

## CHAPTER 50

# NUISANCE ABATEMENT PROCEDURE

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**50.01 DEFINITIONS.** For use in this chapter the following terms are defined:

1. “All-weather surface” means an asphalt, Portland cement concrete, turf block, brick pavers or gravel surface of sufficient thickness to adequately support a motor vehicle.
2. “Building” means a structure for the shelter or enclosure of persons, animals, or chattel.
3. “Inoperable condition” means a vehicle that (1) has a missing or defective part that is necessary for normal operation, or (2) is on blocks, jacks or other supports, or (3) does not have a current license for operation on a public roadway.
4. “Junk” means all old or scrap copper, brass, lead, or any other non-ferrous metal; old or discarded rope, rags, batteries, paper, trash, rubber, debris, waste or used lumber, or salvaged wood; dismantled vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron, steel or other old or scrap ferrous materials; old or discarded glass, tin ware, plastic or old or discarded household goods or hardware. Neatly stacked firewood located on a side yard or rear yard is not considered junk.

5. “Junk vehicle” means any vehicle, trailer or semitrailer, whether currently licensed or not, which because of any one of the following characteristics constitutes a threat to the public health, welfare, and/or safety:

(a) Any vehicle, trailer, or semitrailer which is rendered inoperable, or may not be lawfully operated on a public street or highway, because of a missing or broken windshield or window glass, fender, door, bumper, hood, steering wheel, driver's seat, trunk, fuel tank, wheel, engine, drive shaft, differential, battery, generator or alternator or other component part of an electrical system, or any component or structural part;

(b) Any vehicle, trailer or semitrailer which has become the habitat of rats, mice, snakes or any other vermin or insects;

(c) Any vehicle, trailer or semitrailer which contains stored gasoline or other fuel, paper, cardboard, wood or other combustible materials, garbage, refuse, solid waste, debris, etc.;

(d) Any vehicle, trailer or semitrailer used for storage purposes or harborage, cage or dwelling for animals of any kind;

(e) Any other vehicle, trailer or semitrailer which because of its defective or obsolete condition in any other way constitutes a threat to the public health or safety of the citizens of Washington, Iowa;

(f) Any inoperable vehicle which contains gasoline or any flammable fuel.

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6. “Lot” means a parcel of land whose area, in addition to the parts thereof occupied by a building or accessory structure, is sufficient to provide front, side and rear yards as specified in the zoning regulations.

7. “Motor vehicle” means a motor vehicle as defined in Chapter 321 of the Code of Iowa, including motorized bicycles, motorcycles, and all-terrain vehicles.

8. “Nuisance” means 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.

*(Code of Iowa, Sec. 657.1)*

9. “Outside” means to be not within an enclosed storage facility or structure and to be visible from other property, including public right-of-way.

10. “Residential area” means an area which is either classified as a residential district for zoning purposes or is regularly used by its occupants as a permanent place of abode or dwelling, which is made one’s home as opposed to one’s place of business and which has housekeeping and cooking facilities.

11. “Undeveloped area” means a parcel of land which has no buildings or structures and which is not a park, playground, athletic field, parking area, or place used for vehicular traffic.

12. “Vital component parts” means those parts and elements of a motor vehicle that are essential to the mechanical functioning of the vehicle on a public roadway in a lawful manner, including but not limited to the motor drive train and wheels.

13. “Weeds” means noxious or otherwise, untended vines, brush, and scrub bushes, and other similar vegetation.

14. “Yard, front” means an open space extending the full width of the lot between the building and the front lot line, unoccupied and unobstructed from the ground upward, except as otherwise specified in the zoning regulations.

15. “Yard, rear” means an open space extending a full width of a lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward, except as otherwise specified in zoning regulations.

16. “Yard, side” means an open space extending from the front yard to the rear yard between a building and the side lot line, unoccupied and unobstructed from the ground upward, except as otherwise specified in the zoning regulations.

**50.02 NUISANCES ENUMERATED.** The following subsections include, but do not limit, the conditions which are deemed to be nuisances in the City:

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, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public.

*(Code of Iowa, Sec. 657.2[1])*

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.

*(Code of Iowa, Sec. 657.2[2])*

3. Impeding Passage of Navigable River. Obstructing or impeding without legal authority the passage of any navigable river, harbor or collection of water.

*(Code of Iowa, Sec. 657.2[3])*

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.

*(Code of Iowa, Sec. 657.2[4])*

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.

*(Code of Iowa, Sec. 657.2[5])*

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 62.09)**

*(Code of Iowa, Sec. 657.2[7])*

7. Cottonwood Trees. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees. **(See also Chapter 151)**

*(Code of Iowa, Sec. 657.2[8])*

8. 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.

