

CHAPTER 52: PROPERTY MAINTENANCE AND NUISANCE ABATEMENT

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Editor's note:

Ord. of August 12, 2002 repealed in their entirety §§ 52-1 through 52-3, and enacted new §§ 52-1 and 52-2 as set out herein. Said former sections pertained to similar subject matter and derived from Ord. of 9-13-1999 and Ord. of 9-10-2001

ARTICLE I. PROPERTY MAINTENANCE CODE

§ 52-1 INTERNATIONAL PROPERTY MAINTENANCE CODE ADOPTED BY REFERENCE.

The International Property Maintenance Code, 2006 Edition, as published by the International Code Council, Inc., for the purpose of regulating existing buildings and structures and premises in the City of Charlotte, as in this article modified, is hereby adopted, and the current 2000 Edition, along with the local changes thereto, is repealed.

(1993 Code, § 52-1) (Ord. passed 8-12-2002; Ord. No. 2009-03, passed 2-23-2009)

§ 52-2 AMENDMENTS TO INTERNATIONAL PROPERTY MAINTENANCE CODE.

The following chapters of the 2006 Edition of the International Property Maintenance Code are hereby amended or added as set forth herein.

CHAPTER 1

ADMINISTRATION

Chapter 1, Administration, Section 108, is amended to read as follows:

SECTION 108

DANGEROUS BUILDINGS AND EMERGENCY ORDERS

108.1 Dangerous buildings or structures. It is unlawful for any owner or agent to keep or maintain any building or structure which is a "dangerous building" as defined in subsection 108.2.

108.2 "Dangerous building" means any building, structure or fixtures to a building which has any of the defects or is in any of the following conditions.

108.2.1 Has a door, aisle, passageway, stairway, or other means of exit which does not conform to the city's fire prevention code, or is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic for all persons housed or assembled therein, who would be required to or might use such door, aisle, passageway, stairway or other means of exit.

108.2.2 Has a portion which has been damaged by fire, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause so that the structural strength or stability of the building or structure is appreciably less than it was before the damage and fails to meet any minimum structural requirements set forth in the building code.

108.2.3 Has a portion which is likely to fall, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

108.2.4 Has a portion which has settled to such an extent that walls or other structural portions have materially less resistance to winds than is required by the code for new construction.

108.2.5 Which because of dilapidation, deterioration, decay, faulty construction, or because of the removal or movement of some portion of the ground necessary for the purpose of supporting such building, or any portion of the building, or for other reason, is likely to partially or completely collapse, or some portion of the

foundation or underpinning is likely to partially or completely collapse, or some portion of the foundation or underpinning is likely to fall or give away.

108.2.6 Has become, for any reason whatsoever, manifestly unsafe for the purpose for which it is used.

108.2.7 Has been so damaged by fire, wind, or flood, or has become so dilapidated or deteriorated as to become an attractive nuisance to children, or as to afford a harbor for vagrants, criminals, or immoral persons, or as to enable persons to resort thereto for the purpose of committing a public nuisance or unlawful or immoral acts.

108.2.8 If a building or structure, used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, or faulty construction or arrangement or otherwise, is unsanitary or unfit for human habitation, or is in a condition that is likely to cause sickness or disease, or is likely to cause injury to the health, safety, or general welfare of those living within.

108.2.9 Has become vacant, dilapidated, and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

108.2.10 A building or structure that remains unoccupied for a period of 180 consecutive days or longer, and is not listed as being available for sale, lease, or rent with a real estate broker licensed under Article 25 of the Occupational Code, Public Act No. 299 of 1980 (M.C.L.A. §§ 339.2401 through 339.2518). For purposes of this subsection, "building or structure" includes, but is not limited to, a commercial building or structure. This subsection does not apply to either of the following:

(a) A building or structure as to which the owner or agent does both of the following:

(i) Notifies the Charlotte Police Department that the building or structure will remain unoccupied for a period of 180 consecutive days. The notice shall be given to the police department by the owner or agent not more than 30 days after the building or structure becomes unoccupied.

