



Roll Call Number

Agenda Item Number

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Date June 10, 2013

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 42-346, 42-347, 42-348, 42-352, 42-353, 42-354, 42-355, 42-358, 42-359, 42-360, 42-361 and 42-364, by repealing Sections 42-349, 42-350, 42-356, 42-362 and 42-363, and by adding and enacting new Sections 42-351, 42-358.01 and 42-358.02, relating to nuisances, nuisance abatement, and notices and hearings related thereto",

which was considered and voted upon for the first time under Roll Call No. 13- 0742 of May 6, 2013, and considered and voted upon for the second time under Roll Call No. 13- 0819 of May 20, 2013, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				


CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

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 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: May 6, 2013
	Agenda Item No. 42 Roll Call No. [13-0742] Communication No. 13-232 / 13-0819 Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Ordinance amending Article VI, Chapter 42 of the Municipal Code of the City of Des Moines relating to nuisances, nuisance abatement, and notices and hearings related thereto.

SYNOPSIS:

Article VI, Chapter 42 of the Municipal Code sets out the process and procedures that the City follows in dealing with hazardous and nuisance conditions. The proposed ordinance amends various sections, repeals certain sections, and adds new sections to Article VI, Chapter 42, in order to make the nuisance notice, hearing, abatement, and assessment processes more efficient and consistent with State and federal law. This ordinance has been reviewed by City departments that are charged with enforcement and the Legal Department to improve the functionality of the City's nuisance abatement procedures.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

The City's Legal Department has reviewed the procedures currently set forth in Chapter 42, Article VI of the Municipal Code in response to nuisance abatement and assessment questions presented by the City's Community Development, Engineering, and Public Works Departments, as well as questions from the State ombudsman. The results of such review resulted in the proposed revisions to Chapter 42, Article VI, in order to reflect requirements of State and federal law in relation to nuisance abatement, notices, hearings, and cost assessment. The input of City Department Directors, Division Managers and Administrators, and the City Clerk's office was also provided and incorporated into the proposed Code revisions.

The proposed ordinance amends the City Code by amending Sections 42-346 to 42-348, 42-352 to 42-355, 42-358 to 42-361, and 42-364, by repealing Sections 42-349, 42-350, 42-356, and 42-362 to 42-363, and by enacting new Sections 42-351, 42-358.01 and 42-358.02. These revisions are summarized as follows:

1. The definitions, specifically identified nuisances, powers of departments and the City in addressing nuisance abatement, treatment of abandoned property within City property, and other general sections of Article VI, Chapter 42 are revised for consistency with other City Code sections and to better reflect City practices (See amendments to Sections 42-346 through 42-348 and Sections 42-352 to 42-355, 42-361, and 42-364, and the addition of Section 42-351.).

2. The distinction between nuisances subject to enforcement by administrative hearing procedure and nuisances subject to enforcement only by civil action is eliminated. The current format of the City Code allows for a number of violations to be processed only through court action, while identifying other violations that can be abated by the City pursuant to either administrative hearing process or civil (court) action. For example, the Community Development Department through the Neighborhood Inspection Division is charged with clean up of nuisances including junk, debris, and unlicensed and inoperable vehicles from yards in Des Moines neighborhoods. This department uses the administrative hearing process almost exclusively in its enforcement activities. In addition, the Public Works Department has requested that certain routine violations relating to sewer and water line discharge be handled by administrative hearing rather than by court action.

The proposed revisions permit City departments to proceed under either administrative hearing or court action to address all nuisances, rather than requiring court action as the City's only option to abate certain common and significant nuisances. This change will allow City departments to abate nuisances more efficiently and inexpensively while complying with State requirements for administrative hearings (See amendments to Sections 42-348, 42-358 and 42-359, and repeal of Section 42-349.).

3. The City's notice procedure is simplified. Section 42-358 has been revised to provide the requirements for all notices sent regarding abatement of a nuisance and costs of abatement. Section 42-359, as revised, provides additional notice requirements in the event that a City department decides to proceed by civil (court) action rather than administrative hearing process to abate a nuisance. New Section 42-358.01 sets forth the requirements for service of any notice given pursuant to Article VI, Chapter 42, and revised Section 42-360 explains notices in emergency abatement actions. These revisions make the City Code more consistent with Iowa statutory requirements regarding notices of nuisance abatement, and with State and federal due process requirements.

4. The City's administrative hearing process is now consolidated. New Section 42-358.02 addresses requests for, and procedures related to, administrative hearings following notice of nuisance abatement and/or notice of cost assessment. This Section consolidates current Sections 42-362 and 42-363, which had set forth separate procedures for hearings under Article VI, Chapter 42. The current City Code language provides that "the determination of the hearing officer is the final administrative decision", meaning that any appeals of hearing officer decisions on nuisance abatement are to be appealed directly to District Court. The Neighborhood Inspection Division requested that this ordinance also allow for the decisions of the hearing officer to be appealed to the Iowa District Court should the department or the notice recipient believe that the order issued was contrary to policy or law. This ordinance revision clarifies the appeal process and directs that the decision of an administrative hearing officer is the final, appealable decision of the City, which can be appealed by either the City or the notice recipient directly to district court.

