

## **NUISANCES AND ANIMAL CONTROL**

### **CHAPTER 50 - NUISANCE ABATEMENT PROCEDURE**

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#### **50.01 DEFINITION OF NUISANCE.**

Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property so as essentially to interfere unreasonably with the comfortable enjoyment of life or property is a nuisance.

*(Code of Iowa, Sec. 657.1)*

#### **50.02 NUISANCES ENUMERATED.**

The following subsections include, but do not limit, the conditions which are deemed to be nuisances in the City:

1. **Offensive Smells.** Erecting, continuing or using any building or other place for the exercise of any trade, employment or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public.

*(Code of Iowa, Sec. 657.2(1))*

2. **Filth or Noisome Substance.** Causing or suffering any offal, filth or noisome substance to be collected or to remain in any place to the prejudice of others.

*(Code of Iowa, Sec. 657.2(2))*

3. **Impeding Passage of Navigable River.** Obstructing or impeding without legal authority the passage of any navigable river, harbor or collection of water.

*(Code of Iowa, Sec. 657.2(3))*

4. **Water Pollution.** Corrupting or rendering unwholesome or impure the water of any river, stream or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

*(Code of Iowa, Sec. 657.2(4))*

5. Blocking Public and Private Ways. Obstructing or encumbering, by fences, buildings or otherwise, the public roads, private ways, streets, alleys, commons, landing places or burying grounds.

*(Code of Iowa, Sec. 657.2(5))*

6. Houses of Ill Fame. Houses of ill fame, kept for the purpose of prostitution and lewdness; gambling houses; places resorted to by persons participating in criminal gang activity prohibited by Chapter 723A of the Code of Iowa or places resorted to by persons using controlled substances, as defined in Section 124.101 of the Code of Iowa, in violation of law, or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.

*(Code of Iowa, Sec. 657.2(6))*

7. Billboards. Billboards, signboards and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard or alley or of a railroad or street railway track as to render dangerous the use thereof. (See also Section 62.07)

*(Code of Iowa, Sec. 657.2(7))*

8. Storing of Flammable Junk. Depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, bones and paper, by dealers in such articles within the fire limits of the City, unless in a building of fireproof construction. (See also Chapter 51)

*(Code of Iowa, Sec. 657.2(9))*

9. Air Pollution. Emission of dense smoke, noxious fumes or fly ash.

*(Code of Iowa, Sec. 657.2(10))*

10. Weeds, Brush. Dense growth of all weeds, vines, brush, or other vegetation in the City so as to constitute a health, safety, or fire hazard, or which otherwise constitutes a nuisance under this chapter. For purposes of this subsection, all growths of grass or weeds in excess of eight (8) inches in height shall be deemed to be a nuisance. Exempt from this subsection are growths used primarily for educational and/or research purposes, so long as the growths are controlled. (See also Section 50.15 in this Chapter)

*(Code of Iowa, Sec. 657.2(11))*

11. Dutch Elm Disease. Trees infected with Dutch Elm Disease. (See also Chapter 52)

*(Code of Iowa, Sec. 657.2(12))*

12. Standing Water. Allowing or permitting land to remain in such a condition as to allow stagnant, standing water.

13. Community Standard. A house, building or land, visible from any public place or private premises, remaining in an unclean or disorderly condition and to a standard not conforming with other orderly premises in that vicinity.

