

ORDINANCE NO. 349

AN ORDINANCE AMENDING THE CITY OF HARTLEY, IOWA 2016 MUNICIPAL CODE OF ORDINANCES BY REPEALING CHAPTER 50 NUISANCE ABATEMENT PROCEDURE AND ADOPTING A NEW CHAPTER 50 NUISANCE ABATEMENT PROCEDURE IN LIEU THEREOF

WHEREAS, the City of Hartley City Council wants to protect the public and its residents from nuisances that are 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; and

WHEREAS, The City Council wants to define such nuisances and have a process to abate and remove nuisances from the City; and

BE IT ENACTED by the City Council of Hartley, Iowa;

SECTION 1: SECTION AMENDED. To repeal Chapter 50 Nuisance Abatement Procedure and to replace in lieu thereof with a new Chapter 50 Nuisance Abatement Procedure to Hartley's 2016 Code of Ordinances to read as follows:

CHAPTER 50 – NUISANCE ABATEMENT PROCEDURE

50.01 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)

50.02 NUISANCES ENUMERATED.

The following subsections include, but do not limit, the conditions which are deemed to be nuisances in the City:

1. **Offensive Smells.** Erecting, continuing or using any building or other place for the exercise of any trade, employment or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public.

(Code of Iowa, Sec. 657.2(1))

2. **Filth or Noisome Substance.** Causing or suffering any offal, filth or noisome substance to be collected or to remain in any place to the prejudice of others.

(Code of Iowa, Sec. 657.2(2))

3. **Impeding Passage of Navigable River.** Obstructing or impeding without legal authority the passage of any navigable river, harbor or collection of water.

(Code of Iowa, Sec. 657.2(3))

4. Water Pollution. 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.

(Code of Iowa, Sec. 657.2(4))

5. Blocking Public and Private Ways. Obstructing or encumbering, by fences, buildings or otherwise, the public roads, private ways, streets, alleys, commons, landing places or burying grounds.

(Code of Iowa, Sec. 657.2(5))

6. 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.

(Code of Iowa, Sec. 657.2(6))

7. Billboards. Billboards, signboards and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard or alley or of a railroad or street railway track as to render dangerous the use thereof. **(See also Section 62.06)**

(Code of Iowa, Sec. 657.2(7))

8. Storing of Flammable Junk. Depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, bones and paper, by dealers in such articles within the fire limits of the City, unless in a building of fireproof construction. (See also Chapter 51)

(Code of Iowa, Sec. 657.2(9))

9. Air Pollution. Emission of dense smoke, noxious fumes or fly ash.

(Code of Iowa, Sec. 657.2(10))

10. Dutch Elm Disease. Trees infected with Dutch Elm Disease. (See also Chapter 151)

(Code of Iowa, Sec. 657.2(12))

11. Emerald Ash Borer Disease. Trees infected with Emerald Ash Borer Disease. **(See also Chapter 51)**

12. Community Standard. A house, building or land, visible from any public place or private premises, remaining in an unclean or disorderly condition and to a standard not conforming with other orderly premises in that vicinity.

13. Maintenance of Premises. Premises maintained in a manner causing substantial diminution in the value of other property in the neighborhood in which such premises are located.

