

ORDINANCE

- 25 -

AN ORDINANCE PROHIBITING THE CREATION OR MAINTENANCE OF A NUISANCE AND PROVIDING PENALTIES FOR VIOLATIONS

WHEREAS, the City Council of Farmington, Iowa, by previous Ordinances has defined prohibited nuisances and provided for the abatement thereof, and

WHEREAS, the City of Farmington, Iowa, now desires to refine the procedures for the enforcement of the prohibition against the maintenance of nuisances,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMINGTON, IOWA AS FOLLOWS:

SECTION 1 Prior Ordinance 25 is hereby amended to delete the current provisions thereof and to substitute in place thereof the following Sections 2 through 9.

SECTION 2 Definitions: For use in this Ordinance, the following terms are defined:

"Abandoned" means a dilapidated, deteriorated or decayed building or structure or significant portion thereof that is vacant and unsecured and an accumulation of one or more inoperable motor vehicles or significant portions of such vehicles, notwithstanding the fact that they may otherwise be properly licensed by the state.

"Dilapidated, deteriorated and decayed" means structures, dwellings, dwelling units, multiple dwellings, apartments or apartment houses, including garages, sheds and similar accessory structures and fences or portions thereof which by reason of inadequate maintenance, obsolescence, abandonment or failure to timely proceed with construction or repairs are unsafe, unsanitary, constitute a fire hazard, are an attractive nuisance, or are otherwise dangerous to human life or property or are no longer adequate for the purposes for which they were originally intended.

"Nuisance" means whatever is injurious to the public health, safety or welfare including without limitation those things and actions which are offensive to the senses, which are an obstacle to the free use of property so as essentially to interfere unreasonably with the

comfortable enjoyment of life or property, or which are identified specifically as nuisances herein.

“Officer” means the Mayor or his or her designee authorized to enforce this Ordinance.

"Property owner" means the contract purchaser if there is one of record, otherwise the record holder of legal title.

"Unsafe structures" means dwellings and other structures and improvements or portions thereof including accessory buildings that are:

1. Structurally unsafe, unstable, unsanitary, or which have inadequate exits therefrom;
2. Not provided with permanent means of adequately securing all openings against unauthorized entry;
3. Fire hazards;
4. Unsuitable or improper for the use or occupancy for which they are intended;
5. Hazards to health, safety, life or property because of inadequate maintenance, dilapidation, obsolescence or abandonment; or
6. Otherwise in violation of established ordinances.

SECTION 3 Nuisances Prohibited: The creation or maintenance of a nuisance is prohibited.

SECTION 4 Specifically Identified Nuisances: Specifically identified nuisances include the following:

1. Adoption of Iowa Code on Nuisances: Iowa Code section 657.2, What Deemed Nuisances, is hereby adopted by reference, in its entirety. All amendments to Iowa Code section 657.2 shall automatically modify this section.
2. The pollution of any public well or system, stream, lake, canal, or body of water by sewage, industrial waste, or other substances.

3. The unlawful diversion of any stream, lake, canal or body of water from its natural course or state to the injury or prejudice of others.
4. Any and all putrid or decaying carcasses, flesh, fish, vegetables, entrails, offal, filth, or other unwholesome or offensive substances or any kind left, deposited or existing upon any street, alley, private lot or ground or public place or in or about any vacant or occupied building, except when enclosed in a receptacle.
5. All open cisterns, cisterns with inadequate or improper coverings and cisterns with unsafe coverings, open basements, holes, trenches or other excavations not properly marked and for which inadequate precautionary measures have been taken to prevent injury to the public.
6. All trees, hedges, bill boards, sign boards, 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 as to render dangerous the use thereof.
7. A building, structure or place where any activity is conducted which is in violation of local, state, or federal law.
8. The depository or keeping of junk and refuse such as, but not limited to, old lumber, tin, wire, cans, barrels, cartons, boxes, rags, tires, inner tubes, brush, grass and hedge clippings, rocks, bricks, cinders, scrap iron, buckets, tubs, windows, screens, glass, bottles, wastepaper, bedsprings, discarded furniture, cleanings and bedding from animal or fowl pens; the depository or keeping of improperly covered garbage and waste receptacles, inoperable or dilapidated boats, ATVs and other vehicles and/or boat, ATV and other vehicle parts, inoperable machinery and inoperable appliances.
9. The emission of dense smoke, noxious fumes or fly ash.
10. All noxious weeds.
11. Permitting or allowing an animal or animals to frequently or habitually run at large; frequently or habitually pass on, over or through the property of another; cause damage to or interfere with the property of another; bite, scratch or otherwise cause

personal injury to another or to another's domesticated animals; and frequently or habitually howl, yelp, screech, mewl, bark or otherwise cause unreasonably annoyance or disturbance to another.

