

## CHAPTER 91: NUISANCES

### Section

#### *General Provisions*

- 91.01 Outdoor fired furnaces
- 91.02 Noise regulations
- 91.03 Junk, abandoned vehicles, and the like
- 91.04 Refuse
- 91.05 Container safety

#### *Weeds*

- 91.20 Weeds and rank vegetation height
- 91.21 Vegetation on governmental property
- 91.22 Noxious weeds or other rank vegetation
- 91.23 Notice and removal
- 91.24 Failure to abate
- 91.25 Billing procedure
- 91.26 Appeal
- 91.27 Lien
- 91.28 Administrative liability
- 91.29 Enforcement
- 91.30 Effective date
  
- 91.99 Penalty

#### *GENERAL PROVISIONS*

### § 91.01 OUTDOOR FIRED FURNACES.

(A) **OUTDOOR FIRED FURNACES** include outdoor furnaces, stoves, or boilers fired by wood or any other flammable material, and the term **OUTDOOR FIXED FURNACES** applies to all such outdoor fired devices.

(B) Outdoor fired furnaces are hereby declared to be a public nuisance.

(C) No person shall install, use, or maintain an outdoor fired furnace within the corporate limits of the city.

(D) Any person who violates this section shall be given notice to abate the nuisance within three days by the city through any official, officer, employee, or agent. Notice may be served in any reasonable manner including, without limitation, by hand delivery, by certified mail, by first-class mail, or by publication.

(E) Any existing outdoor fired furnaces located within the corporate limits of the city are exempted, provided that the outdoor fired furnaces are properly vented so as not to be a public nuisance because of smoke, odor, or other cause.

(Ord. 2005-8, passed 12-12-2005) Penalty, see § 91.99

## § 91.02 NOISE REGULATIONS.

(A) *Scope.* This section shall apply to the control of all noises within the city limits as they now exist or may hereafter be established.

(B) *Definitions.* For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**MOTOR VEHICLE or EQUIPMENT.** Any vehicle powered by a mechanical engine and designed to be driven or operated on any public or private property. Such definition shall include, but not be limited to: automobiles, vans, trucks, sport utility vehicles, motorcycles, motor scooters, dune buggies, snowmobiles, all terrain go-carts, minibikes, trail bikes, tractors, mowers, outboard motors, chain saws, gardening equipment, and tillers.

**PERSON.** Any individual, association, partnership, or corporation which includes any officer, employee, department, agency, or instrumentality.

(C) *Loud and unnecessary noise prohibited.*

(1) It shall be a violation of this section for a person to make any loud, raucous, improper, unreasonable, offensive, or unusual noise, disorder, or tumult which disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others within the city, or to permit such noise, disorder, or tumult to be made in or about his or her house or premises, and the same is hereby declared to be a public nuisance.

(2) Further, it shall be the duty of every owner, occupant, manager, agent, or operator of any property, structure, vehicle, or business in the city to prevent persons using property under his or her control from violating this section.

(D) *Certain specific acts prohibited.* The following acts, uses, or noises, among others, subject to specific exemptions, are declared to be loud, raucous, or disturbing noises in violation of this section. Such enumeration shall not be deemed to be exclusive:

(1) Using, operating, or permitting to be played, used, or operated any machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle, or property in which such machine or device is operated and who is a voluntary listener;

(2) Using, operating, or permitting the use or operation of any machine, instrument, or device capable of producing or reproducing of sound which is cast upon other properties, including the public right-of-way for the purposes of commercial advertising or to attract attention to any activity, performance, sale, place, or structure;

(3) Using, operating, or permitting the use or operation of any machine, instrument, or device capable of producing or reproducing any sound on any public transportation vehicle; and

(4) Using, operating, or permitting to be played, used, or operated any machine or device for the producing or reproducing of sound on any public rights-of-way adjacent to any school or church.

(E) *Prohibited noise.* No person shall play, use, or operate any machine or device for the producing or reproducing of sound if it is located in, or on, any of the following:

(1) Any public property, including any public right-of-way, highway, building, sidewalk, park, or thoroughfare, if the sound generated is audible at a distance of 50 feet from its source; or

(2) Any motor vehicle on a public right-of-way, highway, or public space if the sound generated is audible at a distance of 50 feet from the device producing the sound.

