

CHAPTER 163 - ENVIRONMENTAL NUISANCES

163.01 - NUISANCE DEFINED.

Whatever is injurious to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is declared to be a nuisance. All structures and premises thereof or land shall be maintained in a clean, safe, secure, and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health and safety.

163.02 - NUISANCES PROHIBITED.

The creation or maintenance of a nuisance is prohibited.

163.03 - NUISANCES DESIGNATED.

The following things, substances, acts and conditions are declared to be nuisances; provided, however, this enumeration shall not be deemed or construed to be exhaustive, limiting, or conclusive:

1. Any and all putrid or decaying carcasses, flesh, fish, vegetables, entrails, offal, filth, or other unwholesome or offensive substances of any kind left, deposited, or existing upon any street, alley, private lot or ground or public place or in or about any vacant or occupied building, except when enclosed in a receptacle as provided in Chapter 106 of this Code.
2. Any accumulation of stagnant water.
3. A building, structure, or place where any activity is conducted which is in violation of any local, state or federal law.
4. Failure to properly dispose of or quarantine plant or animal matter containing injurious pests or contagious disease.
5. Dense smoke, noxious fumes, fly ash, or other emissions in noisome quantities.
6. Any obstruction placed on a street, alley, public ground or watercourse except as permitted by the City.
7. Failure to secure areas, buildings or places against accidental or unauthorized access where such access threatens the health or safety of citizens, and especially where such an area or place is an attraction to the immature citizen. Fences, railings and other guards shall be well built, kept in good repair, be at least forty-eight (48) inches from top to ground and of adequate height to perform their function, and have no sharp points, spikes, hooks, projection barbs or other devices that are in themselves hazardous; except that barbed wire may be used to enclose agricultural land.
8. Any building or location which harbors vectors, vermin or pests.

9. The pollution of any well, stream, lake, river, or body of water by the dumping or throwing of any sewage, industrial waste, carcass, garbage, refuse, offal, or manure, except with the consent and under the direction of the DNR and the dumping or throwing of any of such items upon any private or public property.

10. All open cisterns or cisterns with inadequate or improper and unsafe coverings, open basements, holes, trenches or other excavations not properly marked and precautionary measures taken to prevent injury to the public, except under such conditions as are provided by this Code of Ordinances.

11. The depositing or keeping of junk and refuse such as, but not limited to, old lumber, tin, wire, cans, barrels, cartons, boxes, rags, tires, inner tubes, brush, grass and hedge clippings, rocks, bricks, cinders, unmaintained and unused piles of dirt or similar material, scrap iron, buckets, tubs, windows, screens, glass, bottles, wastepaper, bedsprings, mattresses, discarded furniture, indoor upholstered furniture which is not designed for outdoor use, cleanings and bedding from animal or fowl pens; improperly covered, loose, or unsecured garbage, garbage bags, and waste receptacles; old automobile parts, inoperable machinery or appliances.

A. Mulch, compost, clippings, or similar organic material used in an appropriate manner shall not be classified as a nuisance, unless unmaintained or maintained as an attraction for vermin or noticeably putrid smell.

B. The storage, collection, and disposal of solid waste and garbage shall also follow all requirements of Chapter 105 Garbage and Solid Waste and Chapter 106 Collection of Solid Waste.

12. The storage of inflammable junk, such as old rags, rope, cordage, rubber and paper, boxes, or other combustible material or objects of a like nature.

13. Noisome plants such as Dutch Elm disease, poison ivy, castor bean plant and thistle.

14. All property owners shall maintain their property and the abutting right-of-way according to the following standards:

A. In developed areas and other areas which lie within one hundred feet of a developed area or urban street or alley, except for those areas otherwise hereinafter regulated, all grass, weeds, vines, brush, and other troublesome growth shall be cut or destroyed to a height comparable to or lower than the groundcover in the surrounding area. However, under no circumstances shall the troublesome growth exceed eight (8) inches in height.

