



Iowa League of Cities Nuisance Abatement Manual

A Guide to Assist Cities in Identifying and Abating Nuisance Property Issues

Cities should work closely with their city attorney and code enforcement officer throughout any nuisance abatement procedure to ensure all steps are properly completed.

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All city governments, at some point, will be forced to deal with nuisance property issues in their community. This never-ending challenge is often one of the more frustrating aspects of managing a city, but is also critical to maintaining vibrant properties and neighborhoods that are fundamental to a healthy community.

To avoid the negative consequences of nuisance properties city officials must be ready to take action. Cities first need to have a clear nuisance ordinance that defines nuisances and the actions the city can take to abate them. Equal and consistent enforcement of the city codes is essential to effective nuisance abatement procedure. Cities must also be prepared to deal with nuisance properties that do not comply with orders to abate, including the city performing required work and assessing costs or taking possession of abandoned properties.

In addition, city officials will need to be proactive in communicating their plan to citizens while being sensitive to concerns of private property rights. Cities should also consider potential budget impacts and the financial and staffing commitment needed to consistently address nuisance properties.

Solving nuisance property issues is rarely easy and what works for one community may not for another. The objective of this manual is to provide city officials guidance and tools to successfully manage nuisance properties in their community. Developing a strong ordinance, actively identifying nuisances and working with property owners will help lead to a safer and healthier city.



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Section 1: Nuisance Codes and Identifying Nuisances

Sample documents related to Nuisance Abatement can be found in Section 4.

One of the fundamentals to an effective nuisance abatement process is a clear and consistent nuisance ordinance. Many city ordinances rely on relevant state codes when shaping local regulations while also identifying certain issues that are important to the community. It is also critical that city officials work with residents and property owners to build a strong understanding of the city's nuisance ordinance and for the city to identify nuisances in a fair and consistent manner.

Code of Iowa

The *Code of Iowa* has multiple sections that help define property nuisances as well as give city governments the ability to take nuisance abatement actions. The primary state code chapter that defines nuisances is Chapter 657, which says nuisances are “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...”

Section 657.2 provides more specific examples of what constitutes a nuisance, including any building or other place that becomes injurious and dangerous to the health or property of individuals or the public, houses of “ill fame”, dense growth of weeds or other vegetation that creates a health, safety or fire hazard, and several others.

Section 364.12 also identifies several specific requirements a city may place on property owners, including the removal of natural accumulations of snow and ice from sidewalks, maintenance of the area between the property owner's lot and public street, repair or replacement of sidewalks, repair or removal of a dangerous building or structure, cutting or destruction of weeds or other growth that is a health, safety or fire hazard, and general abatement of nuisances. Additionally, the Iowa Supreme Court has confirmed that cities have wide latitude in defining what constitutes a nuisance.

Importantly, the *Code* gives cities the ability to establish nuisance abatement procedures and cite owners of properties found to be in violation of city code. Section 364.12 says a city may perform a required nuisance abatement action, after a reasonable time and notice to the property owner, and assess the cost against the property for collection in the same manner as a property tax. The section also allows cities to pursue reimbursement for costs under a civil action. Section 364.22 allows cities to establish municipal infractions for violations to its nuisance ordinance.

Cities are also able to take possession of abandoned and unsafe buildings through Chapter 657A while Chapter 446 allows cities to acquire properties at tax sales, assign a certificate to someone who intends to rehabilitate the property or build a new structure, or negotiate with the holder of a certificate for voluntary assignment.

City Ordinances

Many cities have adopted nuisance ordinances that use similar language as the state code to define property nuisances in their community. In addition, it is common for cities to add specific regulations that help define nuisances to fit their community's standards. For example, some city ordinances will put a specific maximum height of grass before it is deemed a nuisance or describe what is considered a noxious weed or vegetation. Furthermore, some cities include regulations on property maintenance, use of land and property, zoning and more that all work in concert along with the nuisance provisions.

It is essential that ordinances also describe the actions the city may take to abate nuisances and how property owners may respond. This includes how the city will notify owners of violations, the processes that will be used to resolve issues, penalties or fines that may be assessed, how owners may file appeals and other potential actions. Section 2 of this manual fully describes the various nuisance abatement processes cities may use.

Given the legal ramifications of enforcing a nuisance ordinance cities need to work closely with their city attorney when developing or amending their regulations. Nuisance abatement procedures must also ensure that due process of the law is followed by providing proper notice of violations and the ability to appeal citations or orders.

Working with the Public

It is vital for city officials to effectively communicate their nuisance ordinance and abatement program to the public. Many citizens and property owners want their local government to enforce nuisance codes to keep neighborhoods clean, maintain property values and promote a positive community image. It is also true that some residents will be skeptical of nuisance regulations and have concerns that the city will violate their private property rights. Balancing these two elements is often challenging, but something all cities must try to accomplish.

As mentioned, not all cities define nuisances the same way as some communities use a strict nuisance code while others prefer more flexibility. The important thing is that a city's nuisance regulations match what the community supports. City council members and city employees should work with residents, neighborhood associations, business leaders and other civic groups to effectively communicate the city's nuisance ordinance and encourage suggestions for improvements.

Identifying Nuisances

Having strong ordinances and abatement procedures is only half the battle as a city must also be ready to enforce its nuisance regulations. A key element to this is assigning nuisance code enforcement duties. This can be handled by a city employee, such as a code enforcement officer, police officer or other personnel. It can also be done by an elected official, which is sometimes the case in smaller cities. Other cities may find it advantageous to hire a private contractor or partner with another city or the county to complete the work. Cities can also work with citizens and volunteers to help identify issues around the community.

Whoever is assigned the task must have a full understanding of the city's nuisance code. Identifying nuisances may result from observing a violation in person, hearing of issues from other city officials or receiving complaints from citizens.