*(Code of Iowa, Sec. 657.2[10])*

9. Air Pollution. Emission of dense smoke, noxious fumes or fly ash.

*(Code of Iowa, Sec. 657.2[11])*

10. 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. **(See also Section 50.05)**

*(Code of Iowa, 657.2[12])*

11. Dutch Elm Disease. Trees infected with Dutch elm disease.

*(Code of Iowa, Sec. 657.12[13])*

12. 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.

*(Code of Iowa, Sec. 657.2[9])*

13. 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.

*(Code of Iowa, Sec. 657.2[6])*

**50.03 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. Grass and Weeds (**See Chapter 52**)
3. Snow and Ice (**See Chapter 53**)
4. Storage and Disposal of Solid Waste (**See Chapter 105**)
5. Dangerous Buildings (**See Chapter 145**)
6. Trees (**See Chapter 151**)

Noncompliance with the additional conditions listed in Sections 50.04 through 50.13 is also declared to be a nuisance.

**50.04 EXTERIOR OF RESIDENTIAL STRUCTURES.** The exteriors of structures, or portions thereof, in residential districts must be completed in accordance with City-approved construction plans within three hundred sixty (360) days after construction commences.

**50.05 GRASS AND WEEDS.** (Repealed by Ordinance 958; See Chapter 52)

**50.06 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.

**50.07 REMOVAL OF SNOW AND ICE FROM SIDEWALKS.** (Repealed by Ordinance 959; See Chapter 53)

**50.08 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 the storm sewer, could clog the storm sewer.

**50.09 BURNING OF SUBSTANCES PROHIBITED.** The burning of any leaves or other substances of any nature whatsoever on any City street, avenue, or boulevard is prohibited.

**50.10 MACHINERY AND HOUSEHOLD GOODS.** No furniture, household furnishings, appliances, or other such items not designed for outside use; and no machinery, implements, or other such equipment which is in an inoperable condition, including component parts thereof, shall be stored or kept outside for a period of more than twenty-four (24) hours on any premises in a residential area, excluding the week prior to the annual spring cleanup program.

**50.11 CONSTRUCTION EQUIPMENT AND MATERIALS.** Operable machinery, equipment, and materials being used for construction purposes, including pipes, lumber, forms, dirt, sand, and sod, shall not be stored or kept in the open, except:

1. For use in the ordinary course of business as the inventory or asset of a contractor, supplier, or government subdivision; or
2. On the job site of a project in progress for a period not to exceed thirty (30) days after construction has been completed or a separate certificate of occupancy has been issued, whichever occurs first.

**50.12 OPERABLE VEHICLES.** Operable motor vehicles may be parked or stored outside only if placed in a rear yard area, or in a front yard or side yard if such vehicle is parked or stored on a temporary basis, not to exceed twenty-four (24) consecutive hours, and if the vehicle is parked or stored on an all-weather surfaced area.

**50.13 JUNK AND JUNK VEHICLES.** (Repealed by Ordinance 961; See Chapter 51)

**50.14 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)*

**50.15 NUISANCE ABATEMENT.** The Mayor, city administrator, or any enforcement officer designated by the city administrator, is authorized to abate nuisances in accordance with the procedures set forth in this chapter. Nuisances may be abated by either the administrative abatement process, the municipal infraction process, or the emergency abatement process as hereinafter provided.

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

*(Ord. 882 - Jan. 2005 Supp.)*

**50.16 NOTICE TO ABATE; SERVICES.**

A. The city administrator, or any enforcement officer designated by the city administrator, is hereby authorized to serve upon the owner or responsible party of the property upon which the nuisances is being maintained, or upon the person or persons causing or maintaining the nuisance, a written notice to abate as prescribed below.

B. When services of a notice to abate is required, the following methods of service shall be deemed adequate:

1. By personal service upon the property owner and/or responsible party of the property upon which the nuisance exists;
2. By certified mail to the property owner as shown by the records of the county auditor;
3. By ordinance.

C. Content of Notice: The notice to abate shall include the following information:

1. Description of what constitutes a nuisance, citing the appropriate code section.
2. Description of the action necessary to abate the nuisance.
3. The order to abate within a specified time period and identifying the respective abatement process being used by the City as set forth in Section 50.15.