14. Diminution of Property Values. Premises maintained in a manner causing substantial diminution in the value of other property in the neighborhood in which such premises are located.
15. Construction Site Litter. The maintenance of a construction site in such a manner that litter will not be prevented from being carried by the elements to adjoining premises.
16. Abandoned Objects. Abandoned, discarded or unused objects or equipment such as automobiles, furniture, appliances, cans or containers.
17. Compost Pile. Any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin or other disease-carrying pests, animals or insects.
18. Animal Control. Subject to Section 55.05 of this Code of Ordinances, the keeping within the City limits of farm animals and fowl, including but not limited to ducks, geese, chickens, turkeys, cattle, goats, swine, sheep, buffalo, horses and ponies.
19. Rock and Earth Slides. Storing or permitting the storage of material such as, but not limited to, sand, gravel, rock, earth, coal and grain in piles with side slopes in excess of the angle of repose of said material, the angle of repose being the angle that the surface of free-standing material makes with the horizontal plane without slipping, sliding or collapse of the material. (This subsection does not apply to accumulations or piles of snow or to materials stored in a building, enclosure or completely fenced area to which members of the public are not permitted access.)
20. The making available of food, salt, mineral blocks or other products for ingestion by wild or stray animals, except that the following actions shall not be considered a nuisance:
  - A. Elevated bird/squirrel feeders providing seed, grain, fruit, worms or suet for birds or squirrels.
  - B. Standing crops planted and left standing as food plots for wildlife.
  - C. Grain or other feed scattered or distributed solely as a result of normal agricultural, gardening, or soil stabilization practices.
  - D. Standing, flooded, or manipulated natural vegetation or food/seed deposited by natural vegetation.

*(Ord. 134 - Mar. 11 Supp.)*

21. Trash piles. Accumulation of rubbish or trash tending in nature to harbor or attract vermin, rodents, or other disease-carrying pests, animals or insects, or to spread or harbor disease, emit unpleasant odors or harmful gas or creating a hazard of fire.
22. Dead Animals and Other Contaminated Material. Carcasses of animals remaining exposed and unburied six hours after death, or green or slated hides left or deposited in any open or public places; the storage, collection, discharge or depositing of any liquid waste, offal, filth, garbage, refuse, dead animals, or contaminated material in any private or public place so as to threaten the health or safety of or which is offensive to the senses of any individual or the public, or which is conducive to the breeding and harborage of flies, rats, or other vermin. Game animals being processed according to Iowa Department of Natural Resources regulations are exempted.

23. Disposal of Dead Animals. The disposal of dead animals by means other than by rendering, by burying at least three feet under the surface of the ground, or by transportation to and disposal at the Northern Plains Regional Landfill.
24. Deposits on Parking. The deposit or storage of any garbage or refuse containers, brush, rubbish, grass, rocks, building materials, incinerators, or any other debris or materials on the parking or area between the sidewalk and the curb of any street, except for a period not to exceed 24 hours while awaiting removal by garbage or refuse haulers. (See also Chapters 105 and 106)
25. Rats and Other Vermin. An infestation of rats or other vermin in or upon any premises.
26. Spreading Disease. The exposure of any person to any communicable disease by unlawful act or practice.
27. Unlawful Manufacture of Drugs. The unlawful manufacture, formulation, sale, distribution, and/or use of drugs, medication, devices, materials and/or chemicals.
28. Attractive Nuisance. Failure to secure areas, building, or places against unauthorized access where such access threatens the health or safety of individuals, or is an attractive nuisance to children.
29. Debris, Refuse, Rubbish, Trash. Accumulations of unused boards, bricks, concrete or rocks, animal or vegetable products or matter, appliances, ashes, barrels (excluding burn barrels and solid waste collection barrels awaiting pickup), bones, bottles, boxes, broken glass, brush, cans, cartons, cinders, coal, crates, pallets, decayed fruits or vegetables, dirt, dust, excrement, fence wire, filth, firewood not piled or stacked neatly or systematically, flammable materials, garbage, gasoline, grass, household furniture, discarded or broken or abandoned toys, iron and other metals, junk, kegs, leaves, logs, lumber not piled or stacked neatly and systematically (must have nails removed and be in rear yard; untreated lumber must be stacked), lumber scraps, manure, nails, offal, oil, old wearing apparel, paper, plaster, plastic (discarded containers or wrappers), plumbing fixtures, putrid fish or meat entrails, rags, roof shingles, rubber, sawdust, slag slop, soot, straw, sweepings, tacks, tarpaulins not in good repair, tires (mounted or unmounted), toilets, tubs, vehicle parts, weeds, wire, wood or metal shavings, any type of solid or yard waste (bagged or unbagged), or any condition or item that would prohibit the routine maintenance of the property or adversely affect the use and habitability of nearby property and of property within the City as a whole. Foliage and shrub clippings or cuttings, leaves, brush and fallen tree limbs or debris, firewood and other yard waste may be stored in piles in a rear yard not less than two (2) feet from a lot line and should be stored temporarily pending disposal or when used for mulch or composting or firewood.
30. Furniture, Fixtures and Appliances Outdoors. Any furniture, fixture, and appliance, including sofas, divans, recliners, toilets, bathtubs, sinks and similar objects that are not designed for outdoor use but which are maintained or located on any porch, lawn, parking lot, driveway, or public right-of-way.
31. Miscellaneous. Any act done or committed or suffered to be done or committed by any person — or any substance or thing kept, maintained, placed, or found in or on any public or private place — which is annoying or damaging or injurious or dangerous to the public health or welfare or safety, and every