It is possible that a city will need to obtain an administrative search warrant in order to inspect a property for a possible nuisance violation. If so, the city will need to file an application for an administrative search warrant supported by an affidavit of the inspector with the district court. The court may hold a hearing on the matter and issue an order for an administrative search warrant, which is then served on the property owner. The property owner must then provide access for inspection.

However the city becomes aware of nuisance code violations it is imperative that each property is treated in a fair and consistent manner. No citizen or property should be given favorable treatment or leniency that is not given to others.

It is also common for cities to receive complaints from citizens that fall outside of the city's purview. Private property disputes are certainly important to the parties involved but do not require the city to take any action if there is no public nuisance or public safety issue. A common example is a tree on private property that is affecting two or more neighbors (such as tree limbs or debris falling from one property into an adjacent yard). It is often best in these cases for the city to explain that it is a private matter, and the city has no role in finding a resolution.

Section 2: Nuisance Abatement Processes

There are a variety of ways to abate nuisances, and cities should be prepared to use any lawful methods that will be effective in their community. Any abatement process the city desires to employ should first be included and well described in the city code. This includes defining nuisances, how the city will identify nuisances and notify property owners, and what actions the city and property owners may take to abate nuisances.

City officials should also be mindful of the need to treat all citizens and properties equally and to enforce the city's nuisance ordinance in a consistent manner. Ignoring provisions of the city code or allowing certain property owners lenience but not others will likely lead to legal challenges.

Informal Process

It is recommended to start most nuisance abatement processes informally, especially those that may be considered minor violations. This can include contacting property owners over the phone or knocking on their door and politely notifying them of the nuisance and a plan to remedy the situation. If another reminder is needed an informal letter can also be sent. Working with a property owner informally is often effective and keeps the city from starting the formal process, which can include expenses and the use of city resources. It can also help build a trusting relationship with residents and business owners in the community. It is still recommended for cities to document their efforts in the informal process and gather evidence, such as photos of the nuisance, in the event the problem persists and formal processes become necessary.

Administrative Process

When the informal process does not achieve the desired response, cities will need to turn to formal procedures. The administrative nuisance abatement process under Section 364.12 of the *Code of Iowa* is commonly used and begins with an Order to Abate Nuisance. The order should include the following:

- Location and description of the nuisance
- Order to abate the nuisance by taking specific action
- Order to abate the nuisance by a specific date
- Advise property owner of right to request a hearing before the city council or council designee within a certain period of time
- Advise property owner that if the nuisance is not abated as ordered and no request for a hearing is made within the time prescribed, the city may:
 - Abate the nuisance and assess costs against the property for collection in the same manner as property taxes
 - File a civil citation to initiate a municipal infraction proceeding against the registered property owner

The order can be mailed by certified mail or published as a public notice.

If the property owner does not comply and abate the nuisance as ordered, the city may perform the required action and assess the costs to the property owner. It is recommended that cities abate nuisances under this process for relatively minor cases involving minimal abatement costs, such as mowing weeds, clearing brush, removing trash, debris or solid waste, or clearing snow and ice accumulations from public sidewalks.

For more serious nuisance violations, such as the removal and disposal of junk vehicles or the demolition of dangerous buildings, it is recommended the city use the municipal infraction process when the property owner does not comply.

Municipal Infractions

Under Section 364.22 of the state code, cities are allowed to issue civil citations for violations of municipal code. This process moves beyond relatively minor nuisance issues by including the possibility of court-ordered actions. The process begins when an officer authorized by the city issues a civil citation to a person in violation of city code. The citation may be served in person, mailed by certified mail or published as a public notice and must include the following:

- Name and address of the defendant
- Name or description of the infraction attested to by the officer issuing the citation
- Location and time of the infraction
- Amount of civil penalty to be assessed (state code allows a penalty of up to \$750 for the first offense and up to \$1,000 for each repeat offense) or alternate relief
- Manner, location and time in which the penalty may be paid
- Time and place of court appearance
- Penalty for failure to appear in court
- Legal description of the affected real property (not street address)

The citation may also request the property owner to take specific action to abate the nuisance and request the property owner be enjoined and restrained from future violations.

Impact of Sale of Nuisance Property during Abatement Proceeding

It is possible that a property owner will attempt to sell a nuisance property to a third party after being cited by a city for a municipal infraction. If a city duly notifies the court of the municipal infraction and includes a legal description of the property, the city's nuisance abatement proceeding is put on the *lis pendens* list, which provides notice to potential third party purchasers of the proceeding. The court is given jurisdiction over the process, and the court may make the third party subject to the nuisance abatement order. Due to the requirement to notify the court, cities should take steps to ensure infractions involving real estate are included in the *lis pendens* list.

In a municipal infraction proceeding the court can approve a consent decree negotiated by the city and property owner that outlines actions the property owner agrees to take to abate the nuisance. If the proceeding goes to trial and the property owner is found to have committed the infraction, the court may impose a civil penalty by entry of personal judgment against the property owner and enter an order directing the property owner to take specific action within a certain time period to abate the nuisance.

If a property owner fails to abate a nuisance as provided in a consent decree or by order of the court, the court can:

- Hold the property owner in contempt (if the owner is a natural person)
- Impose a civil penalty by entry of a personal judgment against the property owner
- Authorize the city to abate the nuisance
- Order the city's costs of abating the nuisance be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both

Collecting Costs

Under both the administrative and municipal infraction processes it is possible that a city will need to perform nuisance abatement work and incur costs. It is appropriate to charge private property owners for such expenses.

As previously detailed, cities may bill property owners under the administrative process for the actual cost of nuisance abatement work performed by the city. Under the municipal infraction process the court may order a property owner to pay the city for its costs in performing nuisance abatement work. A city could also bring suit against a property owner and seek judgment for abatement costs.

