

CITY OF NIXA CODE OF ORDINANCES

Chapter 14 - NUISANCES

ARTICLE I. - IN GENERAL

Secs. 14-1—14-18. - Reserved.

ARTICLE II. - GENERAL NUISANCE ABATEMENT PROCEDURE

Sec. 14-19. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned, in addition to those definitions contained in applicable state statutes, state codes, other ordinances adopted by the city or as contained in binding case law decisions, refers to any item which has ceased to be used for its designed and intended purpose. The following factors, among others, will be considered in determining whether or not an item has been abandoned:

- (1) Present operability and functional utility;
- (2) The date of last effective use;
- (3) The condition of disrepair or damage;
- (4) The last time an effort was made to repair or rehabilitate the item;
- (5) The status of registration or licensing of the item.

Abate means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the code compliance official in his judgment shall determine is necessary in the interest of the general health, safety and welfare of the community.

Code compliance official means the city official or employee as may be designated in writing by the city administrator to enforce property or premises maintenance and other city code violations as authorized herein.

Dismantled means that from which essential equipment, parts or contents have been removed or stripped and the outward appearance verifies the removal.

Graffiti means defacement, damage or destruction by the presence of paint or ink, chalk, dye or other similar substances; or by carving, etching or other engraving.

Inoperable means incapable of functioning or producing activity for mechanical reasons or other reasons.

Junk vehicle means any vehicle which does not properly display license plates or stickers indicating current registration and has any one or more of the following characteristics:

- (1) Lacks engine, wheel, tire, properly installed battery or other structural parts which render the vehicle inoperable for use as designed by the manufacturer;
- (2) Has a missing windshield or missing windows;
- (3) Has a missing door, bumper, hood, driver's seat or other similar structural piece;
- (4) Has become or has the potential to become the breeding ground or habitat of rats, mice, snakes, mosquitoes or other vermin;
- (5) Has junk, garbage or refuse stored therein; or paper, cardboard, wood or other combustible materials stored therein; or is used as a storage facility for solid waste or other hazardous materials; or is used for the storage of gasoline, propane or diesel fuel at any location on or about the vehicle other than in the vehicle's gas or fuel tank;

(6) Has become a potential source of contamination of the soil from petroleum products or other toxic liquids being discharged or leaking from the vehicle.

Lien holder means any person or entity who has a recorded interest in real property, including mortgagee, beneficiary under a deed of trust or holder of other recorded liens or claims of interest in real property.

Nuisance means, in addition to the conditions described within this chapter, any unlawful act or the failure to perform a duty, or permitting any condition or thing to be or exist on property owned or occupied in which such act, omission, condition or thing:

(1) Injures or endangers the health, safety or welfare of others; and/or

(2) Unlawfully interferes with the use of, obstructs or tends to obstruct or renders dangerous any property, path, sidewalk, stream, ditch or drainage.

Occupant means any person or persons holding and exercising temporary or terminable tenancy rights with respect to a residence, building or property including renters, lessees and/or other persons residing temporarily on the subject property.

Owner means the registered owner of a vehicle; the person to whom property tax is assessed on real or personal property as shown on the last equalized assessment roll of the county.

Parts means any mechanical, structural, body or decorative part of any vehicle, machinery or trailer.

Property means any land, lot, parcel or portion of land whether improved or unimproved, occupied or unoccupied, including any alley, sidewalk, parkway or public easement abutting such land, lot, parcel or portion of land.

Vehicle means any self-propelled vehicle not operating exclusively on tracks except for farm tractors. The term "vehicle" shall include, but is not limited to, an automobile, truck, van, sports utility vehicle, motorcycle, motorized scooter or dirt-bike.

(Prior Code, § 13-4; Ord. No. 1693, 7-2011)

Sec. 14-20. - Statutory authorization.

