

ORDINANCE NO. 13,518

AN ORDINANCE to amend the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, as heretofore amended by repealing Subchapter 1, Article I, Nuisances, Sections 17-1 through 17-6 and Article II, Junk Motor Vehicles of Chapter 17 thereof and enacting a new Subchapter 1, Sections 17-1 through 17-6, all relating to nuisances and junk motor vehicles.

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

Iowa:

Section 1. That the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 11,930, passed January 23, 1993, and amended by Ordinance No. 11,949, passed March 15, 1993, and amended by Ordinance No. 12,087, passed January 17, 1994, and amended by Ordinance No. 13,045, passed June 6, 1994, and amended by Ordinance No. 13,080, passed July 25, 1994, and amended by Ordinance No. 13,083, passed August 15, 1994, and amended by Ordinance No. 13,231, passed August 21, 1995, and amended by Ordinance No. 13,483, passed May 19, 1997 be and is hereby amended by repealing Subchapter 1, Article I, Nuisances, Sections 17-1 through 17-6 and Article II, Junk Motor Vehicles of Chapter 17 thereof and enacting a new Subchapter 1, Sections 17-1 through 17-6, all relating to nuisances and junk motor vehicles, as follows:

SUBCHAPTER 1. NUISANCE

17-1. 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 indecent, or offensive to the senses, or an obstruction to the free use of real estate so as to unreasonably interfere with the comfortable enjoyment of life or real estate, or are identified specifically as nuisances in the municipal code of the city of Des Moines, is a nuisance. Such nuisance may be abated:

(a) by 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; or

(b) by the administrative hearing procedure described in this subchapter with damages 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.

17-1.01. NUISANCES ENUMERATED - SUBJECT TO ENFORCEMENT BY ADMINISTRATIVE HEARING PROCEDURE OR CIVIL ACTION. The following are nuisances which may be enforced through the administrative hearing process as set forth in this subchapter:

- (a) Depositing any poisonous material or thing on any real estate, so as to allow access to it by any animal or person;
- (b) Depositing or storing of flammable junk on any real estate, including but not limited to old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles, unless it be in a building of fireproof construction;
- (c) 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;
- (d) Discarding or abandoning of refrigerators, iceboxes or similar containers equipped with an airtight door, lid with a snap, lock or other device which can not be released from the inside, whether the same is abandoned or discarded outside any building or dwelling, or within any unoccupied or abandoned building, dwelling or other structure;
- (e) Depositing or storing of litter, garbage or organic waste on any real estate, provided, however, that this subchapter shall not prohibit the storage of litter, garbage or organic waste in authorized private receptacles for collection;
- (f) Trees infected with Dutch elm disease or oak wilt, or any dead or dying tree, shrub, brush, or wood, or any tree, shrub, brush, wood or debris infected with any disease, so as to constitute a threat to the public health, safety or welfare;
- (g) Any tree or shrub whose foliage extends over the city right-of-way in violation of section 27-14 or section 25-12 of this code;
- (h) Graffiti as is defined in chapter 17, subsection 5, when placed on any surface not primarily intended for such use except as specifically permitted therein;
- (i) Any motor vehicle which is unlicensed, unsafe or inoperable found upon public or private real estate, and the contents therein, which is not stored within an enclosed building. This subchapter 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.

17-1.02. NUISANCES ENUMERATED - ENFORCEMENT BY CIVIL ACTION.

- (a) 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 which constitute a threat to the public health, safety or welfare.

- (b) Emitting dense smoke, noxious fumes, or fly ash.
- (c) Causing or allowing any offal, filth, or noisome substance to be collected or to remain in any place.
- (d) Discharging sewage, garbage, or any other organic waste matter into or on any public or private real estate.
- (e) Transporting garbage, night soil or other organic fifth, in vehicles or containers which leak or which allow access by insects to the material being transported.
- (f) Obstructing or encumbering by fences, buildings, trees, shrubs, or otherwise any public road, private way, street, alley, traffic control device, street light, common, landing place, or burying ground.
- (g) Obstructing or impeding, without legal authority, the passage of any navigable river, harbor, or collection of water.
- (h) Corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same.
- (i) 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.
- (j) Any sign or sign structure which is structurally unsafe or constitutes a hazard to the public health, safety or welfare by reason 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.
- (k) 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 the municipal code of the city of Des Moines or any other law.
- (l) Signs accessible to the general public containing statements, words, or pictures of an obscene or pornographic character.
- (m) Depositing or permitting to be deposited dirt, debris, or other material:
 - (1) Onto a public right-of-way in amounts which could be injurious or dangerous to the public health, safety or welfare; or

