

**TITLE II – COMMUNITY PROTECTION
DIVISION 2 – ENFORCEMENT: NUISANCES**

CHAPTER 55

NUISANCE ABATEMENT PROCEDURE

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55.01 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)

55.02 NUISANCES ENUMERATED. Nuisances include, but are not limited to:

1. 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. Causing or suffering any offal, filth or noisome substance to be collected or to remain in any place to the prejudice of others.
3. Obstructing or impeding without legal authority the passage of any navigable river, harbor or collection of water.
4. 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.
5. Obstructing 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; illegal 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(5) 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.

7. The manufacture, cultivation, growth, production, processing, sale, distribution, storage or use or possession for any unlawful manufacture, sale, distribution or use of a controlled substance as defined in Section 124.101 of the Code of Iowa, imitation controlled substances, as defined in Section 124A.2 of the Code of Iowa, and drug paraphernalia as defined in Section 51.03 of this Code of Ordinances.

8. The maintenance, use, rental or lease or allowing or permitting the maintenance, use, rental or lease of any real property or sub-unit thereof where people are allowed to congregate, gather or loiter in such a manner as to disturb the peace of other persons lawfully on the property itself or lawfully in the vicinity of the property.

9. The possession, sale or receipt of stolen property.

10. The sexual exploitation of a minor, as prohibited by Section 728.12 of the Code of Iowa.

11. A violation of any provision of the Iowa Alcoholic Beverage Control Act, Chapter 123 of the Code of Iowa or Chapters 145 and 146 of this Code of Ordinances.

12. A violation of the Code of Iowa Section 135.37, Iowa Department of Public Health rules and regulations governing tattooing adopted as provided by Code of Iowa Section 135.37 or any provisions of this Code of Ordinances regarding tattoo parlors.

13. Billboards, signboards and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion of 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.

14. The intentional planting of cotton-bearing cottonwood trees and all other cotton-bearing poplar trees in the City.

15. 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.

16. The depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, boxes and paper, by dealers in such articles within the City limits, unless in a building of fireproof construction.

17. The emission of dense smoke, noxious fumes or fly ash in the City so as to constitute a health, safety or fire hazard.

18. The dense growth of all weeds, vines, brush or other vegetation in the City so as to constitute a health, safety or fire hazard.
19. An adult entertainment business operated, conducted or maintained contrary to the provisions of this Code of Ordinances.
20. The storage of any junk vehicles, machinery, trailers or parts thereof on private property within the corporate limits of the City, in violation of Chapter 143 of this Code of Ordinances.
21. The storage of solid waste on private property for more than three days in violation of Chapter 105 of this Code of Ordinances.
22. All weeds, vines, bushes, volunteer trees less than three inches in diameter, grass and other growths which exceed a height of nine (9) inches and all noxious weeds of any dimension as defined by the Code of Iowa, growing on lots and parcels of ground within the corporate limits of the City.
23. Materials constructed, stored or placed on the public right-of-way for more than 24 hours, which have not been previously approved as landscaping materials or otherwise authorized by the City for said location.
24. All unsafe buildings, structures or appendages in violation of Chapter 130 of this Code of Ordinances.
25. Maintenance of any dilapidated building of whatever kind which is unused by the owner or uninhabited because of deterioration or decay, which condition constitutes a fire hazard or subjects adjoining property to danger of damage by storm soil erosion or rodent or insect infestation or which becomes a place frequented by trespassers and transients seeking a temporary refuge.
26. Maintenance of any partially or otherwise incomplete structures or abandoned property including, but not limited to fences, parking garages, commercial and residential buildings.
27. Maintenance or use of any building or structure which substantially annoys, injures or endangers the comfort, health, repose or safety of the public by reason of vandalism, inadequate maintenance, abandonment or otherwise, including, but not limited to:
 - A. Vacant, inadequately maintained or boarded-up buildings or structures located within 1,000 feet of a residentially zoned district which do not show evidence of current construction or remodeling activity;
 - B. Vacant buildings or structures, regardless of proximity to a residentially zoned district, which are not secure and to which entry may be made through opened or unlocked doors, windows or other openings;
 - C. Vacant buildings or structures which are likely to attract minors and which constitute a danger to the health, safety or well-being of said minors.

