

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: ANIMALS

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' 90.01 DUTY OF OWNER.

(A) It shall be the duty of every owner of any animal or anyone having any animal in possession or custody, to exercise reasonable care and to take all necessary steps and precautions to protect other people, property, and animal from injuries or damage which might result from the owner=s animals behavior, regardless of whether the behavior is motivated by mischievousness, playfulness, or ferocity.

(B) In the event that the owner or keeper of any animal is a minor, the custodian, parent or guardian is legally responsible to ensure that all provisions of this chapter are complied with.

(Ord. 5-2003, passed 4-14-2003) Penalty, see ' 90.99

' 90.02 TYPES OF ANIMALS PERMITTED IN THE CITY.

(A) It shall be unlawful for any person to keep any domestic farm animal other than cats or dogs within the municipal limits of the city.

(1) **FARM ANIMAL** means any domestic species of cattle, swine, goats, llamas, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.

(2) This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and when animals such as horses and llamas when used solely as work and pack animals.

(B) It shall be unlawful for anyone to own, harbor or permit at large any animal which is now or historically has been found wild in the United States, its territories or possessions. This includes, but is not limited to deer, skunk, opossum, raccoon, mink, armadillo, coyote, squirrel, fox, or wolf.

(C) It shall be unlawful for any person to own or harbor a pit bull terrier, as defined in this section, within the municipal limits of the city.

(1) **PIT BULL TERRIER**, as used in this section is defined as any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog, or any mixed breed of dog which contains as an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier.

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(2) This section is a necessary control to eliminate the risk of attack by pit bulls, as defined in this section, on human beings in the city which has become a threat to the health, safety, and welfare of the public in all areas of the city, and the lack of knowledge or lack of intent is not a defense to any violation thereof. (Ord. 5-2003, passed 4-14-2003) Penalty, see ' 90.99

' 90.03 CAT AND DOG LICENSE REQUIRED.

(A) The Police Department shall keep a register of all cat and dog licenses and rabies tags, and shall issue duplicates thereof for any lost or stolen license tags.

(B) It shall be unlawful for any person, to own, possess, harbor or have the care of any animal of the cat or dog kind, within the municipal limits of the city, without first procuring from the Police Department a license tag for each animal so owned and paying to the city for the use of the city the sum of \$2 for each tag so issued. The license tag shall be good for a period of 1 year from January 1 of each year or the fractional part of a year and each tag shall be securely attached to the animal. The Clerk-Treasurer shall procure license tags as herein provided and each tag shall be numbered. The Police Department shall keep a record of all tags so issued.

(C) It shall be unlawful to keep or harbor any cat or dog over the age of 6 months within the municipal limits of the city, unless, that animal has been inoculated against rabies, distemper, and bordetella by a licensed veterinarian within the preceding year. No license tag shall be issued for any cat or dog over the age of 6 months, unless the applicant for the license presents proof that the animal has been inoculated for rabies within the year prior to application.

(D) A person shall not change, alter, counterfeit, imitate, or sell or offer for sale any changed, altered, counterfeit, or imitated cat or dog license tag. No person, being the owner, keeper, or harbors a cat or dog shall use a changed, altered, counterfeit, or

imitated cat or dog license tag for the purpose of evading the requirements of this chapter. (Ord. 5-2003, passed 4-14-2003; Am. Ord. 18-2015, passed 10-12-2015) Penalty, see ' 90.99

' 90.04 CONTROL OF ANIMALS.

(A) *Definitions.*

DIRECT CONTROL. Immediate and continuous physical control of an animal at all times such as by means of a fence, leash, cord or chain of sufficient strength to restrain the animal.

RUNNING AT LARGE. Any animal not under direct control, not on a leash, not in a vehicle driven or parked, or not confined without means of escape in a pen, corral, yard, cage or house within the property limits of its owner.

(B) *Restraint of animals.*

(1) It shall be unlawful for an owner or harbinger of any animal to allow such animal to run at large, whether wearing a collar and tag or not, within the city limits of Batesville. If the animal has a collar and tag, the Animal Control Officer or Law Enforcement Officer shall take reasonable measures to return the animal to its owner. Any animal found running at large that is not wearing a collar and tag shall be immediately impounded by an Animal Control Officer or Law Enforcement Officer. Animal Control Officers and Law Enforcement Officers may pursue animals onto private property to effect capture of such animal.

(2) It shall be the duty of every owner or harbinger of any animal to exercise reasonable care and take all necessary steps and precautions to protect other people, property and animals from injuries or damage which might result from the animal's behavior. If the owner or harbinger of any animal is a minor, the parent, guardian or legal custodian of such minor shall also be responsible for the minor's violation of this section.

(3) It shall be the duty of every owner or harbinger of any dog to ensure that the dog is kept under restraint and that reasonable care and precautions are taken to prevent the dog from leaving the real property limits of its owner or harbinger and ensure that it is:

(a) Securely and humanely enclosed within a house, building, fence, pen, invisible fence or other enclosure out of which it cannot climb, dig, jump or otherwise escape on its own violation;

(b) Securely and humanely restrained by chain, cable or trolley, or other tether of sufficient strength to prevent escape; and/or,

(c) On a leash and under the control of a competent person.

(C) *At large animals.*

(1) It shall be unlawful for the owner or keeper of an animal to cause, suffer, or allow that animal which is owned or kept by such person to be at large in the city.

(2) All second and subsequent violations in a 12 month period are subject to enforcement procedures and a fine of not less than \$100.

(3) If, while the animal is at large in violation of this section at a location other than its owner's or keeper's property, it:

(a) Attacks another animal; or,

(b) Chases or approaches a person in a menacing fashion or apparent attitude of attack;

then the violation shall be subject to the enforcement procedures and penalties provided and the fine imposed shall not be less than \$150, or \$300, if another animal or person is injured as a result of the animal's actions. (Ord. 5-2003, passed 4-14-2003; Am. Ord. 12-2015, passed 8-10-2015) Penalty, see ' 90.99

' **90.05 ANIMALS CREATING A NUISANCE.**

(A) It shall be unlawful for the owner or person in charge or control of any animal or for any person who has the authority or power to prevent the same, to suffer or permit any animal to become a nuisance.

(B) Excessive, continuous or untimely barking, yelping, howling, crying or other distressing, loud or unusual noise, molesting passersby, chasing, vehicles, habitually attacking other domestic animals, trespassing upon school grounds, or upon private property in a manner as to damage property, shall be deemed a nuisance.

(Ord. 5-2003, passed 4-14-2003) Penalty, see ' 90.99

' **90.06 ANIMAL SANITATION.**

It shall be unlawful for any owner or custodian of any animal to allow an animal to soil, defile or defecate on any public property, street, sidewalk, public way, and during public parades and celebrations unless the owner or custodian immediately removes and disposes of all feces deposited by the animal by placing it in a proper container.

(Ord. 5-2003, passed 4-14-2003) Penalty, see ' 90.99

' **90.07 CRUELTY AND NEGLECT OF ANIMALS.**

(A) It shall be unlawful for any person to willfully or maliciously strike, beat, abuse or intentionally run down with a vehicle any animal or otherwise engage in any act to cause or inflict unnecessary pain, injury, suffering or death to the animal; except that reasonable force may be used to drive away vicious or trespassing animals.

(B) No person except a licensed veterinarian, for humanitarian purposes, shall administer poison to any animal, or knowingly leave any poisonous substance

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of any kind or ground glass in any place with the intent to injure any animal.

(C) No owner or custodian shall fail to provide his or her animal with sufficient good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and with humane care and treatment. All excrement shall be disposed of on a regular basis and in a proper container.

(D) An animal in the custody of the city shall be considered to be abandoned 5 days after the city has attempted written notice to the owner. Written notice shall be sent to the owner=s mailing address at the time the animal was in custody.

(1) Abandonment of an animal under this section constitutes the relinquishment of all rights and claims by the owner of the animal and it may be sold or otherwise disposed of as the city sees fit and the purchaser or donee of the animal shall receive full and clear title to the animal.

(2) The giving of notice as provided in this section relieves the city of criminal or civil liability.

(3) The individual who abandoned the animal under this section is liable for all reasonable and customary expenses incurred for food and board, euthanasia, and disposal of the animal.
(Ord. 5-2003, passed 4-14-2003) Penalty, see ' 90.99

' 90.08 ANIMAL POUND AND IMPOUNDMENT OF ANIMALS.

(A) The Common Council shall provide a suitable place to impound the animals as hereinbefore provided.

(B) The Street Commissioner is authorized and empowered to seize any and all animals that are found to be running at large within the municipal limits of the city.

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(C) The city shall keep any animal impounded for a period of 5 days, and should the owner fail to claim ownership of the dog before the expiration of that time, the city shall dispose of the animal in any legal way. Should the owner of the dog claim ownership, he or she shall pay to the city the sum of \$25 for the first offense, \$50 for the second offense and \$75 for the third offense. In addition thereto, he or she shall submit proof to the city that the dog is properly licensed and that it is properly vaccinated against rabies and/or other diseases.
(Ord. 5-2003, passed 4-14-2003) Penalty, see ' 90.99

' 90.09 AUTHORITY TO DESTROY VICIOUS OR FEROCIOUS ANIMALS.

Notwithstanding any other provision of this act, the Street Commissioner or his or her members are authorized to immediately destroy any vicious or ferocious animal which cannot be safely captured or kept in custody by usual and available means, or which is observed to be attacking a person or other animal.
(Ord. 5-2003, passed 4-14-2003) Penalty, see ' 90.99

' 90.99 PENALTY.

(A) A person who violates any provision of this chapter for which no penalty is otherwise provided, shall be fined not more than \$1,000. A separate offense shall be deemed committed on each day that a violation occurs or continues.