(ii) Maintains the exterior of the building or structure and adjoining grounds in accordance with this chapter and the applicable building code of the city.

(b) A secondary dwelling of the owner that is regularly unoccupied for a period of 180 days or longer each year, if the owner notifies the police department that the dwelling will remain unoccupied for a period of 180 consecutive days or more each year. An owner who has given the notice prescribed by this subparagraph shall notify the police department not more than 30 days after the dwelling no longer qualifies for this exception. As used in this subparagraph, "secondary dwelling" means a dwelling, such as a vacation home, hunting cabin, or summer home, that is occupied by the owner or a member of the owner's family during part of a year.

108.2.11 Has a boiler, heating equipment, cooling equipment, elevator, moving stairway, electrical wiring or device, flammable liquid container, or plumbing device or piping on a premises or structure in such disrepair or condition that it is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

108.3 Notice; contents; filing of notice with officer; service.

108.3.1 When the chief code official determines that any building or portion thereof is in a dangerous or unsafe condition, as defined in subsection 108.2, the chief code official shall issue a notice of such condition.

108.3.2 Such notice shall be directed to each owner of or party in interest in the building in whose name the property appears on the last city tax assessment records, and to any other person known to the chief code official to have an ownership interest.

108.3.3 The notice shall set forth the particular conditions alleged to comprise the danger, and shall specify the time and place of a hearing on the condition of the building or structure, at which time and place the person to whom the notice is directed shall have the opportunity to show cause why the building or structure shall not be ordered to be demolished, otherwise made safe, or properly maintained.

108.3.4 The hearing officer shall be appointed by the mayor, to serve at the mayor's pleasure. The hearing officer shall be a person who has expertise in housing matters, including but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization, and shall not be an employee of the city in any capacity. The building board of appeals may be appointed as the hearing officer. If the board of appeals is appointed, decisions shall be made by a majority of a quorum present in accordance with Robert's Rules of Order, Newly Revised. The building official shall file a copy of the notice of the dangerous and unsafe condition with the hearing officer.

108.3.5 All notices shall be in writing and shall be served upon the person to whom they are directed personally, or mailed by certified mail, return receipt requested, to the owner or party in interest at the address shown on the tax records, at least ten days before the date of the hearing described in the notice. If any person to whom a notice is directed is not personally served, in addition to mailing the notice, a copy thereof shall be posted upon a conspicuous part of the building or structure.

108.4 Hearing; testimony; decision; order, nonappearance or noncompliance; review; order to show cause; costs.

108.4.1 The hearing officer shall take testimony of the building official, the owner of the property, and any interested party. The hearing officer shall render a decision, either closing the proceedings or ordering the building to be demolished or otherwise made safe, or properly maintained.

108.4.2 If it is determined by the hearing officer that the building or structure should be demolished, otherwise made safe, or properly maintained, the hearing officer shall so order, fixing a time in the order for the owner, agent or lessee to comply with the order.

108.4.3 If the owner, agent or lessee fails to appear or neglects or refuses to comply with the order, the hearing officer shall file a report of the findings and a copy of the order with the city council not more than five days after noncompliance by the owner, and request that the necessary action be taken to enforce the order. A copy of the findings and order of the hearing officer shall be served on the owner, agent or lessee in the manner prescribed in subsection 108.3.5 above.

108.4.4 The city council shall fix a date not less than 30 days after the hearing prescribed in subsection 108.4.1 for a hearing on the findings and order of the hearing officer, and shall give notice to the owner, agent or lessee, in the manner prescribed in subsection 108.3.5, of the time and place of the hearing. At the hearing, the owner, agent or lessee shall be given the opportunity to show cause why the order should not be enforced, and the city council shall either approve, disapprove, or modify the order. If the city council approves or modifies the order, the city council shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent, or lessee shall comply with the order within 60 days after the date of the hearing under this subsection. In case of an order of demolition, if the city council determines that the building or structure has been substantially destroyed by fire, wind, flood or other natural disaster, and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent or lessee shall comply with the order of demolition within 21 days after the date of the hearing under this subsection.