PREVIOUS COUNCIL ACTION(S):

Date: September 12, 2005

Roll Call Number: 05-2237

Action: Amending Chapter 42 of the Municipal Code regarding run-off and illicit discharge requirements of the City's National Pollution Discharge Elimination System maintenance of drainage

facilities. Moved by Hensley that this ordinance do now pass, #14,484. Motion Carried 6-1. Nays: Brooks (<http://www.dmgov.org/government/citycouncil/ordinances/14484.pdf>)

Date: February 23, 2004

Roll Call Number: 04-407, 04-408

Action: Roll Call No. 04-407, Amending Chapter 42 of the Municipal Code regarding nuisance abatement process procedure. Moved by Vlassis that this ordinance be considered and given first vote for passage. Motion Carried 7-0. Roll Call No. 04-408, Final consideration of ordinance above. Moved by Vlassis that the rule requiring that an ordinance must be considered and voted on passage at two (2) Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #14,319. Motion Carried 7-0. (<http://www.dmgov.org/government/citycouncil/ordinances/14319.pdf>)

Date: August 18, 1997

Roll Call Number: 97-2881, 97-2882

Action: Roll Call No. 97-2881, Amending Chapter 17 of the Municipal Code regarding nuisances and junk motor vehicles. Moved by McPherson that this ordinance be considered and given first vote for passage. Motion Carried 7-0. Roll Call No. 97-2882, Final consideration of ordinance above. Moved by McPherson that the rule requiring that an ordinance must be considered and voted on passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #13,518. Motion Carried 7-0. (<http://www.dmgov.org/government/citycouncil/ordinances/13518.pdf>)

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.

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ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 42-346, 42-347, 42-348, 42-352, 42-353, 42-354, 42-355, 42-358, 42-359, 42-360, 42-361 and 42-364, by repealing Sections 42-349, 42-350, 42-356, 42-362 and 42-363, and by adding and enacting new Sections 42-351, 42-358.01 and 42-358.02, relating to nuisances, nuisance abatement, and notices and hearings related thereto.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 42-346, 42-347, 42-348, 42-352, 42-353, 42-354, 42-355, 42-358, 42-359, 42-360, 42-361 and 42-364, by repealing Sections 42-349, 42-350, 42-356, 42-362 and 42-363, and by adding and enacting new Sections 42-351, 42-358.01 and 42-358.02, relating to nuisances, nuisance abatement, and notices and hearings related thereto, as follows:

ARTICLE VI. NUISANCES

Sec. 42-346. Definitions.

The definitions found in sections 42-28, 42-451 and 42-477 shall apply to the provisions of this division, provided, however, that the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abatement costs (or costs of abatement) are the reasonable costs incurred by the city in abating a nuisance. These costs

may include, but are not limited to, the costs for labor, police officers, equipment used, and overhead or administrative expenses.

Boat is a craft or device designed for operation on water.

Department is any city department charged with enforcement of any section enumerated in this article.

Enclosed building is any structure having exterior walls and a roof constructed in compliance with applicable ordinances that is secured against entry.

Hearing officer is the city manager or his/her designated representative.

Inoperable and/or unsafe vehicle or boat is any motor vehicle, recreational vehicle, trailer, semitrailer, or boat that meets one or more of the following criteria that:

- (1) lacks a current registration or any component part, engine or parts that render it incapable of use and/or unsafe for its intended use;
- (2) with a missing, broken or shattered windshield or any exposed broken glass edges;
- (3) with a missing fender, door, hood, steering wheel, trunk top, or trunk handle;
- (24) that has become a habitat of rats, mice, snakes, or other vermin ~~or~~ for insects;
- (5) that is left unattended on jacks, blocks, or elevated in any other way which constitutes a threat to the public health, safety or welfare;
- (63) that because of its condition or method of storage constitutes a threat to public health and safety.

Junk means all old or scrap copper, brass, lead, or any other non-ferrous metal; old rope, rags, batteries, paper, trash, rubber debris, waste, used lumber or salvaged wood; dismantled or inoperable vehicles, unsafe vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron, steel, or other old or scrap ferrous material; old discarded glass, tinware, plastic, or old discarded household goods or hardware; cut brush, including dead or decaying plant material, except a contained compost pile or orderly stacked firewood if cut in lengths less than or equal to four feet and stored at least eighteen (18) inches above the ground surface.

Motor vehicle is a device in, upon, or by which a person or property is or may be transported or drawn upon a highway, street or waterway, with the exception of devices moved by human power or used exclusively upon stationary rails or tracks, and includes without limitation an automobile, truck, trailer, motorcycle, tractor, buggy, wagon, farm machinery, or any combination thereof.

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Public right-of-way real property includes the public right-of-way (the area of land, the right to possession of which is secured by the city for roadway purposes and includes the traveled portion of the public streets and alleys as well as the border area, which is all property outside the lot and property lines and inside the curb lines or traveled portion of the public streets or alleys), and all other city-owned real property and improvements thereon.

Unlicensed motor vehicle or trailer is any vehicle or trailer that is not displaying a current license as required by state law. For the purposes of this article a valid current license shall not include a stored vehicle license issued under state law. Mere licensing of an inoperable or unsafe motor vehicle or trailer shall not constitute a defense to the finding that the presence of any vehicle constitutes a nuisance.

Sec. 42-347. Nuisance construed; ~~action to abate.~~

Whatever is injurious or dangerous to the public health, safety or welfare, including but not limited to those things or actions which are offensive to the senses, or an obstruction to the free use of property real estate so as to unreasonably interfere with the comfortable enjoyment of life or property, real estate or which are identified specifically as nuisances in this article, Code is a nuisance.