(B) A person who violates any provision of ' 90.02(C) commits a Class A infraction and shall be fined not more than \$2,500. A separate offense shall be deemed committed on each day that a violation occurs or continues.
(Ord. 14-1991, passed 10-14-1991)

(C) For a violation of ' 90.05, the nuisance may be enjoined or abated.
(Ord. 5-2003, passed 4-14-2003)

CHAPTER 91: CIVIL EMERGENCIES

Section

- 91.01 Definition
- 91.02 Proclamation by Mayor
- 91.03 Imposition of curfew
- 91.04 Additional regulations
- 91.05 Emergency powers

- 91.99 Penalty

' 91.01 DEFINITION.

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

CIVIL EMERGENCY.

(1) A riot of unlawful assembly characterized by the use of actual force of violence or any threat to use force if accompanied by immediate power to execute the force by 3 or more persons acting together without authority of law; or

(2) Any natural disaster or man-made calamity including flood, conflagration, cyclone, tornado, earthquake, or explosion within the corporate limits of the city resulting in the death or injury of persons or the destruction of property to an extent that extraordinary measures must be taken to protect the public health, safety, and welfare.
(Am. Ord. 2-70, passed 2-2-1970)

Statutory reference:

*Public health, safety, and welfare, see
I.C. 36-8-2-4*

' 91.02 PROCLAMATION BY MAYOR.

When in the judgement of the Mayor a civil emergency as defined herein is deemed to exist, he or she shall forthwith proclaim in writing the existence of same. In case of the absence of the Mayor from the city, the Chief of Police shall be authorized to act in his or her stead.

(Am. Ord. 1-70, passed 2-2-1970)

' 91.03 IMPOSITION OF CURFEW.

After proclamation of a civil emergency by the Mayor, he or she may order a general curfew applicable to geographical areas of the city or to the city as a whole, as he or she deems advisable and applicable during the hours of the day or night as he or she deems necessary in the interest of the public safety and welfare.

(Am. Ord. 1-70, passed 2-2-1970) Penalty, see ' 91.99

' 91.04 ADDITIONAL REGULATIONS.

After proclamation of a civil emergency, the Mayor may also in the interest of public safety and welfare make any or all of the following orders.

(A) Order the closing of all retail liquor stores.

(B) Order the closing of all taverns.

(C) Order the closing of all private clubs or portions thereof wherein the consumption of intoxicating liquor and beer is permitted.

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(D) Order the discontinuance of the sale of beer.

(E) Order the discontinuance of selling, distributing, or giving away gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle.

(F) Order the closing of gasoline stations and other establishments, the chief activity of which is the sale, distribution, or dispensing of liquid flammable or combustible products.

(G) Order the discontinuance of selling, distributing, dispensing, or giving away of firearms and ammunition.

(H) Issue any other orders as are imminently necessary for the protection of life and property.
(Am. Ord. 1-70, passed 2-2-1970) Penalty, see ' 91.99

(D) *Restricted areas.* No person shall enter any area designated by the Mayor as a restricted area unless in the performance of official duties or with written permission from the Mayor or his or her duly designated representative, or the person shall prove residence therein.

(Am. Ord. 1-70, passed 2-2-1970) Penalty, see ' 91.99

' 91.99 PENALTY.

Whoever violates any provision of this chapter or any order made by the Mayor in accordance with the terms of this chapter, shall be fined not more than \$1,000. A separate offense shall be deemed committed on each day that a violation occurs or continues.

' 91.05 EMERGENCY POWERS.

During the period of a declared state of emergency, the Mayor shall have the power to invoke any or all of the following provisions.

(A) *Alcoholic beverages.* No person shall consume any alcoholic beverages in a public street or place which is publicly owned, or in any motor vehicle driven or parked thereon which is within a duly designated restricted area.

(B) *Weapons.* No person shall carry or possess any rock, bottle, club, brick, or weapon, who uses or intends to use the same unlawfully against the persons or property of another.

(C) *Incendiary missile.* No person shall make, carry, possess, or use any type of Molotov cocktail, gasoline or petroleum base fire bomb, or other incendiary missile.

CHAPTER 92: FIRE PREVENTION CODE

Section

General Provisions

- 92.01 Code adopted
- 92.02 Definitions
- 92.03 Enforcement
- 92.04 Storage of flammable liquids
- 92.05 Bulk storage of liquefied petroleum gases
- 92.06 Storage of explosives and blasting agents
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Smoke Detectors

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Outdoor Wood and Other Fired Furnaces

- 92.25 Purpose
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Cross-reference:

Charges where water supply used for fire protection, see ' 50.261

Fire Department, see Ch. 34

Statutory reference:

Fire prevention, see I.C. 36-8-2-3

GENERAL PROVISIONS

' 92.01 CODE ADOPTED.

For the purpose of prescribing regulations governing conditions hazardous to life or property, from fire or explosion, there is adopted, as if set out at length herein, that certain code known as the 1979 Edition of National Fire Code, published by the National Fire Protection Association, Boston, Massachusetts, and all amendments or additions thereto, including future yearly additions, and the provisions thereof shall be controlling within the corporate limits of the city. Two copies of the National Fire Code and all amendments or additions are available for public inspection at the office of the Clerk-Treasurer (Ord. 4-68, passed 4-8-1968) Penalty, see ' 92.99

' 92.02 DEFINITIONS.

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

BUREAU OF FIRE PREVENTION. The Chief of the Fire Department or other officer of the city designated to enforce the provisions of the Fire Prevention Code.

CORPORATION COUNSEL. The City Attorney.

MUNICIPALITY. The City of Batesville.

' 92.03 ENFORCEMENT.

The Fire Prevention Code shall be enforced by the Chief of the Fire Department and any other officers of the city designated by him, her or by the Mayor, and it shall be unlawful for any person properly served with an order under the provisions of the Fire Prevention Code to fail to comply with the order.

Penalty, see ' 92.99

' 92.04 STORAGE OF FLAMMABLE LIQUIDS.

(A) The limits referred to in ' 16.22(a) of the Fire Prevention Code in which storage of flammable liquids in outside aboveground tanks is prohibited, are established as follows: District C-2 as indicated on the zoning map.

(B) The limits referred to in ' 16.51 of the Fire Prevention Code, in which new bulk plants for flammable liquids are prohibited, are established as follows: Districts R-1, R-2, R-5, C-1, C-2, and C-3 as indicated on the zoning map.

' 92.05 BULK STORAGE OF LIQUEFIED PETROLEUM GASES.

The limits referred to in ' 21.6(a) of the Fire Prevention Code, in which bulk storage of liquefied petroleum gas is restricted, are established as follows: all districts, except the R-1 District, as indicated on the zoning map.

' 92.06 STORAGE OF EXPLOSIVES AND BLASTING AGENTS.

The limits referred to in ' 12.6(b) of the Fire Prevention Code, in which storage of explosives and blasting agents is prohibited, are established as follows: all districts, except the R-1 District, as indicated on the zoning map.

' 92.07 MODIFICATIONS.

The Chief of the Fire Department shall have the power to modify any of the provisions of the Fire Prevention Code on application in writing by the owner or lessee, or his or her duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the Fire Prevention Code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of the modification when granted or allowed and the decision of the Chief of the Fire Department thereon shall be entered on the records of the Department and a signed copy shall be furnished the applicant.

' 92.08 APPEALS.

Whenever the Chief of the Fire Department shall disapprove an application or refuse to grant a license or permit applied for, or when it is claimed that the provisions of the Fire Prevention Code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Chief of

the Fire Department to the Board of Public Works and Safety within 30 days from the date of the decision appealed from.

' 92.09 MATERIALS, PROCESSES, OR OCCUPANCIES REQUIRING PERMITS.

The Mayor, Chief of the Fire Department, and the Building Commissioner shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes, or occupancies, which shall require permits, in addition to those now enumerated in the Fire Prevention Code. The Chief of the Fire Department shall post the list in a conspicuous place in his or her office, and distribute copies thereof to interested persons.

' 92.10 OPEN BURNING.

(A) Any fire built on the ground. This does not include any burning in a metal, wire or masonry container. No person shall open-burn any materials within the corporate limits of the city, other than in a noncombustible container with enclosed sides and bottom and sufficiently vented to induce proper combustion, and with a mesh covering with openings no larger than 1/4 inch square.

(B) No burning of waste oil, tires, or garbage shall be permitted at anytime. Only clean wood products such as leaves, limbs, or other prunings and natural growth.

(C) Burning of any type shall be during daylight hours only, between sunrise and sunset, with all fires to be attended at all times until completely extinguished.

(D) No burning of any type shall be conducted during unfavorable meteorological conditions such as high winds and air stagnation. Any fire creating a nuisance because of a smoke, odor, or fire hazard shall be immediately extinguished.

(E) No burning of any type shall be conducted at any construction site.
(Ord. 17-90, passed 11-12-1990; Am. Ord. 9-2002, passed 11-12-2002) Penalty, ' 92.99

' 92.11 KEY LOCK BOX SYSTEM.

(A) The following structures shall be equipped with a key lock box at or near the main entrance or other location required by the Fire Chief:

(1) Commercial or industrial structures protected by an automatic alarm system or an automatic suppression system, or the structures that are secured in a manner that restricts access during an emergency;

(2) Multi-family residential structures that have restricted access through locked doors and a common corridor for access to the living units;

(3) Nursing care facilities; and

(4) Governmental structures that are protected by an automatic alarm or an automatic suppression system.

(B) (1) Prior to the issuance of an occupation permit, all newly constructed structures subject to this section shall have the key lock box installed and operational.

(2) All structures subject to this section, and in existence on it effective date, shall have 1 year from this effective date to have a key lock box installed and operational.

(C) The Fire Chief shall designate the type of key lock box system to be implemented within the city, and shall have the authority to require all structures to use that system.

(D) The owner or operator of a structure required to have a key lock box shall, at all times, keep a key in the lock box that will allow for access to the structure.

(E) The key box shall contain:

- (1) Keys to locked points of ingress, whether on the interior or exterior of the buildings;
- (2) Keys to locked mechanical equipment rooms;
- (3) Keys to locked electrical rooms;
- (4) Keys to elevator controls; and
- (5) Keys to other areas as directed by the fire officials.