108.4.5 If there is not full compliance with the order and the order has not been appealed to circuit court, or was appealed and affirmed, the city may take whatever steps it deems appropriate to bring the building into compliance, including demolition, maintenance or seeking appropriate court orders. The cost of bringing the property into compliance, including the cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure, or grounds adjoining the building or structure, incurred by the city shall be reimbursed to the city by the owner or party in interest in whose name the property appears.

108.4.6 The owner or party in interest in whose name the property appears upon the last city tax assessment records shall be notified of the amount of such cost by first class mail at the address shown on the records. If the owner or party in interest fails to pay the same within 30 days after mailing by the assessor, the city shall have a lien for the cost incurred to bring the property into conformance with the order. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. The lien does not have priority over previously filed or recorded liens. The lien shall be added to the next tax roll of the city, and the same shall be collected in the same manner in all respects as provided by law for the collection of taxes by the city.

108.4.7 In addition to other remedies under this chapter, the city may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. The city shall have a lien on the property for the amount of a judgment obtained pursuant to this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over prior filed or recorded liens and encumbrances. Pursuant to § 141a of the Housing Law of Michigan, being M.C.L.A. § 125.541a, a judgment under this subsection may be enforced against the assets of the owner other than the building or structure. The lien for the amount of judgment obtained pursuant to this subsection shall be against the owner's interest in all real property located in this state that is owned, in whole or in part, by the owner of the building or structure against whom the judgment is obtained.

108.5 Review. An owner aggrieved by the decision or order of the city council may appeal the decision or order to the circuit court by filing a petition for review within 21 days from the date of the decision.

108.6 Occupied building constituting immediate danger. When the building official determines that any building or structure, or part thereof, is in such condition as to make it immediately dangerous to the life, limb, property, or safety of the public or the occupants, the building official shall order it vacated, insofar as is reasonably practicable, and shall issue and serve a notice of such order in the manner prescribed in subsection 108.3.5; provided, however, that the order to vacate shall remain in effect unless and until it shall be set aside or is modified by the building official, hearing officer, city council or judicial action.

108.7 Posting of signs. When a building is determined to be immediately dangerous or otherwise unsafe, a sign shall be posted at or upon each exit of the building, and shall be in substantially the following form:

Do not enter—Unsafe to occupy

It is a misdemeanor to occupy this building or to remove or deface this notice. By order of the Charlotte Building and Code Enforcement Department.

Penalty: It is a misdemeanor to occupy a building posted in compliance with this section or to remove or deface the notice posted in compliance with this section.

108.8 Closing of vacant structures constituting immediate danger. If part thereof is vacant and deemed by the chief code official to be a nuisance constituting an immediate danger, the code official shall issue the notice required under subsection 108.3, post the notice required under subsection 108.7 on the premises, and order the structure closed up so it will no longer be an immediate danger.

108.8.1 Closing streets. When necessary for public safety, the code official shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

108.9 Emergency orders.

(1) When a code official has found an emergency to exist on any premises, or in any structure or part thereof, or any defective equipment which requires immediate action to protect the health, safety, or welfare of occupants or the general public, and has issued an order in accordance with subsection 108.6 or 108.8, reciting the existence of an emergency and requiring the vacating of the premises or structure or closing of a vacant structure, the order shall be effective immediately, regardless of any pending hearing or appeal.

(2) The order may not allow more than 72 hours for correction of the violation.

(3) If the owner fails to comply with the emergency order by the time designated thereon, the city shall secure the building at the expense of the owner, and the cost shall be recovered from the building owner pursuant to subsections 108.4.6 and 108.4.7.

108.10 Appeal of emergency order. Any person to whom an emergency order is directed and served shall vacate or secure the premises within the time stated in the order. The person may thereafter be afforded a hearing as provided by subsections 108.3 and 108.4.

108.11 Violation of condemnation or emergency orders. After a condemnation or emergency order has been issued, and the code official has posted the order on the structure or parts thereof, on the premises, or on defective equipment or facilities, along with a statement of the penalties provided for any occupancy or use or for removing the order, no person shall occupy the premises or portion thereof so posted, remove or deface the order, or otherwise violate the terms thereof. The code official shall remove the order as soon as practicable after the condition or defect causing the posting of the order has been corrected.