B. In areas of forest cover all grass, weeds, vines, brush, and other troublesome growth between the established treeline and the abutting developed area or urban street or alley shall be cut or destroyed to a height comparable to or lower than the groundcover in the surrounding developed area. However, under no circumstances shall the troublesome growth exceed eight (8) inches in height.

- C. All grass, weeds, vines, brush, and other troublesome growth which occurs within the public right-of-way of an urban street or alley, including any drainage ditch located therein, shall be cut or destroyed when such growth exceeds eight (8) inches in height.
- D. Natural areas, farmland, and publicly-owned open spaces may exceed the standards established by this chapter except that any grass, weeds, vines, brush, and other troublesome growth which constitute a health, safety, or fire hazard shall be cut or destroyed when such growth exceeds two feet in height.
- E. In all other areas of the City all grass, weeds, vines, brush, or other troublesome growth shall be cut or destroyed when such growth exceeds two feet in height.

15. In the event vehicles are parked on grass areas where said parking is illegal under the City Code, the City may, at the owner's sole expense, tow said vehicles to any legal parking area, and tax the cost for said towing against the property, or recover the same by any other legal means, including but not limited to court action. Under such circumstances, the City shall not be liable for any damages to towed vehicles.

16. All snow and ice not removed from public sidewalks within twenty-four hours after the snow and ice has ceased being deposited thereon.

17. Any downspout, trough, eave, awning, or other device which causes snow or ice to accumulate on any public drive, road, alley, walk or way.

18. All trees, hedges, billboards, or other obstructions which prevent persons from having a clear view of traffic approaching an intersection from cross streets or alleys in sufficient time to bring a motor vehicle driving at a reasonable speed to a full stop before the intersection is reached.

19. All trees or parts of trees which are dead, decayed, diseased, or dying.

20. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

21. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches and trim, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights, shall be maintained weather resistant and water tight.

22. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents.

23. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion

of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

24. All cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition

25. All canopies, marquees, signs, metal awnings, fire escapes, standpipes, exhaust ducts and similar overhang extensions shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

26. Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

27. All chimneys, cooling towers, smoke stacks and similar appurtenances shall be maintained structurally safe and sound and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

28. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

29. Any abandoned or otherwise unattended refrigerator, icebox, appliance, or similar container, with doors, outside of buildings and accessible to children.

163.04 - OTHER CONDITIONS.

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

1. Junk Vehicles (See Chapter 163A);
2. Animal Control and Animal Related Nuisances (See Chapter 65).

163.05 - RIGHT OF ENTRY FOR INSPECTION.

Whenever necessary to make an inspection to enforce any ordinance or whenever there is reasonable cause to believe there exists an ordinance violation in any building or upon any premises or real estate within the jurisdiction of the City, based upon the appearance of a nuisance or condition which makes such building or premises unsafe as defined in this Code of Ordinances, any authorized official of the City, or his or her designee, upon presentation of proper credentials, may enter the building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the official by this code of ordinances. Except in emergency situations or when consent of the owner and/or occupant to the inspection has otherwise been obtained, the City official shall give the owner and/or occupant, if they can be

located after reasonable effort, 24-hours' written notice of the official's intention to inspect. If the property owner denies consent to entry for purposes of inspection, the provisions of § 163.06 of this Chapter shall apply.

163.06 - WARRANTS.

If consent to enter upon or inspect any building, structure or property pursuant to a municipal ordinance is withheld by any person having the lawful right to exclude, the City officer, designee or employee having the duty to enter upon or conduct the inspection may apply to the Iowa District Court in and for the county, pursuant to Iowa Code § 808.14, for an administrative search warrant. No owner, operator or occupant or any other person having charge, care or control of any dwelling, unit, rooming unit, structure, building or premises shall fail or neglect, after presentation of a search warrant, to permit entry therein by the municipal officer, designee or employee

163.07 - NUISANCE ABATEMENT.