(2) Into a public storm sewer or drainage way in an amount which could cause an obstruction to the flow of same; or

(3) 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 said private storm sewer or drainage way; or

(4) 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; or

(5) Into a public stream, river or lake in amounts which could cause pollution of same; or

(6) Into a storm sewer or drainage way which could cause pollution of a water of the state, as provided in chapter 455B of the Iowa Code, including a stream, river, or lake located downstream from said private property.

(n) 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:

(1) 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

(2) 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.

(o) The discharge of water upon or under public street or sidewalk by reason of faulty water service.

(p) 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.

(q) The existence of any hazardous substance as defined in chapter 11, subchapter 3, section 12.01(d) of this code that has been or is being discharged or released into the environment, or which is not properly stored or labeled, or which is not secured from access by the public.

17-1.03. EMERGENCY ACTIONS.

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

17-1.04. ABANDONED PROPERTY.

Property left in the public right of way of any road or alley, including but not limited to any personal and household items, dilapidated furniture, appliances, machinery, equipment, building materials or other items which are either wholly or partially rusted, wrecked, junked, dismantled or which are in an inoperative condition may be deemed abandoned under violation of this subchapter. Property left on the public right of way as a result of an eviction or a forcible entry and detainer action shall be deemed abandoned.

17-2. DEFINITIONS.

- (a) Hearing officer means the city manager or designated representative.
- (b) Department means any city department charged with enforcement of any provision enumerated herein.
- (c) An emergency is any unforeseen combination of circumstances requiring prompt action to prevent the otherwise probable loss of life or serious injury or significant damage to real estate.
- (d) Motor vehicle means every device in, upon, or by which a person or property is or may be transported or drawn upon a highway or street, with the exception of devices moved by human power or used exclusively upon stationary rails or tracks, and shall include without limitation an automobile, truck, trailer, motorcycle, tractor, buggy, wagon, farm machinery, or any combination thereof.
- (e) Enclosed building means any structure or portion thereof containing a roof and having exterior walls constructed in such a manner as to obscure from view the contents of the building from any street or adjacent real estate.
- (f) Unlicensed motor vehicle means any vehicle which is not displaying a current license as required by the law of the state of Iowa. For the purposes of this subchapter a valid current license shall not include a stored vehicle license issued under the laws of the state of Iowa. Mere licensing of an inoperable or unsafe motor vehicle shall not constitute a defense to the finding that the presence of any vehicle constitutes a nuisance.
- (g) Unsafe motor vehicle means:
 - (1) Any motor vehicle with a broken or shattered windshield or any exposed broken glass edges.
 - (2) Any motor vehicle with a missing fender, door, hood, steering wheel, trunk top, or trunk handle.
 - (3) Any motor vehicle which has become the habitat of rats, mice, snakes, or any other vermin or insects.

(4) Any motor vehicle left unattended on jacks, blocks, or elevated in any other way which constitutes a threat to the public health, safety or welfare.

(5) Any motor vehicle which because of its condition constitutes a threat to the public health, safety or welfare.

(h) Inoperable motor vehicle means any motor vehicle lacking an engine, a wheel, or other part(s) which render the motor vehicle incapable of being driven, or in the case of a trailer, incapable of being towed.

17-2.01. PERSONS LIABLE.

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

17-2.02. REBUTTABLE PRESUMPTION.

In any proceeding charging a violation of this subchapter, proof that the particular violation described constitutes a violation of this subchapter, together with proof that the particular defendant named was the owner, agent, tenant, or lessee of the residential dwelling, commercial establishment and/or real estate upon which the violation occurred, shall be deemed by rebuttable presumption that said person was the person violating this subchapter.

17-2.03. HABITUAL VIOLATORS.

Any person who is given notice of violation of this subchapter and who is found to be in violation of this subchapter three times within an eighteen (18) month period, at any address in the city, shall be deemed to be an habitual violator.

17-3. POWERS.

