

## Chapter 15 - NUISANCES

*Footnotes:*

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**Cross reference**— *Health, ch. 13; solid waste, ch. 15; projecting tree branches and shrubbery, §§ 20-9, 20-10.***State Law reference**— *Control of nuisances, MCA 7-5-4104; nuisances, MCA 27-30-101 et seq.; public nuisances, MCA 45-8-111; action to abate public nuisance, MCA 45-8-112.*

## Sec. 15-1. - Public nuisance defined.

(a) *Public nuisance* means:

- (1) A condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons, including but not limited to, the following:

The enumeration, below, shall not be deemed exclusive, but merely illustrative, it being the intent and purpose of this subsection to include as nuisances, all actions or things of the character described in subsection (a)(1), above.

- a. Accumulating, maintaining or storing in public view on any lot or other parcel of land, any abandoned, discarded, or unused furniture, stoves, sinks, toilets, cabinets, household fixtures or equipment, or junk. If such material is being accumulated as part of an ongoing, active salvage business other than an approved licensed motor vehicle wrecking facility, the salvage business must be located in a properly zoned area for such a business and shall be fully shielded from public view;
- b. Accumulating, maintaining or storing in public view on any lot or other parcel of land any junk vehicle, component part of a motor vehicle, or any abandoned, wrecked, dismantled, or inoperative trailers, campers, boats or other water craft. Any person possessing one or more junk vehicles, regardless of ownership, shall shield the vehicles from public view or remove the vehicles to a licensed motor vehicle wrecking facility or to a licensed motor vehicle graveyard, as defined by MCA § 75-10-501 annotated;
- c. Dumping, piling, or stacking of bricks, concrete blocks, waste wood and similar material on any lot or other parcel of land, unless said material is stacked in neat piles and all waste materials from the cleaning of such items, such as mortar, wood splinters, broken and unusable bricks, are removed;
- d. Accumulating, maintaining or storing of a significant amount of cardboard boxes, broken packing boxes, paper, or other similar items on any lot or other parcel of land;

- e. Piling, dumping or depositing of any dirt, demolition wastes including wood, bricks, concrete, used road blacktop and other similar materials on any lot or other parcel of land, unless such material is to be utilized for fill material to fill a land depression, and provided that, if such material is used as fill material, all such material is completely covered with clean fill material once every ten days and the fill area is adequately fenced to restrict access to the area; and further provided that the failure to comply with the periodic cover and access control requirements shall constitute a violation of this chapter. The storage by a governmental entity of used road blacktop, cold mix, gravel and other similar materials for road maintenance and repair is expressly permitted;
- f. Maintaining or accumulating on any lot or other parcel of land, garbage, refuse, decaying vegetation, animal bedding, waste or feces, cesspool, water holes, unsealed water tanks, stagnant water, or any other condition which is or may reasonably become infested or inhabited by rodents, reptiles, vermin or wild animals or may furnish a breeding place for mosquitoes or flies;
- g. Maintaining, or causing or permitting the same on any lot or other parcel of land, any building or premises which is determined to be dangerous or dilapidated. Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous or dilapidated building, if such conditions or defects exist to the extent that the life, health, property, value of property or safety of the occupants or the public are jeopardized:
  - 1. Broken or missing window or windows which have remained in such condition for a period exceeding 30 days;
  - 2. Broken or missing exterior door or doors which have remained in such condition for a period exceeding 30 days;
  - 3. Holes in the roof or exterior walls, other than normal construction, which have remained in such condition for a period exceeding 30 days;
  - 4. Fire or other casualty damage in public view which remains unrepaired for a period exceeding six months;

A building which is undergoing construction or remodeling for which a valid building permit has been issued by the city shall not be deemed in violation of this subsection so long as work thereon is prosecuted with reasonable diligence and so long as the building permit has not expired.

- (2) Any premises where persons gather for the purpose of engaging in unlawful conduct;
- (3) A condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

- (b) A person commits the offense of maintaining a public nuisance if such person knowingly creates, conducts or maintains a public nuisance. The owner of a parcel of property and the occupant of the parcel of property are jointly and severally liable for any violation of this section. There is a rebuttable presumption that the person named as owner of the property on the current assessment list of the state department of revenue is the owner of the property for purposes of this chapter.
- (c) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (a)(1) of this section) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.
- (d) This section shall be applicable to and enforced on all classifications of property listed under chapter 24, pertaining to zoning.

