

ORDINANCE NO. 14,319

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, and amended by Ordinance No. 13,900, passed January 8, 2001, and Ordinance No. 14,010, passed November 5, 2001, by amending Sections 42-346, 42-347, 42-348, 42-349, 42-350, 42-355, 42-358, 42-359, 42-360, 42-362 and 42-363 thereof, relating to nuisance abatement process and procedure.

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, and amended by Ordinance No. 13,900, passed January 8, 2001, and Ordinance No. 14,010, passed November 5, 2001, is hereby amended by amending Sections 42-346, 42-347, 42-348, 42-349, 42-350, 42-355, 42-358, 42-359, 42-360, 42-362 and 42-363 thereof, relating to nuisance abatement process and procedure, as follows:

ARTICLE VI. NUISANCES

Sec. 42-346. Definitions.

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 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 devise 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 designated representative.

Inoperable and/or unsafe vehicle or boat is any motor vehicle or boat that:

- (1) lacks any component part, engine or parts that render it incapable of use and/or unsafe for its intended use;
- (2) has become a habitat of rats, mice, snakes, or other vermin of insects;
- (3) because of its condition or method of storage constitutes a threat to public health and safety.

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.

Public right-of-way includes 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.

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 real estate so as to unreasonably interfere with the comfortable enjoyment of life or real estate or which are identified specifically as nuisances in this 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. Enumeration of nuisances subject to enforcement by administrative hearing procedure or civil action.

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 on any real estate, so as to allow access to it by any animal or person.
- (2) Depositing or storing of flammable junk on any real estate, 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.
- (4) 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 such is abandoned or discarded outside any building or dwelling or within any unoccupied or abandoned building, dwelling or other structure.
- (5) Depositing or storing of litter, garbage or organic waste on any real estate; provided, however, that this

article shall not prohibit the storage of litter, garbage or organic waste in authorized private receptacles for collection.

- (6) 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.
- (7) Any tree or shrub 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, 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 an involuntary stopping of the vehicle by reason of causes beyond the control of the operator.
- (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 any public right-of-way abutting real estate owned or under control of such person. Property left in the public right-of-way of any road or alley, 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.

Sec. 42-349. 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 offal, 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 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 public storm sewer or drainage way in an amount which could cause an obstruction to the flow of the sewer or drainage way;
 - c. 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;
 - d. 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;
- e. Into a public stream, river or lake in amounts which could cause pollution of the stream, river or lake; or
 - f. Into a storm sewer or drainage way which could cause pollution of the waters of the state, as provided in I.C. ch. 455B, including a stream, river, or lake located downstream from such private 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.
- (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 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 with or without prior notice.

Sec. 42-355. Powers of department.

The department 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. 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. Thereafter, the department shall take action as required and permitted by this article. Department employees shall have all powers and authority necessary to cause the abatement of the nuisance under this article.

Sec. 42-358. 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.

Sec. 42-359. Notice of nuisances enumerated for enforcement 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 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) 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 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.
- (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.

Sec. 42-360. Emergency actions.

- (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. 42-362. 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.

Sec. 42-363. 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. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Susan A. Low, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 04-408), passed by the City Council of said City at a meeting held February 23, 2004 signed by the Mayor on February 23, 2004 and published as provided by law in the Business Record on March 1, 2004 Authorized by Publication Order No.4025.

Diane Rauh, City Clerk