

ORDINANCE NO 2266

**ORDINANCE AMENDING VARIOUS SECTIONS OF THE CODE OF ORDINANCES,
CITY OF NEWTON, IOWA, 2016, TITLE IX, CHAPTER 94, REGARDING "PUBLIC
NUISANCES"**

WHEREAS, the City wishes to have a robust nuisance abatement process that enables to the City to adequately address conditions occurring on properties within the City limits that negatively affect the health, safety, and general welfare of the community;

WHEREAS, the City has identified gaps in the current language of the nuisance abatement procedure and wishes to fill in these gaps;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Newton, Iowa, as follows:

SECTION 1. Chapter 94.02 is hereby amended by replacement with the text as set forth on Attachment A.

SECTION 2. Chapters 94.20, 94.21, 94.22, 94.23, 94.24, and 94.25 are hereby amended by replacement with the text as set forth on Attachment B.

SECTION 3. Chapter 94.26 is hereby added to Chapter 94 with the text as set forth on Attachment C.

SECTION 4. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 6. . EFFECTIVE. This ordinance shall be effective on September 1, 2016, after the final passage, approval and publication as provided by law.

PASSED this 15 day of August, 2016.

APPROVED this 15 day of August, 2016.



Katrina Davis

~~Katrina Davis, City Clerk~~

Natalie Umsted, Deputy City Clerk

Craig Trotter
~~Michael L. Hansen, Mayor~~
Craig Trotter

I, Katrina Davis, City Clerk of the City of Newton, Iowa, do hereby certify that the foregoing Ordinance was passed and approved by the City Council of the City of Newton, Iowa on the 15th day of August, 2016 and was published in the Newton Daily News, a newspaper of general circulation in the said City of Newton on the 15th day of September, 2016.

Dated this 8th day of September, 2016.

Katrina Davis

§ 94.02 PUBLIC NUISANCES AFFECTING PEACE, SAFETY AND GENERAL WELFARE.

(A) Nuisances Prohibited: Public nuisances affecting peace, safety and general welfare are prohibited.

(B) Definition of Nuisance: Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property so as essentially to interfere unreasonably with the comfortable enjoyment of life or property is a nuisance.

(Code of Iowa, Sec. 657.1)

(C) Nuisances Enumerated. The following subsections include, but do not limit, the conditions which are deemed to be nuisances affecting public peace, safety and general welfare due to them being injurious to health, indecent or offensive to the senses or an obstacle to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property in the City. The following are declared to be nuisances affecting public peace, safety and general welfare due to them being injurious to health, indecent or offensive to the senses or an obstacle to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property:

(1) *Obstructions of view.* All trees, hedges, signage or other obstructions, whether natural or man made, which prevent persons from having a clear view of all traffic approaching an intersection as defined in Iowa Code § 321.1, or any successor provision thereto, and all trees, hedges, signage or other obstructions, whether natural or human-made which prevents persons using a private driveway or street from having a clear view of all traffic approaching on any public street, highway, alley or roadway;

(2) *Old machinery, junk and the like.* The piling, storage or keeping of old machinery, junk, furniture, household furnishings or appliances or component parts thereof or other debris within the city;

(3) *Throwing, placing items on public rights-of-way.* The placing or throwing on any street, alley, road, highway, sidewalk or other public property of any glass, tacks, nails, bottles or any substances which may injure any person or animal or damage any pneumatic tire when passing over the same;

(4) *Garbage, trash and the like.* The depositing of, maintaining, permitting or failing to remove, garbage, trash, rubbish, bottles, cans or other refuse outside of a building on any property within the city, including large quantities of organic debris and materials, which accumulated by other than natural means, except neatly maintained compost piles. Outside of a building includes unenclosed decks and porches;

(5) *Lumber, occupational materials and the like.* The outside storage of pipes lumber, forms, machinery or other occupational materials upon property in the front yard or side yard corner lot or visible from a public street in a residential district;

(6) *Weeds, growths to be cut.*

(a) All weeds, tall grass or ground vegetation growing on lots and parcels of ground within the city limits shall, automatically be deemed a health, safety and fire hazard upon reaching or exceeding the maximum ground vegetation height restriction as set forth below. This section does not apply to ornamental grass.

Maximum Vegetation Height	Land Use
8 inches	Developed residential commercial and industrial zoned areas
12 inches	Undeveloped residential, commercial and industrial zoned areas
18 inches	Unplatted property and agriculture zoned property unless planted for farm cropping purposes

(b) The property owner(s) or occupants(s) shall also be jointly or severally responsible for the cutting of such growths on the abutting space between the lot line and the curb line or edge of the traveled way within the street right-of-way whether in front of or along the side of the lot or parcel of ground, and one-half of any alley abutting the property.