12. All limbs of trees which are less than eight feet above the surface of the sidewalk.
13. All utility wires which are strung less than fifteen feet above the surface of the ground.
14. All buildings, walls, mobile homes, and other structures which have been damaged by fire, decay, or otherwise and which are so situated as to endanger the safety of the public, or which harbor vectors, vermin or pests.
15. Failure to secure buildings, mobile homes, unused refrigerators and deep freezers, or other places against accidental or unauthorized access where such an area or place is an attraction to the immature citizen. Fences, railings and other guards should be well built, kept in good repair, be at least thirty inches from top to ground and of adequate height to perform their function, and have no sharp points, spikes, hooks, projection barbs, or other devices that are in themselves hazardous, except that barbwire may be used to enclose agricultural land.
16. All explosives, inflammable liquids and other dangerous substances stored in any manner or in any amount other than that provided by Ordinance, or approved by State Inspection.
17. All use or display of fireworks except as provided by Ordinance.
18. All unnecessary noises and annoying vibrations.
19. Obstructions and excavations affecting the ordinary use by the public of streets, alleys, sidewalks, or public grounds except under such conditions as are provided by Ordinance.
20. Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks without a permit.
21. All trees or parts of trees which are dead, decayed, diseased or dying which are on private property.

22. The unauthorized connection to public sewer systems, and the installation of toilet facilities not served by the City sewer.
23. The burning of trash on the ground or in burn barrels or other receptacles.
24. All grass, weeds, brush, bushes, vines, and other vegetation reaching in excess of 8 (eight) inches in height grown upon public or private property during the period beginning May 1 and ending October 1 in each calendar year except where ornamental bushes, shrubs and like vegetation are maintained in a landscaped areas and except where the property is unplatted or dedicated to agricultural use in which case the restrictions of this subsection shall apply only to the outermost two hundred feet within the perimeter of the property.
25. Property left in or upon public real property including but not limited to any personal and household items, furniture, appliances, machinery, equipment, building materials or other items and which shall be deemed abandoned.
26. Property left in or on public real property as a result of an eviction or a forcible entry and detainer action and which shall be deemed abandoned.
27. Anything that was a nuisance under the common law of the State of Iowa and which has not been modified or repealed by statute.

SECTION 5 **Enforcement:** Whenever an officer determines that a nuisance exists, he or she shall notify the City Council of the alleged nuisance and violation of the City Code. If the City Council determines that a nuisance exists, it may elect to enforce this Ordinance by notice as set forth in this article, and pursuant to:

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 a personal and/or in rem judgment;
2. The hearing procedure described in this Ordinance, with damages and/or the cost of abatement sustained on account thereof to be recovered as an assessment to be placed against the real property and collected in the same manner as a property tax;
or

3. Any other action authorized by law to protect the public health, safety or welfare, including, but not limited to, injunctive relief.

SECTION 6 Civil Action – Proceedings and Remedies: If the City Council determines that a nuisance exists, in addition to other remedies, the City Council may institute any property action or proceedings in the name of the City to prevent the continuation of an unlawful nuisance. A court with jurisdiction thereover may, upon finding that a nuisance exists or existed, order any one or more of the following:

1. Judgment against the respondent and/or property of the respondent for the costs of abatement;
2. Payment of a civil penalty against the respondent;
3. Abatement of the nuisance by the owners of the structure and/or the owners of real estate on which the nuisance exists, jointly and severally;
4. Assessment of costs of abatement against the property for collection in the same manner as property taxes; and
5. Injunction against further creation, maintenance or keeping of a nuisance.

SECTION 7 Hearing – Abatement - Costs: If the City Council determines that a nuisance exists, in addition to other remedies, the City Council may abate the nuisance according to the following procedures.

1. Notice and order to abate a nuisance shall be given prior to City action to abate a nuisance except that in the event of property abandoned on public real property, the City may remove it and dispose of it or use it in any manner the City chooses without notice or assessment of costs and except that in the event of an emergency of any kind and in any location, the City may perform any emergency action necessary to abate a nuisance and upon such notice, if any, as the City deems practical under the circumstances. If notice to abate a nuisance is given, said notice shall be dated and shall contain the following information:
 - A. A description, to the extent possible, of the conditions that constitute the nuisance;
 - B. A description of the location of the nuisance;

- C. A statement that the person liable for the presence of the nuisance must correct the nuisance within the reasonable time set forth in the notice and in accordance with this ordinance; and
 - D. A statement that upon failure to comply with this ordinance within the time set forth in the notice, the person so notified of the violation shall be deemed liable for the nuisance, and that the City may enter onto the real property and cause the conditions which constitute the nuisance to be abated and assess the costs of abatement against the real property for collection in the same manner as a property tax, following administrative hearing if requested.
 - E. A statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for a hearing on the existence of the nuisance.
2. Notice and order to pay costs of abatement shall be given prior to the City's assessment of such costs. Said notice shall be dated and contain the following information:
- A. A description, to the extent possible, of the conditions that constituted the nuisance;
 - B. A description of the location of the nuisance;
 - C. A description, to the extent possible, of the abatement actions taken by the City;
 - D. A copy of the invoice or other documentation of costs incurred by the City in abating the nuisance; and
 - E. A statement that upon failure to make full payment as directed in the notice within the reasonable time set forth in the notice, the City may assess the costs of abatement against the real property of the responsible party for collection in the same manner as a property tax, following administrative hearing if requested.
 - F. A statement that the person notified, or the person's duly authorized agent as identified in a notarized statement provided by the person notified, may file a written request for a hearing on costs of abatement only.