(F) The Fire Chief shall be authorized to implement rules and regulations for the use of the key lock box system.
(Ord. 14-2005, passed 10-10-2005)

SMOKE DETECTORS

92.15 DEFINITIONS.

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

APARTMENT HOUSE. Any building which is occupied as a home or residence of 3 or more families or persons living independently of each other and doing their own cooking in the building, and the terms shall include buildings containing 3 or more apartments.

APPROVED FIRE ALARM CONTROL PANEL. Any fire alarm control panel that meets the requirements of Underwriter=s Laboratories Standard 864.

APPROVED SMOKE DETECTOR. Any smoke detector that meets the requirements of Underwriter=s Laboratories Standards 217 or 268.

DWELLING. Any building which is not an apartment house, lodging house, hotel, or mobile home and which contains 1 or 2 dwelling units which are, or are intended or are designed to be, occupied for living purposes.

DWELLING UNIT. A single unit providing complete, independent living facilities for 1 or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, or a single unit used by 1 or more persons for sleeping and sanitation pursuant to a work practice or labor agreement.

HABITABLE ROOM. Every room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding rooms containing toilets, bathtubs or showers and excluding laundry, pantries, foyers, communicating corridors, closets, and storage spaces.

REMODELED. The alteration or reconstruction of an existing building for which a building permit is required to be obtained by the local political subdivision.

ROOMING HOUSE. Every dwelling or part thereof which contains 1 or more rooming units in which space is sublet for compensation by the owner or operator to 2 or more persons not within the second degree of kindred to the person compensated. Boarding houses, hotels, inns, lodging homes, dormitories, and other similar dwelling places are included, except and to the extent that they are governed by stricter standards elsewhere created.

ROOMING UNIT. The room or group of rooms let to an individual or household for use as living and sleeping quarters but not for cooking, whether or not common facilities for cooking are made available.

SEPARATE SLEEPING AREA. The area or areas of a dwelling in which the bedrooms are located. Bedrooms separated by the other use areas, such as kitchens or living rooms (but not bathrooms), shall be considered as separate sleeping areas for the purposes of this regulation.

STORY. The portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above.
(Ord. 7-88, passed 7-11-1988)

' 92.16 DETECTOR SPECIFICATIONS.

(A) All detectors installed in dwelling, rooming houses or apartment houses constructed or remodeled on or after July 1, 1988, shall be powered by a non-switchable 120 VAC source or an approved fire alarm control panel.

(B) Detectors installed within dwelling units or rooming units constructed before July 1, 1988, shall be powered by batteries, a non-switchable AC source, or an approved fire alarm control panel.

(C) All detectors installed within common stairwells of buildings constructed before July 1, 1988, and containing less than 6 dwellings or rooming units shall be powered by an AC source or an approved fire alarm control panel.

(D) Detectors installed in common stairwells or hallways of buildings containing 6 or more dwelling units shall be monitored and powered by an approved fire alarm control panel.

(E) Detectors installed within new dwelling units after October 1, 1994, in addition to being powered by a nonswitchable 120 vac source, shall also be equipped with a battery backup and interconnected so that, if 1 detector goes into alarm, all detectors will alarm.
(Ord. 7-88, passed 7-11-1988; Am. Ord. 17-94, passed 9-12-1994) Penalty, see ' 92.99

' 92.17 LOCATION.

(A) It shall be the responsibility of the owner of each dwelling, rooming house, or apartment house to install approved smoke detectors according to the Uniform Building Code Sec. 1210 and City of Batesville Ordinance 7-11-88 and 17-94.

(B) All detectors, control panels and associated equipment installed shall meet the installation requirements of NFPA Standards 72A, 72E, and 74.
(Ord. 7-88, passed 7-11-1988; Am. Ord. 17-94, passed 9-12-1994; Am. Ord. 5-96, passed 6-10-1996) Penalty, see ' 92.99

' 92.18 INSTALLATION AND MAINTENANCE.

(A) It shall be the responsibility of the owner to supply and install all required detectors. The owner shall be responsible for testing and maintaining detectors in common stairwells and hallways. It shall be the responsibility of the tenant to test and maintain detectors within dwelling units or rooming units and to notify the owner or authorized agent in writing of any deficiencies. The owner shall be responsible for providing each tenant with written information regarding detector testing and maintenance.

(B) The tenant shall be responsible for replacement of the battery or unit except that the battery or unit shall be in operating condition at the time that the tenant takes possession. The owner or authorized agent shall correct any reported deficiencies in the smoke detector and shall not be in violation of this subchapter for a deficient smoke detector when he or she has not received notice of the deficiency.
(Ord. 7-88, passed 7-11-1988) Penalty, see ' 92.99

' 92.19 ENFORCEMENT AND COMPLIANCE.

All smoke detectors required by this subchapter shall be installed and in proper working order not later than December 31, 1988. The Fire Chief of the city or his or her duly authorized appointees shall have full authority to go in and upon the premises within the city at all reasonable time for purpose of inspection and to determine compliance with this chapter. The Fire Chief or his or her authorized personnel shall have the authority to issue citations to property owners for any violations of this subchapter with violators to be cited to the City Court or other court of competent jurisdiction.
(Ord. 7-88, passed 7-11-1988) Penalty, see ' 92.99

***OUTDOOR WOOD AND
OTHER FIRED FURNACES***

' 92.25 PURPOSE.

This subchapter is intended to promote the public health, safety, and welfare and to safeguard the health, comfort, living conditions, safety, and welfare of the citizens of the City of Batesville due to air pollution and fire hazards of outdoor burning.

(Ord. 3-2006, passed 4-10-2006)

' 92.26 APPLICABILITY.

This subchapter applies to all outdoor wood and other fired furnaces within the City of Batesville. This subchapter does not apply to the following activities:

(A) Outdoor grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances;

(B) Burning in a stove, furnace, fireplace or other heating device located within a building used for human habitation or occupation unless the material being burned includes refuse as defined herein; or

(C) The use of propane, acetylene, natural gas, heating oil, gasoline or kerosene in a device intended for heating, construction, or maintenance activities.
(Ord. 3-2006, passed 4-10-2006)

' 92.27 DEFINITIONS.

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

CLEAN WOOD. Natural wood which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives, and does not contain resins or glues as in plywood or other composite wood products.

FIRE CHIEF. Chief of the Batesville Volunteer Fire Department, or other person authorized by the Fire Chief.

HARD WOOD. Wood from broad-leaved deciduous trees such as oak, beech, maple, ash, sweet gum or poplar.

HEATING SEASON. From October 1 through May 1.

OUTDOOR BURNING. Burning in an outdoor furnace.

OUTDOOR FURNACE. A furnace, stove, boiler or similar device, or any part thereof, designed for burning wood, coal, corn, or any other combustible material, to produce heat or energy used as a component of a heating system providing heat for interior space or water source, and that is not located within a building intended for habitation or occupation by humans.

REFUSE. Any waste material except clean wood.

RIDGE LINE. The horizontal line formed by the junction of 2 sloping planes, especially the line formed by the surfaces at the top of a roof.
(Ord. 3-2006, passed 4-10-2006)

**' 92.28 GENERAL PROHIBITION ON
OUTDOOR BURNING AND REFUSE
BURNING.**

Outdoor burning and refuse burning are prohibited in the City of Batesville unless the burning is specifically permitted by this subchapter.
(Ord. 3-2006, passed 4-10-2006) Penalty, see ' 92.99

' 92.29 MATERIALS THAT MAY NOT BE BURNED.

Unless a specific written approval has been obtained from the Indiana Department of Environmental Management, or other appropriate state or federal agency, the following materials may not be burned in an outdoor incineration or heating device:

(A) Rubbish or garbage, including but not limited to, food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris, or other household or business wastes;

(B) Waste oil or other oily wastes, unless otherwise permitted by the Indiana Department of Environmental Management;

(C) Asphalt and products containing asphalt;

(D) Treated or painted wood, including but not limited to, plywood, composite wood products or other wood products that are painted, varnished, or treated with preservatives;

(E) Any plastic material, including but not limited to, nylon, PVC, ABS, polystyrene or urethane foam, synthetic fabrics, plastic films and plastic containers;

(F) Rubber including tires and synthetic rubberlike products; or

(G) Newspaper, corrugated cardboard, container board and paper products. Notwithstanding the foregoing provisions, small quantities of newspaper, paper and cardboard products may be used as starter fuel for any fire that is permitted under this subchapter. (Ord. 3-2006, passed 4-10-2006)

' 92.30 OUTDOOR FURNACES.

(A) Ground level pollution of smoke and particulate matter caused by the incomplete combustion of outdoor furnaces in the City of Batesville is hereby declared to be a nuisance.

(B) Outdoor furnaces shall not be permitted to be installed, used or maintained within the corporate city limits of Batesville, Indiana. (Ord. 3-2006, passed 4-10-2006)

' 92.31 EXISTING OUTDOOR FURNACES.

Any existing outdoor furnaces in the City of Batesville shall be installed, used, operated and maintained in strict compliance with the provisions of this subchapter.

(A) All outdoor furnaces shall be installed, operated and maintained in strict conformance with the manufacturer=s instructions and the regulations promulgated hereunder. In the event of a conflict, the stricter of the manufacturer=s instructions or the regulations promulgated hereunder shall control.

(B) The outdoor furnace shall have a chimney or stack through which all smoke and by-products of combustion are emitted, the height of which shall be determined by the distance from the nearest residence or other building intended for human occupation which is not served by, or owned by the owner of, the outdoor furnace, as follows:

| | |
|----------------------|--|
| Zero feet - 100 feet | Height of the ridge line of the nearest residence or occupied building not served, plus 2 feet |
| More than 100 feet | 75% of the ridge line of the nearest residence or occupied building not served, plus 2 feet |

(1) In no event shall the chimney or stack height be less than 15 feet from ground level.