108.12 Temporary safeguards. Notwithstanding other provisions of this chapter, when the chief code official determines there is actual and immediate danger of collapse or failure of a structure or other hazardous condition which creates a danger so immediate that any delays would jeopardize the health, safety, or welfare of the public, and that vacating the structure would not remedy, the chief code official shall initiate the necessary work to be done to render such structure temporarily safe, and shall cause such other action to be taken as the code official deems necessary to meet such emergency, and the cost shall be recovered from the building owner pursuant to subsections 108.4.6 and 108.4.7.

108.13 Standards for condemnation or emergency orders. In determining that any defective equipment, structure, premises or portion thereof, or other place used or designed or intended for human habitation or occupancy, is unsafe, unfit, or dangerous for continued human habitation or occupancy, the code official shall consider, but is not limited to, the following:

- (1) Health hazards.
- (2) Lack of, or inadequate, sanitation.
- (3) Structural hazards.
- (4) Hazardous equipment and facilities, including electrical wiring and service, plumbing and mechanical heating, cooling and ventilation equipment.
- (5) Fire hazards.
- (6) Faulty construction processes, procedures, methods and materials.
- (7) Illegal use of space for human habitation.
- (8) Illegal occupancy.
- (9) Hazardous or unsanitary premises, including the presence of a public nuisance as defined in this chapter.

108.14 Interference with repair or corrective action. No person shall physically obstruct, impede, or interfere with any code official, city employee or authorized representative, including private contractors, while lawfully engaged in the performance of their duties under this chapter.

108.15 Prohibited use. No person shall occupy a premises or structure or part thereof, or shall use equipment, and no owner or any person responsible for the premises shall let anyone occupy a premises or use equipment which has been condemned or ordered vacated.

108.16 Removal of condemnation or emergency order. No person shall deface or remove a condemnation or emergency order without approval of the code official.

Chapter 1, Administration, Section 111, is amended to read:

SECTION 111

MEANS OF APPEAL

111.1 Appeal. Any person affected by any corrective order which has been issued in connection with the enforcement of this Code, or the application of any rule or regulation adopted in conjunction with this Code, shall have the right to a hearing on the matter before the building board of appeals; provided that such person shall file a written petition, requesting the hearing and containing a statement of the grounds therefor, within 21

days after the day the corrective order was served or reconsideration denied, but in no event less than five days before reinspection. The petition shall be accompanied by the appropriate filing fee. Late appeals may be granted at the discretion of the city manager on the showing of good cause.

111.2 Board action. Upon hearing all relevant views, opinions and disclosures of fact, and assessing all supporting documentation submitted by the petitioner, city staff, and other interested parties, the building board of appeals shall take appropriate action in accordance with the procedures established in § 14-30 and Article III of Chapter 82 of the City Code, pertaining to the board of appeals. The board of appeals is authorized to hear an appeal of the code official's interpretation of a provision of this code. The code official's interpretation may only be overturned if four members of the board agree in the decision. If less than five members of the board are present, the issue may be continued until the next meeting, unless four members agree to uphold the decision of the code official. No appeal is authorized by this provision to the state building board of appeals from the decision of the City's building board of appeals.

111.3 Stay. Except for criminal proceedings or civil infraction proceedings instituted in district court as a result of a violation of this chapter, an appeal to the building board of appeals, the zoning board of appeals, a request for reconsideration or pending litigation before a court of competent jurisdiction, shall stay all proceedings in furtherance of the action appealed from, unless the chief code official determines that a stay would impose unnecessary hardship or danger on other parties. The proceedings shall not be stayed except by action of the city council or by a court of competent jurisdiction.

(1993 Code, § 52-2) (Ord. passed 8-12-2002; Ord. No. 2009-03, passed 2-23-2009)

§§ 15-3 -- 15-25 RESERVED.