(c) The City Administrator or the City Administrator's designee shall notify the property owner(s)/occupant(s) when the weeds or growth are longer than the limits set out in this section. If the weeds or growth are not cut within seven days, then the city shall have the option to issue a municipal infraction and/or have the weeds or growth cut and assess the cost to be collected with the property taxes. Nothing herein shall be construed as requiring the property owner(s) or occupant(s) to be jointly or

severally responsible for the cutting of such growths on unimproved platted street right-of-way. Such unimproved platted street right-of-way shall be mowed by the city at its own expense pursuant to guidelines established by the Public Works Director. Furthermore, nothing shall be construed as otherwise alleviating property owner(s) or occupant(s) duty to otherwise maintain all property outside the lot and property lines and inside the curb lines upon the public streets.

(d) The property owner(s) or occupant(s) of tracts of land within the city may allow vegetation to extend beyond the maximum vegetation heights set out in this division (B)(6), so long as all of the conditions specified below are fulfilled.

1. The tract or portion thereof shall be designated by the City Administrator or designee as a natural area, considering the following factors: grade, incline, the difficulty to control or maintain said tract, the character of the surrounding area and whether said tract is being maintained as either a soil erosion control area or a conservation area. The owner or occupant of said tract shall apply in writing to the City Administrator or designee for such natural area designation;

2. A buffer 30 feet in width on all sides of such natural area adjacent to developed properties or public right-of-way shall be mowed to the height required in this division (B)(6); and

3. The tract shall contain no "noxious weeds", as defined in Iowa Code § 317.1.

(e) Subsequent failure of any one or more of the foregoing conditions shall void the waiver issued hereunder and immediately subject the property and property owners to the remedies provided for the abatement of nuisances under this code of ordinances and the Code of Iowa.

(7) *Property not seeded or sodded.* Property in a residential district not fully seeded, sodded or otherwise planted with a ground cover more than 180 days after any disturbance in the front yard, rear yard or side yard of the property caused by construction, grading or other activity, excluding gardens; or at any time prior to the 180 days if the property has inadequate storm water pollution prevention measures as delineated by the Iowa Statewide Urban Designs Standards and Specifications or is causing erosion or drainage problems on the same or nearby properties, including public streets;

(8) *Firewood piles.* The accumulation of any piles of firewood which are not neatly stacked or secured in a stable manner to avoid collapse;

(9) *Exterior of residential structures.* Any structure or portion thereof, in a residential district whose exterior has weather barrier house wrap exposed on any surface for more than 90 days;

(10) *Construction materials.* Any construction materials, including piles of dirt, sand and sod, left in the open on property or street right-of-way more than 60 days after construction has been completed or a certificate of occupancy has been issued, whichever occurred first;

(11) *Mail and newsprint receptacles.* The placement of mail boxes and other newsprint receptacles on public right-of-way, except those which are in compliance with United States Postal Service requirements for location and type and on a common post;

(12) *Non-removal of snow and ice.*

(a) All property owners shall keep the sidewalks abutting upon their property free from snow, ice or other obstructions or accumulations. If such property owner fails to remove the same for a period of 24 hours after the same has been deposited thereon the City Administrator or the City Administrator's designee who shall have charge of the care of the streets may cause the same to be removed. Thereupon, the cost of the removal shall be levied against the property as provided in § [94.24](#) of this chapter.

(b) All property owners shall clear a minimum four-foot portion of the Hike/Bike Trail abutting the front yard and/or side yard of their property free of snow, ice or other obstructions or accumulations. The cleared width of the trail shall be that portion of the trail furthest from the street. If such property owner fails to remove the same for a period of 24 hours after the same has been deposited thereon the City Administrator or the City Administrator's designee who shall have charge of the care of the streets may cause the same to be removed. Thereupon, the cost of the removal shall be levied against the property as provided in § [94.24](#) of this chapter.

(c) The city shall clear a minimum four-foot portion of the Hike/Bike Trail abutting the rear yard of a property and the front, side and/or rear yard of undeveloped property free of snow, ice or other obstructions or accumulations where such trail is not located in a green space, park area or non-residential area. The cleared width of the trail shall be that portion of the trail furthest from the street.

(13) *Dumping of snow.*

(a) It shall be unlawful for any person to throw, push or place or cause to be thrown, pushed or placed, any ice or snow from private property, sidewalks or driveways onto or across the traveled way of streets so as to obstruct gutters, or impede the passage of vehicles upon the street or to create a hazardous condition therein. The owner of the property adjoining the street or alley that contains the thrown, pushed or placed snow or ice or the owner of a property which exhibits a direct path leading to a

collection of snow and ice across a street or alley shall be prima facie liable for the violation.