The city council in recognition of its duty to provide for the health, safety and well-being of the citizens of the city affirms the need to suppress all nuisances which are or may be injurious to the health and welfare of the inhabitants of the city, or prejudicial to the morals thereof, that such nuisances may be suppressed by ordinances, and the expenses for abating these nuisances may be assessed against the owner or occupant of the property and against the property on which said nuisance is committed and a special tax bill may be issued against said property for said expenses. Therefore, the city council of the city, ordains as provided in this article.

Sec. 14-21. - Declarations and purposes.

(a) The city council does hereby find and declare that it is necessary to provide for the abatement of conditions which are detrimental to property values and community appearance, an obstruction to or interference with the comfort and enjoyment of adjacent property or premises, or hazardous or injurious to the health, safety or welfare of the general public in such ways that constitute a public nuisance and to establish community standards to safeguard health and public welfare in keeping with the character of the city by allowing for the maintenance of exterior property for each of the following purposes:

- (1) To safeguard the health, safety and welfare of the citizens of the city by maintaining exterior property in good and appropriate condition;
- (2) To promote a sound and attractive community appearance; and
- (3) To enhance the economic value of the community, and each area in it, through the regulation of the maintenance and conditions of property.

(b) Accordingly, the city council declares that the purposes of this article are to:

(1) Reduce the threat to health, safety, welfare, appearance and economic value to the decline in property condition by lawfully delineating the circumstances under which such conditions are considered unlawful and/or abated; and

(2) Further declare that abatement of such condition is in the best interest of the health, safety and welfare of the residents of the city, as maximum use and enjoyment of property or premises in proximity to one another depends upon maintenance of those properties at or above the established minimum standards as defined within this chapter.

Sec. 14-22. - Exceptions.

(a) The provisions of this article do not regulate or place limitations on any properly zoned junkyard, salvage dealer or waste tire facility holding valid licenses and/or other necessary federal, state or municipal permits.

(b) The provisions of this article do not prohibit the proper storage of idle but operable recreational vehicles, boats or lawn mowing equipment.

(c) The provisions of this article do not prohibit the orderly storage of firewood.

(d) The provisions of this article are not intended to regulate or place limitations on any residential or commercial building project for which a valid building permit has been issued by the city. This exception shall be limited to the site for which any such permit was issued and this exception shall not apply if continuous and substantial progress toward completion of the building project is not being made.

Sec. 14-23. - Administration and enforcement.

The mayor and city council hereby assign the duties of administering this article as follows:

(1) The code compliance official within the planning and development department (or within such other department designated for enforcement by the city administrator) shall have the duty, responsibility and authority to enforce this article in any manner authorized by this Code or by any other law, including but not limited to issuance of citations, civil actions and abatement activity regulation.

(2) The records divisions of the city police department and utility department will provide the planning and development department officials identifying information, when available, of the location and identifying descriptions of violators to assist the reporting, citation completion and service process.

(3) For the purposes of inspections and/or enforcement of the provisions of this chapter, code compliance officials, planning and development department officials or his designees shall be authorized and permitted to enter upon the property of another without being considered trespassers.

(4) All inspections and enforcement actions, unless expressly stated to the contrary, shall be under the direction of the code compliance official who may appoint or designate other public officers or employees to perform duties as may be necessary to enforce the provisions of this article including, but not limited to, abatement activity, work orders, vegetation removal, mowing, etc.

Sec. 14-24. - Certain conditions or actions declared nuisances; listing deemed nonexclusive.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a public nuisance and a violation of this chapter; provided, however, this enumeration shall not be deemed or construed to be exclusive, limiting or restrictive:

(1) No property owner shall be permitted to allow weeds, grass, brush, briars, and other rank vegetation to grow in excess of 12 inches in height, exclusive of ornamental shrubs or flowers, vegetable crops, fruit trees, berry bushes, cover crops and domestic grains or other cultivated crops.

A violation unabated for a period greater than seven days will warrant the issuance of a summons to the property owner. The property owner shall be responsible for all abatement costs. Owners of undeveloped land shall maintain their property so that weeds shall not exceed a height of 18 inches.