DIVISION 1. GENERALLY

§ 52-26 PUBLIC NUISANCE DEFINED AND PROHIBITED.

(A) A **PUBLIC NUISANCE** is defined as follows:

(1) Any unreasonable interference with a common right enjoyed by the general public. It includes conduct:

(a) Which significantly interferes with the safety, health, comfort, peace, convenience or repose of the public;

(b) Offends public decency;

(c) Significantly interferes with, obstructs or renders dangerous any street, highway, navigable lake or stream; or

(d) In any way renders the public insecure in life or property;

(e) Which is known, or should have been known, to be of a continuing nature that produces a permanent or long-lasting, significant effect on these common rights;

(2) Public nuisances shall include, but not be limited to, whatever is forbidden by any provision of this article, or where nuisance is referenced in Chapters 10, 18, 58, 68 and 82.

(B) No person shall commit, create or maintain any public nuisance.

(1993 Code, § 26-26) (Ord. No. 2009-04, passed 6-22-2009)

Cross-reference:

Definitions and rules of construction generally, see § 1-2

§ 52-27 ENUMERATION OF NUISANCES.

The following acts, services, apparatus and structures are hereby declared to be public nuisances:

- (A) The maintenance of any pond, pool of water or vessel holding stagnant water.
- (B) The pollution of any stream, lake or body of water by depositing or permitting to be deposited any refuse, toxic or industrial waste of forcing or discharging into any public or private sewer or drain any stream or gas.
- (C) Any vehicle used for any illegal purpose.
- (D) Betting, bookmaking and all apparatus used in such occupations.
- (E) All gambling devices.
- (F) Gambling houses and all houses kept for the purpose of prostitution or promiscuous sexual intercourse.
- (G) All dangerous, unguarded excavations or machinery in any public place, or left or operated on private property so as to endanger the safety of the public.
- (H) The owning, driving or moving upon any public streets and alleys of trucks or other motor vehicles that are constructed or loaded so as to permit any part of their load or contents to blow, fall or be deposited upon any street, alley, sidewalk or other public or private place, or which deposits from its wheels, tires or other parts, onto the street, alley, sidewalk or other public or private place, dirt, grease, sticky substances or foreign matter of any kind.
- (I) The placing, or causing to be placed, in or on any motor vehicle parked upon any street, alley or other public place within the corporate limits of the city, any paper, posters, signs, cards or other advertising matter.
- (J) The presence of an inoperable motor vehicle or parts of a motor vehicle on any land in violation of the terms of Division 2 of this article.

(1993 Code, § 26-27) (Ord. No. 2009-04, passed 6-22-2009)

§§ 52-28 -- 52-40 RESERVED.

DIVISION 2. OPEN STORAGE OF INOPERABLE MOTOR VEHICLES

§ 52-41 DEFINITIONS.

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

ABANDONED VEHICLE. A vehicle located on a public right-of-way or an area open to the public without consent of the Police Department, for a period of 48 hours after the Police Department has affixed a written notice to the vehicle.

INOPERABLE MOTOR VEHICLE. A motor vehicle that, on the date of inspection, cannot be driven under its own power in compliance with the Uniform Traffic Code, as amended. Vehicles without current registration plates shall be deemed inoperable.

MOTOR VEHICLE. Any wheeled vehicle that is self-propelled or intended to be self-propelled.

(1993 Code, § 26-41) (Ord. No. 2009-04, passed 6-22-2009)

§ 52-42 CONSTRUCTION OF DIVISION.

This division shall not be deemed to be in conflict with other provisions of this code relating to rubbish, litter, garbage, refuse, trash or junk, but shall be construed as supplementary to any such provisions as well as any statutes of the state relating thereto.

(1993 Code, § 26-42) (Ord. No. 2009-04, passed 6-22-2009)

Cross-reference:

Solid waste, see Chapter 50

§ 52-43 STORAGE OF INOPERABLE MOTOR VEHICLES OR PARTS.