(b) Exception: where, in the cleaning of large commercial drives in the business district, it is absolutely necessary to move the snow onto the streets temporarily, such accumulation shall be removed promptly by the property owner or the property owner's agent, and only after making arrangements for such prompt removal at the owner's cost of the accumulation within a reasonably short time. Snow from sidewalks in the central business district may be deposited in the street, adjacent to the curb, as long as it is done in a timely manner to be removed by the normal city snow removal operations.

(14) *Snipe sign.* In order to alleviate existing problems with signs which include among others, an over-abundance of signs causing clutter and visual pollution, a number of abandoned, deteriorated and or unsafe signs, and signs that distract, confuse, obscure, compete and conflict with motorist's vision, it shall be unlawful for any person to post or fail to remove a snipe sign. A **SNIPE SIGN** is any sign or poster affixed in any manner to a tree, fence, utility pole, building or any similar object on public property, which is not otherwise permitted. The City Administrator, or designee, is authorized to remove any snipe sign and if no one comes forward to claim the sign within seven days of its removal, the City is authorized to dispose of the snipe sign;

(15) *Offensive smells.* 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;

(16) *Filth or noisome substance.* The causing of suffering any offal, filth or noisome substance to be collected or to remain in any place to the prejudice of others;

(17) *Water pollution.* The corrupting or rendering unwholesome or impure the water of any river, stream or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others;

(18) *Blocking public and private ways.* The obstructing or encumbering by fences, buildings or otherwise the public roads, private ways, streets, alleys, commons, landing places or burying grounds;

(19) *Billboards.* Billboards, signboards and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view on 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;

(20) *Abandoned appliances.* Abandoning or otherwise leaving unattended any refrigerator, ice box or similar container, with doors that may become locked, outside of buildings and accessible to children, or allowing any such refrigerator, ice box or similar container to remain outside of buildings on premises in the person's possession or control, abandoned or unattended and so accessible to children;

(21) *Storing of inflammable junk.* The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, boxes and paper, by dealers in such articles, unless it be in a building of fire-proof construction;

(22) *Air pollution.* The emission of dense smoke, noxious fumes or fly ash;

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

(24) *Grass clippings in the street.* Grass clippings shall not be deposited on public streets or public sidewalks. The owner of the property adjoining the public right-of-way that contains the clippings shall be prima facie liable for the violation; and

(25) *Garage sales.* A garage sale, yard sale, tag sale, estate sale and all other similar forms of residential sale of tangible property shall not occur on more than two consecutive weekends or for more than five days, consecutively or individually, within a calendar month on residentially-used property, regardless of zoning classification. Garage sale activity and advertising signage shall not extend onto or be placed upon the public right-of-way. Upon conclusion of the sale, all outdoor display of sale items shall be removed.

(26) *Houses of Ill Fame.* Houses of ill fame, kept for the purpose of prostitution and lewdness; gambling houses; places resorted to by persons participating in criminal gang activity prohibited by Chapter 723A of the Code of Iowa or places resorted to by persons using controlled substances, as defined in Section 124.101 of the Code of Iowa, 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.

ABATEMENT; ADMINISTRATION AND ENFORCEMENT

§ 94.20 ABATEMENT PROCESS; PURPOSE.

~~The city has adopted the abatement process in order to allow the city and its residents to resolve city nuisances without penalty to the resident. This chapter will allow city residents a reasonable period of time to abate the nuisance before a municipal infraction citation is issued.~~

~~(2011 Code, § 13.0220)~~

Whenever any authorized municipal officer finds that a nuisance exists, such officer has the authority to determine on a case-by-case basis whether to utilize the nuisance abatement procedure described in Section 94.25 of this chapter or the municipal infraction procedure referred to in Section 94.26.

§ 94.21 CITY ADMINISTRATOR RESPONSIBILITIES.

The responsibilities of the City Administrator, or the City Administrator's designee, shall include making decisions on conditions of abating violations of this chapter, including whether to utilize the nuisance abatement procedure described in Section 94.25 of this chapter or the municipal infraction procedure referred to in Section 94.26.

(2011 Code, § 13.0221)

§ 94.22 PROCEDURES AND GUIDELINES; PRIORITY ENFORCEMENT.

The City Administrator, or the City Administrator's designee, shall be empowered to promulgate procedures and guidelines to accomplish the purposes of this chapter, and shall have the authority to establish priorities for the abatement of nuisance violations and implement appropriate procedures to abate each category of violations so established. The procedures established shall be accomplished in accordance with §§ 94.25 and 94.26 of this chapter.

(2011 Code, § 13.0222)

§ 94.23 RIGHT OF ENTRY.

The City Administrator, or the City Administrator's designee, shall have the right to enter upon any property at any reasonable time for the purpose of carrying out the City Administrator's duties in the enforcement of abatement violations. In the event that the owner of the property located within the city refuses to permit entry to the City Administrator or the City Administrator's designee, the City Administrator may seek an entry warrant from the District Court. Any entry warrant issued shall command such owner or occupant to permit entry to the City Administrator or the City Administrator's designee.

