

**City Council  
Public Hearing  
Vergas Event Center & Zoom Id number 267-094-2170 password 56587  
6:30 PM on Thursday, December 29, 2022**

- 1. Call to Order**
- 2. Lawrence Lake Acres Variance**
- 3. Ordinances**
  - A. Ordinance 91.02 Regarding Dogs and Cats
  - B. Ordinance 71.04 Declaring Snow Emergency; parking requirements
  - C. Ordinance 72.03-72.07 Snowmobiles
- 4. Adjournment**

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**2. Lawrence Lake Acres Variance**

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**Files Attached**

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- Zoning-Decisions.pdf
- Variance - water and sewer in development.pdf

## Zoning Decisions

*Zoning decisions are the source of controversy and confusion in many communities. Understanding a city's zoning authority and the standards associated with various zoning tools is important in navigating controversy and dispelling confusion. Learn the nature of a city's decision-making authority and the legal standards associated with variances, conditional use permits, and nonconformities.*

### RELEVANT LINKS:

Learn more about zoning decisions in LMC information memos [Zoning Guide for Cities](#) and [Planning and Zoning 101](#).

## I. Level of authority

Zoning is a method of establishing a land use pattern by regulating the way land is used by landowners. A zoning ordinance, comprised of text and a map, generally divides a city into various districts and sets standards regulating uses in each district. A city has considerably broader authority when creating its zoning ordinance than it does when administering the same ordinance. Consequently, it is important for a city to be aware of what authority it is acting under whenever making a particular zoning decision.

When adopting or amending a zoning ordinance, a city council is exercising so-called “legislative” authority. The council is advancing health, safety, and welfare by making rules that apply throughout the entire community. When acting legislatively, the council has broad discretion and will be afforded considerable deference by any reviewing court. City councils are ultimately accountable to the voters for legislative decisions.

In contrast, when applying an existing zoning ordinance, a city council is exercising so-called “quasi-judicial” authority. The task is to determine the facts associated with a particular request, and then apply those facts to the legal standards contained in the zoning ordinance and relevant state law. A city council has less discretion when acting quasi-judicially, and a reviewing court will examine whether the city council applied rules already in place to the facts before it. In general, if the facts indicate the applicant meets the relevant legal standard, then they are likely entitled to the approval. Variances and conditional use permits are two commonplace zoning tools that are quasi-judicial in nature.

## RELEVANT LINKS:

See Appendix A: Pyramid of discretion.

LMC information memo,  
[Land Use Variances](#).

[Minn. Stat. §. 462.357, sub. 6.](#)

The amount of discretion a city has when making legislative versus quasi-judicial decisions is represented by the planning and zoning “pyramid of discretion.” The bottom of the pyramid is where a city has the most discretion—when creating a comprehensive plan and corresponding land uses ordinances, such as a zoning ordinance. A city has less discretion when making quasi-judicial decisions as represented by the middle of the pyramid—the city is constrained by the ordinance and law that make up the foundation below.

## II. Variances

Variances are an exception to rules laid out in a zoning ordinance. They are permitted departures from strict enforcement of an ordinance provision as applied to a particular piece of property if enforcement would cause “practical difficulties.” Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan. Variances are generally for dimensional standards (such as setbacks or height limits) and may not be used to allow a use that is prohibited in the particular zoning district. Essentially, variances allow the landowner to break the dimensional rules that would otherwise apply.

### A. Practical difficulties

“Practical difficulties” is a legal standard set forth in state law. Minnesota cities must apply the state statutory standard when considering applications for variances. The statute provides that requests for variances are heard by a body called the board of adjustment and appeals; in many smaller communities, the planning commission serves that function. Generally, the board’s decision is subject to appeal to the city council. Under the statutory practical difficulties standard, a city may grant a variance if the facts satisfy the three-factor test for practical difficulties.