It is hereby declared to be unlawful for any person to store on, place on, or permit to be stored or placed on, or allowed to remain on any land, an inoperable motor vehicle or any parts of a motor vehicle, unless the vehicle or parts shall be kept in a wholly enclosed building. Any such owner, co-owner, tenant or cotenant may be excused from compliance with this section for a period of not to exceed 48 hours, if such motor vehicle is registered to such person, and any such person may, in the event of hardship, upon payment of the fee provided in this division, secure a permit from the Building Official to extend such period of 48 hours for an additional period of not to exceed 1 week for any vehicle, if such motor vehicle is registered to such person. This section shall not apply to businesses in areas zoned to permit inoperable vehicles.

(1993 Code, § 26-43) (Ord. No. 2009-04, passed 6-22-2009)

§ 52-44 PERMITS.

Upon application duly made by the registered owner of a motor vehicle and upon showing of hardship, the Building Official is hereby authorized to issue the permits provided for in § 52-43. A fee of \$1 for each such permit issued shall be collected and shall be paid into the General Fund.

(1993 Code, § 26-45) (Ord. No. 2009-04, passed 6-22-2009)

§ 52-45 REMOVAL OF ABANDONED VEHICLES.

It shall be unlawful for anyone to place or allow to remain on a public right-of-way or area open to the public a vehicle, for a period of time in excess of 48 hours subsequent to the affixing of a written notice on the vehicle by the Police Department. After the passage of the 48-hour period, the vehicle may be removed by the Police Department.

(1993 Code, § 26-46) (Ord. No. 2009-04, passed 6-22-2009)

§ 52-46 PRESUMPTION OF VIOLATION BY REGISTERED OWNER.

The registered owner of an abandoned vehicle shall be presumed to be the person who placed or allowed the vehicle to remain in violation of this division. For purposes of criminal prosecution, proof of registration shall be prima facie evidence of the placing or allowing to remain by the owner of the abandoned vehicle.

(1993 Code, § 26-47) (Ord. No. 2009-04, passed 6-22-2009)

§§ 52-47 -- 52-70 RESERVED.

DIVISION 3. NOISE

§ 52-71 UNLAWFUL ACTS.

It shall be unlawful for any person to make, continue or cause to be made or continued, any loud, unnecessary or unusual noise, or any noise that either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

(1993 Code, § 26-71) (Ord. 2009-04, passed 6-22-2009)

§ 52-72 ENUMERATION OF SPECIFIC OFFENSES.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but their enumeration shall not be deemed to be exclusive.

(A) *Horns, signaling devices, and the like.* The sounding of any horn or signaling device on any automobile, motorcycle, street car or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; the sounding of any such device for an unnecessary and unreasonable period of time; the use of any signaling device, except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.

(B) *Radios, phonographs, and the like.* The playing, using or operating, or permitting to be played, used or operated, of any radio receiving set, musical instrument, phonograph, or other 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 persons who are in the room, vehicle or chamber in which such machine or device is operated, and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(C) *Loudspeakers, amplifiers for advertising.* The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproduction of sound, which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

(D) *Yelling, shouting, and the like.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence or of any persons in the vicinity.

(E) *Animals, birds, and the like.* The keeping of any animal or bird that, by causing frequent or long continued noise, shall disturb the comfort or repose of any persons in the vicinity.

(F) *Steam whistles.* The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, or as a warning of fire or danger, or upon request of proper city authorities.

(G) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat, or motor vehicle, except through a muffler or other device that will effectively prevent loud or explosive noises therefrom.

Further, it shall be unlawful to operate any motor vehicle within the city using exhaust brakes, engine brakes, compression release engine brakes (also known as Jake brakes or Jacobs brakes) or similar devices; provided, however, such brakes or similar devices may be lawfully used on any interstate highway located within the city.

(H) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(I) *Loading, unloading, opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle, or the opening and destruction of bales, boxes, crates and containers.

(J) *Construction or repairing of buildings; permit for work.* The erection (including excavating), demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 9:00 p.m., except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Building Official, which permit may be granted for a period not to exceed three days or less while the emergency continues, and which permit may be renewed for periods of three days or less while the emergency continues. If the Building Official should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 9:00 p.m. and 7:00 a.m., and if he or she shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours of 9:00 p.m. and 7:00 a.m., upon application being made at the time the permit for the work is awarded or during the progress of the work.