28. Keeping or maintaining any stockyard for the purpose of feeding or fattening any cattle, swine, sheep or other animals within the City to the annoyance and discomfort of others.

29. Permitting or suffering to continue a loud, raucous or disagreeable noise upon any premises or emanating from a motor vehicle owned by the person or in the person's possession that causes a disturbance to the general public. A loud raucous or disagreeable noise is a noise that any reasonable person would objectively find disturbing considering the time, place and manner in which the noise is being made. A motor vehicle is any vehicle which is self-propelled. The general public is one person or multiple persons either located in a public place or right-of-way or located off the premises or outside the motor vehicle that is the subject of the violation of this chapter. The general public includes police officers. The following circumstances are considered per se violations as being loud, raucous and disagreeable noises causing disturbance to the general public and a violation of this chapter:

A. Noise emanating from a motor vehicle that can be heard from a distance of 100 feet or more;

B. Modification of the exhaust system of a motor vehicle (including, but not limited to muffler cutouts, bypasses or other non-emission compliant devices which increase sound emissions) such that the noise emanating from the motor vehicle is above the level of noise emanating by the vehicle as manufactured;

C. Noise emanating from a place of business or dwelling that could be heard from a distance of 100 feet or more as measured from any point beginning on the place of business or dwelling property line.

The above circumstances are intended to provide objective guidelines for some of the more common noise violations occurring in the City and in no way meant to limit the scope of the acts that may be prohibited under this section.

30. All other nuisances as specifically defined by the Code of Iowa or in any other section of this Code of Ordinances.

55.03 NUISANCES PROHIBITED. Any person, keeping, allowing or maintaining a nuisance, as defined herein, is guilty of a misdemeanor. At the discretion of the City Attorney, any violation of this chapter may be pursued as a municipal infraction according to the terms of Chapter 8 of this Code of Ordinances in lieu of criminal prosecution. Each calendar day a violation is allowed to continue shall constitute a separate and distinct violation.

55.04 CRIMINAL PENALTY. Any person found guilty of a criminal violation of this chapter shall be subject to the penalties provided in Section 1.14 of this Code of Ordinances.

55.05 MUNICIPAL INFRACTION PENALTY. Any person found guilty of a civil violation of this chapter shall be subject to the penalties provided in Section 8.03 of this Code of Ordinances.

55.06 ADDITIONAL CIVIL RELIEF. For a civil violation in addition to the penalty provided in Section 8.03, a court of competent jurisdiction may:

1. Order such person to remove, correct, cease and desist, abate and/or otherwise come into compliance with this Code of Ordinances.
2. Restrain and enjoin such person from operating, conducting or maintaining a business contrary to this Code of Ordinances.
3. Order such person, to repair, rehabilitate, demolish or remove the building, structure or appendage.
4. Enter any order with specific terms deemed just and equitable by the court intended to achieve any of the purposes set forth in the subsections above.
5. Grant the City authority to achieve any of the purposes set forth in the subsections above with the costs and administrative fees associated therewith being taxed to such person for collection the same manner as taxes and to be a lien against real property as provided by the Code of Iowa.

55.07 ABATEMENT OF NUISANCE. Any person keeping, allowing or maintaining a nuisance shall have the duty to immediately cease and desist, correct and abate the nuisance in the manner provided for in this chapter or State law. If a nuisance is deemed to be an emergency by the Director of the Public Health Department, Police Chief, Director of Parks and Recreation, Building Official, Fire Marshal, Fire Chief or the Mayor, the City may perform any action required by this chapter without prior notice, citation or arrest as provided in this chapter and assess the actual costs and administrative fees.