#### 1. Use property in a reasonable manner

The first practical difficulties factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line, or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

## **2. Circumstances unique to the property**

The second practical difficulties factor is that the landowner's plight is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property; that is, to the land and not personal considerations of the landowner. The statute further notes that economic considerations alone cannot create practical difficulties.

## **3. Maintain essential character of the locality**

The third practical difficulties factor is that the variance, if granted, will not alter the essential character of the locality. This factor generally contemplates whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

## **B. Granting variances**

If the facts surrounding a variance application satisfy all three of the statutory factors, then a city may grant the variance. State statute further provides variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan. So, in addition to the three-factor practical difficulties test, a city evaluating a variance application should make findings as to:

- whether or not the variance is in harmony with the purposes and intent of the ordinance, and
- whether or not the variance is consistent with the comprehensive plan.

Whatever the ultimate decision on a particular variance application, a city should carefully consider each of the three factors of the statutory practical difficulties standard. While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors. Cities should review their zoning ordinance for provisions relating to variances to be sure they are consistent with the state statutory standard for practical difficulties.

## RELEVANT LINKS:

[Minn. Stat. § 462.3595.](#)

LMC information memo,  
[Land Use Conditional Use Permits.](#)

If a city finds it is issuing many variances to a particular standard, then the city may wish to consider the possibility of amending the ordinance to change the standard. In other words, if a city is consistently allowing landowners to break a particular rule, perhaps the need for the rule should be revisited. It could appear that the properties' plight was not particularly unique, or even that there is not an underlying reasonable basis for the rule. City councils have broad legislative authority when writing the rules, but when evaluating a variance application cities are limited to the quasi-judicial role of applying the state practical difficulties standards to the facts before them.

### III. Conditional and interim use permits

Conditional use permits are authorized under state law. Whether to grant or deny a conditional use permit application is another zoning decision that is quasi-judicial in nature. A conditional use is a use that is generally compatible with a particular zoning district but because of hazards inherent in the use itself or because of special problems that its proposed location may present, the use is allowed by permit only if the special concerns are addressed as set forth in the zoning ordinance.

The zoning ordinance typically details both the general standards that apply to all conditional uses, and the specific conditions that apply to a particular conditional use in a given zoning district. The conditions must be reasonable and practical. Unlike a permitted use, which a landowner is generally entitled to as a matter of right, a conditional use is allowed only after a statutorily required public hearing. Reasonable conditions may be attached to a conditional use permit based upon factual evidence contained in public record.

City councils sometimes misunderstand the level and the nature of discretion they have when reviewing applications for conditional use permits. If a proposed conditional use satisfies the conditional use standards set forth in the zoning ordinance, then generally the landowner is entitled to the conditional use permit. The city made the legislative decision about the appropriateness of a kind of use in a zoning district when the council adopted the ordinance providing for the use as conditional. When considering a conditional use permit application, the city is tasked with the more limited quasi-judicial role of considering whether the facts of a particular application satisfy the standards set forth in the ordinance. If the belief is that a kind of use is unacceptable in a given zoning district, then consider not listing the use as a conditional one in the district in the first instance.

## RELEVANT LINKS:

[Minn. Stat. § 462.3595, subd. 3.](#)

A.G. Op. 59-A-32 (February 27, 1990).

[Minn. Stat. § 462.3597.](#)

A conditional use permit is a property right that “runs with the land” so it attaches to and benefits the land and is not limited to a particular landowner. The state statute provides that a conditional use permit shall remain in effect as long as the conditions agreed upon are observed. The attorney general has opined that time limits such as sunset provisions or automatic annual review to include possible termination are not consistent with state law. The attorney general explained that cities may not enact or enforce ordinance provisions for conditional use permits which allow the city to terminate permits regardless of whether or not the conditions agreed upon are reserved. However, a city can certainly revoke a conditional use permit if there is not substantial compliance with conditions, so long as the revocation is based upon factual evidence, after appropriate notice and hearing.