(2) The chimney stack must be dismantled, cleaned, and inspected on an annual basis during the off heating season and may not be reconstructed until the beginning of the heating season.

(3) Any furnace that is not appropriately sheltered per manufacturer=s specifications should be a minimum of 25 feet from the property line and a minimum of 75 feet from any other residential home. Furnaces in existence at the time this subchapter takes effect are presumed to be properly sheltered.

(4) Enforcement of the requirements of this division may be waived upon receipt by the Fire Chief of the City of Batesville, written notices of waiver by the landowners of the 2 nearest residences to the property served by the furnace. It is the responsibility of the furnace owner to obtain the written notices of waiver.

(C) Only clean hard wood may be burned in an outdoor furnace and it only may be burned during the heating season. Under no circumstance may coal, or any materials prohibited under ' 92.29 hereof be burned in an outdoor furnace.

(D) The outdoor furnace shall be sufficiently vented to induce complete primary combustion.

(E) The owner of the outdoor furnace shall operate the same in a manner which is not harmful, and does not create a nuisance or unreasonable interference with the use and enjoyment by owners or occupants of neighboring properties, and the public in general.

(F) Owners of existing outdoor furnaces within the City of Batesville shall bring the same into compliance with this subchapter within 30 days from the effective date of this subchapter.

(G) Ownership cannot be changed for existing outdoor furnaces. In the event the real estate upon which an outdoor furnace exists is transferred in any manner from its current owners, the outdoor furnace must be dismantled.

(Ord. 3-2006, passed 4-10-2006)

' 92.32 RIGHT OF ENTRY AND INSPECTION.

The Fire Chief or any authorized Code Enforcement Officer of the City of Batesville who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this subchapter.

(Ord. 3-2006, passed 4-10-2006)

' 92.33 ENFORCEMENT.

The Fire Chief or his or her designee and the Police Department are authorized to enforce the provisions of this subchapter.

(Ord. 3-2006, passed 4-10-2006)

' 92.99 PENALTY.

(A) *Generally.*

(1) Whoever violates any of the provisions of the Fire Prevention Code or fail to comply therewith, or who shall violate or comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, shall, for each and every violation and noncompliance respectively, be fined not more than \$1,000.

(2) The imposition of a penalty for any violation shall not excuse the violation or permit it to continue; and all persons shall be required to correct or remedy the violations or defects within a reasonable time, and when not otherwise specified each 10 days that prohibited conditions are maintained shall constitute a separate offense.

(3) The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

(B) *Smoke detectors.* Whoever violates any of the provisions of ' ' 92.15 *et seq.* shall be subject to a fine of up to \$25 for each offense, with repeat violators to be subject to a fine of up to \$250 for each offense.

(Ord. 7-88, passed 7-11-1988)

(C) *Open burning.* Any person who shall violate the provisions of ' 92.10 shall be guilty of a Class D infraction, with a penalty of up to \$25 plus costs. Any second or subsequent violation or burning in violation of ' 92.10 after notice by the Fire Chief shall constitute a Class C infraction, with a penalty of up to \$500 per offense plus costs. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(Ord. 17-90, passed 11-12-1990)

(D) *Outdoor wood and other fired furnaces.* Any person, firm or other entity in violation of any portion of ' ' 92.25 *et seq.* shall be subject to a civil penalty in the sum of \$100 for each offense. Every day, or part thereof, that a violation continues in existence constitutes a separate violation for which civil penalties may be imposed. In addition to civil penalties, the appropriate enforcement officers of the City of Batesville may seek injunctive relief.

(Ord. 3-2006, passed 4-10-2006)

CHAPTER 93: GARBAGE AND TRASH; LANDFILL

Section

General Provisions

- 93.01 Contract for collection and disposal of garbage
- 93.02 Rate of service charge
- 93.03 Billing
- 93.04 Collection of unpaid service charges
- 93.05 Cost of service charge
- 93.06 Adjustment

Unlawful Dumping of Refuse

- 93.15 Definition
- 93.16 Proper containers for sanitary storage
- 93.17 Disposing of refuse from any moving vehicle

GENERAL PROVISIONS

‘ 93.01 CONTRACT FOR COLLECTION AND DISPOSAL OF GARBAGE.

The city shall enter into a contract from time to time for the collection and disposal of refuse and garbage and shall pay for the service by levying a service charge against property owners served as provided for by Acts of 1969, Chapter 171 of the 1969 Acts of Indiana.

(Ord. 5-79, passed 5-14-1979)

Statutory reference:

Service Charges, see I.C. 36-9-25-11, 36-9-30-5, 36-9-30-11

‘ 93.02 RATE OF SERVICE CHARGE.

The rate of service charge to collect refuse and garbage shall be based on the type of refuse and garbage to be disposed of, namely residential waste, and the service charge shall be payable by property owners to whom the service is available.

(Ord. 5-79, passed 5-14-1979)

‘ 93.03 BILLING.

Each property owner shall be billed directly for each residence owned and the owner of each multiple-family dwelling, mobile home park, or apartment building shall be billed for 1 service charge per unit.

(Ord. 5-79, passed 5-14-1979)

‘ 93.04 COLLECTION OF UNPAID SERVICE CHARGES.

All service charges provided for herein billed and unpaid shall be collected as provided for in Acts of 1969, Chapter 171 or any other applicable law.

(Ord. 5-79, passed 5-14-1979)

Statutory reference:

Service charges, see I.C. 36-9-25-11, 36-9-30-5, 36-9-30-11

' 93.05 COST OF SERVICE CHARGE.

Based on the present number of residential units served and the present cost of garbage and refuse collection, the service charge shall be as follows:

| | <i>Per month per residential unit</i> |
|-----------------------------|---------------------------------------|
| 1-1-97 through 12-31-97 | \$8.00 |
| 1-1-98 through 12-31-98 | \$8.20 |
| 1-1-99 through 12-31-99 | \$8.40 |
| 1-1-2000 through 12-31-2000 | \$8.40 |
| 1-1-2001 through 12-31-2001 | \$8.49 |
| 1-1-2002 through 12-31-2002 | \$8.60 |
| 1-1-2003 on | \$9.67 |

(Ord. 5-79, passed 5-14-1979; Am. Ord. 14-86, passed 8-11-1986; Am. Ord. 17-91, passed 12-9-1991; Am. Ord. 2-94, passed 2-14-1994; Am. Ord. 15-96, passed 12-29-1996; Am. Ord. 1-2001, passed 1-8-2001; Am. Ord. 10-2002, passed 1-13-2003)

' 93.06 ADJUSTMENT.

The service charge provided for herein shall be adjusted from time to time by the Common Council to ensure sufficient funds are always available to pay for the service.

(Ord. 5-79, passed 5-14-1979)

UNLAWFUL DUMPING OF REFUSE

' 93.15 DEFINITION.

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

REFUSE. All putrescible, nonputrescible solid, and semisolid wastes, including, garbage, rubbish, ashes, street cleanings, dead animals, offal, and solid commercial, industrial, and institutional wastes. (Ord. 6-78, passed 5-8-1978)

' 93.16 PROPER CONTAINERS FOR SANITARY STORAGE.

It shall be unlawful for any person to put, throw, dump, or leave refuse in, on, or within the limits of the city, or adjacent to any public highway, park, recreational area, or in the immediate vicinity of any of the city=s reservoirs except in proper containers provided for sanitary storage of the refuse.

(Ord. 6-78, passed 5-8-1978) Penalty, see ' 10.99

' 93.17 DISPOSING OF REFUSE FROM ANY MOVING VEHICLE.

The throwing, discarding, dropping, dumping, or otherwise disposing of the refuse from an moving vehicle other than a public conveyance shall be prima facie evidence of a violation by the operator of the private conveyance.

(Ord. 6-78, passed 5-8-1978) Penalty, see ' 10.99

CHAPTER 94: LAKE BISCHOFF REGULATIONS

Section

- 94.01 Entrance on lake and grounds
- 94.02 State license required to fish
- 94.03 Discharge of firearms in lake area
- 94.04 Swimming in lake prohibited
- 94.05 Enforcement
- 94.06 Creation of unsanitary condition
- 94.07 Deposit of sewage and garbage in lake area
- 94.08 Subdivisions in lake area to comply with Comprehensive Plan
- 94.09 Reserved
- 94.10 Reserved
- 94.11 Boating regulations
- 94.12 Construction of dock, pier, or boathouse
- 94.13 Parking of camping vehicles and school buses

- 94.99 Penalty

Cross-reference:

Permitted recreational uses of reservoirs, see ' 96.03

' 94.01 ENTRANCE ON LAKE AND GROUNDS.

The city owns the real estate on which Lake Bischoff is constructed, and it is declared to be a policy of the city that any entrance on the lake, or lands owned by the city, by boats or vehicles without first obtaining the permission and consent of the city, is declared to be a trespass on city lands, and as such, a violation of state law.

(Ord. 404, passed 6-13-1960) Penalty, see ' 94.99

Cross-reference:

Streets and sidewalks, see Ch. 97

' 94.02 STATE LICENSE REQUIRED TO FISH.

No person shall take, catch, or attempt to take or catch any species of fish from the lake area without a state fishing license in full force and effect, issued to the person and in his or her possession, and all officers of the state with proper credentials are permitted to enter on the lake area for the purpose of enforcing the laws of the state. Goldfish and other of the carp group of fishes shall not be used as bait at any time or place on or from the shores of Lake Bischoff.

(Ord. 404, passed 6-13-1960) Penalty, see ' 94.99

Cross-reference:

Taking fish from reservoir, see ' 130.09

' 94.03 DISCHARGE OF FIREARMS IN LAKE AREA.

No person shall fire or discharge any firearm of any description within the limits of the lake area, except police officers in the performance of their duties. (Ord. 404, passed 6-13-1960; Am. Ord. 13-2008, passed 11-10-2008; Am. Ord. 3-2013, passed 7-8-2013) Penalty, see ' 94.99

Cross-reference:

Discharge of firearms, see ' 130.11

' 94.04 SWIMMING IN LAKE PROHIBITED.

