the hours prohibited in this Section.
- (6) Proprietors. It is unlawful for a proprietor of an establishment within the City of Dayton to knowingly permit a juvenile to remain in the establishment or on the property of the establishment during the hours prohibited in this Section. If the proprietor is not present at the time of the curfew violation, the responding officer shall leave written notice of the violation with an employee of the establishment. A copy of the written notice shall be served upon the establishment's proprietor personally or be certified mail.

813.05. DEFENSES.

- (1) It is an affirmative defense for a juvenile to prove that:
- (A) The juvenile was accompanied by his or parent, guardian, or other responsible adult.
- (B) The juvenile was engaged in a lawful employment activity or was going to or returning from an employment activity without any detour or stop.
- (C) An emergency situation existed.
- (D) The juvenile was attending an official school, religious, or other recreational activity supervised by adults and sponsored and/or supervised by a public entity, a civic organization, a religious organization, or another similar entity that took responsibility for the juvenile, or was going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored and/or supervised by a public entity, a civic organization, a religious organization, or another similar entity that took responsibility for the juvenile.
- (E) The juvenile was on an errand at the direction of the juvenile's parent or guardian without any detour or stop.

- (F) The juvenile was exercising First Amendment rights protected by the United States Constitution or Article I of the Constitution of the State of Minnesota.
 - (G) The juvenile was engaged in interstate travel.
 - (H) The juvenile was on the public right-of-way, boulevard, alley, or sidewalk abutting the juvenile's residence or abutting the residence of his or her next-door neighbor.
- (2) It is an affirmative defense for a proprietor of an establishment to prove that:
- (A) The proprietor reasonably and in good faith relied upon a juvenile's representations of proof of age. Proof of age may be established pursuant to Minnesota Statutes, Section 340A.503, subdivision 6, or other verifiable means, including, but not limited to, school identification cards and birth certificates.
 - (B) The proprietor promptly notified the responsible police agency that a juvenile was present on the premises of the establishment during curfew hours.

813.06. PENALTIES.

Violation of this section is a misdemeanor under Minnesota law. . In addition, the City may enforce this Section by injunctive action or other appropriate civil remedy.

814. Vandalism of Public Property

814.01. PROHIBITED.

Every person who intentionally damages, displaces, removes, or destroys any of the following shall be guilty of a misdemeanor:

- (1) A street or bridge.
- (2) A tree, rock, post, sign or other monument which has been erected or marked for the purpose of designating a point in any boundary or any mark or inscription thereon.
- (3) A mileboard, a milestone, or guidepost erected upon a street, or any inscription thereon.
- (4) A line of telegraph, cable or telephone, or any part thereof, or any appurtenance or apparatus connected with the working of any magnetic or electric telegraph, cable or telephone, or the sending or conveyance of messages thereby.
- (5) A pipe or main for conducting gas or water, or heat or any works erected for supplying buildings with gas or heat or water, or any appurtenance or appendage connected therewith.
- (6) A sewer or drain, or a pipe or main connected therewith or forming part thereof.

815. Drug Paraphernalia

815.01. PURPOSE.

The purpose of this Section is to regulate the possession, manufacture, advertisement, and delivery of drug paraphernalia and thereby deter the use of controlled substances in the City. This Section is not intended to allow what the Minnesota Statutes prohibit nor to prohibit what the Minnesota Statutes expressly allow.

815.02. DEFINITIONS.

The following words and terms when used in this Division shall have the following meanings unless the context clearly indicates otherwise:

- (1) Drug paraphernalia - all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of Minnesota Statutes or this Code. It includes, but is not limited to:
- (A) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - (B) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 - (C) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - (D) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;
 - (E) scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 - (F) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
 - (G) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - (H) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
 - (I) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - (J) containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
 - (K) hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injected controlled substances into the human body;
 - (L) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - (M) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (1) water pipes;
 - (2) carburetion tubes and devices;
 - (3) smoking and carburetion masks;
 - (4) roach clips, meaning objects used to hold burning material such as a marijuana cigarette which has become too small or too short to be held in the hand;
 - (5) miniature cocaine spoons and cocaine vials;
 - (6) chamber pipes;
 - (7) carburetor pipes;
 - (8) electric pipes;

- (9) air-driven pipes;
- (10) chillums;
- (11) bongs;
- (12) ice pipes or chillers.