~~Such nuisance may be abated by:~~

- ~~(1) A civil action brought by ordinary proceedings, with damages sustained on account thereof, the costs of abatement and civil penalties to be recovered as an assessment to be placed against the real estate and collected in the same manner as a property tax and/or as a personal judgment;~~
- ~~(2) The administrative hearing procedure described in this article, with damages and or the cost of abatement sustained on account thereof to be recovered as an assessment to be placed against the real estate and collected in the same manner as a property tax and/or collected as a personal judgment; or~~
- ~~(3) Any other action authorized by law to protect the public health, safety or welfare, including, but not limited to, injunctive relief.~~

Sec. 42-348. Specifically identified nuisances. Enumeration of nuisances subject to enforcement by administrative hearing procedure or civil action.

Specifically identified nuisances include the following:

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~~The following are nuisances that may be prosecuted through the administrative hearing process or through civil action as set forth in this article:~~

- (1) Depositing any poisonous material or ~~thing~~ substance on any real estateproperty, so as to allow access to it by any animal or person.
- (2) Depositing or storing of flammable junk on any real estateproperty, including but not limited to old rags, rope, cordage, rubber, boxes, and paper, ~~by dealers in such articles,~~ unless it is in a building of fireproof construction.
- (3) Depositing or storing outside a completely enclosed building items that constitute a threat to the public health, safety or welfare, including but not limited to the following: old or scrap rope, rags, batteries, paper, trash, rubber debris, tires, waste, used lumber or salvaged wood, inoperable machinery or appliances or parts of such machinery or appliances, vehicular component parts, iron, steel, old or scrap household goods or hardware, cut brush or wood including dead or decaying plant material except as contained in a compost pile or orderly stacked firewood if cut in lengths of four feet or less and stored at least eighteen (18) inches above the ground surface.
- (4) Placement, storage or abandonment ~~Discarding or abandoning~~ of refrigerators, iceboxes or similar containers equipped with an airtight door, lid with a snap, lock or other device which cannot be released from the inside, ~~whether such is abandoned or discarded~~ outside any building or dwelling or within any unoccupied or unsecuredabandoned building, dwelling or other structure if the door or lid is not disabled.
- (5) Depositing or storing of litter, garbage or organic waste on any real estateproperty; provided, however, that this article shall not prohibit the storage of litter, garbage or organic waste in authorized private receptacles for collection.
- (6) Any trees, shrub, wood or debris which is:
 - a. Infected with Dutch elm disease, or oak wilt, or any disease that is a threat to the entire urban forest; or
 - b. Infested with emerald ash borer or Asian longhorned beetle or any insect that is a threat to the entire urban forest; or

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c. ~~or any d~~Dead or dying tree, shrub, brush or wood, or any tree, shrub, brush, wood or debris infected with any disease damaged ~~so~~ so as to constitute a threat to the public health, safety or welfare.

- (7) Any tree, ~~or shrub,~~ or any other plant whose foliage extends over the city right-of-way in violation of section 114-14 or 122-10 of this Code.
- (8) Graffiti as is defined in division 2 of article VI of chapter 70 of this Code when placed on any surface not primarily intended for such use, except as specifically permitted therein.
- (9) Any motor vehicle, trailer or boat that is unlicensed, unsafe or inoperable found upon public or private real estate property, and the contents therein, which is not stored within an enclosed building. This article shall not apply to legitimate businesses operating in a lawful place and manner provided, however, that such outside areas are screened from public view and do not constitute a threat to the public health, safety or welfare.
- (10) Obstructing or encroaching by motor vehicles or otherwise upon any public or private, road, street, highway, or right-of-way which causes traffic or pedestrians to cross the marked centerline or leave the usual traveled portion of the roadway, right-of-way or sidewalk to travel around the obstruction or encroachment. This article shall not apply to emergency vehicles and official government or utility vehicles in the performance of their duties nor to other vehicles while legally maneuvering into position or momentarily engaged in receiving or discharging passengers, loading or unloading of merchandise, ~~or~~ in obedience to traffic regulations, signs or signals, ~~or~~ in an involuntary stopping of the vehicle by reason of causes beyond the control of the operator, or as otherwise authorized in writing by the city.
- (11) Businesses, the operation or maintenance of which adversely impacts nearby residential or commercial 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 section of this article or any other city, state or federal regulation, ordinance or statute.

(12) ~~Abandonment or allowing the abandonment of property in or upon any public right-of-way abutting real estate owned or under control of such person~~ Personal property left in or in the public right-of-way of any road or alley upon public real property, including but not limited to any personal and household items, furniture, appliances, machinery, equipment, building materials, or other items located on the public right-of-way, shall be deemed abandoned.

(13) Erecting or using any building or place for the exercise of any trade, employment, or manufacture, which by occasioning noxious exhalations, offensive smells, or other annoyances that constitute a threat to the public health, safety or welfare.

(14) Emitting dense smoke, noxious fumes, or fly ash.

(15) Causing or allowing any offal, filth, or noisome substance to be collected or to remain in any place.

(16) Discharging sewage, garbage, or any other organic waste matter into or on any public or private real property.

(17) Transporting garbage, night soil, or other organic filth in vehicles or containers which leak or which allow access by insects to the material being transported.

(18) Except as permitted or authorized in writing by the city, obstructing, encroaching upon, or encumbering by fences, buildings, trees, shrubs, or otherwise any public real property, road, private way, street, alley, traffic control device, streetlight, common, landing place, or burying ground.

(19) Obstructing or impeding, without legal authority, the passage of any navigable river, marina, or collection or body of water.