It is declared to be the policy of the city that no swimming shall be permitted in the lake at any time. (Ord. 404, passed 6-13-1960) Penalty, see ' 94.99

' 94.05 ENFORCEMENT.

The city, through its police department, may enforce the provisions of this chapter as the circumstances may from time to time require. (Ord. 404, passed 6-13-1960; Am. Ord. 3-2013, passed 7-8-2013) Penalty, see ' 94.99

' 94.06 CREATION OF UNSANITARY CONDITION.

The violation of any provisions of any existing city ordinance or ordinance of the city to be hereinafter adopted, whereby any unsanitary condition is created, is declared to be a public nuisance, and any persons violating any provision of this section shall be liable for all damage and expenses thereby caused to the city, or any other person, by reason of the violation in addition to the criminal penalties herein provided. (Ord. 404, passed 6-13-1960) Penalty, see ' 94.99

' 94.07 DEPOSIT OF SEWAGE AND GARBAGE IN LAKE AREA.

It shall be unlawful for any person to place, deposit, or permit to be deposited in an unsanitary manner on public or private property below the high water line of the lake any sewage, garbage, waste, or waste water, or to construct or maintain any privy, privy vault, septic tank, or septic system seepage pit, or other facility intended or used for the disposal of sewage or waste in any area which will contaminate the water course which continuously or intermittently flows directly or indirectly into the lake. Before the construction of any private sewage disposal system or privies on any land bordering the lake, the owner shall first obtain a written permit, signed by the city sanitarian or his or her lawfully designated agent. A permit and inspection fee of \$25 shall be paid to the Clerk-Treasurer at the time that the application is signed. The construction of any sewage disposal systems or privies shall be constructed and maintained

at no expense to the city, in an approved manner as described and illustrated in all city ordinances or State Board of Health bulletins in existence at the time of the construction.

(Ord. 404, passed 6-13-1960) Penalty, see ' 94.99

Cross-reference:

Unlawful dumping of refuse, see ' ' 93.15 et seq.

' 94.08 SUBDIVISIONS IN LAKE AREA TO COMPLY WITH COMPREHENSIVE PLAN.

All persons planning subdivisions in the vicinity of the lake area, wherein any part of the land in the subdivision borders on or drains across land owned by the city, shall comply with all of the provisions of the Master Plan of the city, and necessary permits shall be obtained from the city before the subdivision shall be approved.

(Ord. 404, passed 6-13-1960) Penalty, see ' 94.99

Cross-reference:

Comprehensive Master Code, see Ch. 150

' 94.09 RESERVED.**' 94.10 RESERVED.****' 94.11 BOATING REGULATIONS.**

(A) No boat, canoe, or other vessel shall be placed on or operated on any part of Lake Bischoff for fee or profit, for hire or rental to the second party, either as a direct charge to second party, or as an incident to other services provided to the party.

(B) No boats, pontoons, or other craft shall be permitted on Lake Bischoff that are more than 30 feet long from bow to stern.

(C) All boats used on the waters of the lake shall be subject to inspection by the City Police Department or its representatives.

(D) The city shall, at all times, have power and authority to prohibit, restrict, or otherwise limit or regulate the keeping, maintenance, or operation of any or all boats and watercraft on the lake on the waters of the lake, should it become necessary to do so in the interest of public health or safety, or for the protection or improvement of the lake or other cause.

(E) Boats, pontoons, and other watercraft having motors shall not be operated at speeds in excess of idle only (6 mph) or in a manner or at a speed that would produce a wake. Lake Bischoff is an idle only (6 mph) and no wake lake.

(F) No person shall operate any type of boat within 200 feet of the spillway of the Lake.

(G) No boat or watercraft commonly known as a houseboat, on which the occupants have sleeping accommodations shall be permitted on the lake, and no boat operated on the lake shall have toilet facilities.

(H) Nothing shall be discharged into the Lake in violation of the Watershed Discharge Plan mandated by the Indiana Department of Environmental Management.

(I) No boat or watercraft shall be used or operated, nor any horn or sound device sounded so as to create a nuisance or disturb the peace and quiet of any neighborhood.

(J) The City Police Department or its designee may, in its discretion, and upon written application, issue a special permit for boats or crafts for any properly sponsored special event.
(Ord. 404, passed 6-13-1960; Am. Ord. 23-84, passed 10-8-1984; Am. Ord. -2004, passed - -2004; Am. Ord. 13-2008, passed 11-10-2008; Am. Ord. 3-2013, passed 7-8-2013) Penalty, see ' 94.99

' 94.12 CONSTRUCTION OF DOCK, PIER, OR BOATHOUSE.

The city reiterates its policy of not limiting the use of privately owned property, but since usable docks and piers can only be constructed in the lake area owned or controlled by the city, the following regulations pertaining to the structures are enacted.

(A) No person shall construct a dock, pier, boathouse, or structure of any type on land adjoining the lake without permission of the Waterworks Board. Any person desiring to construct any of the above type structures shall submit to the Waterworks Board his or her plans and specifications for the structure.

(B) No person will be permitted to construct a pier, dock, or boathouse that exceeds 25 feet into the lake from the shoreline or a total size of 300 square feet, nor construct a boathouse sufficient in size to house more than 2 boats, without reference of the request to the Waterworks Board for approval.

(C) All persons constructing docks, piers, or boathouses in the lake area shall maintain the docks, piers, or boathouses in a manner that they shall be safe and sanitary, and shall repair or remove them at the request of the trustees of the City Waterworks Department or its duly authorized agent.
(Ord. 404, passed 6-13-1960; Am. Ord. 7-2009, passed 12-14-2009) Penalty, see ' 94.99

' 94.13 PARKING OF CAMPING VEHICLES AND SCHOOL BUSES.

No person shall camp or park any camping vehicle, such as trailers and school buses, on any property owned by the city surrounding any of its artificial lakes.
(Ord. 404, passed 6-13-1965) Penalty, see ' 94.99

(A) Whoever violates any of the provisions of this chapter for which no penalty is otherwise provided, shall be fined not more than \$1,000, to which may be added a revocation of any permit issued pursuant to this chapter.

(B) A separate offense shall be deemed committed on each day that a violation occurs or continues.

(C) Further, any person violating any of the provisions of this chapter shall become liable to the city for the expenses, loss, or damage occasioned by reason of the violation, and the violation shall be deemed a nuisance and subject to injunction.

(Ord. 404, passed 6-13-1960; Am. Ord. 3-2013, passed 7-8-2013)

CHAPTER 95: NUISANCES

Section

Weeds

- 95.01 Certain vegetation declared nuisance
- 95.02 Destruction of weeds
- 95.03 Cost of destruction a lien on property
- 95.04 Notice to destroy weeds; procedure

- 95.99 Penalty

serve written notice on the owner, occupant, or person in control of the lot or lands to destroy the same within 7 days in the manner provided in ' 95.01. If those weeds or rank vegetation are not destroyed within the 7-day period, the Street Commissioner shall destroy the weeds or rank vegetation and the cost of the destruction shall be paid for by the city.

' 95.03 COST OF DESTRUCTION A LIEN ON PROPERTY.

The Street Commissioner shall report the cost of the destruction to the Clerk-Treasurer who shall cause the costs to be placed on the tax duplicate and to be assessed against the lot or land so benefitted. The costs shall be a lien on the lot or land and shall be collected in the same manner as general taxes are collected.

' 95.04 NOTICE TO DESTROY WEEDS; PROCEDURE.

(A) The notice provided for in ' 95.02 shall be served by regular mail to the owner of the lot or land as listed on the tax duplicate at the mailing address shown thereon.

(B) If no mailing address is shown on the tax duplicate, it shall be sufficient to publish the notice once in a newspaper of general circulation in the city.

WEEDS

' 95.01 CERTAIN VEGETATION DECLARED NUISANCE.

The maintenance of thistles, burdock, jimson weeds, ragweeds, milkweeds, poison ivy, poison oak, iron weeds, and all other noxious weeds and rank vegetation is declared a public nuisance, and every owner, occupant or person in control of any lot or land within the city shall cause the lot or land within the city to be kept free from these noxious weeds by destroying them by spraying with a chemical compound approved by the Board of Health, or by cutting, digging under, or burning.

Penalty, see ' 95.99

Statutory reference:

Public health, safety, and welfare, see I.C. 36-8-2-4

' 95.02 DESTRUCTION OF WEEDS.

Whenever noxious weeds or rank vegetation included within the provisions of ' 95.01 exceed a height of 12 inches, the Street Commissioner shall

' 95.99 PENALTY.

Weeds. Notwithstanding the assessment of costs under the provisions of ' 95.03, and in addition thereto, the owner, occupant, or person in charge of the lot or land who shall fail to comply with the notice rendered under ' 95.03 shall be fined not more than \$1,000.

(Am. Ord. 24-2008, passed 12-8-2008)

[Chapter 96 begins on Page 33]

CHAPTER 96: PARKS

Section

- 96.01 Curfew
- 96.02 Reserved
- 96.03 Permitted recreational uses of reservoirs
- 96.04 General prohibitions
- 96.05 Use and fees

- 96.99 Penalty

Cross-reference:

Lake Bischoff regulations, see Ch. 94

Statutory reference:

Establishment, operation, and maintenance of public parks and programs, see I.C. 36-10-2-2

' 96.01 CURFEW.

(A) A curfew is established for all persons for all city parks maintained by the city through its Department of Parks and Recreation.

(B) No person shall use any park facility or be on park property after the hour of 11:00 p.m. and prior to 6:00 a.m. any day except during scheduled events, at which time the park for which the event is scheduled shall be open until 1:00 a.m. (Ord. 14-80, passed 10-13-1980; Am. Ord. 18-83, passed 9-12-1983) Penalty, see ' 96.99

' 96.02 RESERVED.

' 96.03 PERMITTED RECREATIONAL USES OF RESERVOIRS.