1. Whenever the Code Official, or their authorized designee, 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, unless otherwise stated herein.
2. In cases where a property owner or a tenant has had a nuisance violation notice served to them for a nuisance at that specific property location or address that they own or lease within the corporate limits of the City within the last year (365 days), a municipal infraction citation may be issued immediately for the creation of a nuisance as stated in § 163.02, at the time of the inspection, and/or, at the time of notification of a violation.

163.08 - NOTICE TO ABATE NUISANCE - CONTENTS.

The notice to abate shall be served in accordance with the provisions of section 163.09 of this Chapter and shall contain the following information:

1. *Description of nuisance.* A description of what constitutes the nuisance.
2. *Location of nuisance.* The location of the nuisance.
3. *Notice of Placarding.* The notice shall also include a statement notifying the property owner that the property will be placarded as a nuisance and a posting of the nuisance notification shall be affixed to a structure, or a conspicuous place upon the property. Placarding may occur simultaneously with the providing of written notice pursuant to this section. Placarding shall not be required, except in cases where the building or structure is itself the nuisance or where no other form of service is possible under the circumstances.
4. *Acts necessary to abate.* A statement of the act or acts necessary to abate the nuisance.

5. *Reasonable time.* A reasonable time within which to complete the abatement. A nuisance notification shall require at least forty-eight hours (two days) to abate the nuisance after receipt of notification. If the nuisance is not abated within the specified time period, then the City will cause the nuisance to be abated under the provisions of § 163.12 or § 163.13 of this Chapter.
6. *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.

163.09 - METHOD OF SERVICE.

Whenever a nuisance is found to exist upon any property, the Code Official or other City official may serve notice upon the owner, owner's agent or occupant of the property, to abate the nuisance within forty-eight hours or within a stated longer period if the Code Official determines it is necessary to avoid unnecessary hardship. The violation notice and/or notice to abate shall be served by U.S. certified mail, by personal delivery or in the form of an ordinance, in accordance with Iowa Code 364.12(3). If such service cannot reasonably be made, then service may be made by posting the notice in a conspicuous place upon the premises where the nuisance exists.

163.10 – NOTICE BY PUBLICATION FOR REFUSE/GARBAGE AND VEGETATION VIOLATIONS.

For property owners that have caused or permitted the existence of a nuisance condition defined in subsections 163.03 (11)-(15) of this Chapter, the City, at its sole discretion, may elect to provide notice of the condition via publication in lieu of providing notice under sections 163.08 and 163.09.

Notice to the property owners shall be provided as follows: The Code Official shall cause to be published each year in a newspaper of general circulation within the City a notice stating that maintaining property as required under this chapter shall be done, and that the property owner has fourteen (14) days from the date of publication to remedy the nuisance condition. Further, the notice shall state that failure to comply after publication of the notice will result in the City causing the work to be done, and the costs incurred by the City shall be assessed against the property in the manner provided by law or against the property owner in accordance with the provisions of the Code of Ordinances. The Code Official shall furthermore post initial notice upon the property or provide such additional notice as the Code Official deems appropriate under the circumstances.

Each property owner that has a nuisance abatement occur on their property shall be sent by first-class mail, to the address noted on the tax rolls of the City, a bill for the work performed informing the property owner of the cost of such work and the council's intent to assess the cost if not paid to the City Treasurer within thirty (30) calendar days of the invoice date. Any bill remaining unpaid after the thirty-day period may be assessed against the property in the manner provided by law.

163.11 - REQUEST FOR HEARING.

Any person ordered to abate a nuisance may have a hearing with the Code Official or their designee as to whether a nuisance exists, what measures are necessary to abate the nuisance, and other relevant matters. A request for a hearing must be made in writing and delivered to the Code Official or their designee ordering the abatement within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered. At the conclusion of the hearing, the hearing officer shall render a written decision as to whether a nuisance exists. If the officer finds that a nuisance exists, the officer must order it abated within an additional time, which must be reasonable under the circumstances. An appeal from this decision may be had by immediately filing a written notice with the hearing officer. This appeal will be heard before the Development Director at a time and place fixed by the Director. At the hearing the officer, designee or employee and the person to whom the notice of abatement was issued are parties to the hearing and each may testify, call witnesses and offer evidence and argument relevant to the issues described by or contained within the notice of abatement. The findings of the Director shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.