The department may investigate, locate, and identify nuisances enumerated in this subchapter which occur on real estate in the city of Des Moines. 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 subchapter. Thereafter, the department shall take action as required and permitted by this subchapter. Department employees shall have all powers and authority necessary to cause the abatement of the nuisance under the provisions of this subchapter.

17-3.01 SEARCH WARRANT.

If entry onto real estate for the purposes described in section 17-3 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.

17-3.02. INTERFERENCE PROHIBITED.

Interference with the lawful removal of a nuisance by the city is prohibited.

17-4. NOTICE AND SERVICE - NUISANCES ENUMERATED FOR ENFORCEMENT BY ADMINISTRATIVE HEARING PROCEDURE.

(a) If the department determines that a nuisance exists, as enumerated in 17-1.01, the department shall give notice of the existence of the nuisance and order abatement of the nuisance within the time set forth in the notice. The notice shall contain 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) That the person(s) liable for the presence

for the nuisance must correct the nuisance within the time set forth in the notice and in accordance with this subchapter.

- (4) That upon failure to comply with the provisions of this subchapter within the time set forth in the notice the persons so notified of the violation shall be deemed liable for the nuisance;
- (5) That the city will enter onto the property and cause the conditions which constitute the nuisance to be abated 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; or
- (6) That 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) Service of the Notice.

- (1) Notice shall be served by personal service or certified mail, return receipt requested.
- (2) If service cannot be obtained by personal service or certified mail, service may be effected by one publication in one newspaper of general circulation in the city. The published notice shall contain the information prescribed in this subchapter. Failed attempts at personal service and service by certified mail shall be documented by the department.

17-4.01. NOTICE AND SERVICE - NUISANCES ENUMERATED FOR ENFORCEMENT BY CIVIL ACTION.

(a) If the department determines that a nuisance exists as set out in this subchapter which will be enforced by civil action, the department shall give notice of the existence of the nuisance and

request the abatement of the nuisance within the time set forth in the notice. The notice shall contain 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) That the person(s) liable for the presence of the nuisance must correct the nuisance within the time set forth in the notice and in accordance with this subchapter.
- (4) That upon failure to comply with the provisions of this subchapter within the time set forth in the notice, the persons so notified of the violation shall be deemed liable for the nuisance;
- (5) That the city will file a civil infraction and seek a court order allowing the city to abate the conditions which constitute the nuisance by 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.

(b) Service of Notice.

- (1) By certified mail, return receipt requested, whether or not the notice is signed for and by regular mail.
- (2) By personal service.
- (3) If service cannot be obtained by personal service or certified mail, service may be effected by one publication in one newspaper of general circulation in the city. The published notice shall contain the information prescribed in this subchapter. Failed attempts at personal service and service by certified mail shall be documented by the department.

17-4.02. EMERGENCY ACTIONS.

- (a) If deemed appropriate, an emergency notice may be given to the person(s) deemed to be responsible for the existence of a nuisance which constitutes an emergency. The notice shall contain the following information:
 - (1) A description, to the extent possible, for the condition which constitutes the emergency;
 - (2) A description of the location of the nuisance;
 - (3) That the person(s) liable for the presence of the nuisance must correct the nuisance within the time set forth in the notice and that the person(s) so notified of the violation shall be deemed liable for the nuisance;

(4) 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. That the cost of the damages sustained on account thereof, 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 subchapter.

(5) In the event that 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) Service of Notice.

(1) 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(s) responsible for the violation shall be documented by the department.

17-4.03. ABANDONED PROPERTY - NOTICE AND SERVICE.

(a) Any items which remains on the public right of way of any road or alley for a period of forty-eight (48) hours after receipt of a notice of violation shall be deemed abandoned and subject to being removed from the real estate by the city without further notice. It shall not be a defense to this subchapter that the public works department of the city has been contacted for a bulk waste pick up and the items were placed on the curb or right of way prior to the instructed pick up date. The notice shall contain the following information:

(1) The description, to the extent possible, of the property deemed abandoned;

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

(3) That upon failure to comply with the provisions of this subchapter within the forty-eight (48) hours set forth in the notice, the person so notified of the violation shall be deemed liable for the nuisance;

4) That upon failure to comply with the notice, the city will enter onto the real estate and cause the conditions to be abated. The costs of the abatement 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.

