

**CHAPTER 42**  
**PUBLIC AND PRIVATE PROPERTY**

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**42.01 TRESPASSING.** It is unlawful for a person to knowingly trespass upon the property of another. As used in this section, the term “property” includes any land, dwelling, building, conveyance, vehicle or other temporary or permanent structure whether publicly or privately owned. The term “trespass” means one or more of the following acts:

*(Code of Iowa Sec. 716.7 and 716.8)*

1. **Entering Property Without Permission.** Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense or to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate.

*(Code of Iowa, Sec. 716.7 [2a])*

2. **Entering or Remaining on Property.** Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

*(Code of Iowa, Sec. 716.7 [2b])*

3. **Interfering with Lawful Use of Property.** Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

*(Code of Iowa, Sec. 716.7 [2c])*

4. **Using Property Without Permission.** Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

*(Code of Iowa, Sec. 716.7 [2d])*

None of the above shall be construed to prohibit entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property.

*(Code of Iowa, Sec. 716.7(3))*

**42.02 CRIMINAL MISCHIEF.** It is unlawful, for any person who has no right to do so, to intentionally damage, deface, alter or destroy tangible property.

*(Code of Iowa, Sec. 716.1)*

**42.03 DEFACING PROCLAMATIONS OR NOTICES.** It is unlawful for a person intentionally to deface, obliterate, tear down, or destroy in whole or in part, any transcript or extract from or of any law of the United States or the State, or any proclamation, advertisement or notification, set up at any place within the City by authority of the law or by order of any court, during the time for which the same is to remain set up.

*(Code of Iowa, Sec. 716.1)*

**42.04 UNAUTHORIZED ENTRY.** No unauthorized person shall enter or remain in or upon any public building, premises or grounds in violation of any notice posted thereon or when said building, premises or grounds are closed and not open to the public. When open to the public, a failure to pay any required admission fee also constitutes an unauthorized entry.

**42.05 FRAUD.** It is unlawful for any person to commit a fraudulent practice as defined in Section 714.8 of the Code of Iowa.

*(Code of Iowa, Sec. 714.8)*

**42.06 THEFT.** It is unlawful for any person to commit theft as defined in Section 714.1 of the Code of Iowa.

*(Code of Iowa, Sec. 714.1)*

**42.07 FIRE HYDRANTS.** No person, unless specifically authorized by the City, shall open or attempt to draw water from any fire hydrant for any purpose whatsoever.

**42.08 PARADES, MARCHES, AND FIRST AMENDMENT ASSEMBLIES.**

1. Purpose. The purpose of this notice and permit approval process is to avoid situations where more than one group seeks to use the same space at the same time and to provide the Marion Police Department and other agencies the ability to provide appropriate police protection, traffic control, and other support for participants and other individuals.

2. A person or group who wishes to conduct a parade, march, or other First Amendment assembly on a public street, sidewalk, or other public way, or in a public park, is not required to give notice or apply for permit approval before conducting the event where:

A. The parade, march, or assembly will take place on public sidewalks and crosswalks and will not prevent other pedestrians from using the sidewalks and crosswalks and, when using crosswalks, will not block the view of normal and lawful vehicular traffic in a manner that creates an immediate and unreasonable risk of harm to drivers or pedestrians; or

B. The person or group reasonably anticipates that fewer than 50 persons will participate in the parade, march, or assembly, and the same will not occur on a public street; or

C. The parade, march, or assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event.

3. Except as provided in subsection 2 of this section, a person or group who wishes to conduct a parade, march, or other First Amendment assembly on a public street, sidewalk, or other public way, or in a public park, shall give notice and apply for a permit before conducting the parade, march, or assembly.

A. If a parade or march is contemplated, then the route shall be shown in detail as part of the notice and permit approval process.

B. The permit application shall include the name or names of the person or group organizing the parade, march, or assembly, anticipated size of the parade, march, or assembly, and the proposed date and location of the parade, march, or assembly.

C. The Chief of Police/City Manager shall work with the organizer listed on the permit application to modify the proposed plan's parade, march, or assembly location or route as reasonably necessary based on considerations of public safety.

D. The Chief of Police/City Manager shall inform the person or group giving notice of a parade, march, or assembly, in writing, of the reasons for any decision to: (1) deny an application for approval of a permit; (2) revoke a permit prior to the date of the planned event; or (3) approve a permit subject to time, place, or manner restrictions that the applicant has advised the Chief of Police/City Manager are objectionable to the applicant.

4. Reasonable time, place, and manner restrictions on Parades, Marches, and First Amendment assemblies. The Chief of Police/City Manager may enforce reasonable time, place, and manner restrictions on a parade, march, or First Amendment assembly by:

A. Establishing reasonable restrictions on a proposed parade, march or assembly prior to its planned occurrence through the approval of a permit, where the organizers of the event are required to provide notice;

B. Enforcing reasonable restrictions during the occurrence of a parade, march or assembly for which a permit has been approved, which are in addition to the restrictions set forth in the permit approval, where the additional restrictions are:

(1) ancillary to the restrictions set forth in the approved plan and are designed to implement the substance and intent in the approval of the plan;

(2) enforced in response to the occurrence of actions or events unrelated to the parade, march or assembly that were not anticipated at the time of the approval of the permit and that were not caused by the permit holder, counter-demonstrators, or the police;

(3) enforced to address a determination by the Chief of Police/City Manager that during the pendency of a parade, march or assembly that there exists an imminent likelihood of violence endangering persons or threatening to cause significant property damage; or

(4) enforcing reasonable restrictions on a parade, march or assembly during its occurrence where a plan was not approved for the assembly,

C. No time, place, or manner restrictions regarding a parade, march or assembly shall be based on the content of the beliefs expressed or anticipated to be expressed during the event, or on factors such as the attire or appearance of persons participating or expected to participate in the event, nor may such restrictions favor non-First Amendment activities over First Amendment activities.