If a city wishes to place time constraints on particular uses, then the appropriate zoning tool is an interim use permit, rather than a conditional use permit. A state law passed in 1989 authorizes interim use permits for a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

Cities may wish to employ interim use permits for uses that are not consistent with the city’s long term plan and vision for the particular area, or where the use itself has a limited lifecycle. Interim use permits should be provided for in the city’s zoning ordinance. A public hearing is required prior to issuance, and the land owner generally enters into an agreement with the city.

Cities should periodically review their zoning ordinances to determine whether the conditional uses listed are uses that remain appropriate for the particular zoning district, and to make sure the conditions under which the uses will be allowed are specifically set forth. Cities have broad legislative discretion when establishing uses and conditions in their ordinance. But when administering conditional uses set forth in the ordinance, cities are acting in their more limited quasi-judicial capacity and are constrained to applying the standards in the ordinance to the facts of a particular application.



## RELEVANT LINKS:

LMC information memo,  
[Land Use Nonconformities](#).

Minn. Stat. § 462.357, sub.  
1e.

## IV. Nonconformities

Nonconformities are uses, structures, or lots that do not comply with the current zoning ordinance.

### A. Legal nonconformities

Legal nonconformities are those that were legal when the zoning ordinance or amendment was adopted, in that they complied with preexisting ordinance and law. The rights of legal nonconformities are often referred to as grandfather rights. Legal nonconformities generally have a statutory right to continue unless:

- the use is discontinued for more than one year, or
- the structure is destroyed by more than 50% of its assessed market value, and no building permit is applied for within 180 days.

Legal nonconformities may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. There is a limitation to the continuance rights for nonconformities in National Flood Insurance Program (NFIP) floodplain areas. Despite their right to continue without complying with the current zoning ordinance, it is important to keep in mind that all legal nonconformities must generally comply with other city ordinances, such as a nuisance ordinance or a licensing ordinance.

### B. Non-legal conformities

In contrast to legal nonconformities, non-legal nonconformities are those that were not permitted when established and they do not have the rights associated with legal nonconformities. Before assuming a particular nonconformity is entitled to the statutory right to continue, it is important to consider whether the nonconformity ever complied with existing ordinance or law.

Historically, the theory behind legal nonconformities was that the property would eventually comply with the zoning ordinance. The statutory right to continue was more limited, and cities could phase out nonconformities over time through a process called amortization. Furthermore, the nonconformity could not be upgraded or replaced, and nonconforming rights would cease if the nonconformity was discontinued or destroyed. But in 2001, the legislature prohibited amortization, except for adult uses. And in 2004, the legislature both altered the rule about destruction and afforded nonconformities the right to replacement, restoration or improvement, but not expansion. Cities should review their ordinance provisions concerning nonconformities and make sure they are consistent with the current state statute.

## RELEVANT LINKS:

[Minn. Stat. § 15.99.](#)

LMC information memo,  
[Zoning Guide for Cities](#),  
Section V-A, The 60-Day  
Rule.

LMC information memo,  
[Zoning Guide for Cities](#),  
Section V-C-2-b on  
conducting a public hearing.

[Minn. Stat. § 462.357, subd.  
3.](#)

## V. Creating a record

Whatever the nature of or standard for a particular zoning decision, a city should create a record that will support it. If the city action is challenged, courts will review the decision on the public record. The record must demonstrate the city exercised the appropriate level of discretion and applied the relevant standards in a reasonable fashion. It may not matter that the city acted reasonably if the city is unable to prove its actions through the public record.

When creating a record to support a zoning decision, every city should be aware of Minnesota's 60-day rule. Under state law, a city must either approve or deny a written request related to zoning within 60 days of the time it is submitted to the city. The city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is deemed an approval. So it is vitally important that cities scrutinize applications as they come in the door to first make sure all required information is present, and then to process those applications in an expeditious manner.

### A. Public hearings

Holding a public hearing is an important component in developing the record. Public hearings are generally required before the adoption of any zoning ordinance or amendment, and before the granting of variances, conditional use permits, or re-zonings

Under state law notice of the time, place, and purpose of the hearing must be published at least 10 days prior to the day of the hearing. If the decision affects an area of five acres or less, mailed notice may be required to property owners within a 350-foot radius of the land in question.