14. Construction Site Litter. The maintenance of a construction site in such a manner that litter will not be prevented from being carried by the elements to adjoining premises.
15. Abandoned Objects. Abandoned, discarded or unused objects or equipment such as automobiles, furniture, appliances, cans or containers.
16. Compost Pile. Any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin or other disease-carrying pests, animals or insects.
17. Livestock. Except in areas zoned "A" Agricultural and subject to the requirements of Section 55.08, keeping farm animals and fowl within the City limits, including (but not limited to) ducks, geese, chickens, turkeys, cattle, goats, swine, buffalo, horses and ponies.
18. Rock and Earth Slides. Storing or permitting the storage of material such as, but not limited to, sand, gravel, rock, earth, coal and grain in piles with side slopes in excess of the angle of repose of said material, the angle of repose being the angle that the surface of free-standing material makes with the horizontal plane without slipping, sliding or collapse of the material. (This subsection does not apply to accumulations or piles of snow or to materials stored in a building, enclosure or completely fenced area to which members of the public are not permitted access.)
19. No person shall store or permit to be stored dirt, sand, gravel, debris or similar materials on a property unless said dirt or other materials shall be leveled and the lot brought to uniform grade consistent with surrounding lots. As an exception to the foregoing, the following uses are permitted:
 - a. Materials stored in bulk which are to be used as a part of the normal operations of a legally permitted landscaping business for use on other lots or to be sold on premises.
 - b. Dirt, sand, gravel and other materials may be stored in mounds for a period not to exceed four (4) months on a property in anticipation of construction on that lot, or in connection with construction on a neighboring lot, but for no other purpose.
20. Failure to establish a permanent cover of perennial grasses on any non-farm property or adjacent unpaved public right-of-way as soon as practical after any construction on the lot and adjacent right of way, and to thereafter maintain same in such condition as to substantially bind the surface of the soil and prevent erosion, whether by sheet or gullying, or by wind or water. Exceptions shall be permitted for densely shaded areas, landscape beds, and gardens, provided that vegetable gardens and agricultural crops shall not be placed in the front yard of a non-farm property, unless it can be demonstrated that no other viable location exists on the premises because of topography, natural vegetation, or similar circumstances out of the resident's control. Additionally, if permanent grass cover fails to establish itself on the right of way, due to road salt, sand and other winter maintenance procedures, then ornamental rock cover may be established, subject to the approval of the City Clerk and/or designee.
22. Trash piles. Accumulation of rubbish or trash tending in nature to harbor or attract vermin, rodents, or other disease-carrying pests, animals or insects, or to spread or harbor disease, emit unpleasant odors or harmful gas or creating a hazard of fire.
23. Dead Animals and Other Contaminated Material. Carcasses of animals remaining exposed and unburied six hours after death, or green or slated hides left or deposited in any open or public places;

the storage, collection, discharge or depositing of any liquid waste, offal, filth, garbage, refuse, dead animals, or contaminated material in any private or public place so as to threaten the health or safety of or which is offensive to the senses of any individual or the public, or which is conducive to the breeding and harborage of flies, rats, or other vermin. Game animals being processed according to Iowa Department of Natural Resources regulations are exempted.

24. Disposal of Dead Animals. The disposal of dead animals by means other than by rendering, by burying at least three feet under the surface of the ground, or by transportation to and disposal at the Northern Plains Regional Landfill.
25. Deposits on Parking. The deposit or storage of any garbage or refuse containers, brush, rubbish, grass, rocks, building materials, incinerators, or any other debris or materials on the parking or area between the sidewalk and the curb of any street, except for a period not to exceed 24 hours while awaiting removal by garbage or refuse haulers. (See also Chapters 105 and 106)
26. Rats and Other Vermin. An infestation of rats or other vermin in or upon any premises.
27. Spreading Disease. The exposure of any person to any communicable disease by unlawful act or practice.
28. Unlawful Manufacture of Drugs. The unlawful manufacture, formulation, sale, distribution, and/or use of drugs, medication, devices, materials and/or chemicals.
29. Attractive Nuisance. Failure to secure areas, building, or places against unauthorized access where such access threatens the health or safety of individuals, or is an attractive nuisance to children.
30. Debris, Refuse, Rubbish, Trash. Accumulations of unused boards, bricks, concrete or rocks, animal or vegetable products or matter, appliances, ashes, barrels (excluding burn barrels and solid waste collection barrels awaiting pickup), bones, bottles, boxes, broken glass, brush, cans, cartons, cinders, coal, crates, pallets, decayed fruits or vegetables, dirt, dust, excrement, fence wire, filth, firewood not piled or stacked neatly or systematically, flammable materials, garbage, gasoline, grass, household furniture, discarded or broken or abandoned toys, iron and other metals, junk, kegs, leaves, logs, lumber not piled or stacked neatly and systematically (must have nails removed and be in rear yard; untreated lumber must be stacked), lumber scraps, manure, nails, offal, oil, old wearing apparel, paper, plaster, plastic (discarded containers or wrappers), plumbing fixtures, putrid fish or meat entrails, rags, roof shingles, rubber, sawdust, slag slop, soot, straw, sweepings, tacks, tarpaulins not in good repair, tires (mounted or unmounted), toilets, tubs, vehicle parts, weeds, wire, wood or metal shavings, any type of solid or yard waste (bagged or unbagged), or any condition or item that would prohibit the routine maintenance of the property or adversely affect the use and habitability of nearby property and of property within the City as a whole. Foliage and shrub clippings or cuttings, leaves, brush and fallen tree limbs or debris, firewood and other yard waste may be stored in piles in a rear yard not less than two (2) feet from a lot line and should be stored temporarily pending disposal or when used for mulch or composting or firewood.
31. Furniture, Fixtures and Appliances Outdoors. Any furniture, fixture, and appliance, including sofas,

divans, recliners, toilets, bathtubs, sinks and similar objects that are not designed for outdoor use but which are maintained or located on any porch, lawn, parking lot, driveway, or public right-of-way.