815.03. EVIDENCE.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) prior convictions, if any, of an owner or anyone in control of the object under state or federal law relating to any controlled substance;
- (3) the proximity of the object, in time and space, to a direct violation of this Code;
- (4) the proximity of the object to controlled substances;
- (5) the existence of any residue of controlled substances on the object;
- (6) direct or circumstantial evidence of the intent of an owner or anyone in control of the object to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this Code; the innocence of an owner or anyone in control of the object as to a direct violation of this Code should not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;
- (7) instructions, oral or written, provided with the object concerning its use;
- (8) descriptive materials accompanying the object which explain or depict its use;
- (9) national and local advertising concerning its use;
- (10) the manner in which the object is displayed for sale;
- (11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (13) the existence and scope of legitimate uses for the object in the community;
- (14) expert testimony concerning its use.

815.04. OFFENSES.

- (1) **Possession.** It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Division.
- (2) **Manufacture or Delivery.** It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Division.
- (3) **Minors.** Any person 18 years of age or over who violates this section by delivering drug paraphernalia and said delivery is to a person who is under 18 years of age and at least three years his junior shall also be violating this section.
- (4) **Advertisement.** It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement knowing, or under circumstances where

one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

815.05. PENALTY.

Violation of any provision of this Section shall be a misdemeanor, and each day of violation shall be considered a separate offense.[add civil enforcement]

815.06. CIVIL FORFEITURE.

All drug paraphernalia as defined in this Section are subject to forfeiture, subject to the provisions set forth in Minnesota Statutes.

817. Controlled Substances

817.01. UNLAWFUL USE OF CONTROLLED SUBSTANCES.

It shall be unlawful for any person to manufacture, possess, sell, give away, barter, exchange, distribute, or otherwise transfer any controlled substance as defined in Section 152.02 of Minnesota Statutes; any legend drug as defined in Section 151.01, subdivision 17, of Minnesota Statutes, or any legend medical gas as defined in Section 151.01, subdivision 18 of Minnesota Statutes in a manner contrary to state or federal law.

818. Public Consumption of Alcoholic Beverages

818.01. UNLAWFUL CONSUMPTION OF ALCOHOLIC BEVERAGES.

It shall be unlawful for any person to consume alcoholic beverages on any public park or street, right-of-way, sidewalk, pathway, or bikeway, or in a vehicle parked on any public street or right-of-way without a special permit.

819. Graffiti

819.01. PURPOSE.

The purpose of this Division is to prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property thereby limiting its adverse impact on neighborhoods.

819.02. FINDINGS.

The City Council of the City of Dayton makes the following findings regarding the need to promptly remove graffiti from private and public property:

- (1) Graffiti constitutes a form of vandalism defacing public and private property without the permission of the owner, and causing citizens, businesses and the City to incur the cost of repair and removal.
- (2) Graffiti is a visual symbol of disorder eroding public safety, contributing to a downward spiral of blight and decay, lessening property values, business viability and ultimately tax revenues and, as such, is inconsistent with the City's property maintenance goals and aesthetic standards.

- (3) There is substantial evidence that prompt eradication of graffiti is an effective prevention strategy which discourages its return while failure to promptly remove graffiti increases the likelihood that more graffiti will occur on the same site and on other nearby property.
- (4) The failure to maintain one's property by removing graffiti which has been declared by the City to constitute a public nuisance within a reasonable period of time is injurious to the public health, safety, morals and general welfare of the residents of the City.

819.03. DEFINITIONS.

The following words and terms when used in this Division shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Graffiti - any inscription, word, figure, painting, or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of a permanent structure, fixture or object, including but not limited to: buildings, walls, fences, bridges, benches, shelters, sidewalks, hydrants, fountains, pavement, curbs, trees, rocks, signs, utility poles or boxes situated on public or private property by any graffiti implement, to the extent that the inscription, word, figure, painting or other defacement was not authorized in advance by the responsible party for the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Administrator, or the designee thereof.
- (2) Graffiti Implement - paint, aerosol or pressurized containers of paint, indelible broad-tipped markers, paint stick, etching equipment or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.
- (3) Public Nuisance - real property within the City containing a condition that defaces it or any permanent structure, fixture or object situated thereon which in turn causes or tends to cause depreciation in the enjoyment and use, or in the value of the property in its immediate vicinity or which has the potential to unreasonably annoy, injure or endanger the safety, health, morals, or general welfare of ordinary and reasonable members of the public.
- (4) Responsible Party - an owner, legal occupant, or an entity or person acting as an agent for an owner by agreement, who has authority over the real property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each property owner shall always be a responsible party for the purposes of this Division. There may be more than one responsible party for a particular property.

