

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])

A. In addition to the foregoing, offensive smells shall include any business trade, manufacture or other operation or condition of property, including, but not limited to residential property, which gives rise to noxious or offensive odors, gases, vapors, smoke, dust, pollen, or fumes which may be injurious, offensive, dangerous or prejudicial, or which threaten the health or safety of individuals or the public.

(Ord. 16-164 – Jan. 16 Supp.)

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. 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 62.08 and Chapter 146)**
(Code of Iowa, Sec. 657.2[7])
7. Cottonwood Trees. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees. **(See also Chapter 151)**
(Code of Iowa, Sec. 657.2[8])
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[10])
9. Air Pollution. Emission of dense smoke, noxious fumes or fly ash.
(Code of Iowa, Sec. 657.2[11])
10. Weeds, Brush. (Repealed by Ordinance No. 05-88 – Jul. 05 Supp.)
(See Chapter 56)
11. Dutch Elm Disease. Trees infected with Dutch Elm Disease. **(See also Chapter 151)**
(Code of Iowa, Sec. 657.12[13])
12. Tree Limbs. All limbs of trees which are less than eight (8) feet above the surface of any public sidewalk or street. **(See also Chapter 151)**
13. Wires. All wires which are strung less than twenty (20) feet above the surface of any public sidewalk or street.
14. Explosives and Flammable Liquids. All explosives, flammable liquids and other substances which are dangerous, stored in any manner or in any amount other than as provided by law or ordinance.
15. Fireworks. Use or display of fireworks, except as provided by law or ordinance. **(See also Section 41.12)**

16. Noises. All unnecessary noises and annoying vibrations. **(See also Sections 40.03(2) and 62.04)**

17. Excavations. Obstructions and excavations affecting the ordinary use by the public of streets, alleys, sidewalks or public grounds, except under such conditions as are provided by law and ordinance.

18. Obstructing Streets or Sidewalks. Any use of property abutting on a public street, alley or sidewalk or any use of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the public streets, alleys or sidewalks. **(See also Chapters 135 and 136)**

19. Airport Air Space. Any object or structure hereafter erected within one thousand (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.

(Code of Iowa, Sec. 657.2[9])

20. Lawn Furniture. No person shall use or cause to be used any indoor or automotive couches, sofas, chairs or furniture on porches, decks, gazebos, or in any lawn. All furniture to be used in these areas must be exterior or lawn furniture. *(Ord. 11-131 – Jul. 11 Supp.)*

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)**
4. Trees **(See Chapter 151)**

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, if stationary.
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 in the form of an ordinance or sent by certified mail to the property owner.
(*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 officer ordering the abatement as to whether a nuisance exists. A request for a hearing must be made in writing and delivered to the officer 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, he or she must order it abated within an additional time, which must be reasonable under the circumstances. An appeal from the decision may be had by immediately filing a written notice with the hearing officer. This appeal will be heard 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])

50.11 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])

50.12 INSTALLMENT PAYMENT OF COST 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.

(Ord. 13-141 – Dec. 12 Supp.)

(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.

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.