act or thing done, permitted, maintained, allowed, or continued on any property, public or private, by any person, which is liable to or does endanger, annoy, damage, or injure any person or inhabitant of the City or property of said person or inhabitant.

32. Vehicle Parts. Storage (other than in an enclosed building) on private property that is residentially zoned of any two or more vehicle parts, including (but not limited to) bumpers, engines, exhaust pipes, doors, fenders, hoods, mufflers, seats, windshields or windows, wheels, or any other structural, mechanical, or decorative vehicle parts.
33. Storage on Trailers or Trucks. The storage of anything on an unenclosed trailer, pickup, truck box, or like vehicles shall be treated in the same manner as storage outside of an enclosed structure. Coverage with a tarp is not considered enclosed.
34. Other Nuisances. Any matter, thing, substance, or condition within the City deemed to be a nuisance in Chapter 657 of the *Code of Iowa*, or defined as a public nuisance in Chapter 657A of the *Code of Iowa*, or its successor provisions of either of the chapters.

### **50.03 OTHER CONDITIONS.**

The following chapters of this Code of Ordinances contain regulations prohibiting or restricting other conditions which are deemed to be nuisances:

1. Junk and Junk Vehicles (See Chapter 51)
2. Dangerous Buildings (See Chapter 145)
3. Storage and Disposal of Solid Waste (See Chapter 105)

### **50.04 NUISANCES PROHIBITED.**

The creation or maintenance of a nuisance is prohibited, and a nuisance, public or private, may be abated in the manner provided for in this chapter or State law.

*(Code of Iowa, Sec. 657.3)*

### **50.05 NUISANCE ABATEMENT.**

Whenever the Mayor or other authorized municipal officer finds that a nuisance exists, such officer shall cause to be served upon the property owner a written notice to abate the nuisance within a reasonable time after notice.

*(Code of Iowa, Sec. 364.12[3h])*

**50.06 NOTICE TO ABATE CONTENTS.**

The notice to abate shall contain:

*(Code of Iowa, Sec. 364.12[3h])*

1. Description of Nuisance. A description of what constitutes the nuisance.
2. Location of Nuisance. The location of the nuisance.
3. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.
4. Reasonable Time. A reasonable time within which to complete the abatement.
5. Assessment of City Costs. A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and assess the costs against such person.

**50.07 METHOD OF SERVICE.**

The notice may be served by ordinance, certified mail, or personal service to the property owner as shown by the records of the County Auditor.

*(Code of Iowa, Sec. 364.12[3h])*

**50.08 REQUEST FOR HEARING.**

Any person ordered to abate a nuisance may have a hearing with the Council as to whether a nuisance exists. A request for a hearing must be made in writing and delivered to the Clerk within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered. The hearing will be before the Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.

**50.09 ABATEMENT IN EMERGENCY.**

If it is determined that an emergency exists by reason of the continuing maintenance of the nuisance or condition, the City may perform any action which may be required under this chapter without prior notice. The City shall assess the costs as provided in Section 50.11 after notice to the property owner under the applicable provisions of Sections 50.05, 50.06 and 50.07 and hearing as provided in Section 50.08.