(Code 1981, § 7.02.010; Ord. No. 1019, 6-10-91; Ord. No. 1170, § 1, 7-10-07)

**State Law reference**— Definition of nuisance, MCA 27-30-101.

Sec. 15-2. - Penalty for violation of chapter.

- (a) Unless otherwise specified by the provisions of this chapter, any person who violates the provisions of this chapter shall be deemed guilty of creating and maintaining a public nuisance, and upon conviction thereof shall be punishable by a fine for the first offense of not less than \$100.00 and not more than \$500.00 or by imprisonment for a term not to exceed six months, or both. The second offense shall be punishable by a fine of not less than \$300.00 and not more than \$500.00 or by imprisonment for a term not to exceed six months, or both. The third or subsequent offense shall be punishable by a fine of \$500.00 or by imprisonment for a term not to exceed six months, or both.
- (b) The court may order that in the city be authorized to abate the public nuisance if the property owner or occupant fails to do so, and that the costs incurred by the city in abating said nuisance shall be assessed to the real property and taxed as a special assessment against the same. Interest shall accrue at the rate of ten percent per annum from the date of the court's order.
- (c) Each day of failure to comply with the provisions of this chapter shall constitute a separate offense.

(Code 1981, § 7.02.120; Ord. No. 1019, 6-10-91; Ord. No. 1304, § 1, 9-27-16)

**State Law reference**— Penalty for violation of ordinances, MCA 7-5-4207.

Sec. 15-3. - Creating a hazard.

A person commits the offense of creating a hazard if such person knowingly:

(1)

Discards in any place where it might attract children a container having a compartment of more than 1½ cubic feet in capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside, and fails to remove the door, lid or locking device;

- (2) Being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft or other hole of a depth of four feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;
- (3) Tampers with an aircraft without the consent of the owner;
- (4) Owns or otherwise has possession of property upon which there is a steam engine or steam boiler which is in an unsafe condition; or
- (5) Deposits any hard substance upon or between any railroad tracks which will tend to derail railroad cars or other vehicles.

However, the offense of creating a hazard is not necessarily limited to the situations enumerated in this section.

(Code 1981, § 7.02.020)

**State Law reference**— Creating a hazard, MCA 45-8-113.

Sec. 15-4. - Unlawful deposit of waste.

It shall be unlawful for any person to dump, leave or throw any garbage, ashes of any kind, dead animal or other debris or refuse in or upon any public street, alley or other public place or in or upon any privately owned property without the consent of the owner, within the city limits.

(Code 1981, § 7.02.030)

**Cross reference**— Littering, § 19-11.

Sec. 15-5. - Overgrowth of grass and weeds, and noxious weeds—Prohibited.

It shall be unlawful for any person who owns or possesses any property within the city limits to allow grass or weeds to become overgrown to the extent that the same creates an unsightly appearance; or to knowingly permit any Canadian Thistle, Scotch Bull Thistle, Russian Thistle or any other thistles or noxious weeds to grow or stand upon any property thus owned or possessed by such person.

(Code 1981, § 7.02.040; Ord. No. 1318, § 1, 1-23-18)

**State Law reference**— Control of nuisance weeds within municipality, MCA 7-22-4101.

Sec. 15-6. - Same—Destruction by city.

(a) If the owner or possessor of such property refuses or fails to abate such overgrowth of grass or weeds, or to destroy such thistles or noxious weeds, the office of the city engineer may provide for their destruction 15 days after delivering written notice to such owner or possessor. The cost of such destruction shall be charged by the city council as a special assessment against the property on which the thistles or weeds were destroyed. The city treasurer shall collect the special assessment in the manner provided for the collection of other special assessments.

(b) This section shall not operate as a waiver of prosecution under section 15-14.

(Code 1981, § 7.02.050; Ord. No. 1219, § 34, 4-26-11; Ord. No. 1318, § 2, 1-23-18)

#### Sec. 15-7. - Barbed wire fences.

It shall be unlawful for any person to erect or maintain a barbed wire fence or to own or possess any property on which a barbed wire fence exists, inside the limits of the city.

(Code 1981, § 7.02.060)

#### Sec. 15-8. - Disposal of dead animals.

It shall be unlawful for any person to:

- (1) Place all or any part of a dead animal in any lake, river, creek, pond or reservoir or upon any road, street, alley or other public place within the city limits;
- (2) Place all or any part of a dead animal any other place within the city limits, unless the dead animal or part of a dead animal is buried at least three feet underground; or
- (3) Being the owner or possessor of any such property, permit all or any part of a dead animal to remain in or upon such property.