(A) Recreational use of the reservoirs under the jurisdiction of the Batesville Water and Gas Utility is permitted as follows:

| <i>Reservoir</i> | <i>Sail Boats and Motor Boats</i> | <i>Canoes and Row Boats</i> | <i>Swimming</i> |
|--|-----------------------------------|-----------------------------|-----------------|
| Lake Bischoff | Yes* | Yes | No |
| Liberty Park | No | No | No |
| Mullenkramer | No | Yes | No |
| Osier | No | Yes | No |
| Feller | No | Yes | No |
| Hahn | No | Yes | No |
| *Motors are limited to 6 horsepower and must be licensed by the utility. | | | |

(B) Parking for night fishing is not permitted in the Liberty Park boundaries or on the banks of the reservoir. (Ord. 13-96, passed 11-12-1996)

' 96.04 GENERAL PROHIBITIONS.

(A) No person shall ride or use a bicycle, skate board, roller skates, roller blades, wagon, tricycle, or other transportation device within any shelter area or pavilion area of the parks.

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(B) The playing of any radio, stereo, or other musical instrument in a manner or with volume as to be annoying or to disturb the quiet, comfort, or repose of any person in any dwelling, or other type residence in or adjacent to the parks is not permitted.

(C) Littering in the parks or surrounding premises is not permitted.

(D) The speed limit through the parks is 5 mph.

(E) Whoever violates this section shall be fined not more than \$1,000. A separate offense shall be deemed committed on each day that a violation occurs or continues.

(Ord. 13-96, passed 11-12-1996)

Editor's note:

*Repealed by I.C. 36-1-3-8-(a)(8) and
I.C. 35-45-3-2.*

96.05 USE AND FEES.**(A) Scheduling.**

(1) All scheduled events must be over by 1:00 a.m.

(2) All yearly scheduled events such as company picnics, Fire Department's festivals, and legion festivities should be scheduled at least 8 months in advance and subject to availability thereafter.

(B) Rates.**(1) Pavilion.**

(a) Any person or group that wants to use the Liberty Park Pavilion must pay the standard rate of \$300 without kitchen facilities or \$400 with kitchen facilities. Company picnics in the Pavilion without use of the kitchen shall pay the rate of \$500. Company picnics in the Pavilion with the use of the kitchen shall pay the rate of \$700.

(b) The rate for wedding receptions will be \$1,000 with an additional \$400 refundable deposit if the renter cleans up the area after use. If

the renter chooses not to clean up, the \$400 will not be refunded. Weddings without receptions will be the same rate as renting the particular rental property in which the ceremony is held.

(c) There will be no advanced decorating of the Liberty Park Pavilion; decorating is permitted only on the day of the scheduled event. No staples, nails, thumb tacks, or screws will be allowed to be used in the Liberty Park Pavilion to hang decorations. Tape, wire, or Velcro is acceptable.

(2) Park Shelters.

(a) Park Shelters 1, 2, and 3 shall be rented at the daily rate of \$100.

(b) Park Shelters 4, 5, and 6 shall be rented at the daily rate of \$50.

(3) Liberty Field.

(a) *High school teams.* Teams sponsored by an accredited Indiana high school may utilize Liberty Field for their practice and games at the rate of \$700 per season. The city will provide all chalk, field drying and field care.

(b) *Legion Baseball.* Legion Baseball may utilize Liberty Field for games at the rate of \$200 per season. The city will provide all chalk, field drying and field care.

(c) *Other groups or individuals.* All other groups or individuals may utilize Liberty Field at the rate of \$50 per day with no field preparation and \$100 with field preparation. Preparation includes dragging the field and lining the field once prior to play.

(d) *Adult softball.* Adult softball teams will be charged \$200 per team for use of Liberty Field per season. The Park Department will provide all chalk, field drying and field preparation on game nights.

(4) *Dog Park.* Dog Park rates including but not limited to admission and use of the Dog Park

in Liberty Park will be established for the year 2015 to be \$10 per dog. Dog Park rates will be reviewed and approved on a yearly basis by the Park Board.

(C) Any entity with 501(c) status or other tax exempt status may receive up to a 50% discount on any rental property. Tax exempt status must be shown at the time of reserving and paying for rental property.

(D) *Swimming pool.* Pool rates including but not limited to admission fees, yearly passes, and rental fees, will be reviewed and approved on a yearly basis by the Park Board. The Municipal (Memorial) Pool will be available free of charge to all senior citizens age 65 and older.

(E) The Common Council hereby resolves that rental fees for the city pool(s) and park(s) be collected and allocated to the respective funds for the purpose of making improvements, upkeep, maintenance, or repair to the city pool(s) and park(s) and that said fund be used for the intended purpose.

(Ord. 13-96, passed 11-12-1996; Am. Ord. 20-2009, passed 7-13-2009; Am. Ord. 13-2013, passed - -2013; Am. Ord. 1-2014, passed 1-13-2014; Am. Ord. 1-2015, passed 3-9-2015)

96.99 PENALTY.

(A) Whoever violates any provision of this chapter for which no penalty is otherwise provided, shall be fined not more than \$1,000.

(B) Any juvenile person under the age of 18 years found violating any provision of this chapter shall be determined a delinquent child as that term is defined by the Indiana Code and any juvenile shall be cited to the Juvenile Court of Ripley County, Indiana, for violation hereunder.

(Ord. 14-80, passed 10-13-1980)

(C) Any person found violating any provision of ' 96.01 shall be guilty of a Class C infraction.

(Ord. 18-83, passed 9-12-1983)

CHAPTER 97: STREETS AND SIDEWALKS

Section

Excavations

- 97.01 Excavation of streets
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General Provisions

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EXCAVATIONS

' 97.01 EXCAVATION OF STREETS.

It is declared to be unlawful for any person, firm, or corporation to make any excavation in, dig in, or otherwise molest the surface of any street, alley, or public place in the city, without first procuring a permit therefor as herein provided, or without a full and good faith compliance with the regulatory provisions of this chapter.

(Ord. 400, passed 12-14-1959) Penalty, see ' 97.99

Statutory reference:

*Regulation of use of public ways, see
I.C. 36-9-2-7*

' 97.02 APPLICATION FOR STREET EXCAVATION PERMIT.

Any person, firm, or corporation desiring to make any excavation, dig in, or otherwise molest the surface of any street, alley, or public place within the city may apply to the City Clerk-Treasurer for a permit so to do, which application shall set forth:

(A) The name and address of the owner of the premises seeking the permit;

(B) The name and address of the contractor or other person engaged to do the work thereunder;

(C) The purposes for which the work is proposed;

(D) The exact location of the work, including the depth, below the surface;

(E) A detailed description of the installation to be made and its purposes; and

(F) A covenant of the owner to replace the surface in as good condition as it was before the issuance of the permit.

(Ord. 400, passed 12-14-1959)

' 97.03 POSTING OF BOND REQUIRED.

Before any permit under this chapter is issued the owner of the premises seeking the same shall post a bond with the Clerk-Treasurer, in the penal sum of \$25 conditioned on the payment by the permittee of any damages occasioned by minor repair work to be

done under the permit and the restoration of the surface in good condition as herein provided. Any construction which the Building or Street Commissioner determines to be of a major construction nature, the owner seeking that permit shall post bond in the penal sum of \$500 on the same conditions as hereinabove set forth. On completion of the work authorized under the permit the same shall be inspected by the Street Commissioner, who shall if approved by him or her note the approval on the original application herein provided which approval when so noted shall entitle the permittee to a surrender of the bond.

(Ord. 400, passed 12-14-1959; Am. Ord. 1-79, passed 2-12-1979)

‘ 97.04 NOTIFICATION TO STREET COMMISSIONER.

Before the issuance of any permit herein provided, it shall be the duty of the Clerk-Treasurer to notify the Street Commissioner and any other city officer or employee charged with maintenance of water, sewer, gas, or other utility installations beneath the surface of the streets, alleys, and public places of the city for the purpose of determining if the proposed work will endanger any existing installations. In the event of any damage to the existing installations, the permittee shall be personally liable therefor to the city and his or her bond herein provided subject to forfeiture.

(Ord. 400, passed 12-14-1959)

‘ 97.05 RECORD OF PERMITS.

It shall be the duty of Clerk-Treasurer to keep a permanent record of the permits issued and the original applications therefor.

(Ord. 400, passed 12-14-1959)

GENERAL PROVISIONS

‘ 97.10 STREET DESIGNATION SIGNS.

(A) Any street designation signs placed in the city shall conform to the following specifications and regulations.

(1) The signs shall be metal with baked enamel finish, black letters on traffic yellow color.

(2) The signs shall be 6 inches in width and the letters thereon shall be 3-1/2 inches high.

(3) The signs shall be attached to existing poles and placed on new poles approximately 10 feet from the ground.

(4) If signs are placed on new poles, the poles shall be approximately 2-1/4 inches in diameter and made of iron. The poles shall be set 2 feet deep in an 8 inch in diameter concrete hole, the concrete to be 4 inches below surface of ground.

(5) For uniformity all signs shall be located on the northeast corner while facing north, except where any streets form a T, in which event, they shall be placed on the north side of the intersecting streets while facing north.

(6) In no event shall signs be attached to buildings.

(B) Before any person, firm, corporation, or association shall erect any street designation signs in the city it shall first obtain a permit from the Common Council.

(Ord. 330, passed 11-11-1950)

' 97.11 DISPLAY OF MERCHANDISE.

It shall be unlawful for any person, firm, or corporation operating a grocery store or place of business where fruit, food, or merchandise is sold to exhibit the fruit, food or merchandise beyond 30 inches from the inside public sidewalk line.

(Ord. 277, passed 12-27-1938) Penalty, see ' 97.99

Statutory reference:

Operation of businesses, crafts, professions, and occupations, see I.C. 36-8-2-10

Regulation of use of public ways, see I.C. 36-9-2-7

' 97.12 ROUTINE CLOSINGS OF CITY STREETS.