4. The notice shall advise that, upon failure to comply with the order to abate, the city shall undertake such abatement and that the cost of abatement may be assessed against the property for collection in the same manner as property taxes.

a. The notice used for proceedings under Section 59.17, titled “Abatement by Administrative Proceedings”, shall also advise as to the opportunity for an administrative hearing and that failure to request such a hearing within the time specified in the notice shall constitute a waiver of the right to a hearing and that said notice shall thereafter become a final determination and order to abate.

b. The notice used for proceedings under Section 59.18, titled “Abatement by Municipal Infractions Proceedings”, shall also advise that failure to abate the nuisance within the time specified will result in the issuance of a civil citation charging the owner or responsible party with a municipal infraction. Further, such notice shall advise that each day that a nuisance is permitted to continue constitutes a separate offense and that upon being found guilty of a municipal infraction, the court is authorized to order abatement, assess the costs of abatement against the property and/or enter them as a judgment against the defendant, and assess a civil penalty against the defendant.

*(Ord. 882 - Jan. 2005 Supp.)*

#### **50.17 ABATEMENT BY ADMINISTRATIVE PROCEEDINGS.**

Administrative Hearing: The hearing shall be held in accordance with the procedures of Section 50.21, except as herein otherwise provided. The determination and order shall be appealable to the county district court by writ of certiorari. The order shall not be carried out until the time for filing the writ of certiorari has expired.

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

*(Ord. 882 - Jan. 2005 Supp.)*

#### **50.18 ABATEMENT BY MUNICIPAL INFRACTION PROCEEDINGS.**

Issuance Of Civil Citation: In the event that the nuisance is not abated as ordered and within the time specified in the notice to abate, the enforcement officer may issue a civil citation to the property owner or responsible party charging that person with a municipal infraction.

The enforcement officer may, but shall not be required to, give notice to abate prior to issuance of a civil citation for a repeat offense involving the same property and occurring within one year of a prior violation.

*(Ord. 882 - Jan. 2005 Supp.)*

**50.19 EMERGENCY ABATEMENT PROCEDURE.** When the enforcement officer determines that a nuisance exists on a property and the nuisance constitutes an imminent clear and compelling danger to health, safety or welfare of persons or property, the enforcement officer is authorized to abate or have abated the nuisance without prior notice and opportunity of hearing. The costs of such action may be assessed against the property for collection in the same manner as property tax. However, prior to such assessment, the city shall give a property owner notice by certified mail and the opportunity for an administrative hearing in accordance with the procedures of Section 50.17 of this chapter.”

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

*(Ord. 882 - Jan. 2005 Supp.)*

**50.20 ABATEMENT REMEDIES; COLLECTION OF COSTS; PENALTIES.**

A. Abatement may include, but shall not be limited to, repair, removal, cleaning, extermination, cutting, mowing, grading, sewer repairs, draining, securing, repairing a building or structure, boarding unoccupied buildings, barricading or fencing, removing dangerous portions of buildings or structures and demolition of dangerous structures or abandoned buildings.

B. The cost of abatement may be assessed against the property for collection in the same manner as property taxes. Abatement costs shall include the cost of removing or eliminating the nuisance, the cost of investigation, such as title searches, inspection and testing; the cost of notification; filing costs; reasonable attorney fees and other related administrative costs. An administrative fee of \$50 may be assessed by the enforcement officer for repeat or severe violations of this or the Chapters listed in Section 50.03 of this Code of Ordinances. Inoperable and/or obsolete vehicles which have been impounded may be sold in accordance with state law. If an inoperable and/or obsolete vehicle is not sold or if the proceeds of such sale or redemption are not sufficient for payment of the cost of abatement, storage and sale of said inoperable and/or obsolete vehicle, such cost or the balance of such cost may be assessed against the property for collection in the same manner as a property tax.

C. 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 thirty (30) days, 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. If the amount expended to abate the nuisance or condition exceeds one hundred dollars (\$100), the City shall permit the assessment to be paid in up to five (5) annual installments, with a minimum annual payment of \$50 to be paid in the same manner and with the same interest rates provided for assessments against benefited property under State law.

D. In a municipal infraction proceeding for the abatement of a nuisance, the court may order any one or more of the following:

1. Place a judgment against the person and/or property of the defendant for the costs of abatement.
2. Levy a civil penalty (fine) against the defendant of up to the maximum permitted by state law.
3. Order abatement of the nuisance in any manner as provided in this chapter.
4. Assess costs of abatement against the property for collection in the same manner as property taxes.

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

*(Ord. 882 - Jan. 2005 Supp.)*

**50.21 ADMINISTRATIVE HEARING PROCEDURES**

1. Applicability. This Section shall apply to all administrative hearings expressly provided for in this Code of Ordinances in Chapters 50-53 and Chapter 145. The City Administrator may authorize utilization of these procedures in place of the procedures outlined in Chapter 55 of this Code of Ordinances.