(2) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or items offensive to the senses or a risk to health, safety and/or welfare.

(3) Any condition which provides harborage for rats, mice, snakes and other vermin.

(4) Allowing or permitting vegetation, grass or weeds to grow outside or extend beyond the boundaries of any lot or property to a length greater than six inches, to a height greater than 12 inches or encroach upon any sidewalk more than four inches.

(5) Conditions contributing to or causing rank or noxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.

(6) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage or industrial wastes.

(7) Abandoning, discarding or knowingly permitting to remain on premises or property, in a place accessible to children, any abandoned or discarded icebox, refrigerator or other airtight or semi-airtight container which has a capacity of 1½ cubic feet or more and which has a door or lid equipped with hinge, latch or other fastening device capable of securing such door or lid, without rendering such equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein. No part of this subsection shall apply to any icebox, refrigerator or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouseman or repairman of such products.

(8) All furniture, machinery, discarded containers or any other appliance, article, item or equipment designed for use inside a dwelling unit if stored, placed or set upon the ground or on any open porch, in any attached carport or freestanding carport, or in any garage or shed that is without doors to conceal such articles.

(9) To permit, cause, keep, maintain or allow a fence or partitioning containing barbed wire, razor wire, electric wire or razor ribbon fencing in any residential or commercially zoned district.

(10) Dismantled, non-licensed, inoperable or junk vehicles as defined herein.

(11) Bricks, shingles, building materials, salvage materials including, but not limited to, auto parts, scrap metal, tires and any other trade materials stored, deposited, dumped discarded and/or abandoned on any section of property.

(12) Buildings, structures or other surfaces upon which graffiti exists.

(13) Any flammable material which may endanger public safety.

(14) All substances or things, which cause an odor disagreeable to the surrounding neighborhood.

(15) Ashes, slop, filth, excrement, stones, straw, soot, rubbish, manure, offal, stagnant water, decaying animal matter, decaying fruit or vegetable matter, wrecks or parts of worn-out vehicles or machinery, scrap iron or other metals, cans, bottles, broken glass, discarded wearing apparel, dead animals or any other offensive or disagreeable substances or thing, dilapidated buildings or building materials which may be offensive to the sight or smell or a menace to health, safety, peace or comfort, or which may be or become harborers or breeding places for mosquitoes, ants, flies, rats, mice or other vermin, animals or insects, or which may provide shelter, food or protection for rodents, whether left or deposited upon private premises or vacant lots or upon any public property.

(16) All mud, dirt, rocks or debris from construction sites, fields or pastures which fall on city streets from the loads, tires or bodies of vehicles driven from said sites onto city streets. Developers and contractors are required to provide the city with a route plan for construction traffic in and out of new subdivisions and development sites. Failure to do so will be a violation of this Code.

(17) Any vehicle operable or not, parked off street in a residential district in a space not complying with the definition of "parking space" in the zoning ordinance of the city. In addition to the vehicle capacity of a residence including garage space and driveway space, one accessory space may be designated. This space must be constructed out of three-fourths-inch base rock, asphalt or concrete. If constructed of base rock, it must be bordered with landscaping timbers. Vehicles parked to the rear of the front elevation of the house must be covered with an appropriate cover or behind a privacy fence at least six feet tall. This includes storage of boats, campers, trailers, and all other accessory vehicles. Any vehicle not parked according to these guidelines will be considered in violation of the nuisance code.

Sec. 14-25. - Nuisances prohibited.

(a) It is unlawful for any owner or occupant having control of any lot or land or any part thereof in the city to cause, permit or maintain any nuisance on any such lot or land or contribute to the creation or maintenance of any nuisance as defined within this chapter; and it is further unlawful for any person or his agent, servant, representative or employee to cause or maintain a nuisance on the property of another, with or without permission.

