

Ordinance # O – 1 – 2018

NUISANCES

- I. DEFINITION OF NUISANCE.** The term “nuisance” means whatever is injurious to health, indecent, or unreasonably offensive to the senses or an obstacle to the free use of property, so as essentially to unreasonably interfere with the comfort and enjoyment of life or property.
- II. NUISANCES ENUMERATED.** The following are declared to be nuisances:
1. The 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.
 2. The causing or suffering any offal, filth, or noisome substance to accumulate or to remain in any place to the prejudice of others.
 3. The obstruction or impeding without legal authority the passage of any navigable river, harbor, or collection of water.
 4. The corruption or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course of state, to the injury or prejudice of others.
 5. The obstruction or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places or burying grounds.
 6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, or houses resorted to for the use of controlled substances or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.
 7. 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, especially near intersecting streets.
 8. Any object or structure hereafter erected within 1,000 feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.
 9. The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, bones and paper, by any person, including a dealer in such articles, within the fire limits of this City, unless it be in a building of fire resistant construction.
 10. The emission of dense smoke, noxious fumes, or fly ash.

11. Dense growth of all weeds, grasses, vines, brush, or other vegetation in the City so as to constitute a health, safety, or fire hazard including any City owned property between the abutting property line and the street right-of-way.
12. Trees infected with Dutch elm disease.
13. Effluent from septic tank or drain field running or ponding on the ground in the open.
14. Any article or substance placed upon a street, alley, sidewalk, public ground, or in any ditch, waterway, or gutter so as to obstruct the drainage.
15. Accumulations of rubbish or trash tending to harbor vermin, rodents, and rank growth of weeds or other vegetation and plants, which is conducive to hazard.

III. OTHER CONDITIONS. The following Ordinances contain regulations prohibiting or restricting other conditions which are deemed to be nuisances:

1. Junk and Junk Vehicles (See Ordinance #O-1-04)
2. Dangerous Buildings (See Ordinance O-2-2018)

IV. 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.

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

VI. NOTICE TO ABATE: CONTENTS. The notice to abate shall contain:

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 may abate it and assess the costs against such person.

VII. METHOD OF SERVICE. The notice may be in the form of an ordinance or sent by certified mail to the property owner.

VIII. 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.

- IX. 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 and provided in the Collection of Costs paragraph of this ordinance after notice to the property owner under the applicable provisions of the Nuisance Abatement, Notice to Abate and Method of Service paragraphs and hearing as provided in the Request for Hearing paragraph of this ordinance.
- X. 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 expense on behalf of the City.
- XI. COLLECTION OF COSTS.** The Clerk shall send 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.
- XII. INSTALLMENT PAYMENT OF COSTS OF ABATEMENT.** If the amount expended to abate the nuisance or condition exceeds five hundred dollars (\$500.00), the City may permit the assessment to be paid in up to ten (10) annual installments, to be paid in the same manner and with the same interest rates provided for assessments against benefited property under State law.
- XIII. 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.
- XIV. MUNICIPAL INFRACTION ABATEMENT PROCEDURE.** In lieu of or in addition to the provisions set forth above, the requirements of this chapter may be enforced as a municipal infraction as set forth below.
1. **MUNICIPAL INFRACTION.** A violation of this chapter or any ordinance of code herein adopted by reference or the omission or failure to perform any act or duty required by the same, is a municipal infraction punishable by civil penalty as provided herein.
 2. **PENALTIES.** A municipal infraction under this chapter is punishable by the following civil penalties:

- a. First Offence: \$250.00
- b. Second Offence: \$500.00
- c. Third and Subsequent Offences: \$1,000.00

Each day that a violation occurs or is permitted to exist constitutes a separate offence. Any person violating this chapter may also be required to pay all costs and expenses involved in the prosecution of the violation.

3. **CIVIL CITATIONS.** The Mayor, City council person or any officer authorized by the City to enforce this chapter may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service as provided in Iowa Rule of Civil Procedure 1.305, by certified mail addressed to the defendant at the defendant's last known mailing address or by publication in the manner as provided in Iowa Rule of Civil Procedure 1.311. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the Clerk of the District Court. The citation shall serve as a notification that a civil offence has been committed and shall contain the following information.

- a. The name and address of the defendant.
- b. The name and description of the infraction attested to by the officer issuing the citation.
- c. The location and date or time of the infraction.
- d. The amount of civil penalty to be assessed or the alternative relief sought, or both.
- e. The manner, location, and time in which the penalty may be paid.
- f. The time and place of court appearance.
- g. The penalty for failure to appear in court.

4. **ALTERNATIVE RELIEF.** Seeking a civil penalty as authorized in this chapter does not preclude the City from seeking alternative relief from the court in the same action. Such alternative relief may include, but is not limited to, an order for abatement or injunctive relief for any violation of this chapter. The City may, in addition to other remedies, institute an injunction, mandamus, or other appropriate lawful action necessary to prevent, correct, or abate such violation.

5. **CRIMINAL PENALTIES.** This chapter does not preclude a peace officer from issuing a criminal citation for a violation of this Code of Ordinances or regulation if criminal penalties are also provided for the violation. Nor does it preclude or limit the authority of the City to enforce the provisions of this Code of Ordinances by criminal sanctions or other lawful means.

Passed and approved this 3rd day of May, 2018.

James Drahos, Mayor

ATTEST:

Lisa Berry, City Clerk