5. The City shall not require, separate from or in addition to the requirements for giving notice of or applying for a permit, that persons give notice to, or obtain a permit from, the Chief of Police, or other municipal officials or agencies, as a prerequisite for making or delivering an address, speech, or sermon regarding any political, social, or religious subject in any public street, sidewalk, other public way, or park.

6. The City shall not require, separate from or in addition to the requirements for giving notice of or applying for a permit, that persons give notice to, or obtain a permit from the Chief of Police, or other municipal officials or agencies as a prerequisite for using a stand or structure in connection with such an assembly; provided, that a parade, march, or First Amendment assembly permit may contain limits on the nature, size, or number of stands or structures to be used as required to maintain public safety. Individuals conducting a parade, march, or assembly under subsection 3 of this section may use a stand or structure so long as it does not prevent others from using the street, sidewalk, other public way, or park.

7. The City shall not require, separate from or in addition to the requirements for giving notice of or applying for a permit, that persons give notice to, or obtain a permit from the Chief of Police, or other municipal officials or agency as a prerequisite for selling demonstration-related merchandise within an area covered by an approved permit or within a parade, march, or assembly covered by subsection 3 of this section; provided, that nothing in this subsection shall be construed to authorize any person to sell merchandise in the area covered by the permit contrary to the wishes of the permit holder.

8. Issuance Standards. The City Manager shall issue the permit as requested upon the applicant's written agreement to comply with the terms of the permit unless the City Manager finds that:

A. The time, route, and size of the parade, march, or assembly will disrupt to an unreasonable extent the movement of other traffic. Before denying the permit application, the City Manager/Chief of Police should work with the person or group applying for a permit to provide ample alternative options to reach the assembly's target audience and suggesting alternative options.

B. The parade, demonstration, march, or rally will unreasonably interfere with another parade, march, or assembly for which a permit has been issued. Before denying the permit application, the City Manager/Chief of Police should work with the person or group applying for a permit to provide ample alternative options to reach the assembly's target audience and suggesting alternative options. Mere presence near, or audibility of, counter-protesters is not interference.

C. An application for an event covered by this Chapter that is expected to exceed sound, noise, or time limits shall be subject to Council approval as provided for within Chapter 53 of the Marion Code of Ordinances.

9. Denial Standards. The City Manager shall deny an application for a permit as requested and shall notify the applicant of the denial where:

A. The City Manager makes a finding contrary to the findings required to be made for the issuance of the permit.

B. The information contained in the application is found to be false or insufficient for purposes of assuring public safety.

C. The applicant refuses to abide by or comply with all conditions of the permit that are reasonable and necessary for public safety.

10. Upon a denial by the City Manager of an application made pursuant to this section, the applicant may appeal from the determination of the City Manager within five (5) days thereafter to the Council by filing a written notice of appeal for hearing by the Council at its next meeting. Upon such appeal, the Council may reverse, affirm, or modify in any regard the determination of the City Manager. In the event an application is not filed within the required time as specified in this section, the applicant may request a waiver of such requirement by the Council at its next regular meeting, or at a special meeting which may be called prior thereto by the Council to consider the matter, and the Council, if it finds unusual circumstances and in the exercise of its sound discretion, may waive such requirement.

11. The granting of a permit to hold a parade, march, or assembly creates a presumption that the sponsoring organization agrees to indemnify and hold harmless the City of Marion, Iowa, its employees, representatives, and agents against all claims, liabilities, losses, or damage for personal injury and/or property damage on account of the parade, march, or assembly and/or deviation from normal City regulations in the area when such claims, liabilities, losses, or damage shall be caused by or in any way result from or rising out of any act, omission, or negligence of the permit holder, including the sponsoring organization, or any of its officers, owners, directors, partners, or agents. Furthermore, the granting of permit creates a presumption that the sponsoring organization agrees to indemnify and hold harmless the City of Marion, Iowa, its employees, representatives, and agents against any loss, injury, death, or damage to person or property and against all claims, demands, fines, suits, actions, proceedings, orders, decrees, and judgments of any kind or nature and from and against any and all costs and expenses including reasonable attorney fees which at any time may be suffered or sustained by the permit holder or by any person who may, at any time, be participating or engaging in the parade, march, or assembly when such loss, injury, death, or damage shall be caused by or in any way result from or rising out of any act, omission, or negligence of the permit holder, including the sponsoring organization, or any of its officers, owners, directors, partners, or agents. No permit holder, including the sponsoring organization, or any of its officers, owners, directors, partners, or agents are subject to a presumption of indemnification or hold harmless claims, liabilities, losses, damage, injury, death, demands, suits, actions, proceedings, orders, decrees, and judgments of any kind for acts and omissions of others, including those of counter-protesters or bystanders in response to the parade, march, or assembly.

12. The City Manager or the City Manager's Designee shall be the authorized city official to receive notice and consider permit approval under this Section.

*(Ord. 17-21 – Nov. 17 Supp.)*