(b) Any person who shall cause, create or maintain a nuisance or contribute to any nuisance as defined within this chapter shall be guilty of violating the provisions hereof and shall be liable for all costs and expenses attendant upon the removal and/or correction of such a nuisance in addition to any penalties provided. Each day that a nuisance is maintained can be the basis of a separate offense.

Sec. 14-26. - Nuisance abatement.

(a) Summary abatement of nuisances.

(1) Procedure. Whenever a complaint is made to the code compliance official or upon discovery of the existence of a nuisance, as defined in this chapter, the code official shall promptly cause to be inspected the property on which it is alleged that such nuisance exists. Upon discovery of a nuisance, the code compliance official may order the owner or other person creating, keeping, maintaining, or permitting the same to abate it. Should the code official find that a public nuisance exists, and the public health, welfare or safety may be in immediate danger, then summary abatement procedures shall be implemented and the inspecting official or department may cause the nuisance to be removed or abated. Summary abatement costs shall be certified by the city clerk and assigned to the annual real estate tax bills for the property.

(2) Notice. When summary abatement is authorized, notice to the owner, agent, or occupant of the property is not required. Following summary abatement, the code compliance official shall cause to be posted on the property liable for the abatement a notice describing the action taken to abate the nuisance.

(b) Abatement of nuisances in other cases.

(1) Procedure. Whenever a complaint is made to the code compliance official or upon discovery of a nuisance that does not pose an immediate danger to the public health, welfare or safety, the code compliance official shall submit a written report of the property on which the nuisance exists to the city administrator or his designee. If the code compliance official declares the existence of a nuisance, but the nature thereof is not such as to require the summary abatement of such nuisance, then the city administrator, or his designee, may order the abatement of the nuisance after notice and a hearing pursuant to sections 14-27 and 14-28.

(2) Abatement by owner. Within ten days after service of the notice to abate the nuisance, the owner or individual in possession of the affected property shall remove and abate such nuisance or show that actions for abating the nuisance have been commenced. Such showing shall be made by filing a written statement or other proof of such actions with the code compliance official.

(c) Abatement by city. If the city administrator or his designee, after a hearing in compliance with this section, finds that the nuisance or dangerous condition exists, the chief of police or the code compliance official shall have authority to enter upon the property and abate the nuisance found thereon. In abating such nuisance, the chief of police or code compliance official may go to whatever extent may be necessary to complete the abatement of the nuisance. If it is practicable to salvage any material derived in the aforesaid abatement, the chief of police or code compliance official may sell the salvage material at private or public sale and shall keep an accounting of the proceeds thereof.

(d) Proceeds from sale of private property. The proceeds, if any, obtained from the sale of any material salvaged as a result of an abatement of public nuisance by the code compliance official or chief of police shall be deposited into the general fund of the city and any deficit between the amount so received and the cost of the abatement shall be filed with the city clerk. The city clerk shall certify said costs and submit a special tax bill to the assessor so that the costs can be added to the annual real estate tax bill for the property. Should the proceeds of the sale of the salvaged material exceed the cost of abatement, the surplus, if any, shall be paid to the owner of the property from which the public nuisance was abated when a proper claim to the excess is established.

(e) Authorized action. In abating a public nuisance, the code compliance official or chief of police may call upon any of the city departments or divisions for whatever assistance shall be deemed necessary or may by private contract cause the abatement of the public nuisance.

(f) Statement of costs. The city is hereby empowered to charge and collect all costs of any abatement which is performed by the city, including administrative expenses, which shall be determined by the code compliance official, chief of police, planning and development department officials or his designees and/or municipal court. Said costs shall be reported to the city administrator or his designee in an itemized document titled "certificate of cost" showing the costs of abatement, administrative expenses and any outstanding penalties. Said costs shall be assessed and billed to the owner, occupant or entity having control of the property upon which the violation exists along with a notice advising that a special tax bill shall be issued and that the costs of the abatement will be added to the annual real estate taxes assessed against the property if the costs are not paid within 30 days. The person or entity causing, maintaining, or permitting the nuisance shall be personally liable to the city for the cost of such abatement.

