

## CHAPTER 50

# NUISANCE ABATEMENT PROCEDURE

50.01 Definition of Nuisance

50.02 Nuisances Defined

50.03 Other Conditions

50.04 Nuisances Prohibited

50.05 Nuisance Abatement

50.06 Notice to Abate: Contents

50.07 Method of Service

50.08 Request for Hearing

50.09 Abatement in Emergency

50.10 Abatement by City

50.11 Collection of Costs

50.12 Installment Payment of Cost of Abatement

50.13 Failure to Abate

50.14 Nuisance Advisory Board

**50.01 DEFINITION OF NUISANCE.** Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property so as essentially to interfere unreasonably with the comfortable enjoyment of life or property is a nuisance.

*(Code of Iowa, Sec. 657.1)*

**50.02 NUISANCES DEFINED.** Whatever is injurious to the senses, or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance. Examples of nuisances are:

1. All diseased animals running at large.
2. All ponds or pools of stagnant water.
3. Carcasses of animals not disposed of within twenty-four hours after death as provided by law.
4. Accumulations of refuse including junked, abandoned or inoperable vehicles.
5. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial wastes, or other substances.
6. *(Repealed by Ord. 11-05 – May 11 Supp.)*
7. Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities.
8. The use of a common public drinking cup or roller towel.
9. The distribution of samples of medicines or drugs unless such samples are placed in the hands of an adult person.
10. All gambling devices, slot machines and punch boards not authorized by state law.  
*(Ord. 05-38 – Nov. 05 Supp.)*
11. All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdy houses.
12. All places where intoxicating liquors are kept for sale, barter or distribution in violation of law, and all liquors, bottles, kegs, pumps, bars and other property kept at and used for maintaining such a place.
13. Any vehicle used for the transportation of intoxicating liquor, or for promiscuous sexual intercourse or any other immoral purpose.

14. Any violation of Section 105.16 of the Code of Ordinances.  
*(Ord. 02-21 – Aug. 02 Supp.)*
15. All snow and ice not removed from public sidewalks twelve hours after the snow and ice has ceased being deposited thereon.
16. All trees, hedges, billboards or other obstructions which prevent persons from having a clear view of traffic approaching an intersection from cross streets in sufficient time to bring a motor vehicle driven at a reasonable speed to a full stop before the intersection is reached.
17. All limbs of trees which are less than 8 feet above the surface of any public sidewalk or street.
18. All wires which are strung less than 15 feet above the surface of the ground.
19. All buildings, walls, and other structures which have been damaged by fire, decay or otherwise to an extent exceeding one-half their original value, and which are so situated as to endanger the safety of the public.
20. All explosives, inflammable liquids and other dangerous substances stored in any manner or in any amount other than that permitted by this code.
21. All use or display of fireworks except as permitted by law or this code.
22. All loud or unusual and unnecessary noises.
23. Obstruction and excavations affecting the ordinary use by the public of streets, alleys, sidewalks or public grounds except under such conditions as are permitted by this code.
24. 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 and sidewalks.
25. Failure to pay to the City of Marion, when due, any fee or fine required by the Code of Ordinances.
26. Maintaining any violation of the Code of Ordinances.
27. Failure to install any improvement required by the subdivision ordinance, other provisions of the Municipal Code, or any memorandum of agreement.
28. All noxious weeds and all weeds, vines, brush, dead or diseased trees, rank growth or objectionable vegetation which constitutes a health, safety, fire hazard, is injurious to the senses, and objection to the free use of property or interferes with the comfortable enjoyment of life or property.  
*(Ord. 11-05 – May 11 Supp.)*
29. All trees, including dead or diseased, fallen trees or limbs or leaning trees, which constitutes a hazard of blocking or damming any stream over which there is a bridge, during a heavy rain or a flooding event.  
*(Ord. 03-02 – Feb. 03 Supp.)*
30. Maintaining a structure in a partially or otherwise incomplete condition after the expiration of the building permit to erect said structure.

**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. Dangerous Buildings (**See Chapter 150**)
3. Weeds (**See Chapter 52**)
4. Storage and Disposal of Solid Waste (**See Chapter 105**)
5. Trees (**See Chapter 152**)
6. Property Maintenance (**See Chapter 153**)
7. Storm Water Management (**See Chapter 156**)
8. Housing Code (**See Chapter 165**)

**50.04 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)*

**50.05 NUISANCE ABATEMENT.** Whenever the Mayor, City Manager or other authorized municipal officer finds that a nuisance exists, such officer shall cause to be served upon the property owner a written notice to abate the nuisance within a reasonable time after notice.

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

**50.06 NOTICE TO ABATE: CONTENTS.** The notice to abate shall contain:

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

1. Description of Nuisance. A description of what constitutes the nuisance.
2. Location of Nuisance. The location of the nuisance.
3. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.
4. Reasonable Time. A reasonable time within which to complete the abatement.
5. Assessment of City Costs. A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and assess the costs against such person.

**50.07 METHOD OF SERVICE.** The notice may be in the form of an ordinance, by personal service, or sent by certified mail to the property owner.