32. Miscellaneous. Any act done or committed or suffered to be done or committed by any person — or any substance or thing kept, maintained, placed, or found in or on any public or private place — which is annoying or damaging or injurious or dangerous to the public health or welfare or safety, and every act or thing done, permitted, maintained, allowed, or continued on any property, public or private, by any person, which is liable to or does endanger, annoy, damage, or injure any person or inhabitant of the City or property of said person or inhabitant.
33. Vehicle Parts. Storage (other than in an enclosed building) on private property that is residentially zoned of any two or more vehicle parts, including (but not limited to) bumpers, engines, exhaust pipes, doors, fenders, hoods, mufflers, seats, windshields or windows, wheels, or any other structural, mechanical, or decorative vehicle parts.
34. Storage on Trailers or Trucks. The storage of anything on an unenclosed trailer, pickup, truck box, or like vehicles shall be treated in the same manner as storage outside of an enclosed structure. Coverage with a tarp is not considered enclosed.
35. Abandoned Objects. Abandoned, discarded or unused objects or equipment such as automobiles, furniture, appliances, cans or containers.
36. Obstruction of drainage. Any article or substance placed upon any street, alley, sidewalk, public ground or in any ditch, waterway or gutter so as to obstruct the same.
37. Obstruction of view. All trees, hedges, billboards, advertisement signs or other obstructions which prevent persons from having a clear view of traffic approaching an intersection from cross streets in sufficient time to bring a motor vehicle driven at a reasonable speed to a full stop before the intersection is reached.
38. Septic effluent. Effluent from a septic tank or drainage field running or ponding on the ground in the open, including in ditches.
39. Ponding water. An accumulation of water until it becomes stagnant.
40. 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.
41. Poison. The deposit of any poisonous material or thing on any premises, so as to allow access to it by any animal or person.
42. Any sign or sign structure which is structurally unsafe, or constitutes a hazard to safety or health by reason of its location, inadequate maintenance or dilapidation, or is not kept in good repair, or is

capable of causing electric shocks to persons likely to come in contact with it, or which obstructs free ingress or egress from a required door, window, fire escape or other required exit-way.

43. Signs accessible to the general public containing statements, words or pictures of an obscene or pornographic character.
44. Residential or non-residential structures, the condition of which constitutes a hazard to safety or to health as determined by the enforcement official or his or her designee.
45. Discharge of water upon or under public streets or sidewalks by reason of faulty water service.
46. Noise Pollution. Any sound which disturbs human or which causes or tends to cause an adverse psychological or physiological effect on humans.
47. Litter. Any decomposable or non-decomposable solid or other waste material.
48. Structures damaged by Fire or Decay. All buildings and other structures which have been damaged by fire, decay or otherwise to an extent exceeding one-half (1/2) of their original value and which are so situated as to endanger the safety of the public.
49. Permitting or allowing the illumination of flood lights, yard lights or similar lights to be focused in such a fashion so as to encroach upon the peaceful enjoyment of neighboring property.
50. Fences or retaining walls that are not structurally sound or which are deteriorating, as may be evidenced by leaning or loose or missing elements.
51. BUILDING MAINTENANCE. All buildings shall be maintained to be weather and water tight. Broken windows, holes in roofs, and missing siding shall be replaced with similar materials to maintain the weather and water tight properties of the structure. All wood including floor boards, decking, subfloors, joists, rafters, roof sheathing, and siding shall be replaced when missing, rotted or damaged. Materials and practices used in reconstruction and residing shall be of standard quality and appearance commensurate with the character of house or building. Their appearance, as judged under prevailing appraisal practices and standards. Owners or responsible parties shall not use materials which would depreciate the value of adjoining premises or the neighborhood. Painted surfaces shall be maintained or repainted so that an individual wall surface does not have peeling or missing paint in areas in excess of fifty percent (50%) of that individual surface area.
52. Missing or torn, ripped, tattered, canvas, plastic, fabric or non-permanent material of a temporary storage structure (membrane storage structure) or missing, broken or dilapidated aluminum or steel support structures of such temporary structure (commonly referred to as hoop building or tent garages). The City's zoning ordinance may prohibit such temporary portable accessory storage structures.
52. Other Nuisances. Any matter, thing, substance, or condition within the City deemed to be a nuisance in Chapter 657 of the *Code of Iowa*, or defined as a public nuisance in Chapter 657A of the *Code of Iowa*, or its successor provisions of either of the chapters.