Another avenue is to assess the costs of nuisance abatement work as allowed under Section 364.12 of the state code, which says that if a property owner does not perform an action required by a city within a reasonable amount of time “a city may perform the required action and assess the costs against the property for collection in the same manner as a property tax.”

An assessment schedule pursuant to Section 384.59 must be prepared showing the description and parcel number of each lot to be assessed, the valuation of each lot and the amount to be assessed against each lot. The city council must adopt a resolution approving the assessment schedule; the resolution shall:

- Confirm and levy assessments
- State the number of annual installments (if any), not exceeding 15, into which the assessments of \$500 or more are divided
- Provide for interest on all unpaid installments at a rate not exceeding that set by the state treasurer
- State the time when assessments are payable
- Direct the city clerk to certify the final assessment schedule to the treasurer of the county and to publish notice of the schedule once each week for two consecutive

weeks. The first publication shall not be more than 15 days from the date of filing of the final schedule.

A city is allowed to accumulate abatement costs from multiple properties until there is a sufficient amount to justify the procedure. This provides a measure of needed flexibility for small cities.

On or before the date of the second publication of the assessment schedule, the clerk is required to send, by mail, a copy of the notice to each property owner identified on the schedule. The notice is required to include a statement that assessments may be paid in full or in part without interest within 30 days after the date of the first notice of the assessment schedule. Thereafter, all unpaid assessments shall bear interest as determined by the council, but not exceeding the amount set by the treasurer of the state pursuant to Chapter 74A. The notice is also required to state that the property owners may elect to pay any installment semiannually in advance. If a property is shown by the records to be in the name of more than one owner at the same mailing address, a single notice may be mailed to all owners at that address. The *Code* specifically states that failure to receive a mailed notice is not a defense to the assessment. Once completed the clerk must forward the certified assessment schedule to the county treasurer for processing.

A person with interest in a property subject to the special assessment has 20 days from the date the resolution was passed to test the regularity of the proceedings or the legality of the assessment by filing a petition with the district court in the county the property is located. A property owner may also appeal the amount of the assessment at any time during the proceedings, up to 20 days after the date of the second publication of the notice.

Cities need to be mindful that under this process it must pay its attorney fees and cannot collect them from a defendant. A city would also be forced to pay court costs if the court rules against the city. The state code places the burden of proof in a municipal infraction proceeding on the city and the proof “shall be clear, satisfactory, and convincing.” In addition, municipal infraction rulings may be appealed, which can further delay a result.

Acquisition of Title through Tax Sale

The state code permits cities in Iowa to obtain title to certain types of properties at tax sales as well as work with developers to receive properties designated for rehabilitation. When a property becomes so dilapidated that it is no longer feasible to remedy the nuisance conditions, it is common to see a property owner stop paying taxes. Chapter 446 of the *Code* offers several solutions to cities to assist in the abatement of nuisances on abandoned and vacant nuisance properties.

Right to redeem property

Prior to using any of the four options detailed below cities must understand that a tax sale certificate is considered a lien against the property until the tax sale is redeemed by the property owner or a tax sale deed is issued to the certificate holder.

The state code in Section 447.9 requires tax sale certificate holders to provide written notice to property owners of their right to redeem the property. The notice should be served by both regular mail and certified mail to the person’s last known address. Notice must also be provided to any other party that has an interest in the property. The city, as a certificate holder, must then file an affidavit of the service to the property owner with the county treasurer. The time allowed under state code for a property owner to redeem a property begins when the affidavit is filed (redemption periods for each tax sale process can be found below).

If the property owner does not redeem a property within the specified timeframe a tax sale deed is issued to the certificate holder. The holder must then return the certificate of purchase and remit the appropriate deed issuance fee and recording fee to the county treasurer within 90 days after the redemption period expires.

Finally, after receiving the tax sale deed and taking possession of the property, Section 448.15 allows the city to file an affidavit with the county recorder that gives any person claiming right, title or interest in the property to file a claim within 120 days to challenge the deed. If no such claim is filed within 120 days, the city receives title to the property and may sell it.

City negotiation for voluntary assignment of tax sale certificate (Section 446.31)

A city may negotiate with a tax sale certificate holder for voluntary assignment to the city. Under this option any type of real estate, including mobile homes, can be included. The city may be able to acquire a certificate for less than the total principal and interest owing to the certificate holder if the property is in poor condition with little chance the owner will redeem the property by paying the full amount of taxes and interest owing.

- Initial redemption period: 18 months after tax sale
- Redemption period after notice served on property owner: 90 days
- Cost: Negotiable

City purchase of abandoned housing property at tax sale (Section 446.19A)

Cities are allowed to purchase abandoned residential or commercial multifamily housing property. This can only be done if the county has adopted an ordinance authorizing cities in its county to do so. Prior to the purchase, a city shall file with the county treasurer a verified statement that a parcel to be purchased is abandoned property and the parcel is suitable for use as housing following rehabilitation or that a parcel to be purchased is a vacant lot.

A city may then purchase the property and receive the tax sale certificate. The tax sale certificate may be assigned (sold) to a person who demonstrates “the intent to rehabilitate the abandoned property for habitation or build a residential structure on the vacant lot if the property is not redeemed.”

- Initial redemption period: 3 months after tax sale
- Redemption period after notice served on property owner: 90 days
- Cost: The city incurs no cost as taxes owing on the property are charged off to the city and all other taxing bodies

City purchase of tax sale certificate for abandoned housing property from certificate holder (Section 446.19A)

As above, this process may only be used if the county has adopted an ordinance authorizing cities to purchase tax sale certificates of abandoned housing property or vacant lots. After a tax sale is done, the city may file a verified statement with the county treasurer identifying a parcel sold at tax sale as abandoned residential or commercial multifamily housing property. The city may require the purchaser of the tax sale certificate to assign the certificate to the city by paying the holder the total amount of principal and interest.