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- (20) Corrupting or rendering unwholesome or impure the water of any river, stream, lake or pond, or other body of water, or unlawfully diverting such water.
- (21) Billboards, signboards, and advertising signs, whether erected and constructed on public or private real property, which so obstruct or impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or railway track as to render dangerous the use thereof.
- (22) Any sign or sign structure which is structurally unsafe or which constitutes a hazard to the public health, safety or welfare because of its location, inadequate maintenance or dilapidation or which is not kept in good repair or which is capable of causing an electric shock to persons likely to come in contact with it.
- (23) Any sign, sign structure, vehicle or any other property or structure which obstructs free ingress to or egress from a door, window, fire escape, or any other entrance or exit required by this Code or any other law.
- (24) Signs accessible to the general public containing obscene statements, words, or pictures. As used in this subsection, the term "obscene" means and includes any depiction or description of genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive, and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value.
- (25) Depositing or permitting to be deposited dirt, debris, or other material:
 - a. Onto public real property, except as part of a city project or city function or as otherwise permitted or authorized in writing by the city;
 - b. Into a private storm sewer or drainage way in an amount which could obstruct the flow of water in a public storm sewer or drainage way located upstream from such private storm sewer or drainage way; or
 - c. Onto public or private real property so as to obstruct or divert the natural flow of surface water causing or threatening to cause damage to a building or its contents on adjoining property.

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- (26) Any discharge, directly or indirectly, of waters which collect upon private real property from subsurface or surface drainage, including but not limited to that from building footing drains:
 - a. To a point upon or so adjacent to a public sidewalk or street as to permit the waters so discharged to drain upon a public sidewalk or street during other than periods of community emergency generated by extraordinary high levels of precipitation; or
 - b. Onto adjoining real property causing or threatening to cause damage to any building, its contents, any structure, or any other thing of value on such adjoining real estate. The city engineer may require that any such discharge be connected to the public sewer system, if available, or be redirected to a discharge point which eliminates or lessens the nuisance.
- (27) The discharge of water upon or under a public street or sidewalk because of faulty water service.
- (28) Any object or structure that may be 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 takeoff and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the object or structure is located.
- (29) The existence of any hazardous substance, as defined in section 46-92 of this Code, that has been or is being discharged or released into the environment or that is not properly stored or labeled or that is not secured from access by the public.

Sec. 42-349. Reserved.

Editor's note--Ord. No. 15,--- repealed § 42-349 which pertained to enumeration of nuisances subject to enforcement by civil action and derived from Code 1991, § 17-1.02 and Ord. No. 13,518, and from Code 2000, § 42-349 and Ordinance Nos. 14,319 and 14,484.

Enumeration of nuisances subject to enforcement by civil action.

~~The following are nuisances that may be prosecuted through civil action as set forth in this article:~~

- ~~(1) Erecting or using any building or place for the exercise of any trade, employment, or manufacture, which by occasioning noxious exhalations, offensive~~

~~smells, or other annoyances that constitute a threat to the public health, safety or welfare.~~

- ~~(2) Emitting dense smoke, noxious fumes, or fly ash.~~
- ~~(3) Causing or allowing any effal, filth, or noisome substance to be collected or to remain in any place.~~
- ~~(4) Discharging sewage, garbage, or any other organic waste matter into or on any public or private real estate.~~
- ~~(5) Transporting garbage, night soil, or other organic filth in vehicles or containers which leak or which allow access by insects to the material being transported.~~
- ~~(6) Obstructing or encumbering by fences, buildings, trees, shrubs, or otherwise any public road, private way, street, alley, traffic control device, streetlight, common, landing place, or burying ground.~~
- ~~(7) Obstructing or impeding, without legal authority, the passage of any navigable river, harbor, or collection of water.~~
- ~~(8) Corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting such water.~~
- ~~(9) Billboards, signboards, and advertising signs, whether erected and constructed on public or private real estate, which so obstruct or impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or railway track as to render dangerous the use thereof.~~
- ~~(10) Any sign or sign structure which is structurally unsafe or which constitutes a hazard to the public health, safety or welfare because of its location, inadequate maintenance or dilapidation or which is not kept in good repair or which is capable of causing an electric shock to persons likely to come in contact with it.~~
- ~~(11) Any sign, sign structure, vehicle or any other structure which obstructs free ingress to or egress from a door, window, fire escape, or any other entrance or exit required by this Code or any other law.~~
- ~~(12) Signs accessible to the general public containing obscene statements, words, or pictures. As used in this subsection, the term "obscene" means and includes any depiction or description of genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards~~

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~~with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive, and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value.~~

~~(13) Depositing or permitting to be deposited dirt, debris, or other material:~~

~~a. Onto a public right-of-way in amounts which could be injurious or dangerous to the public health, safety or welfare;~~

~~b. Into a private storm sewer or drainage way in an amount which could obstruct the flow of water in a public storm sewer or drainage way located upstream from such private storm sewer or drainage way; or~~

~~c. Onto public or private real estate so as to obstruct or divert the natural flow of surface water causing or threatening to cause damage to a building or its contents on adjoining property.~~

~~(14) Any discharge, directly or indirectly, of waters which collect upon private real estate from subsurface or surface drainage, including but not limited to that from building footing drains:~~

~~a. To a point upon or so adjacent to a public sidewalk or street as to permit the waters so discharged to drain upon a public sidewalk or street during other than periods of community emergency generated by extraordinary high levels of precipitation; or~~

~~b. Onto adjoining real estate causing or threatening to cause damage to any building, its contents, any structure, or any other thing of value on such adjoining real estate. The city engineer may require that any such discharge be connected to the public sewer system, if available, or be redirected to a discharge point which eliminates or lessens the nuisance.~~

~~(15) The discharge of water upon or under a public street or sidewalk because of faulty water service.~~

~~(16) Any object or structure that may be 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 takeoff and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the object or structure is located.~~

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~~(17) The existence of any hazardous substance, as defined in section 46-92 of this Code, that has been or is being discharged or released into the environment or that is not properly stored or labeled or that is not secured from access by the public.~~

Sec. 42-350. Emergency actionsReserved.