(g) Appeal of cost statements. The property owner, occupants, or entities having control of the property may object to the assessment discussed in subsection (f) of this section. Such objections must be made in writing with 20 days from the date of mailing of the notice discussed in subsection (f) of this section. If no objections are received within the 20-day period, the city clerk is to proceed with the procedures set forth in subsection (h) of this section.

If an objection is received, the city clerk shall refer the matter to the city administrator, or his designee, for administrative review. After administrative review, the city administrator, or his designee, shall make a written determination that the amount of the charges shall be canceled, reduced or remain the same.

The city administrator, or his designee, may reduce or cancel the proposed assessment if it is determined that: no notice of order to remove the nuisance was provided; or the work performed for abating the nuisance was not in compliance with this chapter; or the computation of charges was not in compliance with this chapter. A copy of this determination shall be furnished to the person making the objections together with a notice of the person's right to appeal. The decision of the city administrator, or his designee, may be appealed pursuant to the provisions of RSMo ch. 536 by any person aggrieved, provided such appeal is filed within 30 days after the date of personal service or mailing of the city administrator's or his designee's decision.

(h) Special tax bills and liens upon property. In the event the person or persons billed fails to pay within the 30-day period set forth in this section, the city administrator, or his designee, shall certify the amount thereof to the city clerk. The city clerk shall take any and all steps necessary for a special tax bill to be issued and/or for the costs of the abatement to be added to the annual real estate taxes assessed against the property. The cost of the abatement as determined by the city administrator, or his designee, shall be certified to the city clerk not sooner than 30 days after issuance of the city administrator's, or his designee's written findings, if not sooner paid. The special tax bill, if issued, shall be deemed a personal debt against the property owners and shall be a lien on the property until paid. If the special tax bill is added to the annual real estate bill for the property and is not paid, the real estate taxes shall be considered delinquent and the collection thereof shall be governed by the laws applicable to delinquent real estate taxes. Such special tax bills, if not paid when due, shall bear interest at the rate of eight percent per annum.

(i) Claim of lack of notice. If, after a lien has been entered, there is a written request of the owner who alleges that the owner did not receive notice of the proposed assessment, the city clerk shall refer the matter for review pursuant to subsection (g) of this section. The lien may be canceled or reduced by the city administrator, or his designee, in administrative review, if it is determined that the owner did not receive notice of the proposed assessment, did not previously have knowledge of the lien or of the nuisance abatement work constituting the basis of the lien and could not, in the exercise of reasonable care or diligence, have had such knowledge, and, in addition, that the circumstances are such that a reduction or cancellation of the charges would have been appropriate had the matter been reviewed pursuant to this section prior to assessment. Upon receipt of a certification from the city administrator, or his designee, pursuant to subsection (g) of this section, the city clerk shall cancel or reduce the lien if required by determination of the city administrator. Even if the lien is reduced or eliminated under this section, the individuals, firms, corporation, or other owners of the property at the time at which the notice was served shall be personally liable for the amount of assessment including all interest, civil penalties and other charges.

Sec. 14-27. - Notice.

(a) Upon verification of a reported nuisance violation within the city, the code compliance official shall provide a written notice to correct or abate. If the violation is on private property, proof that a person occupies the property, or that a person has possession or right to possession of the property, shall constitute prima facie evidence for the purposes of this article that such person has caused, maintained, or permitted the violation and such person shall be responsible for its abatement. If the property is vacant, evidence as to the record title owner from the county recorder's office shall be prima facie evidence for the purpose of this article that the owner has caused, maintained or permitted the violation, and such person shall be responsible for its abatement. The following methods of service of the written notice to abate shall be deemed adequate:

(1) By personal service upon the owner or occupant of the property upon which the nuisance exists or upon the person or persons or other responsible party causing or maintaining the violation;

(2) By sending the notice by certified mail to the last known address of the owner, occupant or person causing or maintaining the nuisance;

(3) By publishing the notice once a week for two consecutive weeks in a newspaper of general circulation in the city, or by posting the notice in a conspicuous place on the property or building whereupon the nuisance exists.

