

Direct your questions and comments regarding this proposed code to Jody Gates, gatesj@ci.ottumwa.ia.us, 105 E. Third, Ottumwa, Iowa 52501, 641-683-0694.

ORDINANCE NO. – 2008

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF OTTUMWA, IOWA BY REPEALING CHAPTER 24 IN IT'S ENTIRETY AND ENACTING A SUBSTITUTE IN LIEU THEREOF AND BY REPEALING SECTIONS 34-26 THROUGH 34-31 IN THEIR ENTIRETY AND RESERVING SAME FOR FUTURE USE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA.

SECTION ONE. The code of Ordinances (Municipal code of the City of Ottumwa, Iowa) is hereby amended by repealing Chapter 24 in its entirety and enacting a substitute in lieu thereof.

NUISANCES GENERALLY

Sec. 24-1. Public nuisances prohibited; authority to abate.

The creation or maintenance of a nuisance is unlawful and is prohibited. The city board of health, city administrator or designee or police officers may enter any building or place for the purpose of examining into, preventing or removing any nuisance, source of filth or cause of sickness.

Sec. 24-2. Nuisance defined; enumeration of nuisances.

Whatever is injurious to the senses or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property by the public or community shall be deemed a nuisance. Nuisances shall include, but shall not be limited to, the following:

- (1) The erecting, continuing or using of any building or other place for the exercise of any trade, employment or manufacture which, by occasioning noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public.
- (2) The causing, permitting or allowing of any refuse, solid waste, garbage, noxious substances, hazardous wastes, junk or salvage materials to be collected or to remain in any place. The term "noxious substances," shall include, but not be limited to, substances, solid or fluid, which are offensive, detrimental to health, hurtful or dangerous, including any dead animal or portion thereof, together with human or animal excrement.
- (3) The causing, preventing or allowing any refuse, solid waste, garbage, noxious substances or hazardous wastes, junk, salvage material or other offensive substances to be thrown, left or deposited in or upon any street, avenue, alley, sidewalk, park, public square, lot, whether vacant or occupied, or upon any pond or pool of water.
- (4) The obstructing or impeding, without legal authority, of the passage of any navigable river, harbor or collection of water.
- (5) Creating, maintaining, causing or allowing to exist any stagnant water standing on any property, including any container or material kept in such a condition that water can accumulate and stagnate therein.
- (6) The corrupting or rendering unwholesome or impure of the water of any river, stream or pond, or unlawfully diverting the river, stream or pond from its natural course or state, to the injury or prejudice of others.
- (7) Creating, maintaining, causing or allowing to exist any ditch, drain or water course which is now or hereafter may be constructed so as to prevent or unduly interfere with

the surface and overflow water drainage from adjacent lands, or any storm water detention basin not properly maintained, as determined by the city engineer.

(8) Facilities for the storage or processing of sewage, such as septic tanks, cesspools and drain fields, which have failed or do not function properly, or which are overflowing, leaking or emanating odors; or septic tanks, cisterns and cesspools which are abandoned or no longer in use, unless properly emptied and filled with clean fill; or any cesspool or septic tank which does not comply with city or county health regulations.

(9) The obstructing or encumbering, by fences, buildings, structures, signs or otherwise, of the public roads, private ways, streets, alleys, commons, landing places or burying grounds.

(10) Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, or places resorted to by persons using controlled substances, as defined in I.C.A. § 204.101(6), in violation of law, or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.

(11) Unoccupied buildings or unoccupied portions of buildings which are unsecured or abandoned.

(12) Billboards, signboards and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard or alley or of a railroad or street railway track as to render dangerous the use thereof.

(13) The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, bones and paper, by dealers in such articles, within the fire limits of the city, unless it is in a building of fireproof construction.

(14) The depositing or allowing the depositing of any mud, dirt, gravel or other debris on any public street, alley, sidewalk, or other public property.

(15) The emission of dense smoke, noxious fumes or fly ash in the city. The city may provide the necessary rules for inspection, regulation and control.

(16) Dense growth of all weeds, vines, brush or other vegetation in the city so as to constitute a health, safety or fire hazard.

(17) All weeds, grass, vines, and brush growing on lots and parcels of ground within the corporate limits of the city, 12 inches or more in height, except crops.

(18) Creating, maintaining, causing or allowing existing conditions which are conducive to the harborage or breeding of vermin; or allowing existing infestations of vermin, such as rats, mice, skunks, snakes, bats, starlings, pigeons, wasps, cockroaches or flies.