Public hearings should include a complete disclosure of what is being proposed and a fair and open assessment of the issues raised. A public hearing should include an opportunity for the general public and interested parties to hear and see all the information and to ask relevant questions, provide additional information, and express support or opposition. In order to help the public hearing process run well, it is helpful for the city council to develop a written set of policies and procedures to follow at each public hearing.

## RELEVANT LINKS:

LMC information memo,  
*Taking the Mystery Out of  
Findings of Fact.*

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Neighborhood opposition is perhaps the most challenging issue for any city council or planning commission to deal with when considering the merits of a particular zoning application. Case law holds that the views of neighbors should not be the sole basis for a particular city action. In this regard, it is helpful to distinguish between what might be termed the “quantity” of the comments, as opposed to the “quality” of the comments. For example, well-supported testimony that brings forth relevant facts is the kind of information upon which a city council can rely. On the other hand, unsupported and unsubstantiated emotional opposition to a particular project should not be the basis for a decision.

### **B. Written statements**

After a public hearing, the city should make findings to support its decision. In the case of a denial of a particular zoning application, Minnesota’s 60-day rule requires the reasons for a denial be put in writing and those reasons be adopted within the statutory timeframe. Failure to do so may result in the city council decision being overturned. Even where the application is approved, a written statement explaining the decision is advisable.

The written statement explaining the reasons for the zoning decision is particularly important for quasi-judicial decisions such as variances and conditional use permits. The League recommends the city adopt written findings of fact and conclusions of law whenever a city makes such decisions. The document should identify the relevant legal criteria such as statutory standards or code provisions, explain the relevant facts relating to the particular application, and then apply those facts to the legal criteria. The document should provide a court with everything needed to uphold the zoning decision.

### **VI. Further assistance**

Zoning decisions can be controversial and confusing, and this memo is by no means a comprehensive discussion of all issues that may arise. If you have further questions relating to zoning decisions, please feel free to contact the League’s Loss Control Land Use Attorney.

When dealing with particular issues, it is also important to seek specific legal advice from your own city attorney.

## Appendix A: The pyramid of discretion

The pyramid framework illustrates how much discretion the city has to make land use decisions based on the role it is playing.



**Application for Variance**  
City of Vergas -County of Ottertail  
111 E Main Street -PO Box 32  
Vergas MN 56587  
218-342-2091

# 400<sup>00</sup>  
Application Fee  
Receipt Number 149820  
Accepted By/Date AL 11/30/2022

Applicant's Name JOSH HANSON Telephone Home: \_\_\_\_\_ Cell: 218-234-1685

Address: P.O. Box 9 VERGAS MN 56587

Property Owner's Name JOSH HANSON Telephone Home: \_\_\_\_\_ Cell: \_\_\_\_\_

Location of Project: \_\_\_\_\_ Parcel # 82000500024000

Legal Description:

Section 25 Township 137 Range 041 Lake Number: 56-555 Lake Name LAWRENCE Lake Class 6D

Description of Proposed Project: LAWRENCE LAKE ACCESS

Specify the section of the ordinance from which a variance is sought: TITLE V 52.06 (C + POSSIBLE E)  
TITLE V POSSIBLY 51.018

Explain how you wish to vary from the applicable provisions of the ordinance: WOULD LIKE TO ALLOW PRIVATE WATER AND SEWER THROUGHOUT LAWRENCE LAKE ACCESS

Please attach a site plan or accurate survey as may be required by ordinance. CITY HAS SURVEY

Please answer the following questions as they relate to your specific variance request:

1. In your opinion, is the variance in harmony with the purpose and intent of the ordinance? Yes ☒ No ☐ Why or why not?  
I BELIEVE INTENT OF ORDINANCE WAS TO READ SIMILAR TO THE SAME ORDINANCE