55.08 ADMINISTRATIVE PENALTIES.

1. In addition to or in lieu of criminal prosecution or municipal infraction proceeding, any body, department, agency, or official of the City which has issued a permit, license, certificate, registration, or other authorization to a person keeping, allowing, or maintaining a nuisance, as defined herein, may administratively suspend or revoke said permit, license, certificate, registration, or other authorization.
2. In the matter of any permit, license, certificate, registration, or other authorization for which there is a specific suspension or revocation process set forth in this Code of Ordinances, then the suspension or revocation shall follow that specified process, including the specified appeals process.
3. In the matter of all permits, licenses, certificates, registrations, or other authorizations for which there is no specified process for suspension or revocation set forth elsewhere in this Code of Ordinances, the suspension or

revocation shall be made by the same authority issuing the permit, license, certificate, registration, or other authorization. The appeal to any said suspension or revocation shall be to the Council by filing a written notice of appeal with the Clerk within ten business days of service of notice on the holder of said permit, license, certificate, registration, or other authorization, or said person's authorized agent. Service of the notice of suspension or revocation may be by any means provided by State law for service of original notice in a civil lawsuit or by posting in a conspicuous place on the subject real property. Filing an appeal under this chapter does not automatically stay the order of suspension or revocation. Upon the filing of a written appeal, the aggrieved party may, in writing, request the Mayor to stay the denial, suspension or revocation. The Mayor may stay the denial, suspension or revocation of the permit, license, certificate, registration, or other authorization while the appeal is pending, by filing a written notice of stay with the Clerk and sending copies thereof to the aggrieved party and the issuing authority.

55.09 ENFORCEMENT RESPONSIBILITY. The criminal and civil provisions of this chapter may be enforced by any peace officer located within the City limits. The civil provisions of this chapter may also be enforced as provided in Chapter 8 of this Code of Ordinances.

55.10 EMERGENCY DEFINED. As used in this chapter, "emergency" means any unforeseen or unexpected occurrence or circumstance or a combination of such occurrences or circumstances or the resulting state therefrom that calls for immediate action to protect the health, safety, or life of individuals or property from substantial damage or destruction.

55.11 EMERGENCY ACTIONS AUTHORIZED. If the appropriate authority declares an emergency, the City is authorized and empowered to order and/or undertake, without notice, and without any waiting period, or right to appeal by the owner, occupant or other interested party as may be required by this or any other provision of this Code of Ordinances.

1. Any action that may be taken to abate the nuisance as provided by this chapter;
2. Occupants to immediately vacate the premises;
3. The premises not be occupied by anyone;
4. Required repairs/alterations be completed by deadlines established by the authority declaring the emergency;
5. Removal of the emergency condition;
6. Securing of the premises by fencing, boarding, or any other appropriate method;
7. Demolition of the property in whole or part;

8. Any necessary work to render the emergency temporarily safe and/or cause such other actions as deemed appropriate to eliminate such emergency condition or situation;
9. The temporary closing or vacating of buildings, structures, houses, sidewalks, streets, public ways, public places, and other property that are adjacent to or in dangerous proximity to the emergency condition and prohibit the same from being utilized or occupied for the period of time necessary to ensure the safety of the affected area; and
10. To employ people or contract with others to provide the necessary labor, equipment and/or materials to perform the required emergency work as expeditiously as possible without following the requirements regarding public bidding for contracts.

55.12 RIGHT OF ENTRY. In a declared emergency, it is unlawful for any person to enter such building or structure for any purpose, except with the knowledge and authorization of the authority declaring the emergency. A violation of this section is a misdemeanor and, upon conviction, shall be subject to the penalties provided in Section 1.14. The provisions of Chapter 131 (Building Code) are also enforceable in addition to the provisions of this section.

55.13 FORECLOSED/RENTAL PROPERTY. Any real property which is subject to foreclosure, forcible entry and detainer, eviction, or in which possession is otherwise transferred through legal process or Court action, shall be in full compliance with this Code of Ordinances within twenty-four hours of the transfer of possession. Failure to comply with the provisions of this section shall be deemed an emergency. The City is authorized to proceed in a manner consistent with the emergency provisions set forth in this chapter. Any person, including the property owner and, if applicable, a landlord, violating this section is guilty of a misdemeanor. At the discretion of the City Attorney, any violation of this chapter may be pursued as a municipal infraction according to the terms of Chapter 8 of this Code of Ordinances in lieu of criminal prosecution. Each calendar day a violation is allowed to continue shall constitute a separate and distinct violation.

55.14 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])

[†] **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.

55.15 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.

55.16 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])

55.17 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.

55.18 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])

55.19 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 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])

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

(Code of Iowa, Sec. 364.13)

55.21 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.

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