(Code 1981, § 7.02.070)

**State Law reference**— Unlawful disposition of dead animals, MCA 75-10-213.

#### Sec. 15-9. - Spitting.

It shall be unlawful for any person to spit or otherwise expectorate upon any street, sidewalk or other public place within the limits of the city.

(Code 1981, § 7.02.080)

#### Sec. 15-10. - Causing fire by careless smoking.

- (a) The term "smoking device or material" shall include cigarettes, cigars, pipes, ashes, matches, lighters or any other smoking instrument or product.
- (b) The term "careless conduct in smoking" shall include any of the following acts: permitting a spark from any lighted smoking device or material to fall upon anything inflammable; falling asleep with any lighted smoking device or material at hand; throwing, dropping or setting any lighted smoking device or material elsewhere than in a proper receptacle; and failure to completely extinguish the fire of any smoking device or material after its use.
- (c) It shall be unlawful for any person, due to careless conduct in smoking, to set fire to any building, bedding, carpet, curtains or other property within the city limits.
- (d) This section shall apply to any overnight accommodation within the city limits, and it shall be the duty of the landlord (as defined in [section 19-1](#)) of such overnight accommodation to post in a conspicuous place, in every unit of such overnight accommodation, a plainly printed notice of this section.

(Code 1981, § 7.02.090)

**Cross reference**— Negligent arson, [§ 16-9](#).

**Sec. 15-11. - Maintenance of sidewalks—Required; removal of impediments.**

It shall be unlawful for the owner of any premises within the city limits not to keep and maintain the sidewalks in front of and adjoining such premises in good repair and clean and safe for pedestrians. The owner, manager or landlord shall ensure, with all reasonable dispatch, the removal of all snow, ice, slush, mud or other impediment to safe and convenient pedestrian travel.

(Code 1981, § 7.02.100; Ord. No. 1007, § 1, 9-11-90)

**Cross reference**— Streets and sidewalks, [ch. 20](#).

**State Law reference**— Prevention of obstructions on trafficways and public grounds, MCA 7-14-4104; maintenance of trafficways and public grounds, MCA 7-14-4105(3).

**Sec. 15-12. - Same—Repair or maintenance by city.**

- (a) If the owner of such property refuses or fails to keep and maintain the sidewalks in front of and adjoining such premises, within 90 days after delivery of written notice by the office of the city engineer, then the office of the city engineer may have the sidewalk repaired. The cost of such repair shall be charged by the city council as a special assessment against the property on which the repairs were done. The city treasurer shall collect the special assessment in the manner provided for the collection of other special assessments.

(b) If the owner, manager or landlord refuses or fails to remove any such impediment to safe and convenient pedestrian traffic, the office of the city engineer may provide for the removal, 24 hours after delivery of written notice to the owner, manager or landlord. The cost of such removal shall be charged by the city council as a special assessment against the property on which the impediment was removed. The city treasurer shall collect this special assessment in the manner provided for the collection of other special assessments.

(c) This section shall not operate as a waiver of prosecution under section 15-11.

(Code 1981, § 7.02.110; Ord. No. 1007, § 1, 9-11-90; Ord. No. 1219, § 35, 4-26-11)

#### Sec. 15-13. - General definitions.

For purposes of this chapter, the following definitions shall apply:

*Component part* means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including, but not limited to, fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

*Inoperative* means a motor vehicle, trailer, camper, boat or other water craft which is not in operating condition, or which for a period of 60 days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine or other essential parts required for its operation, or, on which there are displayed neither valid license plates nor a valid tax decal.

*Junk* means old appliances, equipment, or parts thereof, old iron or other scrap metal, automobile or truck tires, cardboard, old lumber or scrap wood, rags, rope, paper, debris, rubble, batteries, rubber debris, mattresses or any worn out, cast off or discarded article or material which is ready for destruction or has been collected or stored as salvage, for conversion to some other use or for reduction into components and is not part of a commercial or public salvaging or recycling operation

*Junk vehicle* means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, that is not lawfully and validly licensed and remains inoperative or incapable of being driven.

*Motor vehicle* means a vehicle designed to be propelled by its own power and designed or used to transport persons or property upon public highways, streets, or alleys.

*Person* means any individual, firm, partnership, company, association, corporation, governmental entity or other private entity, whether organized for profit or not.

*Public view* means any point six feet above the surface of the center of a public road from which a violative condition can be seen.