819.04. GRAFFITI VANDALISM.

- (1) It shall be unlawful for any person to intentionally place or apply, or attempt to place or apply, graffiti on any surface of a permanent structure, fixture or object located on public or private real property within the City without the advance authorization of a responsible party for the property.
- (2) It shall be unlawful for any person to possess any graffiti implement with the intent to use the same to place or apply graffiti on any public or private real property within the City or any surface of a permanent structure, fixture or object located thereon.

819.05. GRAFFITI ABATEMENT.

- (1) **Duties of Responsible Party.** It shall be the duty of each responsible party for real property within the City to remove any graffiti placed upon any surface of a permanent structure, fixture or object located thereon within ten (10) business days of being notified by the City that the presence of the graffiti is a public nuisance, unless a longer abatement period is set forth in the notice. The cost of such removal shall be paid by the responsible party.

- (2) **Declaration of Public Nuisance.** Where the existence of graffiti on private property is determined to constitute a public nuisance, the Environmental Health Services Manager, or the designee thereof, shall serve a written notice of that finding to the responsible party or parties for the property by personal service or by certified mail to the last known address supplemented by a posting of the notice in a conspicuous place on the property for at least twenty-four (24) hours. This notice shall contain the following:
- (A) The street address, City, State or County Park, within the confines of Dayton, and/or legal description of the property sufficient for identification of the property;
 - (B) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to that finding;
 - (C) A description of what must be done to abate the graffiti;
 - (D) A statement that within the period set forth in the notice the responsible party must either abate the graffiti in the manner described in the notice or serve the City Environmental Health Services manager with a written demand for an administrative hearing and that failure to either abate or demand a hearing shall be deemed an admission that the graffiti constitutes a public nuisance subject to abatement by the City with assessment of those costs against the property; and
 - (E) A statement that the written demand for a hearing must contain the full names and dates of birth for all persons known to be responsible parties for the property; the street address of the property; and a specific statement of the grounds on which the responsible party contests the City's determination that the graffiti constitutes a public nuisance.

819.06. HEARING.

- (1) A person wishing to appeal a staff decision shall file with the city clerk a written request for a hearing within 10 days after receipt of notification of activity on which the appeal is based. The request shall specify the order, decision or condition being appealed, the date notification was received, and the provision under which the appeal is authorized.
- (2) Said request shall thereupon be scheduled on the agenda of the next regular city council meeting, unless the party appealing requests a hearing at the regular council meeting to be held on a later date not more than 30 days from the filing of the appeal request.
- (3) The city shall, upon receipt of a hearing, provide written notice of the time and place of the hearing to the requesting party.
- (4) The city shall hear relevant testimony and receive relevant evidence offered by the person appealing and that which is offered by the person, board or department whose action, order or conditions prompted the appeal. As the trier of fact, the council or its designee shall make the determination of the relevancy of testimony of evidence.
- (5) After considering all such evidence and testimony submitted and the report of the designee, if any, the council may order on the record such action as it, in its sole discretion, deems appropriate.
- (6) The following are exceptions to an appeal under this section:
 - (a) Appeals resulting from the commencement of legal proceedings, whether civil or criminal.
 - (b) Where some other appeal procedure is specified in code.

(c) An appeal from the result of another appeal process set forth in this code.

819.07. FAILURE TO ABATE; ABATEMENT BY CITY; ASSESSMENT THEREFOR.

If, at the end of the period fixed by the City for the abatement of graffiti, the graffiti is not abated by the responsible party, the City may cause the same to be abated or removed by the City in any manner deemed appropriate with the costs thereof subject to assessment against the property in the manner set forth in City Code.

819.08. PENALTY.

Violation of this Section shall, in addition to any civil fines, penalties or assessments, be punishable as a misdemeanor under Minnesota law except where a determination has been made by a hearing examiner that the graffiti does not constitute a public nuisance.

SECTION 3. EFFECT. This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

Adopted by the City Council of the City of Dayton this ____ day of _____ 2009

Mayor

ATTEST:

City Clerk

Published in the _____ on _____.