Editor's note--Ord. No. 15,--- repealed § 42-350 which pertained to emergency actions and derived from Code 1991, § 17-1.03 and Ord. No. 13,518, and from Code 2000, § 42-350 and Ordinance No. 14,319.

~~If the department determines that a nuisance exists which constitutes an emergency requiring immediate abatement, the city may perform any emergency action necessary to abate the nuisance with or without prior notice.~~

Sec. 42-351. Reserved. Action to abate.

If a department determines that a nuisance exists, such nuisance may be abated and enforced against by notice as set forth in this article, and pursuant to:

- (1) A civil action brought by ordinary proceedings, with damages sustained on account thereof, the costs of abatement and civil penalties to be recovered as a personal and/or in rem judgment;
- (2) The administrative hearings described in this article, with damages and/or the cost of abatement sustained on account thereof to be recovered as an assessment to be placed against the real property and collected in the same manner as a property tax ; or
- (3) Any other action authorized by law to protect the public health, safety or welfare, including, but not limited to, injunctive relief.

Editor's note--Ord. No. 13,718 originally repealed § 42-351 which pertained to abandoned property and derived from Code 1991, § 17-1.04 and Ord. No. 13,518.

Sec. 42-352. Liability.

The owners, agents, contract buyers, tenants, or lessees of all residential dwellings, commercial establishments, and/or real estate property 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 assessed or awarded under this article.

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Sec. 42-353. Rebuttable presumption.

In any proceeding charging a violation of this article, proof that the particular violation described constitutes a violation of this article, together with proof that the particular ~~defendant~~ named violator was the owner, agent, tenant, or lessee of the residential dwelling, commercial establishment ~~and/or real estate~~ property upon which the violation occurred, shall be deemed to create a ~~by~~ rebuttable presumption that such violator person ~~was the party~~ person violating this article. As to property abandoned, in the public ~~real estate~~ right property-of-way, it is presumed that the abandoned property was placed there by or with the consent of the owner, agent, tenant or lessee of ~~or person responsible for~~ the abutting property.

Sec. 42-354. Habitual violators.

Any person who is ~~given notice of violation of~~ found to have violated this article three or more times within a 36-month period, at any address in the city, shall be deemed to be a habitual violator.

Sec. 42-355. Powers of department.

~~The~~ Department employees designated by the department director may enter onto and into open unobstructed property and structures to investigate, locate, and identify nuisances ~~enumerated in this article that occur on real estate in the city.~~ Designated department ~~employees of the department~~ shall have full authority to declare a condition to be a ~~public~~ nuisance and issue appropriate notices provided for by this article and such designated. ~~Thereafter, the department employees may~~ shall take such further action as required and permitted by this article. Designated ~~Department~~ employees shall have all powers and authority necessary to cause the abatement of the nuisance in accordance with ~~under~~ this article. If entry onto real property for the purposes described in this section is refused, an administrative search warrant may be obtained as provided in section 1-19 of this code.

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Sec. 42-356. Reserved.

Editor's note--Ord. No. 15,--- repealed § 42-356 which pertained to search warrants and derived from Code 1991, § 17-3.01 and Ord. No. 13,518.

~~Search warrant.~~

~~If entry onto real estate for the purposes described in section 42-355 of this article is refused, the department may obtain an administrative search warrant as provided by law to gain entry onto the real estate for the purpose of inspection.~~

Sec. 42-358. Notices. ~~Notice of nuisances enumerated for enforcement by administrative hearing procedure or civil action.~~

~~(a) If the department determines that a nuisance exists, as enumerated in 42-348 of this article, the department may give notice of the existence of the nuisance and order abatement of the nuisance within the time set forth in the notice. If the department in its sole discretion determines to proceed by administrative procedure, the notice shall contain the following information:~~

~~(1) A description, to the extent possible, of the conditions that constitute the nuisance;~~

~~(2) An indication of the location of the nuisance;~~

~~(3) A statement that the person liable for the presence of the nuisance must correct the nuisance within the time set forth in the notice and in accordance with this article;~~

~~(4) A statement that upon failure to comply with this article within the time set forth in the notice, the person so notified of the violation shall be deemed liable for the nuisance;~~

~~(5) A statement that the city will enter onto the property and cause the conditions which constitute the nuisance to be abated, the costs of abatement and civil penalties to be recovered as an assessment to be placed against the real estate and collected in the same manner as a property tax or as a personal judgment; or~~

~~(6) A statement that upon notice of the administrative procedure the person notified or the person's duly authorized agent may file a written request for a hearing as set forth in this subchapter.~~

~~(b) Notice shall be served by United States mail, postage prepaid to all persons deemed responsible for the violation at their last known mailing address as determined by reasonable search.~~

~~(c) If the department, in its sole discretion, determines at any time to proceed by civil action, then notice may be given pursuant to § 42-359.~~

(a) Notice to abate a nuisance shall be given prior to city action to abate a nuisance, except that in the event of an emergency, such notice as is practical under the circumstances, if any is practical, shall be given; provided, however, that nothing herein shall require notice in an emergency if impractical. If notice to abate a nuisance is given pursuant to this article, said notice shall contain the following information:

(1) A description, to the extent possible, of the conditions that constitute the nuisance;

(2) A description of the location of the nuisance;

(3) A statement that the person liable for the presence of the nuisance must correct the nuisance within the reasonable time set forth in the notice and in accordance with this article; and

(4) A statement that upon failure to comply with this article within the time set forth in the notice, the person so notified of the violation shall be deemed liable for the nuisance, and that the city may enter onto the real property and cause the conditions which constitute the nuisance to be abated and assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing if requested or court action as applicable.