If the holder fails to assign the certificate to the city or county the county treasurer may issue a duplicate certificate of purchase to the city, which takes the place of the original certificate. The tax sale certificate may be assigned (sold) to a person who demonstrates “the intent to rehabilitate the abandoned property for habitation or build a residential structure on the vacant lot if the property is not redeemed.”

- Initial redemption period: 18 months
- Redemption period after notice served on property owner: 90 days
- Cost: Principal and interest due on the tax sale certificate, paid to the certificate holder

Redeveloper purchase of tax sale certificate at “public nuisance” tax sale (Section 446.19B)

The county must adopt an ordinance authorizing the county treasurer to separately offer and sell at the annual tax sale parcels that are abandoned property and are assessed as residential property or as commercial multifamily housing property and that are, or are likely to become, a public nuisance.

On or before May 15 a city may file with the county treasurer a verified statement that contains a listing of parcels and declares that each parcel is abandoned property, assessed as residential property or as commercial multifamily housing property, is, or is likely to become, a public nuisance, and is suitable for use as housing following rehabilitation.

On the day of the tax sale the treasurer separately offers and sells such properties at the “public nuisance tax sale” and only persons who have entered into an agreement with the city to rehabilitate the property as housing are eligible to bid at the public nuisance tax sale. After a tax sale deed has been issued to the holder of a certificate of purchase at the public nuisance tax sale and the holder determines that a building, structure or other improvement located on the parcel cannot be rehabilitated for habitation, the holder may request approval from the city council to remove, dismantle or demolish the building, structure or other improvement.

Impact of Intervening Tax Sale on City Nuisance Abatement Proceeding

After a city issues a municipal citation or nuisance abatement order it is possible that a property owner will cease to pay property taxes. If the city files the infraction with the county treasurer, the county is prevented from selling the property at tax sale.

- Initial redemption period: 3 months after tax sale
- Redemption period after notice served on property owner: 90 days
- Cost: The city incurs no cost as the redeveloper who bids at the tax sale pays all amounts due

Award of Title to Abandoned Property by Court

Section 657A.10B (previously Section 657A.10A) of the *Code of Iowa* allows cities to be awarded title to abandoned property. Under this process the city must petition the court to enter judgment awarding title to the abandoned property to the city (see below for what constitutes “abandoned” in this process). The petition must include a legal description of the property and filed with the district court of the county in which the property is located. The city must also serve notice on the owner and any other named respondents by certified mail and by posting notice in a conspicuous place on the building.

The city may request a hearing no sooner than 60 days after filing the petition. In determining whether a property is abandoned, the court shall consider the following:

- Whether any property taxes or special assessments were delinquent when the petition was filed
- Whether any utilities are currently being provided
- Whether the building is unoccupied
- Whether the building meets the city’s housing code for being fit for human habitation, occupancy or use
- Whether the building is exposed to the elements such that deterioration of the building is occurring
- Whether the building is boarded up or otherwise secured from unauthorized entry
- Past efforts to rehabilitate the building and grounds
- The presence of vermin, accumulation of debris and uncut vegetation
- The effort expended by the petitioning city to maintain the building and grounds
- Past and current compliance with orders of the local housing or building code official
- Any other evidence the court deems relevant

If the court finds that the property is abandoned, the court can enter judgment awarding title to the property to the city “free and clear of any claims, liens, or encumbrances held by the respondents”. The court can also grant title to the city if the city is able to establish that all parties with an interest in the property have received proper notice and either consented to the entry of awarding title to the city or did not make a good faith effort to comply with the order of the city within 60 days after the petition was filed.

This process can be effective in removing blighted and nuisance properties that are detrimental to the community. It gives the ability to the city to put such properties in the hands of developers or organizations that are committed to redevelopment that return the property to an active status. However, city officials must understand that until a property has a new owner the city will be responsible for maintenance and upkeep as well as the potential that a new owner may not be identified immediately, leaving the property empty until that occurs.

- Time period for starting process: Begins when petition for title to property is filed with the district court and owner and respondents have been provided notice by certified mail
- Time period for completing process: Varies depending on whether the matter is contested and whether the court's decision is appealed
- Cost: Varies, but can include a lien search, court filing fee, certified mail cost, other attorney or guardian ad litem, asbestos/environmental abatement, actual demolition work and any tax certificate holders investment. In some cases, courts have required a city to pay just compensation for the property, less prior enforcement and abatement costs incurred by the city.

Condemnation & Acquisition of Title to Nuisance Residential Property

Section 364.12A allows cities to acquire title to nuisance residential property through condemnation “for the public purpose of disposing of the property under Section 364.7 by conveying the property to a private individual for rehabilitation or for demolition and construction of housing.” Early in the process it is wise for the city to obtain an administrative search warrant (as detailed in the administrative process) to enter the property and conduct an investigation of the nuisances. The city official conducting the search should note all nuisance violations and take photos to record the condition of the property (this can also help an appraiser establish a property value).

It is then recommended to issue the property owner a municipal infraction citation if the court has not previously found the property to be a nuisance. This helps establish in court that the property is a public nuisance and a court order declaring such also supports the city's assertion that condemnation is required. Issuing a citation and court order also provides evidence that the property owner was duly notified and given an opportunity to a hearing on the matter.

The council should then approve a resolution finding the property to be a public nuisance and that it is in the public's interest for the city to acquire the property under Section 364.12A for the public purpose of disposing it and conveying it to a private party for rehabilitation or for demolition and construction of housing. A copy of the proposed resolution with a cover letter may also be sent to the property owner informing the owner of the date and time of the council meeting where the resolution will be discussed. This provides the owner additional notice and opportunity to be heard.