(F) *Prohibited vehicular noises.* The following acts are declared to be a public nuisance, but the enumeration of the particular offenses hereinafter particularly defined shall not be construed as limiting the generality of this section or limiting the offense hereunder to the particular offense hereinafter enumerated:

(1) The continuous or repeated sounding of any horn or signal device of a motor vehicle when not used as a danger signal. *CONTINUOUS* includes unnecessary or unreasonable periods of time;

(2) The use of any motor vehicle with appurtenances attached thereto so as to create loud or unnecessary grating, grinding, rattling, or other noise; and

(3) The use of any motor vehicle with or without the attachment of various appurtenances thereto so as to create loud or unnecessary grating, grinding, rattling, or other noise or noises. This shall include the use of any vehicle, said use of which causes excessive noise as a result of a defective or

modified exhaust system, or as a result of unnecessary rapid acceleration, deceleration, revving the engine, or tire squeal, and specifically including use of semi tractor "Jake Breaks" is forbidden at all times.

(G) *Exemptions.* Exemptions shall not be permitted within any duly established "quiet zones" when such zone is designated by appropriate signage. The following shall be exempted from the provisions of this chapter:

- (1) Sound emitted from sirens of authorized emergency vehicles;
  - (2) Lawn mowers, garden tractors, and similar home power tools, when properly muffled, between the hours of 8:00 a.m. and 10:00 p.m.;
  - (3) Burglar alarms or other warning devices, when properly installed on publicly or privately owned property, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time;
  - (4) Reasonable celebrations on Halloween and legal holidays;
  - (5) Permitted parades or festivals between the hours of 8:00 a.m. and 12:00 midnight Sunday through Thursday, and between 8:00 a.m. and 1:00 a.m. Friday through Saturday;
  - (6) Attendant noise connected with the actual performance of athletic or sporting events and practices related to them;
  - (7) The emission of sound for the purposes of alerting persons to the existence of an emergency or for the performance of emergency work;
  - (8) Sounds associated with normal conduction of a legally established non-transient business, when such sounds are customary, incidental, and within the normal range appropriate for such use; and
  - (9) In the case of motor vehicles, where the noise is the result of a defective or modified exhaust system, if the cause is repaired or otherwise remedied within seven calendar days.
- (Ord. 2002-9, passed 10/11-12-2002) Penalty, see § 91.99

### **§ 91.03 JUNK, ABANDONED VEHICLES, AND THE LIKE.**

Regulating the use of real estate in the city in certain instances and providing against maintaining of junk yards, abandoned junk, and junk vehicles. The phrase abandoned or dilapidated, and unused or junked motor vehicles, refrigerators, washing machines, or any other type of machinery or machines that are placed, stored, abandoned, or dismantled and salvaged, which for any reason are no longer used or useful in the manner and for the purposes for which said articles were originally manufactured, designed,

or intended, and expressly includes junking, salvage, and storage operations covering such type of personal property. Any violation of this section is hereby declared and shall constitute a public nuisance. (Prior Code, § IV-2-6) Penalty, see § 91.99

#### **§ 91.04 REFUSE.**

(A) It is unlawful for any person to throw, place, or scatter any garbage, rubbish, trash, or other refuse over or upon any premises, street, alley, either public or private, or to suffer or permit any garbage, rubbish, trash, or other refuse to be placed or deposited on the premises owned, leased, occupied, or controlled by such person either with or without the intent to later remove, cover, or burn it.

(B) The Police Department or an official, employee, or agent of the city shall make a careful inspection, upon request, of any lots, grounds, and tracts of land situated within the corporate limits of the city for the purpose of determining whether there is a violation of this section. Whenever the Police Department or an official, employee, or agent of the city finds garbage, rubbish, trash, or other refuse over or upon any premises or property within the city, which is in such a condition as to violate this section, a written report of the complaint and findings shall be filed with the Mayor's office and the Board of Public Works. The city, through any official, employee, or agent, then may issue a written notice to the landowner, occupant, or any other person having an ownership interest in, or the ability or right to control, the property or premises to remove the refuse within ten days of the date of notice. Notice may be served in any reasonable manner including, without limitation, by hand-delivery, by certified mail, by first-class mail, or by publication.

(C) The Police Department or an official, employee, or agent of the city shall reinspect the property within the ten days after the date of the notice to determine whether the violation has been cured. If the garbage, rubbish, trash, or other refuse has not been removed, or the person receiving notice of the violation has not pursued an appeal pursuant to this section, a written report of these findings shall be filed with the Mayor and the Board of Public Works. The Police Department, an official employee, or an agent of the city may issue to the person found to be in violation of this section for ordinance violation which states the relevant offense(s) and which assesses the appropriate penalty. The penalty, as established by this section, shall be paid to the city's Ordinance Violations Bureau as provided by the ordinance establishing the Bureau or within 72 hours in full satisfaction of the assessed penalty. If such payment is not made within the prescribed period, proceedings may be filed in a court of competent jurisdiction.