(5) If the department elects to follow the administrative hearing procedure set forth in this article, the notice shall also contain a statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for an administrative hearing as set forth in section 42-358.02(b) of this article.

(b) Notice of costs of abatement shall be given prior to city assessment of such costs. If notice of costs of abatement is given following administrative hearing procedure or emergency action pursuant to this article, said notice shall contain the following information:

(1) A description, to the extent possible, of the conditions that constituted the nuisance;

(2) A description of the location of the nuisance;

(3) A description, to the extent possible, of the abatement actions taken by the city;

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- (4) A copy of the invoice or other documentation of costs incurred by the city in abating the nuisance; and
- (5) A statement that upon failure to make full payment as directed in the notice within the time set forth in the notice, the city may assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing if requested.
- (6) A statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for an administrative hearing on costs of abatement only, as set forth in section 42-358.02(b) of this article.

Sec. 42-358.01. Service of notice.

Notices given pursuant to this article shall be served by certified mail and regular mail, postage prepaid, to all persons deemed responsible for the violation, and to all other parties required by law or by departmental policy or procedure to receive such notices, at their last known mailing addresses as shown by the records of the county auditor, and if deemed appropriate by the department director or his/her designee, also at their last known mailing addresses as shown by any other available public record. In addition to and concurrently with mailing, notice may be delivered by a peace officer, process server, or any other method deemed appropriate. Failed attempts to locate the person responsible for the violation shall be documented by the department.

Sec. 42-358.02. Administrative hearings.

- (a) Recipients of notices pursuant to this article are not entitled to administrative hearings, and administrative hearings shall not be held, if the department elects to solely bring civil action to abate the nuisance and collect costs for abatement rather than to follow the administrative hearing procedure, as stated in the notice.
- (b) Recipients of notices pursuant to this article for which the department elects to follow the administrative hearing procedure, as stated in the notice, may request an administrative hearing as follows:
 - (1) Requests shall be made in writing, and either hand-delivered to the city clerk no later than seven (7) calendar days from the date of the notice, or sent to the city clerk via regular mail postmarked by official

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U.S. postal service cancellation and not by postage meter no later than seven (7) calendar days from the date of the notice.

- (2) Each request for hearing shall contain the name, address, electronic mail (e-mail) address, and daytime telephone number of any person requesting a hearing and of any attorney and/or agent duly authorized by the person who has received the notice to represent him/her at the hearing.
 - (3) Each request for hearing shall set out the requester's basis for the appeal.
 - (4) Failure to request a hearing within seven (7) calendar days from the date of the notice shall be deemed a waiver of the right to contest the validity of the determination of nuisance and/or determination of costs stated in the notice, as applicable. The information set forth in the notice will be deemed to be valid and abatement and/or assessment of abatement costs will proceed as indicated in the notice.
- (c) All administrative hearings requested in compliance with this section shall proceed as follows:
- (1) Shall be scheduled by the city clerk to occur as soon as practical following the date of the notice.
 - (2) Shall be held before a hearing officer and be conducted informally. The department and the person in receipt of the notice may be represented by counsel or duly authorized agent, and examine witnesses, and present evidence.
 - (3) The person requesting the hearing shall be notified in writing by regular mail or by electronic mail (e-mail), or by phone of the date and time for the hearing at least three (3) business days in advance thereof.
 - (4) For hearings following notice to abate a nuisance, the hearing officer shall either find that a nuisance exists, or void or reverse the notice. If the hearing officer finds that a nuisance exists and evidence of plans for abatement are presented at the hearing by the recipient of the notice, the hearing officer may grant additional reasonable time for the abatement of the nuisance by the recipient of the notice prior to city abatement of the nuisance.
 - (5) For hearings following notice of costs of abatement, the hearing officer shall either uphold the amount billed, reduce the amount billed, or waive the costs, and shall not determine any other issue relating to the nuisance abatement including but not limited to

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any issue that may have been raised at a hearing following notice to abate a nuisance. Any costs not waived by the hearing officer may be assessed against the real property for collection in the same manner as a property tax.

(d) The determination of the hearing officer shall be in writing, including findings of fact, and is the final administrative decision of the city.

(1) Any party aggrieved by the determination of the hearing officer pursuant to this article may challenge whether the officer exceeded proper jurisdiction or otherwise acted illegally by commencing a certiorari action in the district court for Polk County, Iowa. The petition to initiate a certiorari action must be filed within thirty (30) days after the entry of the final determination unless an extension of time is allowed by the reviewing court pursuant to Division XIV of the Iowa Rules of Civil Procedure. The city manager is hereby authorized to initiate a certiorari on behalf of the city when the city manager, in consultation with the city attorney, deems it necessary and appropriate.