(K) *Schools, courts, churches, hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while such are in use, or adjacent to any hospital that unreasonably interferes with the workings of such institution, or that disturbs or unduly annoys patients in the hospital; provided conspicuous signs are displayed in such streets indicating that the street is a school, hospital or court street.

(L) *Devices to attract attention.* The use of any drum, loudspeaker, amplifier or other instrument or device for the purpose of attracting attention for any purpose.

(1993 Code, § 26-72) (Ord. passed 9-28-1992; Ord. 2009-04, passed 6-22-2009; Ord. 2011-01, passed 2-28-2011)

§ 52-73 EXCEPTIONS.

None of the terms or prohibitions of this article shall apply to or be enforced against the following.

(A) *Emergency vehicles.* Any police or fire vehicle or any ambulance, while engaged upon emergency business.

(B) *Highway maintenance and construction.* Excavations or repairs of bridges, streets, or highways by or on behalf of the city, county or the state, during the night, when the public safety, welfare and convenience renders it impossible to perform such work during the day.

(C) *Loudspeakers at an approved event.* Using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproduction of sound, which is cast upon the public streets during an event that has received prior approval from the City Manager or designee when the event is sponsored by the city or a non-profit organization.

(1993 Code, § 26-73) (Ord. 2009-04, passed 6-22-2009; Ord. 2019-08, passed 11-12-2019)

§ 52-74 STANDARDS FOR DENSITY OF EMISSIONS.

(A) Except as provided in subsections (B), (C), and (D) of this section, a person shall not cause or permit to be discharged into the outer air, from a process or process equipment, a visible emission of a density greater than the most stringent of the following:

(1) A 6-minute average of 20% opacity, except for 1 6-minute average per hour of not more than 27% opacity;

(2) A limit specified by an applicable federal new source performance standard;

(3) A limit specified as a condition of a permit to install or permit to operate.

(B) The provisions of this rule shall not apply to any process or process equipment for which fugitive visible emission limitations are specified by the State Department of Environmental Quality.

(C) The provisions of subsection (A) of this section shall not apply to visible emissions due to uncombined water vapor.

(D) Upon request of the owner of a process or process equipment for which an allowable particulate emission rate is established by the State Department of Environmental Quality, the Department may establish an alternate opacity. Such alternate opacity shall not be established by the City unless the City is reasonably convinced of all of the following:

(1) That the process or process equipment subject to the alternate opacity is in compliance or on a legally enforceable schedule of compliance with other rules of the State Department of Environmental Quality;

(2) That compliance with the provisions of subsection (A) of this section is not technically or economically reasonable;

(3) That reasonable measures to reduce opacity have been implemented or will be implemented in accordance with the schedule approved by the State Department of Environmental Quality.

(E) Any violation of this section shall constitute a misdemeanor, which is enforceable as provided by law. Each day that a violation exists or continues constitutes a separate and additional violation.

(1993 Code, § 26-74) (Ord. passed 12-9-2002; Ord. No. 2009-04, passed 6-22-2009)

§§ 52-75 -- 52-90 RESERVED.

DIVISION 4. WEEDS

§ 52.91 WEED GROWTH PROHIBITED.

(A) All areas, except those lots that are in excess of 5 acres in size, shall be kept free from weeds in excess of 10 inches. Lots that are in excess of 5 acres shall be kept free from weeds in excess of 10 inches within 100 feet of any street or alley, and within 100 feet of any property line that abuts any platted lot; provided, however, that the provisions of this section shall not apply to the following areas:

(1) Open space, landscaped areas and storm water retention and detention facilities developed in accordance with a site plan approved by the Planning Commission;

(2) Areas beside ponds, lakes and open waterways;

(3) Steep slopes subject to erosion;

(4) Parcels used for public parks or other governmental purposes;

(5) Wildflower plantings, meadows or similar naturalized areas grown on portions of unplatted lots or parcels;

(6) Groups of contiguous platted lots in excess of 5 acres; and

(7) Unplatted parcels in excess of 5 acres zoned R-1 or R-2 that are vacant or used for farms or single-family developments of a rural character.