The city must first offer to purchase the property for its fair market value as determined by appraisal. If the offer is not accepted, the city may initiate eminent domain proceedings under Chapter 6B of the *Code* by serving notice of condemnation upon the property owner and all lien and encumbrance holders. A compensation commission must meet to determine the fair market value of the property and make an award of just compensation to the property owner and other interest holders.

- Time period for starting process: Varies depending on time to complete an appraisal and make initial purchase offer as well as time for compensation commission to meet and determine fair market value, which can be four to six weeks
- Time period for completing process: The city has the right to possession upon payment of award of the compensation commission; however, the process to determine just compensation may continue if the award is appealed to court. The city becomes the title holder once all appeals have been exhausted.

- Cost: The city must pay just compensation for the award as set by the compensation committee or as determined by the court if there is an appeal. In addition, the city would need to pay for its appraisal of the property, its attorney fees and cost of the eminent domain proceedings before the compensation commission. If the award of the compensation commission is 110 percent or more of the city's final offer, the city is required to pay the property owner's reasonable attorney fees and cost of the property owner's appraisal. If the award of the compensation commission is appealed and the award is increased by the court, the city must also pay attorney fees incurred by the property owner for the appeal.
 - o The City must convey the property to a private individual for rehabilitation or for demolition and construction of housing. If the property later sells for more than the city's costs, the difference goes to the previous owner.

Section 3: Programs, Resources and Other Considerations

Other Nuisances and Land Use Concerns

It is common for city ordinances to regulate general property nuisances, such as overgrown grass and weeds, junk vehicles and unsafe buildings. However, there are some types of nuisances that may require their own section in the city code due to the unique issues they present. The following are some examples of nuisances that may require additional regulation in city ordinances.

Business Nuisances

As with all properties, businesses fall under a city's nuisance code as well as property maintenance and zoning codes. In this sense, any business must maintain its property as required by city code. In addition, some cities have found the need to specify different standards for business properties due to the impact they have on the community.

City code sections that directly affect business properties typically state a violation occurs if the business, or operation thereof, endangers the public health or safety or the health or safety of persons residing or working on the premises or in the surrounding area. This may include activities such as disturbing the peace, illegal drug activity, public drunkenness, harassment of passersby, assaults, excessive noise, illegal parking, citations, arrests and other illegal activities. It may also address how the building is used and prohibit businesses from creating noxious exhalations, offensive smells or other issues that result in a threat to public health and safety.

When a business commits a violation of a city's nuisance code, the city may use any available process to rectify the issue. It is likely that the city would pursue either an administrative process by issuing an order to abate the nuisance or issue a municipal infraction along with an order to abate.

In either case, the city will need to notify the property owner of the nuisance violation and order the nuisance to be abated. Depending on the nature of the nuisance, the city may need to collect more evidence than a traditional case. Digital photographs, high definition video or statements from surrounding property owners may all be necessary to provide an accurate depiction of the nuisance. Like all nuisance proceedings, city officials must be aware that the property owner can appeal the city's action and be prepared for the matter to go to court.

Nuisance Bars and Liquor Licensing

Chapter 123 of the *Code of Iowa* regulates alcoholic beverages, including the licensing of establishments that wish to sell and/or allow the consumption of alcohol on its premises. Section 123.49 prohibits persons or clubs holding a liquor license or permit from knowingly permitting or engaging in any criminal activity on the premises covered by the license or permit. Consequently, allowing criminal activity on licensed premises is a liquor license violation and may be considered by the licensing authority when determining whether to renew, suspend, revoke or deny a liquor license.

According to the Iowa Alcoholic Beverages Division (IABD), the absence of security personnel on the licensed premises is insufficient, without additional evidence, to prove that criminal activity which occurred on the licensed premises was knowingly permitted in violation of Section 123.49(2)(j). Moreover, the law requires that the licensee knowingly engaged in or permitted such illegal activity. This is a stringent standard; it is not sufficient to prove that a licensee should have known or could have concluded that criminal activity was taking place.

Licensing authorities are not allowed to file criminal or civil charges against nuisance bar licensees. They are allowed, however, to review whether criminal activities are knowingly engaged in or permitted by a liquor licensee on the licensed premises in determining whether to renew, suspend or revoke a liquor license or permit.

In order for a licensing authority to revoke, suspend, deny or refuse to renew a liquor license or permit based upon Section 123.49(2)(j), due process must be followed. In this case, the licensee must be notified of the claimed violation, proposed action and provided a hearing. At the hearing the liquor licensing authority must prove that a crime occurred on the licensed premises, including parking lots and areas adjacent to the licensed premises, and must also prove that the liquor licensee, or the licensee's agents or employees, knew about the criminal activity and either engaged in or permitted the criminal activity.

■ *The LABD helped provide guidance for this section and cities are encouraged to contact them for assistance with liquor licensing issues.*

Sidewalks

Section 364.12 of the *Code of Iowa* allows cities to enact ordinances requiring property owners to maintain and repair adjacent sidewalks and many communities have found it beneficial to detail such requirements in city code. Some communities have implemented sidewalk programs that help plan for maintenance, repair, replacement and installation. Such plans should detail when sidewalks need to be repaired or replaced, how and when the city will inspect sidewalks, scheduling of repair or replacement projects and how the city will fund the program. Failure by property owners to properly maintain sidewalks can result in the city incurring costs for required work and the costs may be assessed pursuant to *Code* Section 364.12 as previously detailed.

Cities also have the authority to approve ordinances that require the installation of sidewalks following proper notice. This is typically done to address areas of the city that do not have a sidewalk or where new construction occurs.

Noise

Many cities have enacted noise control ordinances that address concerns over disturbing noises. While each community must gauge its tolerance for different noise levels and what may be considered disturbing, it is common to see city codes identify unacceptable decibel levels of sounds coming from different things, such as vehicles, homes, equipment, musical instruments, moving and loading, and more.