(19) Trees infected with Dutch elm, [Emerald Ash Borer](#) or other infectious disease as identified by the city arborist or park division manager; or any dead, diseased or damaged trees or plant materials which may harbor serious insect or disease pests or disease injurious to other trees or plant materials, or any healthy tree in such a state of deterioration that any part of such tree is likely to fall and damage property or cause injury to persons.

(20) Creating, maintaining, causing or allowing to exist any noxious weeds described as a nuisance in the State Code.

(21) The following items stored in outdoor areas or in partially enclosed sheds, lean-tos or other structures not totally enclosed by structural walls, roof and properly functioning doors: building materials not part of an active building project authorized by a current city building permit, abandoned, inoperable vehicles or junk vehicles (as defined in section 24 ½ - 8), non-registered or unlicensed vehicles, auto parts, miscellaneous steel, plastic, rubber or metal parts or junk, tires, packing boxes, wooden pallets, tree limbs, brush piles, discarded lumber, not including neatly stacked and cut fire wood, broken or unused furniture and appliances, any upholstered or finished furniture intended for indoor usage such as couches, beds, mattresses, desks, chairs, shelving or wooden tables, other broken or unused household furnishings or equipment including carpeting, appliances and other typical household items intended for indoor usage, plastic tarps,

trash bags containing leaves, debris, garbage or other items, trash and garbage not properly contained within a trash disposal container or any other discarded or miscellaneous item or items not normally required in the day to day use of the exterior area of the property, when stored continuously in excess of 48 hours on any portion of any property outside of a totally enclosed structure located on the property.

(22) Any attractive nuisance dangerous to children in the form of abandoned vehicles, abandoned or broken equipment, including abandoned refrigerators, hazardous pools, ponds, excavations, materials, including building material, debris, or neglected machinery.

(23) Real property maintained in such condition as it becomes so defective, unsightly, or in such condition of deterioration or disrepair that the same causes substantial depreciation of the property values of the surrounding properties or is materially detrimental to properties and improvements.

(24) Any wall, fence or hedge in such condition as to constitute a hazard to persons or property or to cause depreciation in the value of any adjacent or nearby property.

(25) Any discarded or unused material on real property that is not consistent with the condition and visual appearance of surrounding adjacent real properties. Types of unacceptable materials include those items enumerated in subsection (13) and also include dirt and gravel piles, rock piles, incomplete landscaping projects, eroded soil areas, pits, holes and excavations.

(26) The causing of the accumulation of building debris and/or construction materials, tools, equipment or machinery on any property within the city limits of the city after the expiration of a building permit as outlined in chapter 10 of this Code, the occasioning of which becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

(27) Creating, maintaining, causing or allowing to exist for a continuous period of more than 30 days, any man-made excavation, hole, or other depression in the ground in or on any lot or parcel of land in the city of a depth of more than three feet below the surrounding grade, other than as part of the active construction of a building or other structure on the lot which will ultimately close in and completely cover such excavation, hole or depression. Upon a finding by the city that the owner of the lot or parcel of land has violated the provisions of this subsection, the lot owner shall be required to fill in any such excavation, hole or depression and grade the same to a topographic elevation equal to or level with the surrounding adjacent grade, and seed the site with grass or similar vegetative ground cover, and take reasonable measures to ensure the proper germination of the planted vegetation.

(28) On properties being used by an allowable commercial use, any items stored on the property that are not normally utilized in the daily operation of the commercial use must be stored in structures totally enclosed by structural walls, roof and properly functioning doors.

(29) Any hazardous thing or condition on property which may contribute to injury of any person present on the property, including, but not limited to, open holes, open foundations, open wells, or dangerous trees or limbs.

(30) Any thing or condition on property creating an imminent threat to human health or in violation of any health or sanitation law.

(31) Building construction sites maintained in violation of chapter 10, buildings.

(32) Any violation of junk vehicles set forth in Chapter 24 ½ of this code.

Sec. 24-3. Additional conditions subject to chapter.

The requirement of the removal, correction or abatement of nuisances enumerated in this chapter shall not be confined to the things known to the common law or specially declared by law as nuisances, but shall also extend to anything constituting a nuisance in fact, including as well anything designated in this Code and judicially declared as dangerous, offensive, unhealthy or obstructive.

Sec. 24-4. Responsibility for abatement; abatement defined.

(a) The owner, agent, lessee, occupant or other person in charge of any building or premises where any of the things forbidden by this chapter exist, or whence any of such things have originated, or any person responsible for the existence, origin or continuance of any of such things, shall correct, remove or abate such thing without delay.