It is resolved by the Board of Works of the City of Batesville, that the Mayor of the City of Batesville, upon consultation of with the necessary department heads, is authorized to approve any routine closings of streets and parking lots for community events including, but not limited to, parades and festivals.

(Res. 2-2005, passed 1-10-2005)

' 97.99 PENALTY.

Whoever violates any provision of this chapter for which no penalty is otherwise provided, shall be fined not more than \$1,000. A separate offense shall be deemed committed on each day that a violation occurs or continues.

CHAPTER 98: TREE ADVISORY COMMITTEE; TREE REGULATIONS

Section

Tree Advisory Committee

- 98.01 Creation and establishment
- 98.02 Duties and jurisdiction
- 98.03 Street trees
- 98.04 Tree care
- 98.05 Regulation of tree care

Tree Regulations

- 98.20 Title
 - 98.21 Purpose and intent
 - 98.22 Definitions
 - 98.23 Street tree species to be planted
 - 98.24 Tree planting, spacing, and distances
 - 98.25 Tree clearance
 - 98.26 Public tree care
 - 98.27 Private tree care
 - 98.28 Interference with planting, maintenance, or removal
 - 98.29 Tree protection
 - 98.30 Enforcement
 - 98.31 Performance evaluation
- 98.99 Penalty
- Appendix A: Tree Request Permit
- Appendix B: Approval Tree Care Permit Request

TREE ADVISORY COMMITTEE

98.01 CREATION AND ESTABLISHMENT.

(A) *Creation.* There is hereby created and established a City Tree Advisory Committee for the City of Batesville which shall consist of 7 members, citizens and residents of Batesville.

(B) *Term of office.* The term of the 7 persons initially appointed by the Mayor of the City of Batesville should be 3 members for an initial 3-year term and 4 members appointed for 4-year terms. The 3-year term members shall serve 4-year terms after the initial 3-year term is completed. In the event of any vacancy, the Committee shall recommend a replacement to the Common Council who shall fill the vacancy for the balance of the term. After the completion of all initial terms, the Committee shall recommend appointments to the Common Council who shall then make all future appointments.

(C) *Compensation.* Members of the Tree Advisory Committee shall serve without compensation.

(D) *Operation.* The Tree Advisory Committee will select a chairperson on April 1 of each year. A majority of its members must be present to conduct business. The Committee shall be advisory only and shall submit its written recommendations to the Common Council.

(Ord. 10-2005, passed 12-12-2005; Am. Ord. passed - -)

' 98.02 DUTIES AND JURISDICTION.

(A) Duties.

(1) To study the problems and determine the needs of the city in connection with its urban forestry program and to prepare a written plan for the care, replacement, maintenance and removal or disposition of tree or shrubs in parks, along streets and in other public areas. This plan will be presented annually to the Common Council, and upon their acceptance and approval, shall constitute the official comprehensive city tree plan for the City of Batesville, Indiana.

(2) To recommend to the Common Council the type and kind of trees to be planted on city streets, or parts of city streets, parks or public areas.

(3) To assist the officials of the city, as well as the Community Forest Manager/Street Commissioner and citizens of the city in the dissemination of news and information regarding the protection, maintenance, removal, and planting of trees and vegetation on public lands, and to make recommendations from time to time to the Common Council.

(4) To coordinate the city=s urban forestry program, grants and educational activities.

(B) Jurisdiction and appeals. All actions or decisions taken or made by the Tree Advisory Committee shall be subject to review by the Common Council. Any citizen may appeal any ruling or order made by the Tree Advisory Committee to the Board of Works. In the event of any appeal, the Board of Works shall hear the matter and make a final decision as to any matter to be determined or action to be taken.
(Ord. 10-2005, passed 12-12-2005; Am. Ord. passed - -)

' 98.03 STREET TREES.

(A) Street trees are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, highways, avenues, alleys or ways, or which overhang any streets, highways, avenues, alleys, sidewalks, or ways within the city.

(B) The tree lawn is defined as that area of land between a parcel of privately owned property and any road, street or highway, but which is actually included within the road, street or highway right of way.

(C) The Committee shall recommend to the Common Council which shall adopt the city street tree planting specifications which shall list the official street tree species for the city. The specifications shall also contain the minimum distances between the trees and other trees and structures which must be followed for the planting of any tree under this subchapter. The tree planting specifications may be amended by the Common Council from time to time.

(D) No species other than those included in this list may be planted on the tree lawn without written permission of the City Tree Advisory Committee.

(E) The spacing of street trees will be in accordance with the tree planting specifications, and no trees shall be planted closer to another tree or structure except as recommended in the specifications except in special plantings designed or approved by a landscape architect or forester, and then approved by the City Tree Advisory Committee.

(Ord. 10-2005, passed 12-12-2005) Penalty, see ' 98.99

' 98.04 TREE CARE.

(A) The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs which are growing in or overhanging the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety of public grounds.

(B) The city shall have the right, and may remove or cause or order to be removed, any tree, plant or shrub or part thereof located on either public or private property within the city which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest and which represents a threat to public safety. The City Tree Advisory Committee will notify in writing the owners of any of those trees. Removal shall be done by the owners at their own expense within 60 days after the date of the notice. In the event or failure the owners to comply with the provisions, the city shall have the authority to remove the trees in any court in county of the owner. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of the trees is in accordance with this subchapter.

(C) It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than 3 inches in diameter within the tree's crown to a degree so as to remove the normal canopy and disfigure the tree. In the planting, pruning, maintenance and preservation of trees, the city shall adhere to and shall urge its residents to adhere to recommended practices of the ANSI A300 Pruning Standards recommended by the International Society of Arboriculture. Questions about these practices may be referred to the Tree Advisory Committee.

(D) Except as provided in division (E) below, every owner of any privately owned tree overhanging any street or right-of-way within the city shall prune the branches so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of 15 feet above the surface of any street or alley and a clearance space of 8 feet above the surface of any sidewalk. The owner shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute menace to the safety of the public. The city shall have the right to prune or cause

to be pruned, any tree or shrub on the private property when it interferes with the proper spread of light along the street from a street light or interferes with the visibility of any traffic control device or sign.

(E) (1) Any tree overhanging the right-of-way of any state road within the city shall be pruned, cut, and maintained by the Indiana Department of Transportation so that no branches shall obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of 15 feet above the surface of any state highway or right-of-way.

(2) The state shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public which overhang any state road or right of way, and shall have the right to prune any tree or shrub which overhangs a state road or right-of-way when it interferes with the proper spread of light along the street from a street light or interferes with the visibility of any traffic control device or sign even if the tree or shrub is on private property.

(F) No person shall intentionally attach any wire, nails, advertising posters or other contrivances to any street tree on the tree lawn.

(G) No person shall intentionally carve, cut, damage, transplant or remove any street tree on the tree lawn.

(Ord. 10-2005, passed 12-12-2005) Penalty, see ' 98.99

' 98.05 REGULATION OF TREE CARE.

(A) It shall be unlawful for any person to prevent, delay or interfere with the City Tree Advisory Committee, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street trees or trees on private grounds, as authorized in this subchapter.

Batesville - General Regulations

(B) It shall be unlawful for any person or firm to engage professionally in the business or occupation of pruning, treating, or removing street trees within the city without first applying for and procuring a license.

(C) The City Clerk-Treasurer shall issue license to applicants who shall file evidence of possession of liability insurance in the minimum amounts of \$50,000 for bodily injury and \$100,000 property damage indemnifying the city or any person injured or damaged resulting from the pruning, treating, or removing of street trees and who pays a license fee of \$25.

(D) No license shall be required for any city employee doing the work in accordance with instructions of his or her supervisor, the Mayor, or the Common Council.

(E) No license shall be required of any public service company doing the work in the pursuit of their public service endeavors if they present a plan for pruning or trimming, or show evidence of approved arborist training.

(F) The Common Council shall review the conduct, acts and decisions of the City Tree Advisory Committee, and any person may appeal from any ruling or order of the City Tree Advisory Committee to the Common Council who may hear the matter and make final decision.

(Ord. 10-2005, passed 12-12-2005)

TREE REGULATIONS**‘ 98.20 TITLE.**

This subchapter shall be known as the Tree Regulations Subchapter.

(Ord. passed - -)

‘ 98.21 PURPOSE AND INTENT.

(A) Trees provide energy efficiency, windbreaks, and increased property values while reducing air and noise pollution, therefore, adding to our city=s beauty and quality of life.

(B) This subchapter establishes policies, regulations and standards necessary to ensure that the City of Batesville will realize the benefits provided by its urban forest.

(C) The provisions of this subchapter are enacted to:

(1) Establish and maintain the maximum sustainable amount of tree cover on public land in the city;

(2) Maintain city trees in a healthy and nonhazardous condition through good arboricultural practices; and

(3) Establish and maintain appropriate diversity in tree species and age classes to provide a stable and sustainable urban forest.

(Ord. passed - -)

‘ 98.22 DEFINITIONS.

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

CITY. City of Batesville.

COMMUNITY FOREST. All trees both public and private in the community.

COMMUNITY FOREST MANAGER/STREET COMMISSIONER. The official representative of the Tree Advisory Committee and is responsible for the administration of the Tree Regulations Subchapter.

PARK TREE. Trees on city owned park areas.

PUBLIC STREET RIGHT-OF-WAY. The width between property lines abutting a street, alley, or boulevard.

SHRUB. Woody plant which is characteristically below 20 feet in height and is multi-stemmed supporting the main leafy growth.

STREET. The entire width of every public way or right-of-way when any part is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

STREET TREE. Any tree in a public street right-of-way.

TREE. Woody plant, ordinarily with 1 main stem or trunk, which develops many branches and which ordinarily grows to a height of 20 feet or more.

TREE LAWN. The part of a street or highway, not covered by sidewalk or other paving, lying within the public street right-of-way.
(Ord. passed - -)

' 98.23 STREET TREE SPECIES TO BE PLANTED.