*(Code of Iowa, Sec. 364.12[3h])*

**50.10 ABATEMENT BY CITY.**

If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the City may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the Clerk who shall pay such expenses on behalf of the City.

*(Code of Iowa, Sec. 364.12[3h])*

The City may institute civil proceedings to obtain injunctive and declaratory relief or such orders of the court as are reasonable and proper to abate practices, conditions or circumstances found to be contrary to or prohibited by the provisions of this Chapter.

#### **50.11 COLLECTION OF COSTS.**

The Clerk shall mail a statement of the total expense incurred by certified mail to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one (1) month, the Clerk shall certify the costs to the County Treasurer and such costs shall then be collected with, and in the same manner, as general property taxes.

*(Code of Iowa, Sec. 364.12[3h])*

The City may collect all associated abatement expenses in a Court of Small Claims.

#### **50.12 INSTALLMENT PAYMENT OF COST OF ABATEMENT.**

Installment Payment. If the amount expended to abate the nuisance or condition exceeds \$500, the City may permit the assessment to be paid in up to ten (10) annual installments, to be paid in the manner and with the same interest as benefited property under the Code of Iowa.

*(Code of Iowa, Sec. 364.13)*

#### **50.13 FAILURE TO ABATE.**

Any person causing or maintaining a nuisance who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this Code of Ordinances.

#### **50.14 MUNICIPAL INFRACTION ABATEMENT PROCEDURE.**

A failure to abate a nuisance as defined in this chapter or a failure to perform an action required herein, following notice as provided in this chapter, shall constitute a municipal infraction and the requirements of this chapter may be enforced under the procedures applicable to municipal infractions in lieu of the abatement procedures set forth in this chapter.

#### **50.15 CONTROL OF VEGETATION**

1. Except as provided in subparagraph B below, all property owners shall maintain their property and the abutting property outside the property owner's lot and property line and inside the curb lines of an adjacent public street, or in absence of a curb, from the traveled portion of the adjacent public street to the lot or property line at a height of not more than eight (8) inches. Property not so maintained shall be deemed a nuisance.
2. Notice Abatement; Assessment of Cost. In the event the owner of any property shall neglect or fail to comply with the preceding provisions, the City shall give notice of violation to the property owner by posting a notice on the property that the property is in violation of Section 50.15(1) of the Wahpeton City Code, and if the violation is not abated within seven (7) days of the first date of

posting of the notice, the City will abate the condition and attempt to collect the cost of abatement from the property owner.

If the condition is not abated within seven (7) days of the first date notice was posted, the City shall act to control the vegetation and periodically report the cost of the abatement for each parcel of land or adjacent right-of-way through the City Council. The Council may levy and assess the reasonable cost for abatement against the parcel and certify the same to the County Auditor to be collected in the same manner as a property tax. Alternatively, the city may pursue a small claim action or a municipal infraction citation in Magistrate's Court. When said services are performed by the City, the minimum charge shall be \$100.00, along with an additional fee of \$50.00 per hour after the first hour or any fraction thereof.

3. Portions of real estate which fall within one or more of the following classifications are exempt from the requirements of this Section 50.15:
  - a. a natural wooded area, wetland or flood plain;
  - b. native prairie or meadow area;
  - c. land that is currently used for agricultural purposes;
  - d. land areas which because of slope, obstacles or standing water are impractical or unsafe to cut or mow;
  - e. gardens, landscape features or areas of natural vegetation which are planned, defined, controlled and maintained by the property owner.

#### Notes

EDITOR'S NOTE: A suggested form of notice for the abatement of nuisances is included in the appendix of this Code of Ordinances. Caution is urged in the use of this administrative abatement procedure, particularly where cost of abatement is more than minimal or where there is doubt as to whether or not a nuisance does in fact exist. If compliance is not secured following notice and hearings, we recommend you review the situation with your attorney before proceeding with abatement and assessment of costs. Your attorney may recommend proceedings in court under Chapter 657 of the Code of Iowa rather than this procedure.