(b) Abatement may include, but shall not be limited to, repair, removal, cleaning, extermination, cutting, mowing, grading, draining, securing, repairing a building or structure, boarding unoccupied buildings, barricading or fencing, removing dangerous portions of buildings or structures, and demolition of dangerous structures or abandoned buildings.

Sec. 24-5. Abatement by city after notice--Procedure; payment of costs.

(a) In case of the failure of any person to correct, remove or abate a nuisance upon written notice issued by the city board of health, city administrator or designee served in the manner of an original notice, door hanger, placard or by mail to the last known address of the owner, agent, lessee, occupant or other person in charge of the building or premises where the nuisance exists, and designating the time allowed for such removal, correction or abatement, the time thus allowed depending on the urgency of the case, then and at once upon such failure the city board of health, city administrator or designee shall cause the nuisance to be summarily removed, corrected or abated, and the city board of health, city administrator or designee, chief of police and such other officers as may be directed shall have the power at all times during the daytime to enter into and upon the premises and make thorough examination thereof for the purpose of ascertaining its sanitary conditions or the existence of nuisances therein, and to do whatever may be necessary to remove, correct or abate such nuisances.

(b) Whenever the owner, occupant or agent of any premises upon which any nuisance is found is unknown or cannot be found, then the nuisance may be abated without notice.

(c) Notification to cut weeds shall be served on property owners by publication in a daily newspaper of general circulation in the city notifying such property owners that unless such weeds, grass, vines, and brush growing on lots and parcels of ground within the corporate limits of the city 12 inches or more in height are cut, the city will cause the same to be cut and assess the cost to the owner of the lot or parcel of ground.

(d) Emergency abatement procedure. When the board of health, city administrator or designee determines that a nuisance exists on a property and constitutes an imminent and compelling danger to health, safety, or welfare of persons or property, the city board of health, city administrator or designee is authorized to abate or have abated the nuisance without prior notice. The cost of any such emergency abatement procedure may be assessed against the property for collection in the same manner as property taxes as set forth in state code

(e) Costs of abatement. Abatement costs shall include, but shall not be limited to, the cost of removing or eliminating the nuisance, the cost of investigation, such as title searches, inspection and testing, the costs of notification, filing costs and other related administrative costs and any other costs or expenses incurred by the city in the abatement of the nuisance.

Sec. 24-7. Resisting, obstructing or interfering with city officer.

Any person who resists, obstructs, or otherwise interferes with any city officer who has been designated by the city board of health, city administrator or designee to enter upon and inspect any premises, or to correct or abate any nuisance on such premises, shall be guilty of a municipal infraction and shall be punished as provided in section 1-8 of this Code.

Secs. 24-8. Criminal penalty.

In addition to the right of abatement, anyone committing a nuisance shall be guilty of a misdemeanor and be subject to penalty provisions of section 1-8 of this Code.

Secs. 24-9 – 24-20. Reserved.

SECTION TWO. The Code of Ordinances (Municipal Code of the City of Ottumwa, Iowa) is hereby amended by repealing Sections 34-26 through 34-31 in their entirety and are hereby reserved for future use.

SECTION THREE. All ordinances or parts of ordinances or provisions in the Code of Ordinances (Municipal Code of the City of Ottumwa, Iowa) in conflict therewith are hereby repealed.

SECTION FOUR. This ordinance shall be in full force and effect from and after its passage, adoption, and approval and publication as required by law.

SECTION FIVE. When this ordinance is in effect, it shall automatically supplement, amend and become a part of said Code of Ordinances (Municipal Code of the City of Ottumwa, Iowa) without further resolution of the City Council.

Passed on its first consideration on the ____ day of _____, 2008.

Passed on its second consideration on the ____ day of _____, 2008

Requirement of consideration and vote at two prior council meetings suspended on the ____ day of _____, 2008.

Final passage and adoption on the ____ day of _____, 2008.

CITY OF OTTUMWA, IOWA

Dale M. Uehling, Mayor

___ No action taken by the Mayor.

___ Vetoed this ____ day of _____, 2008.

Dale M. Uehling, Mayor

___ Repassed and adopted over the veto this ____ day of _____, 2008.

___ Veto affirmed this ____ day of _____, 2008 by failure of vote taken to repass.

___ Veto affirmed, no timely vote taken to repass over veto.

ATTEST:

Ann Cullinan City Clerk