City codes typically identify different times of day and different areas of the city (residential, commercial and industrial) where certain noises may be allowed or prohibited. Exceptions should also be included, such as public safety alarm testing, festivals and other public events, public transportation and other governmental vehicles, solid waste collection operations, repair or construction of public streets, and others. Accurately measuring a potential noise violation may be difficult and cities must use equipment or other means that allow them to enforce its noise ordinance consistently. If the standard is a decibel level, then the enforcement officer needs to have a decibel meter.

Animal Control

While not necessarily a component of maintaining property or keeping a property clear of nuisances, some cities find that animal control issues coincide with nuisance or zoning problems. Animal control ordinances help regulate the pet population in a community and provide a framework for residents to safely enjoy pets. Ordinances should detail the duties of animal owners, the number of pets allowed, types of pets not allowed in the city, that pets are not allowed to run at large, that pets are prohibited from biting or attacking other animals or humans, that proper care of pets is required and that it is unlawful to neglect any pet.

Pet licensing and vaccination programs should also be detailed in the ordinance along with the city's actions when an animal is found at large and impounded. Finally, it is wise to describe the process and enforcement when pets bite another animal or human.

Junkyards

Junkyards are regulated in the state code in Chapter 306C while cities have the ability to regulate junkyards through its zoning code and often require their location to be in an industrial or heavy use commercial zone. It is also common for cities to require junkyards to erect sight obscuring fencing to prevent junk being visible outside of the junkyard's property boundary.

A pre-existing junkyard that was established prior to a city's adoption of zoning restrictions on the location of junkyards that is not compliant with city zoning regulations will be considered "non-conforming" and will likely have "grandfather rights" to continue that use at that location, even if the zoning ordinance now prohibits the use at that location. However, the owner of a pre-existing junkyard who wishes to expand that use may be prohibited from doing so at that location if that use is prohibited. If the use is allowed, the expansion will likely have to conform to current zoning regulations regarding setbacks and screening.

Cities must be cognizant of relevant administrative rules as governed by the Iowa Department of Transportation. In particular, junkyards which are located within 1000 feet of and visible to a state highway on the National Highway System are subject to control and need to be screened or removed. The administrative rules provide that "screening shall be designed to eliminate the visual impact of the junkyard contents by obscuring it from view from the main traveled portion of the highway", and that "screens shall be made of wood, metal or other materials commonly used in the building trade, and shall be of a height and type necessary to provide obscurement." As a reminder, city codes and land use regulations cannot be less stringent than state regulations.

Fire Damaged Property

In some cases, the city may have an interest in ensuring a fire damaged property is properly reconstructed or demolished. Section 515.139 of the *Code* requires a demolition reserve on fire and casualty claims on property. The reserve must be \$10,000 or ten percent, whichever is greater, of the payment for damages to the property excluding personal property if the following are applicable:

- The property is located within the city
- The damage to the property renders it uninhabitable or unfit for the purpose for which it was intended, without repair
- Proof of loss has been submitted by the policyholder for a sum in excess of 75 percent of the face value of the policy covering the building or other insured structure

The *Code* then requires insurers who have received proof of loss in excess of 75 percent of the face value of the policy covering a building or other structure to notify the city council in which the property is located. The notice shall be made by certified mail within five working days after receipt of the proof of loss.

The city has 180 days after receiving notice to institute legal proceedings for the demolition of the building or other insured structure and notify the insurer in writing of the institution of legal proceedings. Failure to notify the insurer of the legal proceedings terminates the city's claim to any proceeds from the reserve.

If the city has instituted legal proceedings, undertaken emergency action, or is required to demolish the damaged property at city expense, the city shall present to the insurer costs incurred, since the date of the fire or other occurrence, including but not limited to legal costs, engineering costs and demolition costs related directly to the enforcement of any local ordinance. The insurer shall compensate the city for the incurred costs up to the amount in the demolition cost reserve. Any amount left from the demolition cost reserve after the cost of demolition of the property is paid to the city shall be paid to the insured if the insured is entitled to the remaining proceeds under the policy.

The demolition cost reserve is no longer needed if the insurer receives notice from both the insured and the city council that the insured has completed repairs to the property or has completed demolition of the property in compliance with all applicable statutes and local ordinances.

State Programs and Funding

The following are different state agencies and programs that may be of assistance to cities in nuisance abatement efforts, including some funding opportunities. In some cases, a local match is required in order to obtain funding and cities should ensure it has budgeted properly for such grant opportunities.

IDNR Derelict Building Program

The Iowa Department of Natural Resources (IDNR) Derelict Building Program offers funding assistance to cities with populations of 5,000 or less to address neglected buildings that have been vacant for at least six months. The program's main focus is landfill diversion through recycling and reusing building materials. Grants are awarded on an annual basis.

Brownfields/Grayfields

Established by the U.S. Environmental Protection Agency, the Brownfields Program helps prevent, assess, cleanup and reuse brownfields, which are defined as properties that “the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.” Grand funding is available to conduct environmental site assessments, technical assistance, planning and site cleanups of hazardous materials. The Iowa Economic Development Authority (IEDA) also offers tax credits for qualifying brownfields properties.

Grayfields are abandoned, obsolete or underutilized commercial or industrial properties that have been developed with infrastructure in place but the property’s current use is outdated or prevents a better use of the property. The IEDA offers tax credits for qualifying sites.

IDNR Solid Waste Alternative Program

Another potential funding source is the Solid Waste Alternatives Program (SWAP) through the IDNR. Funding assistance is available through forgivable loans, zero interest loans, and three percent interest loans for a variety of projects, including waste reduction, recycling, collection, processing or hauling equipment, educational materials, purchase of recycled content products, and salaries directly related to implementation and operation of a qualified project.

