

CHAPTER 50

NUISANCE ABATEMENT PROCEDURE

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50.01 DEFINITION OF NUISANCE. Whatever is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property so as to interfere essentially 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:

(Code of Iowa, Sec. 657.2)

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.
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.
3. **Impeding Passage of Navigable River.** Obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.
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.
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.
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 62.06)**
7. **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)**
8. **Air Pollution.** Emission of dense smoke, noxious fumes, or fly ash.

9. Weeds, Brush. Dense growth of all weeds, vines, brush, or other vegetation in the City so as to constitute a health, safety, or fire hazard.
10. Dutch Elm Disease. Trees infected with Dutch elm disease. **(See also Chapter 151)**
11. 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.
12. Houses of Ill Fame. Houses of ill fame, kept for the purpose of prostitution and lewdness; gambling houses; places resorted to by persons participating in criminal gang activity prohibited by Chapter 723A of the *Code of Iowa* or places resorted to by persons using controlled substances, as defined in Section 124.101 of the *Code of Iowa*, in violation of law, or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.
13. Dangerous Buildings. All buildings or structures which are structurally unsafe, or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

50.03 GRASS AND WEEDS. The maximum height of grass and/or weeds shall be eight (8) inches in developed residential, commercial, and industrial zoned districts, twelve (12) inches in undeveloped residential, commercial, and industrial districts, and eighteen (18) inches in unplatted districts other than agricultural districts. The property owner and occupant are jointly and severally responsible for mowing the abutting space between the lot line and the curb line or edge of the traveled portion of the street right-of-way and one-half of any alley abutting the property. A lot may be exempted from the foregoing provision on the following conditions:

1. All owners of property abutting such lot must consent to exemption in writing.
2. A firebreak thirty (30) feet in width on all sides of such lot shall be mowed to the height of not more than eight (8) inches.
3. The lot shall contain no “noxious weeds” as defined in Section 317.1 of the *Code of Iowa*.
4. The property owners shall assume in writing all liability for such condition and indemnify the City for any claims or damages related thereto.

50.04 GROUND COVER REQUIRED. Property in a residential area shall be seeded, sodded, or otherwise planted with a ground cover not more than thirty (30) days after construction is completed, unless impractical, but not later than the beginning of the next growing season.

50.05 REMOVAL OF SNOW AND ICE FROM SIDEWALKS. All property owners shall keep the sidewalks on or abutting their property free from snow, ice, or other obstructions. If such property owner fails to remove the same for a period of 24 hours after the same has been deposited thereon, the City may do so and the cost of the removal shall be levied against the property as a special assessment in the same manner and under the same procedure as special assessments are levied for the construction of sidewalks.

50.06 PLACING ITEMS ON PUBLIC RIGHT-OF-WAYS. No person shall throw or deposit on any street or alley any glass, glass bottle, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, leaves, grass or any other debris, or any other substance likely to injure any person, animal or vehicle, or which if washed into a storm sewer, could clog or obstruct the storm sewer.

50.07 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. Storage and Disposal of Solid Waste (See Chapter 105)
3. Trees (See Chapter 151)
4. Mobile Homes and Mobile Home Parks (See Chapter 145)
5. Separation Distances From Municipal Wells (See Chapter 146)

50.08 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)

50.09 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])

50.10 NOTICE TO ABATE: CONTENTS. The notice to abate shall contain:

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

1. Description of Nuisance. A description of what constitutes the nuisance.
2. Location of Nuisance. The location of the nuisance.
3. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.
4. Reasonable Time. A reasonable time within which to complete the abatement.
5. Assessment of City Costs. A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and assess the costs against such person.
6. Subsequent Notice. A statement that if a nuisance continues or is created or maintained within six months of the notice, the City may abate such nuisance without additional notice.

50.11 METHOD OF SERVICE. The notice may be personally served, posted at the subject property, in the form of an ordinance, or sent by certified mail to the property owner.

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

50.12 REQUEST FOR HEARING. Any person ordered to abate a nuisance may have a hearing with the Council as to whether a nuisance exists. A request for a hearing must be made in writing and delivered to the Clerk within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered. The hearing will be before the Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.

50.13 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 50.16 after notice to the property owner under the applicable provisions of Sections 50.09, 50.10 and 50.11 and hearing as provided in Section 50.12.

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

50.14 ABATEMENT OF DANGEROUS BUILDINGS.

1. Further Definition. A building or structure is an “unsafe building”:
 - A. Structurally Unsafe. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay, or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
 - B. Manifestly Unsafe. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe.
 - C. Inadequate Maintenance. Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage, faulty construction, or otherwise, is determined by the City to be unsanitary, unfit for human habitation or in such condition that it is likely to cause sickness or disease.
 - D. Fire Hazard. Whenever any building or structure, because of dilapidated condition, deterioration, damage, or other cause, is determined by the Fire Marshal or Fire Chief to be a fire hazard.
 - E. Abandoned. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or a structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.
2. Posting of Signs. The Council shall cause to be posted at each entrance to such building a notice to read: “DO NOT ENTER. UNSAFE TO OCCUPY. CITY OF WELLMAN, IOWA.” Such notice shall remain posted until the required demolition, removal, or repairs are completed. Such notice shall not be removed without written permission of the Council and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.
3. Right to Demolish. In case the owner fails, neglects, or refuses to comply with the notice to repair, rehabilitate, or demolish and remove the building or structure or portion thereof, the Council may order the owner of the building prosecuted as a violator of the provisions of this chapter and may proceed with the work specified in such notice. A statement of the cost of such work shall be transmitted to the Council.

50.15 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])

50.16 COLLECTION OF COSTS. The Clerk shall send a statement of the total expense incurred by certified mail to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one month, the Clerk shall certify the costs to the County Treasurer and such costs shall then be collected with, and in the same manner, as general property taxes.

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

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

be paid in up to ten (10) annual installments, to be paid in the same manner and with the same interest rates provided for assessments against benefited property under State law.

(Code of Iowa, Sec. 364.13)

50.18 FAILURE TO ABATE. Any person causing or maintaining a nuisance who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this Code of Ordinances.

50.19 REMEDY NOT EXCLUSIVE. Nothing contained in this chapter shall be construed to limit the City's remedies, and the Council may take action under appropriate State or Federal law without first using the procedures outlined in this chapter.