2. In your opinion, is the variance consistent with the comprehensive plan? Yes ☒ No ☐ Why or why not?  
OBVIOUS NEED FOR MORE AFFORDABLE HOUSING AND RENTAL UNITS

3. In your opinion, does the proposal put property to use in a reasonable manner? Yes ☒ No ☐ Why or why not?  
LARGE LOT SIZES FOR ADDITIONAL HOUSING

4. In your opinion, are the unique circumstances to the property not created by the landowner? Yes ☐ No ☒ Why or why not?  
WE ARE ASKING TO HAVE A ROAD BUILT THROUGH THE PROPERTY

5. In your opinion, will the variance, if granted, alter the essential character of the locality? Yes ☒ No ☐ Why or why not?  
YES - IT WILL BRING MORE RESIDENTS, BUSINESS AND GROWTH TO THE CITY OF VERGAS

The Planning Commission must make an affirmative finding on all the five criteria listed above in order to grant a variance. The applicant for a variance has the burden of proof to show that all of the criteria listed above have been satisfied.

The undersigned certifies that they are familiar with application fees and other associated costs, and also with the procedural requirements of the City Code and other applicable ordinances.

Applicant's Signature: Josh E. M. Hanson

Date: 11-30-22

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**3. Ordinances**

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- A. Ordinance 91.02 Regarding Dogs and Cats
- B. Ordinance 71.04 Declaring Snow Emergency; parking requirements
- C. Ordinance 72.03-72.07 Snowmobiles

**Files Attached**

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- Poposed Ordinance 71.04 Declaring snow Emergency, parking requirments.pdf
- Proposed Ordinance 72.03-72.07 Snowmobiles.pdf
- Proposed Ordinance 91.02 Cats and Dogs .pdf

**' 71.04 DECLARATION OF SNOW EMERGENCY; PARKING PROHIBITED.**

(A) The Mayor or other designated official may declare a snow emergency in the city. The emergency shall continue in effect for a period of 24 hours or until the snow has been removed from the city's streets or until the snow emergency has been rescinded by action of the Mayor, Police Chief or other designated officer.

(B) Notice of the declaration of a snow emergency shall be given by notifying the local news media; however, the notification shall be a service aid only and not a duty on the part of the officials.

(C) During a declared snow emergency or **enough snow has accumulated to plow**, no motor vehicle shall be left parked on any street or public way in the city until the declared emergency is canceled or, if no emergency is declared, until the street is cleared on both sides of accumulated snow.

(D) During a declared snow emergency, any city employee, who finds a motor vehicle in violation of this section shall attempt to contact the owner of the motor vehicle and require the owner to immediately move the motor vehicle so as not to be in violation of this section. **If the owner does not immediately remove the motor vehicle or the owner cannot be located, the utility maintenance employees are authorized to have the motor vehicle removed at the owner's expense.**

Penalty, see ' 10.99

**Replace the following:**

**' 72.03 APPLICATION OF TRAFFIC ORDINANCES.**

The provisions of Ch. 70 of this code shall apply to the operation of snowmobiles upon streets and highways, except for those relating to required equipment, and except those which by their nature have no application.

Penalty, see ' 10.99

**' 72.04 RESTRICTIONS.**

(A) It is unlawful for any person to enter, operate or stop a snowmobile within the limits of the city:

(1) On the roadway of any street, except the most right hand lane then available for traffic or as close as practicable to right hand curb or edge of the roadway, except when overtaking and passing another vehicle stopped in the lane or proceeding in the same direction, or in making a left turn. Snowmobiles may also be operated upon the outside slope of trunk, county-state aid and county highways where the highways are so configured within the corporate limits. The City Council may, pursuant to M.S. ' 84.87, Subd. 3, as it may be amended from time to time, adopt a resolution designating certain city streets as available for snowmobile operation and prescribe such time and speed limits as are necessary.

(2) On a public sidewalk provided for pedestrian travel.

(3) On boulevards within any public right-of-way.

