

## CHAPTER 50

# NUISANCE ABATEMENT PROCEDURE

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**50.01 DEFINITIONS.** For use in this chapter the following terms are defined:

1. “Inoperable condition” means a vehicle that (1) has a missing or defective part that is necessary for normal operation, or (2) is on blocks, jacks or other supports, or (3) does not have a current license for operation on a public roadway.
2. “Junk” means all refuse; rubbish; old or scrap copper, brass, lead, or any other non-ferrous metal; old or discarded rope, rags, batteries, paper, trash, rubber, debris, waste or used lumber, or salvaged wood; dismantled vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron, steel or other old or scrap ferrous materials; old or discarded glass, tinware, plastic or old or discarded household goods or hardware. Neatly stacked firewood located on a side yard or a rear yard is not considered junk.
3. “Junk vehicle” means a motor vehicle which is in inoperable condition and is (1) partially dismantled, or (2) is being used for sale of parts or as a source of repair or replacement parts, or (3) which is being kept for scrapping or salvage. Mere licensing of such vehicle shall not constitute a defense to the finding that the vehicle is a junk vehicle.
4. “Motor vehicle” means a motor vehicle as defined in Chapter 321 of the Code of Iowa, including motorized bicycles, motorcycles and all-terrain vehicles.
5. “Nuisance” means 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.

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

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

4. Sanitary Sewer Facilities. Facilities for the storage or processing of sewage, such as privies, vaults, sewers, private drains, septic tanks, cesspools and drain fields, which have failed or do not function properly or which are overflowing, leaking or emanating odors. Septic tanks, cisterns and cesspools which are abandoned or no longer in use unless they are emptied and filled in accordance with applicable laws, ordinances or regulations. Any vault, cesspool or septic tank which does not comply with the Polk County or Dallas County Department of Health regulations.

5. 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])*

6. Impeding Passage of Rivers or Streams. Obstructing or impeding without legal authority the passage of any rivers, streams, harbor or collection of water.

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

7. 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])*

8. Dense Growth of Weeds, Vines, Brush and Other Vegetation. Dense growth of all weeds, vines, brush or other vegetation in the City so as to constitute a health, safety or fire hazard.

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

9. Grasses and Weeds. Grasses and weeds on any developed lot that are allowed to grow to a height greater than ten (10) inches, grasses and weeds on any undeveloped lot that are allowed to grow to a height greater than fifteen (15) inches and any growth of noxious weeds as defined in the Code of Iowa. This section does not apply to grasses grown as agricultural crops on undeveloped property or to grasses growing in an area declared by the City Council to be a natural woodlands area. For land zoned RE—Residential Estate zoning classification, this section does not apply to grasses grown on the

portion of a lot zoned RE that does not contain the residence or the yard associated with the residence, including grasses grown on such lots for agricultural purposes such as pasture land. *(Ord. 730 – Aug. 01 Supp.)*

10. Dutch Elm Disease. Trees infected with Dutch Elm Disease.  
*(Code of Iowa, Sec. 657.2[12])*
11. Junk. Any junk stored outside on public or private property.
12. 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 corporate limits of the City.  
*(Code of Iowa, Sec. 657.2[9])*
13. Vermin Harborage. Conditions which are conducive to the harborage or breeding of vermin.
14. Dilapidated Buildings. Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsafe or unsanitary condition that it is a menace to the health of people residing in the vicinity thereof or any building or structure defined as a dangerous building in the Uniform Code for the Abatement of Dangerous Buildings.
15. 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 62.09)**  
*(Code of Iowa, Sec. 657.2[7])*
16. 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])*
17. Businesses. Businesses, the operation or maintenance of which adversely impacts nearby residential, commercial or industrial uses and which:
  - A. Jeopardizes or endangers the public health or safety, or the health or safety of persons residing or working on the premises or in the surrounding area;
  - B. Has resulted in or facilitated any of the following activities: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive

littering, illegal parking, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.) noxious smells or fumes, traffic violations, or police detention, citations or arrests; or

C. Violates any other sections of this section or any other City, State, or Federal regulation, ordinance or statute.

*(Ord. 797 – Dec. 03 Supp.)*

18. Other Nuisances. Noncompliance with the conditions listed in Sections 50.03 through 50.06 is also declared to be a nuisance.

*(Ord. 797 – Dec. 03 Supp.)*

**50.03 BUILDING MAINTENANCE.** Every building shall be maintained to be free from excessively peeling paint or other conditions suggestive of deterioration or inadequate maintenance. Exterior surfaces shall not have any holes or broken glass; loose, cracked or damaged shingles or siding; or other defects in the exterior finish which admit rain, cold air, dampness, rodents, insects or vermin. Basements, cellars and crawl spaces shall be free of standing water and hazards. All wood, including floorboards, subfloors, joists, bridging, roof rafters and sheathing, and all other wood in any interior or exterior floor, wall, roof or other part of the structure, shall be maintained to be free of cracks affecting structural integrity, termite damage, infestation or rot. Any and all damaged or deteriorating materials shall be replaced. If infestation exists in any basement, cellar or crawl space, such infestation shall be remedied in accordance with industry standards.

**50.04 HOUSEHOLD GOODS AND MACHINERY.** No furniture, household furnishings, appliances or other such items not designed for outside use, and no machinery, implements or other such equipment which is in an inoperable condition, including component parts thereof, shall be stored or kept outside for a period of more than twenty-four (24) hours on any premises in a residential area, excluding the week prior to the annual spring cleanup program.

**50.05 CONSTRUCTION EQUIPMENT AND MATERIALS.** Operable machinery, equipment and materials being used for construction purposes, including pipes, lumber, forms, dirt, sand and sod, shall not be stored or kept in the open, except:

1. For use in the ordinary course of business as the inventory or asset of a contractor, supplier or government subdivision; or
2. On the job site of a project in progress for a period not to exceed thirty (30) days after construction has been completed or a separate certificate of occupancy has been issued, whichever occurs first.

**50.06 JUNK VEHICLES.** No junk vehicles shall be parked or stored outside for a period of more than twenty-four (24) hours on private property. The provisions of this section do not apply to any junk vehicle stored within:

1. Building. A garage or other enclosed building; or

2. Salvage Yard. An auto salvage yard or junk yard lawfully operated within the City.

**50.07 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)*

**50.08 NUISANCE ABATEMENT.** Whenever the Mayor, City Manager 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])*

**50.09 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.

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

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

**50.11 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.

**50.12 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.

**50.13 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])*

**50.14 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.

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

**50.15 INSTALLMENT PAYMENT OF COST OF ABATEMENT.** If the amount expended to abate the nuisance or condition exceeds one hundred dollars (\$100.00), the City shall 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.

*(Code of Iowa, Sec. 364.13)*

**50.16 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 50.14 after notice to the property owner under the applicable provisions of Sections 50.08, 50.09 and 50.10 and hearing as provided in Section 50.11.

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

**50.17 PENALTY.** Unless another penalty is expressly provided by this chapter for any particular provision or section, any person violating any provision of this chapter or any rule or regulation adopted herein by reference shall be subject to a civil penalty as set forth in the Schedule of Civil Penalties in Chapter 4 of this Code of Ordinances. Each day that a municipal infraction occurs and/or is permitted to exist constitutes a separate offense.

*(Ord. 798 – Dec. 03 Supp.)*

#### 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.

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