(b) In addition to the notice requirements of this chapter, the notice to abate a nuisance issued under the provisions of this article shall contain:

(1) The street address or legal description of the property;

(2) A description of the condition or conditions alleged to constitute a nuisance;

(3) That a hearing is scheduled with the hearing officer on a date not sooner than ten days after the date of service by any of the methods stated in subsection (a) of this section;

(4) That proof of the commencement of such abatement actions must be submitted to the code compliance official not later than three working days before the date scheduled for the hearing to determine whether the nuisance or dangerous condition will be held; and

(5) That the hearing may be held without the presence of any owner, lien holder, occupant or representative.

Sec. 14-28. - Hearing and appeal.

(a) Procedure. The owners, lien holders and occupants of the property who have been served with notice pursuant to section 14-27, and who do not submit sufficient proof of the commencement of the such abatement to the code compliance official not later than three working days before the date before the scheduled hearing, may appear in person or by representative at the hearing with the hearing official scheduled on a date not sooner than ten days after the date of service of the notice as provided in section 14-27. Said hearing will be conducted by a hearing officer appointed by the mayor.

(b) Hearing. The hearing officer shall conduct a full and adequate hearing upon the question of whether a public nuisance in fact exists. The hearing officer may amend or modify the notice to extend the time for compliance with the notice by the owner by such date as the hearing officer may determine.

(c) Evidence. The owners, lien holders, occupants of the property, or their representative or agents shall be given the opportunity to present evidence to the hearing officer in the course of the hearing.

(d) Order. Should the evidence support a finding that the condition constitutes a nuisance, the hearing officer shall issue an order making specific findings of fact, based on competent and substantial evidence, which shows that the condition constitutes a public nuisance and that it should be removed, repaired or otherwise abated by the city.

(e) Additional time. The hearing officer, upon written application by the owner at any time within the period after the notice has been served, but before the scheduled hearing, may grant additional time for the owner to effect the abatement of the nuisance, provided that such extension is limited to a specific time period.

(f) Costs. The costs of performance of the abatement performed by the city in accordance with the hearing officer's order shall be certified and billed in accordance with section 14-26(f). If the bill is not paid within 30 days, the city clerk is to follow the procedures set-forth in 14-26(h) regarding special tax bills and liens against real estate.

(g) Appeal procedures. If, upon a hearing, the hearing officer determines that a violation exists, proper notice was given, and there has been a failure to abate the nuisance, the hearing officer shall make an order directing the chief of police or the code compliance official to have the nuisance abated or removed. The decision of the hearing officer that a nuisance exists and is to be abated may be appealed pursuant to the provisions of RSMo ch. 536, by any person aggrieved, provided such appeal is filed within 30 days after the date of personal service or mailing of the hearing officer's decision.

(h) Finality of judgment. If the judgment is not appealed to the circuit court within 30 days as set forth in subsection (g) of this section, then the judgment will be declared final per RSMo ch. 536.

(Prior Code, § 13-10; Ord. No. 1693, 7-2011)

Sec. 14-29. - Other remedies.

The procedures set forth in this article shall be in addition to any other remedies that may exist under law for the abatement of public nuisance, and this article shall not prevent the city from prosecuting violations of this chapter, a conviction of which shall be punishable pursuant to section 1-9, or proceeding in a civil cause of action for abatement of nuisances created by the accumulation of unsightly, dangerous or noxious personal property within the borders of the city. Upon the successful prosecution of such civil cause of action, the city may be awarded by the court reasonable attorney's fees, litigation expenses, expert fees, and court costs incurred in such action.