(Ord. No. 1170, § 2, 7-10-07)

#### Sec. 15-14. - Enforcement procedure and penalty; prosecution in the city court, hearing before city council.

The prohibitions in this chapter shall be enforced through appropriate criminal prosecution in the city court as set forth herein; however, at the election of either the code enforcement officer or police officer investigating said matter, or at the election of the mayor, enforcement may proceed as a civil violation before the city council.

- (a) Violation of chapter to be treated as a misdemeanor, and enforced as follows:
- (1) If the code enforcement officer or police officer, in the officer's reasonable discretion, determines that the alleged public nuisance presents an emergency, then the officer shall issue a citation and may take immediate action to abate the public nuisance. In such circumstances, the officer shall have the authority to contact city employees and to request their assistance in abating the nuisance.
  - (2) If the code enforcement officer or police officer, in the officer's reasonable discretion, determines that the alleged public nuisance is not an emergency, then the officer shall provide a written notice to the owner and occupant, if any, advising the owner and occupant of the complaint and requesting that the alleged public nuisance be abated within a period of not more than ten days. The officer shall re-inspect at the end of the ten-day period. If the owner or occupant has not abated the alleged public nuisance within the time required by the notice, then the officer shall issue a citation and take those actions reasonably necessary to abate the alleged public nuisance, or, the officer or the mayor may refer the matter for hearing before the city council pursuant to part (b) of this section.
  - (3) Notice to the owner of the property or, if the owner is not the occupant of the property, then notice to the occupant of the property shall be given by one of the following methods, and such notice shall be deemed to have been given upon completion of any of the following:
    - a. Personal service; or
    - b. Certified mail, return receipt requested, addressed to the occupant at the physical address of the property; or
    - c. By posting notice in a conspicuous place upon the property.
  - (4) Notice to the owner, if the officer is able to determine that the occupant is not the owner of the property, shall be given by certified mail, return receipt requested, addressed to the owner or owners as named in the most current assessment list for the parcel of property at the address set forth in such assessment list, and shall be deemed complete upon such mailing. Confirmation of actual notice to the owner, if the owner is not the occupant, shall

not be required in order to proceed with enforcement of this chapter as to the occupant, however, cost of abatement may not be assessed to the property owner's taxes if notice was not provided to the property owner as set forth herein.

- (5) Violation of this chapter shall be a misdemeanor, and shall be punishable by a fine not to exceed \$500.00 and not more than six months in jail. The city court may further order that the violations be abated at the direction of the public works director, and that all costs associated with such abatement be assessed against the property as a special assessment.
- (b) Enforcement as civil violation before the city council, at the election of the investigating officer or the mayor, may be enforced as follows:
- (1) The notice provisions set forth in subsections (a)(i)—(iv) shall be followed. After notice has been given, however, the officer shall request that the city clerk set a hearing on the matter before the city council.
  - (2) Upon receipt of notice from the code enforcement officer or police officer, the city clerk shall set a date and time for a hearing on the matter before the city council, and send notice to the occupant, as well as to the owner if not the occupant, by certified mail, return receipt requested.
  - (3) At the time fixed on the notice, the city council shall proceed to hear the testimony of the city personnel and the testimony of any other interested party who may be present and desire to testify respecting the condition of the property or thing, the estimated cost of abatement, or other appropriate action.
  - (4) Upon the conclusion of the hearing, the city council shall by resolution, declare its findings and in the event it so concludes, it may declare the property or thing to be a nuisance and direct the owner to obtain the proper permits and physically commence abatement of the nuisance within ten days, and to complete said abatement within 30 days by having the property repaired, demolished, removed or other appropriate act necessary to cure the nuisance.
  - (5) Such resolution shall further notify the owner of the property that if the nuisance is not abated, the property will be the subject of repair, demolition, removal, or other appropriate act, as the case may be, by the city and the expenses thereof shall remain a lien on the property.
  - (6) In the event the owner does not commence the abatement of the nuisance located on the real property within ten days prescribed, the violations shall be abated at the direction of the public works director, and that all costs associated with such abatement be assessed against the property as a special assessment.
  - (7)

Assessment as a special assessment shall be approved by a resolution of the city council, and delivered to the county treasurer for collection.

- (8) The city council shall not have the ability to assess fines or impose jail time in matters which proceed before the council.

(Ord. No. 1170, § 3, 7-10-07; Ord. No. 1304, § 2, 9-27-16; Ord. No. 1318, § 3, 1-23-18; Ord. No. 1335, § 1, 6-25-19)