(D) In addition to division (C) above, if the person in violation of this section, upon reinspection, failed to remove the garbage, rubbish, trash, or other refuse or failed to pursue an appeal pursuant to this section, the city, through its Board of Public Works and its Public Works Department, may remove the refuse or vegetation. The city also may pursue any other appropriate legal remedies. If the person in violation of this section failed to remove the garbage, rubbish, trash, or other refuse and the city removes it, the city shall make a certified statement of the actual cost incurred by the city for the removal. The statement shall be served on the landowner by certified mail. The landowner shall pay the amount in the



statement to the city within ten days after receiving it. If the landowner should fail to pay within the ten-day period, a certified copy of the statement of costs shall be filed in the office of the County Auditor. The Auditor shall place the amount claimed on the tax duplicate against the property affected by the work. The amount shall be collected as taxes are collected and disbursed to the General Fund of the city.

(E) An appeal of the written removal notice must be made in writing within seven days of the date of the removal notice to the Board of Public Works, which shall issue its written findings. All appeals from written findings of the Board shall be made to courts of competent jurisdiction within ten days.

(F) It is unlawful to transport refuse, stone, or other materials that are likely to fall from a vehicle unless such materials are covered and secured so as to prevent their deposit on public and private property. Any materials falling from a vehicle shall be promptly removed by the person responsible for their deposit. If such person neglects or refuses to remove the materials, the city shall cause such materials to be removed at the expense of the person responsible, who shall be liable to pay the city the cost of removal.

(Prior Code, § IV-2-7) Penalty, see § 91.99

#### **§ 91.05 CONTAINER SAFETY.**

(A) Ice boxes, refrigerators, ice chests, ice makers, vertical or chest freezers, and other airtight devices or containers used for the preservation of foods can pose a threat to the health and safety of the public. No ice box, refrigerator, ice chest, ice maker, vertical or chest freezer, or any other airtight device or container used for the preservation of foods shall be discarded, abandoned, kept for salvage, or stored in a public place or in plain view and accessible to the public unless all locks, catches, and magnetic closing devices are removed, or the door is removed or secured by lock and chain in such a manner to prevent opening.

(B) This section shall not apply to persons who, or entities that, in the ordinary course of his, her, or its business buy, sell, store, or repair new or used refrigerators or other such devices if he, she, or it otherwise comply with this section. Such persons or entities may keep or store such devices on his, her, or its premises, provided that the devices are stored in a safe manner at all times and are made inaccessible to the public before the end on the business day.

(C) To the extent that any other ordinance further prohibits, prevents, or restricts a person's or entity's right to maintain on his, her, or its premises or real property any personal property described in this section, this section shall not be interpreted to prohibit, prevent, or restrict the city's right to enforce or take action under any other section.

(Prior Code, § IV-2-2) Penalty, see § 91.99

**WEEDS****§ 91.20 WEEDS AND RANK VEGETATION HEIGHT.**

It is unlawful for anyone to permit any weeds, rank vegetation, grass, or plants other than trees, bushes, flowers, or other ornamental plants to grow to a height exceeding nine inches anywhere in the city. **WEEDS AND RANK VEGETATION** does not include agricultural crops such as hay and pasture or vegetation planted for some useful or ornamental purpose. Weeds or rank vegetation exceeding such a height are hereby declared to be a nuisance.

(Ord. 1999-7, passed 8-9-1999) Penalty, see § 91.99

**§ 91.21 VEGETATION ON GOVERNMENTAL PROPERTY.**

It is unlawful to permit weeds, vegetation, trees, permanent structures, or woody growth on private property which, due to its proximity to any governmental property, right-of-way, or easements, interferes with the public safety or lawful use of the governmental property, right-of-way, or easement. Such interference is hereby declared to be a nuisance.

(Ord. 1999-7, passed 8-9-1999) Penalty, see § 91.99

**§ 91.22 NOXIOUS WEEDS OR OTHER RANK VEGETATION.**

It is unlawful for anyone to permit any noxious weed, including, but not limited to, Canadian thistle and Johnson grass, to grow or be grown on any premises on which weeds, plants, or grass are permitted to grow.

(Ord. 1999-7, passed 8-9-1999) Penalty, see § 91.99

**§ 91.23 NOTICE AND REMOVAL.**

The Public Works Department shall be responsible for the administration of this subchapter. The head of the Public Works Department, upon receipt of a complaint of a violation of this subchapter, will issue a five-day written notice by registered mail to remove the weeds or rank vegetation.

(Ord. 1999-7, passed 8-9-1999)

**§ 91.24 FAILURE TO ABATE.**

If the landowner fails to cut and remove the weeds and/or rank vegetation within the time prescribed in the notice, or any extension of that time granted by the Board of Public Works or Department of Public Works, city employees or contractors hired by the city may enter the property to abate the violation of

this subchapter and may cut and remove, or cause to be cut and removed, such weeds and/or rank vegetation.