(2011 Code, § 13.0223)

§ 94.24 REMEDIES.

The City Administrator, or the City Administrator's designees, shall have, but not by way of limitation, the following remedies available to the City Administrator, or the City Administrator's designee, with respect to the abatement of nuisance violations.

(A) *No action.* After careful consideration of the facts and circumstances, the City Administrator may authorize no action to be taken on a complaint of an alleged nuisance violation.

(B) *Warning and order to abate.* If upon investigation of an alleged nuisance the City Administrator, or the City Administrator's designee, has reason to believe that a nuisance exists, the City Administrator, or the City Administrator's designee, ~~shall~~ **may** issue the violator a warning and order to abate.

(C) *Summary abatement.* Upon the advice of the City Attorney, the City Administrator shall have the power to authorize summary abatement of a violation which creates an imminent hazard to public health, safety and welfare.

(D) *Additional remedies.* Remedies provided in this chapter shall be cumulative and in addition to any other remedies which may be available to the City Administrator. Nothing contained herein shall be construed to preclude the City Administrator from seeking other such remedies in addition to, or in lieu thereof, the remedies herein granted, such as issuing a municipal infraction citation.

(2011 Code, § 13.0224) (Ord. 2209, passed 6-4-2013)

§ 94.25 ~~PROCEDURES AND GUIDELINES; ABATEMENT OF NUISANCE BY WRITTEN NOTICE.~~

~~The City Administrator shall be empowered to promulgate procedures and guidelines to accomplish the purposes of this chapter.~~

Any nuisance, public or private, may be abated in the manner provided for in this section:

(Code of Iowa, Sec. 364.12[3h])

(A) *Nuisance abatement.*

(1) Whenever an authorized municipal officer finds that a nuisance exists, the officer shall cause to be served upon the property owner a written notice to abate the nuisance within a reasonable time after notice.

(2) With regard to the nuisance involving real property, property owners will be notified after the first determination that conditions exist posing a nuisance and that a second determination of this kind will immediately constitute the failure to abate a nuisance as outlined in this section, which subjects the property owner to all applicable fines.

(B) *Contents of Notice to abate.* The notice to abate shall contain:

- (1) *Description of nuisance.* A description of what constitutes the nuisance or other condition;
- (2) *Location of nuisance.* The location of the nuisance or condition;
- (3) *Acts necessary to abate.* A statement of the act or acts necessary to abate the nuisance or condition;
- (4) *Reasonable time.* A reasonable time within which to complete the abatement; and
- (5) *Assessment of city costs.* A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the city will abate it and assess the costs against the property owner.

(C) *Method of service.* The notice may be in the form of an ordinance or sent by certified mail to the property owner.

(D) *Request for hearing.* Any person ordered to abate a nuisance may have a hearing with the City Administrator as to whether a nuisance exists. A request for a hearing must be made in writing and delivered to the Clerk within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered. The hearing will be before the City Administrator at a time and place fixed by the City Administrator. The findings of the City Administrator shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.

(E) *Abatement in emergency.* If it is determined that an emergency exists by reason of the continuing maintenance of the nuisance or condition, the city may perform any action which may be required under this chapter without prior notice. The city shall assess the costs as provided in this section after notice to the property owner and hearing under the applicable provisions of this section.

(F) *Abatement by city.* If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the city may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the Clerk, who shall pay such expenses on behalf of the city.

(G) *Collection of costs.* The Clerk shall send a statement of the total expense incurred, by certified mail, to the property owner who has failed to abide by the notice to abate; and, if the amount shown by the statement has not been paid within 30 days after the statement was sent, the Clerk shall certify the costs to the County Treasurer and such costs shall then be collected with, and in the same manner as, general property taxes.

(H) *Installment payment of cost of abatement.* If the amount expended to abate the nuisance or condition exceeds \$100, the city may permit the assessment to be paid in up to ten annual installments, to be paid in the same manner and with the same interest as benefitted property.

(I) *Interference with enforcement.* Any person who shall interfere in any way with the enforcement provisions of this chapter may be charged with a municipal infraction pursuant to the city's code of ordinances.

(J) *Failure to abate.* Any person causing or maintaining a nuisance who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this code of ordinances and may be charged with a municipal infraction pursuant to the city's code of ordinances.

(2011 Code, § 13.0227) (Ord. 2209, passed 6-4-2013)

ATTACHMENT C

§ 94.26 MUNICIPAL INFRACTION ABATEMENT PROCEDURE. In lieu of the abatement procedures set forth in Section 94.25, the requirements of this chapter may be enforced under the procedures applicable to municipal infractions as set forth in Chapter 10.99 of this Code of Ordinances.