(2) The filing of an action in the district court challenging the determination of the hearing officer does not automatically stop the city from taking action pursuant to such determination. Unless the city has been served with an order from the district court directing otherwise, the city may proceed with enforcement of a determination.

(e) Request for an administrative hearing does not stay an action by the city for alternative relief as allowed by law.

Sec. 42-359. Notice of nuisances enumerated for enforcement enforced by civil action.

(a) If the department determines that a nuisance exists as enumerated in § 42-348 or § 42-349 of this article, the department may give notice of the existence of the nuisance and order abatement of the nuisance within the time set forth in the notice. The notices pursuant to this article for which the department elects to proceed by civil action notice the nuisance shall be served in the manner set forth in section 42-358.01 of this code, and shall contain all information set forth in section 42-358(a) of this code as well as the following information:

- ~~(1) A description, to the extent possible, of the conditions which constitute the nuisance.~~
 - ~~(2) A description of the location of the nuisance.~~
 - ~~(3) A statement that the person liable for the presence of the nuisance must correct the nuisance within the time set forth in the notice and in accordance with this article.~~
 - ~~(4) A statement that upon failure to comply with this article within the time set forth in the notice, the person so notified of the violation shall be deemed liable for the nuisance.~~
 - ~~(5) A a statement that the city may file a civil action and seek a court order allowing the city to abate the conditions which constitute the nuisance with the costs of abatement and civil penalties to be recovered as an assessment to be placed against the real estate and collected in the same manner as a property tax or as a personal judgment relating to the existence of, abatement, and recovery of abatement costs of abating the nuisance.~~
- ~~(b) Notwithstanding any other provision of this article, where a department determines that the operation or maintenance of a business constitutes a nuisance for any reasons enumerated in § 42-348 (11) and that immediate abatement of the nuisance is required in order to protect the public health, safety or welfare, the department may give written notice to the business that the business must immediately abate the nuisance. If the department has given notice to a business that its operation or maintenance constitutes a nuisance and the business owner does not promptly make the necessary changes in its operations or maintenance to ensure abatement of the nuisance, the city may seek injunctive and such other relief as is appropriate in district court.~~
- ~~(c) Service of notice shall be accomplished as follows:~~
- ~~(1) Notice served by United States mail, postage prepaid to all persons deemed responsible for the violation at their last known mailing address as determined by reasonable search, shall be deemed sufficient.~~
 - ~~(2) In the case of a determination of nuisance pursuant to subsection (b) hereof, notice may be delivered by a peace officer, process server, United States mail, or any other method deemed appropriate to give notice under the circumstances to the business owner and/or person then working at or in charge of the business at the business address.~~

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Sec. 42-360. Emergency actions.

If the department determines that a nuisance exists which constitutes an emergency requiring immediate abatement, the city may perform any emergency action necessary to abate the nuisance without prior notice or abatement hearing.

~~(a) If deemed appropriate a notice may be given to the person determined to be responsible for the existence of a nuisance that constitutes an emergency. The notice shall contain the following information:~~

~~(1) A description, to the extent possible, of the condition that constitutes the emergency.~~

~~(2) A description of the location of the nuisance.~~

~~(3) A statement that the person liable for the presence of the nuisance must correct the nuisance within the time set forth in the notice and that the person so notified of the violation shall be deemed liable for the nuisance.~~

~~(4) A statement that upon failure to comply with the notice, the city will enter upon the real estate and cause the condition which constitutes the emergency to be abated and that the cost of abatement and civil penalties will be assessed against the real estate from which the nuisance was abated for collection in the same manner as a property tax, or collected as a personal judgment after notice of the right to an administrative hearing as set forth in this article.~~

~~(5) If no notice of violation was given prior to the abatement by the city, the costs of the abatement incurred by the city will be assessed against the real estate for collection in the same manner as a property tax.~~

~~(b) If notice is given, service of notice shall be accomplished by regular mail, personal service or that method which shall give such notice within the shortest practicable period of time, considering the nature of the emergency. Failed attempts to locate the person responsible for the violation shall be documented by the department.~~

Sec. 42-361. Abandoned property in the right-of-way within public real property.

(a) Property left in or upon the public right-of-way of any road or alley real property, including but not limited to any personal and household items, furniture, appliances, machinery, equipment, building materials or other items, shall be deemed abandoned and shall constitute a violation

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~~of this article and are~~ is hereby declared a public nuisance. Property left ~~on the~~ in or on public right-of-way real property as a result of an eviction or a forcible entry and detainer action shall be deemed abandoned and ~~are~~ is hereby declared a public nuisance.

(b) The abutting property owner is required to maintain all property outside their lot lines and property lines and inside the curb lines or the traveled street surfaces ~~portion of the public streets or alleys~~. Any items which remain which create an obstruction of the public right-of-way or sidewalk, and any items within the traveled portion of the public right-of-way or sidewalk, and items which remain on the untraveled portion of public right-of-way or any untraveled road or alley for a period of 48 hours, shall be deemed abandoned and to constitute a public nuisance subject to removal from the real estate ~~property~~ by the city with or without notice.

(c) The department may abate the nuisance and remove abandoned personal property from public real property and assess costs thereof by administrative hearing process or court action, as determined by the department director or his/her designee. In the alternative, the department may remove the personal property from the public real property and dispose of or use the personal property in any manner that the department so chooses, without notice or assessment of costs.

(de) It shall not be a defense to this article that the public works department of the city has been contacted for a bulk waste pick up, if the items were placed on the curb or right-of-way prior to the pick up date assigned by the public works department.