Keep Iowa Beautiful

The mission of Keep Iowa Beautiful (KIB) is to bring cultural and economic vitality to communities through improvement and enhancement programs. KIB offers several programs that help community beautification and improvement efforts, including funding for painting projects, tools for community enhancement projects, recycling plastic bags and more. Several communities have enlisted in the Hometown Pride program and enjoyed positive results through working with a community coach and collaborating with neighboring communities.

IEDA Abandoned Nuisance Properties Loan Program

A relatively new program administered by the IEDA that offers financial assistance for dealing with abandoned nuisance properties. Funding is available through low-interest loans to finance projects that address abandoned nuisance properties.

Community Development Block Grants

The IEDA administers the federal Community Development Block Grant (CDBG) program, which is designed to help communities develop housing and expand economic opportunities. Funding is available for a variety of community initiatives, such as housing rehabilitation, public facilities and buildings (including municipal water and sewer utilities), economic development, downtown revitalization and job training.

City Programs and Funding

The following details various ways cities can proactively work on nuisance abatement to rectify current issues and prevent future problems.

Budgeting for Nuisance Abatement

As mentioned throughout this manual, it is likely a city will incur expenses when working to remedy nuisance problems in its community. Whether going through formal nuisance abatement processes or offering a city program to encourage citizens to better maintain their property, the city budget will need to be able to absorb some ongoing costs. As with any budget item, city officials must assess what revenues are available. This may include issuing general obligation bonds as Section 384.24 of the state code includes nuisance abatement costs as an essential corporate purpose.

With that in mind, it is prudent for city officials to discuss the city's nuisance abatement efforts annually and determine the costs it must budget for. Some cities are active in their nuisance abatement efforts and may simultaneously use formal processes to abate nuisances while also conducting cleanup programs. Other cities may be less active and only wish to handle a couple nuisance issues per year. In either case, the city council and city staff need to assess the desire to abate nuisances and the impact to the city budget.

Remember, in addition to the costs described in the abatement processes, the city will also have costs in staff time when managing nuisance proceedings as well as any related city programs. The success of any nuisance abatement effort is heavily dependent upon the city taking an active role in developing plans and working to inform the community of different issues and solutions.

City Cleanup Days

Many cities host citywide cleanup days that encourage citizens and businesses to pick up litter, trash, debris, yard waste, household items and more that can be taken to the landfill. Cleanup days offer a way to rid the city of unnecessary items and boost community morale. Programs should outline which items the city will pick up or allowed to be dropped off, use appropriate schedules that take into account the season, and have adequate funding and staff support from the city. Some cities have also implemented "amnesty days" where property owners can rectify a nuisance, perhaps junk or debris on their property, and notify the city for cleanup assistance and not be subject to code violations.

Recycle/Swap/Garage Sale Events

Another program cities have found successful offers citizens a way to recycle or swap goods. This can be done through a swap event where citizens bring certain types of items to a central location and are able to offload things they no longer want to possess while giving others a chance to take something home that they find valuable. A similar event is a city garage sale where the city and/or businesses and residents participate by hosting a large garage sale or smaller ones throughout the city that encourages residents to sell and purchase items rather than dispose of them.

Property Recognition Programs

While much of nuisance abatement can be challenging and anything but fun, a program that recognizes properties for being well maintained can help boost morale and pride in the community. Cities should be sure to notify the public of such a program and publicize the properties that are awarded to help build support. Some cities may consider also using small rewards to incentivize owners and grow participation in the program.

Section 4: Sample Documents and Court Cases

The League strongly urges consulting with the city attorney prior to using any samples included in this manual. The samples are included as a resource, but cities should carefully review any documents they intend to use in local proceedings and make any necessary changes.

Sample City Codes

Spencer
Wahpeton (includes junk vehicle and dangerous building ordinances)
West Des Moines
Windsor Heights (includes noise ordinance)

Sample Nuisance Abatement Documents

Administrative Search Warrant Application
Order for Administrative Search Warrant
Administrative Search Warrant
Order to Abate Nuisance
Municipal Infraction Citation
Special Assessment Resolution
Special Assessment Schedule

Small Claims Court Actions:

- Confidential Information Form
- Verification and Affidavit Re: Military Service
- Proposed Settlement Agreement
- Certificate of City Clerk
- Order Accepting Settlement Agreement
- Report to Court of Noncompliance
- Rule to Show Cause Application
- Rule to Show Cause Affidavit
- Rule to Show Cause Order
- Precipe
- Notice of Garnishment
- Letter to Clerk
- Letter to Sheriff
- Motion to Remove to District Court
- Order Granting Removal to District Court

Tax Sale Actions:

- Resolution Approving City Acquisition/Assignment of Tax Sale Certificate
- Affidavit/Verified Statement of Abandoned or Public Nuisance Property
- Notice to Property Owner to Redeem From Tax Sale
- Affidavit of Service to Property Owner
- Affidavit for 120 Days to File Claim
- Resolution Approving Agreement for Assignment of Tax Sale Certificate to Developer
- Agreement for Voluntary Assignment of Tax Sale Certificate to City

Due to the unique nature of tax sale processes, the accompanying list should not be considered comprehensive. The League encourages cities to work closely with its city attorney and the county treasurer to assess options and select the proper tax sale process.

Award of Title to Abandoned Property Actions:

- Petition for Award of Title to Property
- Original Notice to Defendants
- Directions to Sheriff for Posting Service to Property
- Verified Statement
- Notice to Court that Verified Statement was Delivered to Treasurer's Office
- Affidavit of Certified Mailings
- Notice of Intent to File Written Application for Default
- Application for Hearing Date
- Order Setting Hearing Date
- Application to Publish Notice if Defendant Cannot be Found
- Order Authorizing Publication
- Affidavit of Publication
- Application for Appointment of Attorney and Guardian Ad Litem
- Order Appointing Guardian Ad Litem
- Order to Award Title to City
- Resolution Accepting Acquisition of Property

Condemnation and Acquisition of Title to Nuisance Residential Property Actions:

- Resolution Finding Property to be a Nuisance
- Application for Condemnation

Relevant Court Cases

Municipal Authority to Abate Nuisances

Independence v. Purdy, 46 Iowa 202 (1877)

A city has the right and power by resolution to require lots within the city limits upon which water becomes stagnant to be filled up by the owners thereof.