(A) Lists of small, medium and large recommended and not recommended trees for planting in public areas shall be attachments to this document. These lists will be available to residents of Batesville upon request to aid in the selection of trees for private properties. These lists shall be updated periodically to reflect new arboricultural developments or species that may affect the population of the community forest.

(B) Trees should be classified by mature sizes:

- (1) *Large.* Mature height greater than 45 feet.
- (2) *Medium.* Mature height between 30 feet and 45 feet.
- (3) *Small.* Mature height less than 30 feet.

(C) No species other than those listed on the Tree Advisory Committee recommended list may be planted as street trees without permission of the Tree Advisory Committee or the Community Forest Manager/Street Commissioner.
(Ord. passed - -) Penalty, see ' 98.99

' 98.24 TREE PLANTING, SPACING, AND DISTANCES.

(A) The spacing of street trees will be in accordance with the tree species size classes listed in ' 98.23(B) of this subchapter.

(B) No street trees may be planted closer together than the following:

- (1) *Large.* 35 feet.
- (2) *Medium.* 25 feet.
- (3) *Small.* 15 feet.

(C) The minimum distance trees may be planted from the street, sidewalk or curb will be in accordance with the tree species size classes listed in ' 98.23(B) of this subchapter.

- (1) *Large.* 4 feet.
- (2) *Medium.* 3 feet.
- (3) *Small.* 2 feet.

(D) No street tree shall be planted closer than 25 feet from any street corner, measured from the center point of the nearest curb or curbline. For specifics see ' 151.23.

(E) No street tree shall be planted closer than 10 feet from any fireplug.

(F) No street trees or trees planted anywhere on city property may be planted under overhead utility lines without first filing a Public Tree Permit Request.

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(G) Small or medium tree species as defined in ' 98.23(B) of this subchapter may be planted no less than 10 lateral feet from an overhead utility line.

(H) Large tree species as defined in ' 98.23(B) of this subchapter may be planted 20 lateral feet from an overhead utility line.

(I) No small, medium or large tree may be planted within 5 lateral feet of any underground utility (phone, sewer, water, cable, electric, and the like). (Ord. passed - -) Penalty, see ' 98.99

' 98.25 TREE CLEARANCE.

The property owner shall be responsible so as not to permit limbs or branches to obstruct movement of vehicles or pedestrians along streets, alleys or sidewalks in the city. The limbs shall be trimmed by the property owner so that there is a clear space above the street surface of 20 feet (IDOT Sec. 201-03), above the sidewalk surface of 8 feet; behind the street edge or alley edge of 3 feet; and in a manner as to not obstruct the view of any street activity.

(Ord. passed - -) Penalty, see ' 98.99

' 98.26 PUBLIC TREE CARE.

(A) *City=s right.* The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the right-of-way of all streets, alleys, lanes, and public grounds as may be necessary to ensure the public safety or to preserve or enhance the beauty of the public places.

(B) *Topping.*

(1) It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree, or other tree on public property.

(2) Topping is defined as severe cutting back of limbs to stubs within the tree=s crown to a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other

causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this section at the discretion of the Community Forest Manager/Street Commissioner.

(C) *Permit required.* It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating/spraying, or removing any street tree, park tree or other publicly owned tree without first applying for and procuring a permit from the Community Forest Manager/Street Commissioner. Before any permit shall be issued, each applicant shall first file evidence of liability insurance or be bonded. Any public servant or employee doing the work in the pursuit of the public service endeavors shall require no permit.

(D) *Stump removal.* All stumps of street or park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

(E) *Tree replacement.* It shall be the responsibility of the city under the direction of the Tree Advisory Committee to replace any tree removed from the tree lawn, park, or any other public property. A Public Tree Permit Request should be filed before planting.

(F) *Alteration of tree lawn.* No person shall pave, gravel, excavate, remove or otherwise convert existing grassed tree lawn into hard space with the addition of the aforementioned without first filing a Public Tree Permit Request.

(Ord. passed - -) Penalty, see ' 98.99

' 98.27 PRIVATE TREE CARE.

(A) The city has the authority to enter onto private property whereon there is located a tree, shrub, or plant that is suspected to be a public nuisance and to order its removal if necessary. Public nuisance is defined as any plant with an infectious disease or insect problem; a dead or dying tree or plant that may pose a hazard to pedestrians, public

structures or vehicles; a tree or part of a tree or plant that obstructs street signs, traffic lights, traffic signs, the free passage of pedestrians or vehicles; or any other situation that may constitute a hazard to life or property.

(B) The Community Forest Manager/Street Commissioner will notify in writing the owner of the tree(s) or plant(s) and removal shall be accomplished within 30 days of notification. In the event of the owner=s failure to remove the nuisance, the city shall have the authority to remove the tree or plant and charge the cost of the removal to the owner.

(C) It shall be unlawful for any person to prevent, delay or interfere with access to private property by the city or its representative in the legal performance of any section of this subchapter.

(Ord. passed - -) Penalty, see ' 98.99

' 98.28 INTERFERENCE WITH PLANTING, MAINTENANCE, OR REMOVAL.

(A) No person, firm or corporation shall interfere with the Board of Public Works and Safety or persons acting under its authority while engaged in planting, mulching, pruning or removing any tree, shrub or plant on any street, street right-of-way, or public place within the city.

(B) It shall be unlawful for any person to prevent delay or interfere with any members of Tree Advisory Committee or any of its representatives while engaged in the planting, cultivation, mulching, pruning, spraying or removing of any tree or plant within the community forest, as authorized by this subchapter.

(Ord. passed - -) Penalty, see ' 98.99

' 98.29 TREE PROTECTION.

It shall be unlawful for any person to:

(A) Damage, cut, carve or injure any street or park tree or any tree on public property;

(B) Attach any sign, wire or injurious material to any street or park tree or any tree on public property; or

(C) Remove any street or park tree without filing a Public Tree Permit Request.

(Ord. passed - -) Penalty, see ' 98.99

' 98.30 ENFORCEMENT.

The Board of Works upon recommendation of the Tree Advisory Committee is hereby charged with the responsibility for the enforcement of this subchapter and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the City Attorney is hereby authorized to institute appropriate proceedings to that end.

(Ord. passed - -)

' 98.31 PERFORMANCE EVALUATION.

(A) The Tree Advisory Committee shall collect and maintain all records and data necessary to objectively evaluate the progress rate toward the intent, purpose and objectives of this subchapter.

(B) The Committee shall prepare an annual report.

(C) The Common Council shall consider the report recommendations and take necessary action to accomplish the goals of the chapter. Those actions may include, but are not limited to, revision or amendment of the subchapter and the adoption of other resolutions or ordinances.

(Ord. passed - -)

' 98.99 PENALTY.*(A) Tree Advisory Committee.*

(1) Any person who violates any section of ' 98.01 *et seq.* shall be given written notice of the violation and shall be instructed to remedy the violation within 30 days of the notice.

(2) Any person who shall fail to remedy or abate the violation shall be fined a sum not to exceed \$500 for each violation.

(3) The city may commence an action to abate or enjoin the violations and/or to assess fines in any court with appropriate jurisdiction in the county.

(4) In the event a lawsuit is commenced to abate the violations or to assess a fine against a person and the person is found to have failed to remedy a violation, the person shall be responsible and liable to the city for all costs of the action, including but not limited to the costs and expenses of remedying the violation, the costs of suit, expenses and reasonable attorney fees incurred by the city in bringing the action. (Ord. 10-2005, passed 12-12-2005)

(B) Tree regulations. Any person violating any provision of ' ' 98.20 *et seq.* shall be, upon conviction or plea of guilty, subject to a fine not to exceed \$250. (Ord. passed - -)

APPENDIX A: TREE PERMIT REQUEST

Tree Permit Request PERMIT # _____

1. Name (of Applicant): _____
Address: _____
Phone: _____

2. Name of Property Owner (if different) _____
Address: _____
Phone: _____

3. Request (check applicable and complete information requested)

_____ Tree Planting Type and number planned _____

Size at planting time (caliper in inches) _____

Minimum 2 inches

Proximity to Street (ft.) _____ Sidewalk (ft.) _____ Parking Area (ft.) _____

Have underground utilities been located? _____

Note:

- . No street tree shall be planted closer than 10 feet from any fireplug.
- . No trees should be planted under overhead utility lines.
- . No small or medium tree species may be planted less than 10 lateral feet from an overhead utility line.
- . No large tree may be planted less than 20 lateral feet from an overhead utility line.
- . No small, medium, or large tree may be planted less than 5 lateral feet of any underground utility (phone, sewer, water, cable, electric, and the like).

_____ Tree Removal

Reason _____

Tree Species and condition _____

Number to be removed _____

Is replacement tree planned? _____

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____ Spraying

Reason _____

Pesticide information _____

____ Adjacent excavation

Reason _____

Number of trees affected and size _____

Depth and proximity to adjacent trees _____

____ Trimming

Reason _____

Describe extent of work to be performed _____

____ Tree lawn removal

Reason _____

Describe extent of work to be performed _____

4. Location of site (describe, or attach map) _____

Phone Number: _____

. If contractor is to perform work, the contractor must Have proof of liability insurance or bonding on file with the City Street Commissioners office.

Registration # _____

5. Approximate date work will begin: _____

6. Applicant agrees in executing the requested work to follow the City of Batesville tree regulations and any conditions set forth upon permit approval by the Street Commissioner.

Signature of Applicant

Date

(Ord. passed - -)

APPENDIX B: APPROVAL TREE CARE PERMIT REQUEST

Approval
Tree Care Permit Request
(to be completed by City of Batesville)

PERMIT # _____

Information reviewed by staff: Date: _____ By: _____

Remarks: _____

Permitee agrees to the following conditions: _____

Approved by: _____ Title: _____

Date: _____

For staff use

Follow-up check on (date): _____ by: _____

Remarks: _____

Computer update completed on (date): _____ by: _____

Address: _____

Tree site: _____

Remarks: _____

(Ord. passed - -)