~~(d) The costs of the abatement will be assessed against the abutting real estate from which the nuisance was abated for collection in the same manner as a property tax if notice has been served.~~

~~(e) Service to the notice shall be by regular mail, addressed to the owner of the real estate abutting the property and/or the person deemed responsible for the real estate abutting the public right-of-way four (4) days in advance of the abatement. The notice shall contain information, which reasonably appraises the party notified of the nature of the nuisance.~~

Sec. 42-362. Reserved.

Editor's note--Ord. No. 15,--- repealed § 42-362 which pertained to hearings to contest notice of violation and derived

from Code 1991, § 17-4.04 and Ord. Nos. 13,518 and 13,718, and
from Code 2000, § 42-362 and Ordinance No. 14,319.

Hearing to contest notice of violation.

~~(a) Any person ordered to abate a nuisance by administrative procedure pursuant to § 42-358 may request a hearing to contest the validity of the notice.~~

~~_____ (1) A request for a hearing shall be made in writing and filed with the city clerk no later than seven days from the date of the notice of violation.~~

~~_____ (2) Each request for hearing shall contain the address and telephone number of the person requesting the hearing and the name and/or the name and address of any person who will be present to represent them.~~

~~_____ (3) Each request for hearing shall set out the basis for the appeal.~~

~~_____ (4) Failure to request a hearing within seven days from the date of the notice of violation shall be a waiver of the right to contest the validity of the violation. The violation will be deemed to be valid and abatement will proceed as indicated in the notice. The costs of the abatement shall be collected as an assessment or by personal judgment.~~

~~(b) The hearing:~~

~~_____ (1) Shall be scheduled no later than 18 days from the date of the notice of violation. The person requesting the hearing shall be notified in writing or by phone of the date and time for the hearing at least three days in advance.~~

~~_____ (2) Shall be held before a hearing officer and be conducted informally. The department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence.~~

~~_____ (3) The hearing officer may find that the violations exist at the time of the notice, exist at the time of the hearing, or void the notice.~~

~~_____ (4) If the hearing officer finds that a nuisance exists, evidence of plans for abatement may be presented and the hearing officer may grant reasonable time for the abatement of the nuisance.~~

~~_____ (5) If the hearing officer finds that a nuisance exists or existed, the hearing officer may enter an order for collection of abatement costs. In addition, the hearing officer may levy a civil penalty of no more than \$500.00 for the initial offense and no more than \$750.00 for each repeat offense.~~

~~_____ (6) The determination of the hearing officer is the final administrative decision.~~

~~_____ (7) Request for an administrative hearing does not stay an action by the city for alternative relief.~~

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Sec. 42-363. Reserved.

Editor's note--Ord. No. 15,--- repealed § 42-363 which pertained to hearings regarding cost of abatement and derived from Code 1991, § 17-5 and Ord. Nos. 13,518, 13,718, 13,648, 13,718, and from Code 2000, § 42-363 and Ordinance Nos. 13,900, 13,941, 13,993 and 14,319. ~~Hearing regarding cost of abatement.~~

~~(a) Any person sent notice of the costs due for the abatement of a nuisance may request a hearing to determine if the costs should be assessed, reduced, or waived.~~

~~(1) A request for a hearing shall be made in writing and filed with the city clerk no later than seven days from the date of the notice of costs due for the abatement.~~

~~(2) Each request for hearing shall contain the address and telephone number of the person requesting the hearing and the name and/or the name and address of any person who will be present to represent them.~~

~~(3) Each request for hearing shall set out the basis for the appeal.~~

~~(4) Failure to request a hearing within seven days from the date of the notice of costs due shall be a waiver of the right to contest the validity of the costs incurred in abatement of the violation. The costs will be deemed to be valid and shall be collected by assessment to the real estate or by personal judgment.~~

~~(b) The hearing:~~

~~(1) Shall be scheduled no later than 18 days from the date of the notice of violation. The person requesting the hearing shall be notified in writing or by phone of the date and time for the hearing at least three days in advance.~~

~~(2) Shall be held before a hearing officer and be conducted informally. The department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence.~~

~~(3) The hearing officer may uphold the amount billed for the cost of abatement, reduce the amount billed, or waive the costs. Costs shall be collected by assessment to the real estate or by personal judgment.~~

~~(4) The determination of the hearing officer is the final administrative decision.~~

Sec. 42-364. Civil actions; alternative relief.

(a) Any person who fails to perform an act required by this article or who commits an act prohibited by this article

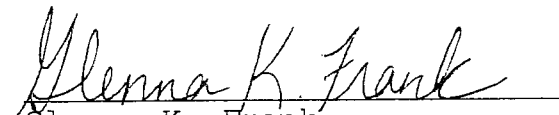
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- shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.
- (b) Proceeding with the abatement, administrative hearing, and/or seeking a civil action, or emergency action penalty as authorized in this article does not preclude the city from seeking alternative relief from ~~the~~ a court in the same action or as a separate action, including but not limited to an order for abatement or injunctive relief.
- (c) In addition to other remedies set forth in this article, When it is determined by the department that a nuisance exists and/or that a person is a habitual violator, the city may file a civil action in the district court seeking an order enjoining the person from further violation of this article on real estate property owned or controlled by such person or real estate property where such person acts as an agent, tenant, or lessee of any residential dwelling, commercial establishment and/or real estate property within the city. The city may further request that upon entry of the injunction the court allow the city to abate further violations without notice and/or seek an order of contempt.

Secs. 42-365--42-390. Reserved.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:


Glenna K. Frank
Assistant City Attorney