Bush v. Dubuque, 69 Iowa 233, 28 N.W. 542 (1886)

A city has no right, without the owner's consent, to raise the grade of a lot higher than is necessary for the abatement of the nuisance caused by water stagnating there.

Sioux City v. Simmons Warehouse Co., 151 Iowa 334, 129 N.W. 978 (1911)

Under *Code*, § 696, empowering cities to prevent annoyance from anything dangerous, offensive, or unhealthy, and to cause any nuisance to be abated, a city anticipating danger from the obstruction of a stream within its limits, may declare by a general ordinance that no structure shall be erected over the stream without leaving a specified area unobstructed for the flow of the water in its natural channel, provided the ordinance is reasonable; and one violating the ordinance must show that the requirement is unreasonable, and that his structure does not imperil the safety of the public as to free passage of the water of the stream at any stage, resulting from causes which may in their nature and extent be anticipated.

Wilson v. Ottumwa, 181 Iowa 303, 164 N.W. 613 (1917)

The power conferred by *Code Supp.* 1913, § 696, authorizing municipal corporations to abate nuisances, can be exercised only in accordance with ordinance regularly and legally adopted.

Hancock v. City Council of City of Davenport, 392 N.W.2d 472 (Iowa 1986)

Municipality, in exercise of its police power, may declare and abate nuisances by adopting and enforcing reasonable ordinances, but power is subject to procedural due process requirements. U.S.C.A. Const. Amend. 14.

City of Iowa City v. Iowa Dist. Court for Johnson County, Iowa, 456 N.W.2d 178 (Iowa 1990)
Cities have authority to investigate, to declare, and to seek abatement of nuisances. I.C.A. § 364.1.

Kelley v. Story County Sheriff, 611 N.W.2d 475 (Iowa 2000)

While the police power is very broad, and not capable of exact definition, it is not boundless, and, as a rule, is subject to constitutional limitations, and while police power may allow public nuisances to be abated, in all such cases, the necessity for summary action must exist, and one who would justify on the ground of necessity must be able to convince a jury that the occasion was present which authorized his act.

City of Muscatine v. Northbrook, 619 N.W.2d 362 (Iowa 2000)

City may pursue a personal judgment to recover demolition costs incurred by the city in abating a nuisance.

Meyer v. Jones, 696 N.W.2d 611 (Iowa 2005)

Before a city can declare a property a nuisance and order its abatement in a nonemergency situation, the city should inform the property owner of the city's declaration that a property is a nuisance, inform the owner of what the owner must do to prevent the city from abating the nuisance at the owner's expense, and provide the owner with a hearing to contest the declaration and abatement order.

Municipal Infractions

Kistler v. City of Perry, 719 N.W.2d 804 (Iowa 2006)

The seizure of junk vehicles without a pre-deprivation hearing denied the plaintiffs due process.

City of Des Moines v. Gruen, 457 N.W.2d 340 (Iowa 1990)

Landowner was found guilty in the District Court, Polk County, Joel D. Novak, J., of violation of a municipal ordinance which restricts the parking and storage of lawfully unregistered vehicles to enclosed buildings, at least when such vehicles are parked and stored in a residential neighborhood. Landowner appealed. The Supreme Court, McGiverin, C.J., held that the ordinance was not "inconsistent" with the statute which provides that automobile dealers may lawfully possess unregistered vehicles under certain conditions, and thus, the ordinance did not violate the Home Rule Amendment. Affirmed.

Award of Title to Abandoned Property by Court

City of Council Bluffs v. Harder, 2009 Iowa App. LEXIS 1914 (Iowa Ct. App. 2009)

House was damaged by fire and the insurance company refused payment. House sat vacant for over three years during which neighbors complained of break-ins. Property owners continued to pay taxes and mortgage and hired nephew to maintain property, but could not afford to repair the house without insurance proceeds. Court found that despite those efforts, the house was abandoned under Section 657A.10A. Affirmed.

City of Waterloo v. Bainbridge, 749 N.W. 2d 245 (Iowa 2008)

The Supreme Court held that actions under Section 657A.10A can cut off lien of purchaser at tax sale.

City of Winfield v. Douglas, 832 N.W.2d 385 (Iowa App. 2013)

The Court of Appeals held that current use of a property as commercial does not make Section 657A.10A inapplicable if at one time it was used as residential. (League: The state code has been modified since this case as Section 657A.10A now allows commercial and industrial properties in addition to residential properties).

City of Eagle Grove v. Calahan Investments, LLC 904 N.W.2d 552 (Iowa 2017)

The city filed petitions alleging two properties owned by Cahalan Investments, LLC were abandoned and in an advanced state of disrepair and asked for transfer of ownership to the city under Section 657A.10A. The district court dismissed the petitions, concluding the transfer of ownership of the properties to the city without just compensation to Cahalan would constitute an unconstitutional taking. On appeal, the city contended the district court erred in failing to transfer ownership of the properties to it in furtherance of a lawful exercise of its police power authorized by the statute. The Supreme Court ruled the city's claim fits as a public nuisance action and the process under 657A.10A does not result in a taking requiring compensation.

Condemnation of Residential Buildings

Lewis Investments, Inc. v. City of Iowa City, 703 N.W.2d 180 (Iowa 2005)

Property owner alleged city did not follow due process. District court found the city had provided due notice. Supreme Court did not rule on the issue, but advised property owners to use a certiorari action to determine whether a city council's declaration of a public nuisance was procedurally flawed.



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