(Ord. 1999-7, passed 8-9-1999) Penalty, see § 91.99

#### **§ 91.25 BILLING PROCEDURE.**

The Clerk-Treasurer shall then issue a bill to the landowner for the costs incurred by the city in abating the violation, including, a civil penalty, administrative costs, and removal costs. The bill shall be served upon the landowner in the same manner as the service of notice of violation. Costs for the abatement of weeds are determined by the Board of Public Works and Safety.

(Ord. 1999-7, passed 8-9-1999)

#### **§ 91.26 APPEAL.**

(A) Any appeal of the removal notice or bill must be made in writing within ten calendar days of the date of the removal notice or bill, whichever is applicable. Any appeal must be in writing and shall be made to the Board of Public Works, which shall set the matter for hearing. The hearing may be at a special meeting of the Board of Public Works or any regularly scheduled meeting of the Board of Public Works.

(B) After the hearing, the Board of Public Works shall issue its written findings. Any appeal from written findings of the Board of Public Works must be made to a court of competent jurisdiction located in the county within ten calendar days of the issuance of its written findings by the Board of Public Works.

(Ord. 1999-7, passed 8-9-1999)

#### **§ 91.27 LIEN.**

If the landowner fails to pay the bill issued under § 91.25 within the time specified, the Clerk-Treasurer shall certify to the Auditor of the county the amount of the bill, plus any additional administrative costs incurred in the certification. The Auditor of the county shall place the total amount certified on the tax duplicate for the property affected and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the General Fund of the city.

(Ord. 1999-7, passed 8-9-1999)

#### **§ 91.28 ADMINISTRATIVE LIABILITY.**

No officer, agent, or employee of the city shall render himself or herself personally liable for any damage that may occur to persons or property as a result of any act required or permitted in the discharge



of his or her duties under this subchapter. Any suit brought against any officer, agent, or employee of the city as a result of any act required or permitted in the discharge of his or her duties under this subchapter shall be defended by the City Attorney until the final determination of the proceedings therein. (Ord. 1999-7, passed 8-9-1999)

#### **§ 91.29 ENFORCEMENT.**

The Public Works Department shall enforce this subchapter. (Ord. 1999-7, passed 8-9-1999)

#### **§ 91.30 EFFECTIVE DATE.**

This subchapter was in full force and effect from and after notice, passage by the City Council, and approval by the Mayor, all in the manner as provided by law. (Ord. 1999-7, passed 8-9-1999)

#### **§ 91.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) Any person who violates § 91.01 and who fails or refuses to abate the nuisance after having been given notice shall be fined in the sum of \$50. Each day the nuisance continues after the deadline date in the notice shall be deemed a separate offense.

(2) Persons who abate the nuisance after the deadline date and who elect to admit a violation of § 91.01 may admit such violation and pay such fine to the Violations Clerk of the Ordinance Violations Bureau.

(3) The city shall also have the power, instead of, or in addition to the \$50 fine, to bring a civil action against the violator pursuant to I.C. 36-1-6-4 and request the county Circuit Court to order the violator to abate the nuisance.

(C) Whoever violates § 91.02, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 for each offense. Each day any violation shall continue shall constitute a separate offense.

(D) Any person, firm, or corporation who violates any provision of § 91.03 is guilty of a misdemeanor and, on conviction, shall be fined in any amount not exceeding \$100. A separate offense shall be deemed committed upon each day during, or on, which a violation occurs or continues. (Prior Code, § IV-2-6)

(E) Violations of the provisions of § 91.04 are declared a public nuisance. Any person who violates any provision of § 91.04 shall be subject to a fine of \$25. Each day that a violation continues shall constitute a separate violation.  
(Prior Code, § IV-2-7)

(F) Any person who, or entity that, violates any provision of § 91.05 shall be subject to a fine of \$25. Each offense and/or each day of each offense shall constitute a separate violation for the purpose of collection under § 91.05.  
(Prior Code, § IV-2-2)

(G) In the event of a failure to abate, as stated in § 91.24, and the city removes or causes to be removed such weeds and/or rank vegetation, or in the event that the city receives a second substantiated complaint after the first complaint has been abated in the same calendar year regarding the same parcel of ground, which is owned by the same person, then a civil penalty will be assessed as follows:

(1) First offense: \$25;

(2) Second offense: \$50; and

(3) Third offense: \$100.

(Ord. 1999-7, passed 8-9-1999; Ord. 2002-9, passed 10/11-12-2002; Ord. 2005-8, passed 12-12-2005)