163.12 - 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. Upon failure to timely request a hearing under 163.11 or comply with such notice, the City may either abate the nuisance, with costs certified to the Council, paid by the City, and certified to the County Treasurer for property assessment and collection as taxes, and/or the City may file a municipal infraction nuisance charge against the property owner, owner's agent or occupant in accordance with § 163.17 of this Chapter.

163.13 - EMERGENCY ABATEMENT BY CITY.

1. 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 Code Official, or their authorized designee, shall make a determination as to whether or not an emergency exists based upon:
 - A. Inability to contact the property owner by normal efforts;
 - B. The seriousness of the violation due to health hazards or physical hazards to a private individual or to the public as determined by the Code Official or their designee.
 - C. Frequency of violations of a property owner or a tenant when the property owner or a tenant has received more than two nuisance violation notifications within one calendar year. This determination is in effect for one calendar year beginning on the date of the most recent nuisance violation notification.

2. The City shall assess the costs as provided in § 163.12 after notice to the property owner under the applicable provisions of §§ 163.07 – 163.09 and hearing as provided in § 163.11.
3. In the event that a failure to abate under § 163.12 is determined to be an emergency by the Code Official or their designee, the Fire Marshal, the Fire Chief or the Police Chief of the City, or the Public Health Official of Des Moines County, Iowa, the Code Official or their designee is authorized to placard the structure as a dangerous building, and to order vacation of the building and securing of all equipment and structures so as not to constitute an attractive nuisance. This subsection applies to all structures residential and non-residential.

163.14 - INTERFERENCE.

Interference with the lawful removal or abatement of a nuisance by the City or its agents is prohibited and any person who violates this section commits a municipal infraction shall be subject to the penalties provided in Chapter 4 of this Code of Ordinances.

163.15 - LIABILITY.

The owners, agents, contract buyers, tenants, or lessees of all residential dwellings, commercial establishments, and/or real estate upon which a violation of this article is found shall be jointly and severally responsible for compliance with this article and jointly and severally liable for any damages or costs incurred and awarded under this Chapter.

163.16 - FORECLOSED/RENTAL PROPERTY.

Any real property which is subject to foreclosure, forcible entry and detainer, eviction, or on which possession is otherwise transferred through legal process or court action, shall be in full compliance with the code of ordinances within 48 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 provision set forth in this Chapter. Any person, firm partnership, corporation, or other legal entity, including the property owner and, if applicable, a landlord, violating this section commits a municipal infraction and is subject to penalties in accordance with the terms of § 163.17 below. Each calendar day a violation is allowed to continue shall constitute a separate and distinct violation.

163.17 - PENALTY.

1. *Civil Penalty.* Any person violating any of the provisions of this Chapter or failing to comply with any order given hereunder shall, upon conviction, be subject to the penalties set forth in Section 1.14 of this Code of Ordinances or a violation of any of the provisions of this Chapter shall constitute a municipal infraction and may be enforced under Chapter 4 of this Code of Ordinances. Any person who commits the same offense after the initial notification and abatement may be charged with a municipal infraction, without

notice, and the violation may be abated without further notice pursuant to the provisions of this Chapter.

2. *Administrative penalties.* In addition to or in lieu of criminal prosecution or municipal infraction and civil penalties proceeding, any body, department, agency, or official of the City which has issued a permit, license, certificate, registration, or other authorization to a person, firm, partnership, corporation or other legal entity keeping, allowing, or maintaining a nuisance, as defined by the code of ordinances, may administratively suspend or revoke said permit, license certificate, registration, or other authorization.
 - A. In the matter of any permits, license, certificate, registration, or other authorization for which there is a specific suspension or revocation process set forth in the code of ordinances, then the suspension or revocation shall follow that specified process, including the specified appeals process.
 - B. 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 the 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 as set forth in § 163.11 above.

State Law references — (Code of Iowa, §§ 364.1; 364.12; 364.22)