(5) In the event that 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) Service of Notice.

(1) By regular mail or hand delivered, addressed to the owner of the real estate and/or the person deemed responsible for the real estate adjacent to the public right of way of any road or alley upon which the abandoned items are located.

17-4.04. EMERGENCY ACTIONS AND ABANDONED PROPERTY - NOTICE OF RIGHT TO HEARING.

(a) In the event the city abated a nuisance due to an emergency condition, or removed abandoned property, and notice to abate the violation was given, a notice shall be given of the right to a hearing regarding costs. The notice shall contain the following information:

(1) A description, to the extent possible, of the conditions which constituted the nuisance or the abandoned property;

(2) A description of the location of the nuisance or abandoned property;

(3) That the city entered onto the real estate and caused the conditions which constituted the nuisance to be abated, or removed the abandoned property, and that the costs of the abatement or removal will be assessed against the real estate from which the nuisance was abated for collection in the same manner as a property tax, or be collected as a personal judgment;

(4) An itemization of the costs incurred by the city in the abatement of the violation or removal of the property; and

(5) That the person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this subchapter.

(b) Service of Notice.

(1) By regular mail or hand delivered, addressed to the owner of the real estate and/or the person deemed responsible for the real estate adjacent to the public right of way of any road or alley upon which the abandoned property was located.

17-5. HEARING.

(1) Any person ordered to abate a nuisance may have, upon request, an appeal hearing with a hearing officer to determine whether a nuisance exists or existed.

(2) A request for a hearing shall be made in writing and filed with the city clerk within ten (10) days of receipt of the notice.

(3) Each request for hearing shall contain the address of the person requesting the hearing to which all further notices shall be mailed or served and shall state the basis for the appeal.

(4) The hearing shall be scheduled to be held as soon as practicable and no later than fourteen (14) days after the request for hearing was filed. The person requesting the hearing shall be

notified in writing of the date and place of such hearing at least three (3) days in advance thereof. At such hearing the department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.

(5) The hearing officer may make a determination at the hearing and deliver the findings orally to be followed by a written decision. A written copy of the decision shall be placed in the file maintained by the department. If the determination is not given orally at the hearing, it shall be reduced to writing and shall be mailed to the appellant by regular mail.

(6) The hearing officer may find that violations exist or existed, may void the notice, order compliance with all or part of the notice, or extend the time for compliance of the notice to a date certain, but in no case shall time for compliance be extended past ninety (90) days from the date of the notice.

(7) If the hearing officer finds that a nuisance exists or existed, an order for damages sustained on account thereof, the costs of abatement and a civil penalty of no more than \$100.00 for the initial offense and no more than \$200.00 for each repeat offense, or any other fine authorized under the Iowa code, damages sustained on account thereof and the costs of abatement by the city may be entered to be paid to the city.

(8) The determination of the hearing officer is a final administrative decision.

(9) Failure to request a hearing within ten (10) days of receipt of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the nuisance exists and the nuisance will be abated by the city as indicated in the notice and the costs will be collected as indicated in the notice.

17-6. CIVIL ACTIONS - ALTERNATIVE RELIEF.

(a) Civil Violations and Penalties.

Any person, corporation, or other legal entity who violates any provision of this subchapter shall be liable for a municipal infraction punishable by a civil penalty of not more than \$100.00 for the initial offense and not more than \$200.00 for each repeat offense. Each day the municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates a provision of this subchapter after having previously been found liable for violating the same provision of this subchapter at the same location or at a different location shall be liable for a repeat offense.

(b) Alternate Relief.

Proceeding with the administrative hearing and/or seeking a civil penalty as authorized in this subchapter does not preclude the city from seeking alternative relief from the court in the same action or as a separate action, including an order for abatement or injunctive relief.

(c) When it is determined by the department that a person is an habitual violator, the city may file a civil action in the district court seeking an order enjoining the person from further violation of this subchapter on real estate owned or controlled by said person or real estate where said person acts as an agent, tenant, or lessee of any residential dwelling, commercial establishment and/or real estate within the city. The city may further request that upon entry of the injunction that the court allow the city to abate further violations without notice and/or seek an order of contempt.

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

FORM APPROVED:

Vicky Long-Hill

Assistant City Attorney