3. Service of notice.
 - A. Notices given pursuant to this Ordinance shall be served by certified mail and regular mail to all persons deemed responsible for the violation and to all property owners where the nuisance exists at their address as shown by the respective county auditor and by posting the notice in a conspicuous place upon the property where the nuisance exists. In addition to and concurrently with mailing, notice may but need not necessarily be delivered by a peace officer, process server, or any other method deemed appropriate to all persons deemed responsible for the violation, and to all other parties required by law to receive such notices.
 - B. The City may but shall not be required to give notice to abate prior to initiating a civil action.
4. Hearing and decision:
 - A. Recipients of notices pursuant to this Ordinance are not entitled to administrative hearings and administrative hearings shall not be held if the City elects to solely bring civil action to abate the nuisance and collect costs for abatement.
 - B. Recipients of notices pursuant to this Ordinance may request an administrative hearing as follows:
 - i. Requests shall be made in writing and either hand-delivered to the City Clerk no later than seven calendar days from the date of the notice, or sent to the City Clerk via regular mail postmarked by official U.S. postal service cancellation and not by postage meter no later than seven calendar days from the date of the notice.
 - ii. Each request for hearing shall contain the name, address, electronic mail (e-mail) address, and daytime telephone number of any person requesting a hearing and of any attorney and/or agent duly authorized by the person who has received the notice to represent him/her at the hearing.
 - iii. Each request for hearing shall set out the requester's basis for the appeal.

- iv. Failure to properly request a hearing within seven calendar days from the date of the notice shall be deemed a waiver of the right to contest the validity of the determination of nuisance and/or determination of costs stated in the notice, as applicable. The information set forth in the notice will be deemed to be true, correct and valid and abatement and/or assessment of abatement costs will proceed as indicated in the notice.
- v. All administrative hearings requested in compliance with this section shall proceed as follows:
 - a. The time and place of hearing shall be scheduled by the City Clerk to occur as soon as practical following the date of the notice.
 - b. The hearing shall be held before the City Council and shall be conducted informally. The City and the person in receipt of the notice may be represented by counsel or duly authorized agent, and examine witnesses, and present evidence.
 - c. The person requesting the hearing shall be notified in writing by regular mail or by electronic mail (e-mail), or by phone of the date and time for the hearing at least three business days in advance thereof.
 - d. For hearings following notice to abate a nuisance, the Council shall either find, by majority vote, that a nuisance exists, or void or reverse the notice. If the Council finds that a nuisance exists and if evidence of plans for abatement are presented at the hearing by the recipient of the notice, the Council may grant additional reasonable time for the abatement of the nuisance by the recipient of the notice prior to city abatement of the nuisance.
 - e. For hearings following notice of costs of abatement, the Council shall uphold the amount billed, reduce the amount billed, or waive the costs – all by majority vote. The Council shall not determine any other issue relating to the nuisance abatement including but not limited to any issue that may have been raised at a hearing following notice to abate a nuisance. Any costs not waived by the Council may

be assessed against the real property for collection in the same manner as a property tax.

f. The determination of the Council shall be in writing, shall be based on clear and convincing evidence, shall state the credible facts relied upon by the Council in making its determination and shall be the final administrative decision of the City.

vi. The determination of the Council shall be either hand-delivered to the recipient of the notice or mailed, by certified and regular mail, to any one of the addresses provided by said person in his or her request for hearing.

vii. Request for a hearing does not stay an action by the City for alternative relief as allowed by law.

SECTION 8 Exceptions: The provisions of this Ordinance shall not apply to property owners and lessees burning only leaves and other yard waste on their respective properties; to owners of junk motor vehicles or junk machinery stored within a garage or other enclosed structure; and to owners of an automobile or machinery repair facility having a dealer's license and/or a current retail sales tax permit.

SECTION 9 Liability: The owners, agents, contract buyers, tenants, and lessees of all residential dwellings, commercial establishments, and other real property upon which a violation of this Ordinance is found shall be jointly and severally responsible for compliance with this Ordinance and jointly and severally liable for any damages or costs incurred and assessed or awarded under this ordinance.

SECTION 10 Rebuttable Presumptions: In any proceeding charging a violation of this Ordinance, proof that the particular violation described constitutes a violation of this Ordinance, together with proof that the particular named violator was the owner, agent, tenant, or lessee of the structure or real estate upon which the violation occurred, shall be deemed to create a rebuttable presumption that such violator was the party violating this Ordinance. As to property abandoned on public real property, it is presumed that the abandoned property was placed there by or with the consent of the owner, agent, tenant or lessee of the abutting property.

SECTION 11 REPEALER All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 12 SEVERABILITY If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provisions shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 13 EFFECTIVE DATE This Ordinance shall become effective immediately upon its adoption, approval, and publication.

Passed and approved: July 11, 2016.

Janet Browning, Mayor

Becky L. Fry, Clerk

Published in Van Buren County Register July 21, 2016.