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

**50.08 REQUEST FOR HEARING.** Any person ordered to abate a nuisance, or any person interested therein may have a hearing with the Nuisance Enforcement/Property Maintenance Advisory Board as to whether a nuisance exists or on a request for an extension of time in which to abate a nuisance. A request for a hearing must be made in writing and delivered to the Nuisance Enforcement/Property Maintenance Advisory Board either: within the time stated in the order to abate, or it will be conclusively presumed that a nuisance exists, and it must be abated as ordered. The Nuisance Enforcement/Property Maintenance Advisory Board shall set a hearing date as soon

as practicable after receiving a written appeal. The applicant shall be advised in writing of the time and place of such meeting at least (4) days prior to the date of the meeting. At such meeting, the applicant shall be given an opportunity to be heard and show just cause why a nuisance does not exist or why an extension of time is needed. At the conclusion of the hearing, the Nuisance Enforcement/Property Maintenance Advisory Board shall render a written decision as to whether or not a nuisance exists. If the Nuisance Enforcement/Property Maintenance Advisory Board finds that a nuisance exists, it shall order the nuisance abated within an additional time which is reasonable under the circumstances. The findings of the Nuisance Enforcement/Property Maintenance Advisory Board shall be the final decision on the matter. Enforcement of any notice or order issued under this code shall be stayed during the duration of an appeal of the order, which is properly and timely filed.

*(Ord. 04-23 – Feb. 05 Supp.)*

**50.09 ABATEMENT IN EMERGENCY.** If it is determined that an emergency exists by reason of the continuing maintenance of the nuisance or condition, the City may perform any action which may be required under this chapter without prior notice. The City shall assess the costs as provided in Section 50.11 after notice to the property owner under the applicable provisions of Sections 50.05, 50.06 and 50.07 and hearing as provided in Section 50.08.

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

**50.10 ABATEMENT BY CITY.** If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the City may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the Clerk who shall pay such expenses on behalf of the City. The person issuing the order to abate a nuisance may enter into any building or place for the purpose of entering into property to remove or abate any nuisance.

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

**50.11 COLLECTION OF COSTS.** 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 one (1) month, 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.

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

**50.12 INSTALLMENT PAYMENT OF COST OF ABATEMENT.** If the amount expended to abate the nuisance or condition exceeds five hundred dollars (\$500.00), the City may permit the assessment to be paid in up to ten (10) annual installments, to be paid in the same manner and with the same interest rates provided for assessments against benefited property under State law.

*(Ord. 13-17 – Aug. 13 Supp.)*

*(Code of Iowa, Sec. 364.13)*

**50.13 FAILURE TO ABATE.** Any person causing or maintaining a nuisance who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this Code of Ordinances.

**50.14 NUISANCE ADVISORY BOARD.**

1. Organization. A Nuisance Enforcement/Property Maintenance Advisory Board is hereby established, which shall consist of seven members. The word “Board” when used in this section shall mean the Nuisance Enforcement/Property Maintenance Advisory Board. Membership of the Board shall be as follows:

A. The seven members shall be, to the extent practical, a diverse cross section representation of the general populous of the City, including not less than one member nor more than two members who own or manage residential rental housing in Marion and not less than one member nor more than two members who occupy residential rental housing in Marion as a tenant, all of whom shall be residents of the City.

B. Members of the Board shall be appointed by the Mayor and confirmed by the Council to serve respectively for the following terms from January 1: three for one year, two for two years and two for three years. The successor to each member so appointed shall serve a term of three years. *(Ord. 12-26 – Nov. 12 Supp.)*

C. Vacancies shall be filled by the Mayor and confirmed by the Council for any unexpired term.

D. The Board shall elect a Chairperson and shall adopt rules of procedure in accordance with the provisions of this section and the Code of Iowa.

E. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine.

*(Ord. 12-14 – Aug. 12 Supp.)*

2. Purpose and Intent. The purpose and intent of this Board is to:

A. Promote public safety, general welfare and quality of life through fair and consistent interpretation of the Code.

B. Provide a centralized point of nuisance code communications for all interested groups and individuals.

C. Promote harmony and consistency in nuisance abatement procedures.

3. Powers. The Board shall have the following powers:

A. To provide direction and interpretation of nuisance definition and parameters to City staff for the enforcement of this Code.

B. To conduct hearings and render decisions as requested per Section 50.08 of this Code.

C. To hear testimony, issue subpoenas, conduct studies and review documentation necessary for the determination of the Board.

D. To assist with review and development of new codes or amendments to existing codes.

*(Ord. 04-23 – Feb. 05 Supp.)*

**EDITOR'S NOTE**

A suggested form of notice for the abatement of nuisances is included in the appendix of this Code of Ordinances.

Caution is urged in the use of this administrative abatement procedure, particularly where cost of abatement is more than minimal or where there is doubt as to whether or not a nuisance does in fact exist. If compliance is not secured following notice and hearings, we recommend you review the situation with your attorney before proceeding with abatement and assessment of costs. Your attorney may recommend proceedings in court under Chapter 657 of the Code of Iowa rather than this procedure.

*(Ch. 50 - Ord. 18-15 – Aug. 18 Supp.)*

[The next page is 281]