CHAPTER 50

NUISANCE ABATEMENT PROCEDURE

50.01 Definition of Nuisance
50.02 Nuisances Enumerated
50.03 Other Conditions
50.04 Nuisances Prohibited
50.05 Nuisance Abatement
50.06 Abatement of Nuisance by Written Notice
50.07 Municipal Infraction Abatement Procedure
50.08 Adult Establishments

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 that 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 that, 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, that 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 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. Outside Parking and Storage. The outside parking and storage on property used for residential purposes of large number of vehicles, water craft, trailers, materials, supplies or equipment not customarily used for residential purposes, which is declared a public nuisance because such vehicles (i) obstruct views on streets and private property, (ii) create cluttered and otherwise unsightly areas, (iii) prevent full use of residential streets for residential parking, (iv) decrease adjoining landowners' and occupants' enjoyment of their property and neighborhood, and (v) otherwise adversely affect property values and neighborhood patterns. **(See also Section 165.16)**

50.03 OTHER CONDITIONS. The following chapters of this Code of Ordinances contain regulations prohibiting or restricting other conditions that are deemed to be nuisances:

1. Junk and Junk Vehicles **(See Chapter 51)**
2. Storage and Disposal of Solid Waste **(See Chapter 105)**
3. Dangerous Buildings **(See Chapter 145)**
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 any authorized municipal officer finds that a nuisance exists, such officer has the authority to determine on a case-by-case basis whether to utilize the nuisance abatement procedure described in Section 50.06 of this chapter or the municipal infraction procedure referred to in Section 50.07.

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

50.06 ABATEMENT OF NUISANCE BY WRITTEN NOTICE. Any nuisance, public or private, may be abated in the manner provided for in this section:

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

1. Contents of Notice to Property Owner. The notice to abate shall contain: †

   A. Description of Nuisance. A description of what constitutes the nuisance.

   B. Location of Nuisance. The location of the nuisance.

   C. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.

   D. Reasonable Time. A reasonable time within which to complete the abatement.

   E. 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 the property owner.

2. 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])

3. 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.

4. 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 that may be required under this chapter without prior notice. The City shall assess the costs as provided in Subsection 6 of this section after notice to the property owner under the applicable provisions of Subsections 1 and 2, and the hearing as provided in Subsection 3.

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

5. 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])

6. 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

† **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.

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])

7. Installment Payment of Cost of Abatement. If the amount expended to abate the nuisance or condition exceeds $500.00, the City may permit the assessment to be paid in up to 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)

8. 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.

50.07 MUNICIPAL INFRACTION ABATEMENT PROCEDURE. In lieu of the abatement procedures set forth in Section 50.06, the requirements of this chapter may be enforced under the procedures applicable to municipal infractions as set forth in Chapter 3 of this Code of Ordinances.

50.08 ADULT ESTABLISHMENTS.

1. As used in this section, "adult establishment" means any business that provides nude or topless dancing or operates any other adult-oriented business.

2. A public safety nuisance exists when it is established by clear and convincing evidence that an owner, manager, employee, contemporaneous patron, or guest of an adult establishment commits any of the following acts either on the premises or in any parking lots or areas, including but not limited to public rights of way, adjacent to the premises:

A. Unlawfully discharges a firearm or uses an offensive weapon, as defined in Section 724.1 of the *Code of Iowa*, regardless of whether it inflicts injury or death.

B. Assaults another person with a dangerous weapon as defined in section 702.7 of the *Code of Iowa* resulting in injury or death.

C. Engages in a riot as defined in section 723.1 of the *Code of Iowa* on three or more dates within a twelve-month period to which the police respond and disperse a crowd. The participants need not be the same persons for each incident.

3. When the City Attorney believes a serious threat to the public safety exists, the City Attorney or any other attorney on behalf of the City Attorney, may file a suit in equity in the district court without bond seeking abatement of the public safety nuisance arising from an adult establishment.

(Code of Iowa, Sec. 657.12)

[The next page is 187]