(4) On private property of another without specific permission of the owner or person in control of the property.

(5) Upon any school grounds, except as permission is expressly obtained from responsible school authorities.

(6) On public property, playgrounds and recreation areas, except areas previously listed or authorized for the use by resolution of the City Council, in which case the use shall be lawful, and snowmobiles may be driven in and out of those areas by the shortest route.

(7) On streets as permitted by this chapter at a speed exceeding 10 miles per hour.

(8) During the hours of 10:00 p.m. to 7:00 a.m., Sunday through Thursday, and 12:01 a.m. to 8:00 a.m. on other days closer than 100 feet from any residence. This provision is not intended to prohibit snowmobiles from operating on city streets during the hours specified herein.

(B) It is unlawful for any person to operate a snowmobile within the limits of the city:

(1) So as to tow any person or thing in a public street or highway except through use of a rigid tow bar attached to the rear of the snowmobile; provided, that a disabled snowmobile may be towed to a private residence or a place of business where snowmobiles are repaired without the use of a rigid tow bar.

(2) Within 100 feet of any fisherman, pedestrian, skating rink or sliding area where the operation would conflict with use or endanger other persons or operation.

(3) To intentionally drive, chase, run over or kill any animal.

Penalty, see ' 10.99

**' 72.05 STOPPING AND YIELDING.**

No snowmobile shall enter any uncontrolled intersection without making a complete stop. The operator shall then yield the right-of-way to any vehicles or pedestrians at the intersection, or so close to the intersection as to constitute an immediate hazard.

Penalty, see ' 10.99

**' 72.06 PERSONS UNDER 18.**

(A) No person under 14 years of age shall operate on streets or make a direct crossing of a city street as the operator of a snowmobile. A person 14 years of age or older, but less than 18 years of age, may operate a snowmobile on streets as permitted under this chapter and make a direct crossing of those streets only if he or she has in his or her immediate possession a valid snowmobile safety certificate issued pursuant to M.S. ' 84.872, as it may be amended from time to time.

(B) It is unlawful for the owner of a snowmobile to permit the snowmobile to be operated contrary to the provision of this section.



Penalty, see ' 10.99

## **' 72.07 EQUIPMENT.**

It is unlawful for any person to operate a snowmobile any place within the limits of the city unless it is equipped with the following:

(A) Standard mufflers which are properly attached and which reduce the noise of operation of the motor to the minimum necessary for operation. No person shall use a muffler cutout, by-pass straight pipe or similar device on a snowmobile motor.

(B) Brakes adequate to control the movement of and to stop and hold the snowmobile under any condition of operation.

(C) A safety or so called deadman throttle in operating condition.

(D) When operated between the hours of one-half hour after sunset to one-half hour before sunrise, or at times of reduced visibility, at least one clear lamp attached to the front, with sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead during the hours of darkness under normal atmospheric conditions. The head lamp shall be so aimed that glaring rays are not projected into the eyes of an oncoming snowmobile operator. It shall also be equipped with at least one red light plainly visible from a distance of 500 feet to the rear during hours of darkness under normal atmospheric conditions.

(E) Snowmobiles shall fly a pennant flag or red or blaze material, of a size not less than 12 inches by 9 inches, at a height of not less than six feet from ground level at any time when the vehicle is operated on public streets.

(F) Reflective material at least 16 square inches on each side, forward of the handlebars and at the highest practical point on any towed object, so as to reflect lights at a 90 degree angle.