(B) **WEEDS** shall be defined as all grasses, annual plants and vegetation other than trees or shrubs; provided, however, this term shall not include cultivated flowers and gardens. It shall be the duty of any person owning, leasing, occupying or otherwise controlling any plot of ground in the city to prevent the growth of weeds thereon.

(1993 Code, § 70-76) (Ord. No. 2009-04, passed 6-22-2009)

§ 52-92 DUTY OF OCCUPANT OR OWNER.

It shall be the duty of the occupant of every premises and the owner of unoccupied premises within the city to cut and remove, or destroy by lawful means, all such weeds and grass as often as may be necessary to comply with the provisions of § 52-91.

(1993 Code, § 70-77) (Ord. No. 2009-04, passed 6-22-2009)

§ 52-93 CUTTING BY CITY.

(A) If any person shall fail to comply with the provisions of § 52-92 by the specified time, the City Manager shall, through the Department of Public Works, cause all such grass and weeds to be cut or destroyed upon lands of the person not complying with the provisions of this article. The City Council shall determine the hourly rates

to be charged for cutting of weeds. The Director of the Department of Public Works shall cause the owners of property, upon which the City has cut weeds, to be billed for such services in accord with the time spent and the rates established.

(B) If such charges are unpaid, the costs for weed cutting shall be certified to the City Treasurer and collected as provided in Charter, § 9.10.

(1993 Code, § 70-78) (Ord. No. 2009-04, passed 6-22-2009)

§ 52-94 VIOLATION NOT EXCUSED.

The facts that grass or weeds are cut by the City and the cost thereof charged to or paid by the owner shall not excuse the owner from responsibility for the violation of this Code thereby abated. Failure to cut grass or weeds by the owner, as required in this article, shall constitute a violation of this Code, punishable as provided in § 1-16, regardless of whether such grass and weeds are cut subsequent to the commission of such violation.

(1993 Code, § 70-79) (Ord. No. 2009-04, passed 6-22-2009)

§§ 52-95 -- 52-99 RESERVED.

ARTICLE II. NUISANCE ABATEMENT

ARTICLE III. FEES

§ 52-100 SCHEDULE OF FEES FOR ISSUANCE OF NOTICES OF VIOLATION, CITY ATTORNEY WARNING LETTERS, AND REQUESTS FOR REINSPECTION.

(A) The City hereby assesses fees which shall be paid by the owner of the property, or such other responsible person, as it relates to the enforcement of the provisions of this chapter. The City assesses fees relating to the following activities:

(1) There shall be a fee assessed for the issuance of a notice of violation.

(2) There shall be a fee assessed for the administrative extension of a notice of violation.

(3) There shall be a fee assessed for the issuance of any City Attorney warning letter regarding the enforcement of this chapter.

(4) There shall be a fee assessed for any reinspection requested by the City Attorney or the court to determine compliance with the cited violation of this chapter.

(B) These fees shall be in addition to fines and costs, if any, as may be assessed by a court of competent jurisdiction.

(Ord. No. 2009-04, passed 6-22-2009)

§ 52-101 ESTABLISHMENT OF THE AMOUNT OF FEES.

At the time of the adoption of Ordinance No. 2009-04, the City Council shall, by resolution, establish a schedule of fees for those activities as set forth in § 52-100. Thereafter, the schedule of fees may be amended by City Council from time to time by resolution.

(Ord. No. 2009-04, passed 6-22-2009)

§ 52-102 ESTABLISHMENT OF A LIEN.

If the fees as established in this article remain unpaid for a period of 60 days, then pursuant to § 2.1(B)(1) of the City Charter, the fees so assessed shall become a lien upon the property, shall be charged as a special

assessment against the real property, and shall be collected in the same manner as special assessments are collected under the City Charter and the City Code.

(Ord. No. 2009-04, passed 6-22-2009)