2. **Hearing Authorized.** Any person affected by any action, notice or order issued under the Code of Ordinances may request an administrative hearing, if such hearing is expressly authorized under that chapter.
3. **Form of Request.** A request for hearing shall use the Request for Administrative Hearing Form provided in Appendix A to this Code of Ordinances, or, shall contain all of the information required by the Request for Administrative Hearing Form. All requests for hearing must be in writing.
4. **Filing Fee.** No filing fee is required for requests for administrative hearing.
5. **Location and Deadline for Filing.** A request for administrative hearing must be received by the City Clerk for the City of Washington within ten (10) calendar days from the date the notice was personally served, or from the date the notice was mailed by certified mail.
6. **Untimely or Defective Filing.** Failure to timely file a written request for administrative hearing shall constitute a waiver of the hearing, and the action, notice or order shall become a final determination and order.
7. **Hearing Scheduled.** Upon receipt of a timely filed written request for administrative hearing, the City Clerk shall promptly forward the request to a subcommittee of no less than two (2) members of the City Council and one (1) member of the Planning & Zoning Commission, appointed by the Mayor (herein “the Hearing Panel”). The Hearing Panel shall conduct the hearing and make the final determination on the matter. Upon determining that the written request complies with this section, the Hearing Panel shall contact the person making the request and schedule the administrative hearing.
8. **Time of Hearing.** To the extent practicable, the hearing shall be held within twenty (20) days of the receipt of the written request. The hearing may also be scheduled upon agreement of the Hearing Panel and the person who filed the request.
9. **Conduct of Hearing.**
  - A. The administrative hearing shall be conducted by the Hearing Panel. The Hearing Panel may be assisted by the Enforcement Officer who initiated the action, notice or order.

B. The Hearing Panel may receive and consider information presented by the Enforcement Officer, the person requesting the hearing, and any other person with information relevant to the matter. The Hearing Panel may also receive and consider photographs, documents, video or audio recordings, and any other materials offered by interested parties. The proceedings shall be conducted in an informal manner. The Hearing Panel shall mechanically record the hearing if possible. The Hearing Panel, the Enforcement Officer, and the person requesting the hearing may ask questions or make statements that are relevant to the matter.

10. Decision. After hearing the matter, the Hearing Panel shall issue a written decision. A copy of the written decision shall be provided to the Enforcement Officer, and a copy shall be sent by certified mail to the person requesting the hearing. This decision shall become a final order unless appealed to the full Council in compliance with the provisions of Paragraph 11A of this Section.

11. Appeal to Council and Judicial Review.

A. Any party to the hearing may appeal the Hearing Panel's decision to the City Council. The appeal must be filed within ten (10) calendar days of the date of the decision. The notice of appeal shall be in writing and shall use the Appeal to Council Form provided in Appendix B, or shall contain the information required by the form.

B. Upon receipt of a timely filed written Appeal, the Council shall review the decision of the Hearing Panel and the information received and the record made at the administrative hearing. The Council may, but is not required to grant each party to the hearing the opportunity to appear and present arguments to the Council on the relief sought. No new information shall be received by the Council.

C. After review of the decision and record, and any arguments presented, the Council may affirm, modify or reverse the decision of the Hearing Panel, or may remand the matter back to the Hearing Panel for a rehearing to receive additional information. A rehearing shall be conducted in accordance with Paragraph 9 of this section. The Council's decision shall be in writing. A copy of the Council's written decision shall be provided to the City Administrator, the Enforcement Officer, and a copy shall be mailed by certified mail to the other party.

D. Any party to the hearing, including the City, may appeal the Council's decision by filing a petition for judicial review with the district court. Said petition must be filed within twenty (20) days of the date of the decision. If no petition for judicial review is timely filed, the decision of the City Council becomes a final order.

**50.22 Emergency Orders.** Notwithstanding any provision stated in this chapter, whenever in the judgment of the municipal officer, agent or employee, an emergency exists creating a dangerous and imminent health or safety hazard to persons, property or the general public which requires immediate action, he/she shall order such action as may be necessary to meet the emergency. Any orders issued pursuant to this section shall be effective immediately or in the time and manner prescribed in the order itself.

**50.23 Authority Of City To Perform Work Upon Failure Of Property Owner.** Should any property owner affected by any notice or order issued pursuant to this chapter fail to perform an action required by said notice or order, the city, where otherwise allowed by law, may perform the required action and assess the costs against the property involved.”

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

*(Ord. 882 - Jan. 2005 Supp)*