Penalty, see ' 10.99

### **With the following:**

#### **' 72.031 Replacing Ordinances 72.03-72.07 Snowmobiles**

**It is the purpose of this section to permit snowmobiling only on designed routes within the City of Vergas.**

- A. Designed routes. Travel by snowmobile shall be permitted on designated trails along the following routes.**
  - 1. From County State Aid Highway (CSAH) 17 on the west side of right-of-way to the business district on 1<sup>st</sup> street and or East Lake Street to Railway Avenue to CSAH 60.**
  - 2. From CSAH 4 to Linden Avenue to Railway Avenue to CSAH 60.**
  - 3. From Old Detroit Rd to CSAH 60.**
- B. Direct access and use. All snowmobiles operating within city limits shall use as direct route to access the designated routes. Designated routes are intended to be means of ingress, egress and movement of snowmobiles to and from adjoining snowmobile trail systems and not as a primary trail for other snowmobile riding.**
- C. License requirement. All snowmobiles operating within city limits shall be properly licensed and authorized for use in accordance with Minnesota Statutes.**
- D. Qualifications of operators. All persons operating a snowmobile within city limits shall be properly licensed and authorized in accordance with state statute.**
- E. Easement required. Snowmobile clubs shall obtain proper easements for all designated routes which travel upon or cross private property.**

**' 91.02 DOGS AND CATS.**

(A) *Running at large prohibited.* It shall be unlawful for the dog or cat of any person who owns, harbors, or keeps a dog or cat, to run at large. A person, who owns, harbors, or keeps a dog or cat which runs at large shall be guilty of a misdemeanor. Dogs or cats on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person, so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land unless the city has posted an area with signs reading ADogs or Cats Prohibited.®

(B) *License required.*

(1) All dogs **and cats** over the age of six months kept, harbored, or maintained by their owners in the city, shall be licensed and registered with the city. **Cat and dog** licenses shall be issued by the City Clerk upon payment of the license fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time. The owner shall state, at the time application is made for the license and upon forms provided, his or her name and address and the name, breed, color, and sex of each **cat and/or** dog owned or kept by him or her. No license shall be granted for a dog that has not been vaccinated against distemper and rabies, as evidenced by a certificate by a veterinarian qualified to practice in the state in which the **cat or** dog is vaccinated.

(2) It shall be the duty of each owner of a **cat or dog** subject to this section to pay to the City Clerk the license fee established in the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11, as it may be amended from time to time.

(3) Upon payment of the license fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time, the Clerk shall issue to the owner a license certificate and metallic tag for each dog licensed. The tag shall have stamped on it the year for which it is issued and the number corresponding with the number on the certificate. Every owner shall be required to provide each **cat of dog** with a collar to which the license tag must be affixed and shall see that the collar and tag are constantly worn. In case a **cat or** dog tag is lost or destroyed, a duplicate shall be issued by the City Clerk. A charge shall be made for each duplicate tag in an amount established in the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11, as it may be amended from time to time. **Cat and** dog tags shall not be transferable from one dog to another, and no refunds shall be made on any **cat or** dog license fee or tag because of death of a **cat or** dog or the owner's leaving the city before the expiration of the license period.

(4) The licensing provisions of this division (B) shall not apply to **cats or** dogs whose owners are nonresidents temporarily within the city, nor to **cats or** dogs brought into the city for the purpose of participating in any **cat or** dog show. If the animal owned is a service animal which is capable of being properly identified as from a recognized school for seeing eye, hearing ear, service or guide animals, and the owner is a blind or deaf person, or a person with physical or sensory disabilities, then no license shall be required.

(5) The funds received by the City Clerk from all **cat or** dog licenses and metallic tags fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time, shall first be used to defray any costs incidental to the enforcement of this chapter; including, but not restricted to, the costs of licenses, metallic tags, and impounding and maintenance of the **cats and** dogs.

**This section to be removed.**

**(C) Cats. Cats shall be included as controlled by this division insofar as running-at-large, pickup, impounding, boarding, licensing and proof of anti-rabies vaccine is concerned. All other provisions of this section shall also apply to cats unless otherwise provided.**

(D) *Vaccination.*

(1) All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every three years by a licensed veterinarian for:

- a) Rabies - with a live modified vaccine; and
- (b) Distemper.

(2) A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the City Clerk, the Animal Control Officer or a police officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven days in which to present the certificate(s) to the City Clerk or officer. Failure to do so shall be deemed a violation of this section.

Penalty, see ' 91.99