50.03 OTHER CONDITIONS.

The following chapters of this Code of Ordinances contain regulations prohibiting or restricting other conditions which are deemed to be nuisances:

1. **REMOVAL OF DISEASED TREES.** The removal of diseased trees or dead wood, but not diseased trees and dead wood outside the lot and property lines and inside the curb lines upon the public street. **(See Chapter 151)**
(Code of Iowa, Sec. 364.12(3b))
2. **REMOVAL OF STRUCTURES.** The removal, repair or dismantling of a dangerous building or structure. **(See Chapter 145)**
(Code of Iowa, Sec. 364.12(3c))
3. **NUMBERING OF BUILDINGS.** The numbering of buildings.
(Code of Iowa, Sec. 364.12(3d))
4. **DRAINAGE CONNECTIONS.** The connection to public drainage systems from abutting property when necessary for public health or safety. **(See Chapters 97)**
(Code of Iowa, Sec. 364.12(3e))
5. **SANITARY FACILITIES.** The connection to public sewer systems from abutting property, and the installation of sanitary toilet facilities and removal of other toilet facilities on such property. **(See Chapter 97)**
(Code of Iowa, Sec. 364.12(3f))
6. **DESTRUCTION OF WEEDS.** Weeds, brush, grass or other vegetation, exceeding six (6) inches in height, other than trees, bushes, flowers or other ornamental plants on property in primarily residential areas or property used primarily for residential purposes. **(See Chapter 53)**
(Code of Iowa, Sec. 364.12(3g))
7. **MAINTENANCE.** The maintenance, by the property owner, of all property outside the lot and property lines and inside the curb lines upon public streets, including maintaining a fifteen (15) foot clearance above the street from trees extending over the streets and eight (8) feet clearance above sidewalks from trees, except as provided in Section 9.03(1) in this Chapter.
8. **JUNK AND JUNK VEHICLES (See Chapter 51)**

50.04 NUISANCES PROHIBITED.

The creation or maintenance of a nuisance is prohibited, and a nuisance, public or private, may be abated in the manner provided for in this chapter or State law.

(Code of Iowa, Sec. 657.3)

50.05 NUISANCE ABATEMENT.

Whenever any authorized municipal officer finds that a nuisance exists, such officer shall have the authority to determine on a case-by-case basis whether to utilize the nuisance abatement procedure described in Section

50.06 of this Chapter or the municipal infraction procedure referred to in Section 50.07.

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

50.06 NOTICE TO ABATE CONTENTS.

The notice to abate shall contain:

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

1. Description of Nuisance. A description of what constitutes the nuisance.
2. Location of Nuisance. The location of the nuisance.
3. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.
4. Reasonable Time. A reasonable time within which to complete the abatement.
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 such person.

50.07 METHOD OF SERVICE.

The notice may be served by ordinance, certified mail, or personal service to the property owner as shown by the records of the County Auditor.

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

50.08 REQUEST FOR HEARING.

Any person ordered to abate a nuisance may have a hearing with the Council 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 Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.

50.09 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 Section 50.11 after notice to the property owner under the applicable provisions of Sections 50.05, 50.06 and 50.07 and hearing as provided in Section 50.08.

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

50.10 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.

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

The City may institute civil proceedings to obtain injunctive and declaratory relief or such orders of the court as are reasonable and proper to abate practices, conditions or circumstances found to be contrary to or prohibited by the provisions of this Chapter.

50.11 COLLECTION OF COSTS.

The Clerk shall mail 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 one (1) month, 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.

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

The City may collect all associated abatement expenses in a Court of Small Claims.

50.12 INSTALLMENT PAYMENT OF COST OF ABATEMENT.

Installment Payment. If the amount expended to abate the nuisance or condition exceeds \$500, the City may permit the assessment to be paid in up to ten (10) annual installments, to be paid in the manner and with the same interest as benefited property under the Code of Iowa.

(Code of Iowa, Sec. 364.13)

50.13 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.

50.14 MUNICIPAL INFRACTION ABATEMENT PROCEDURE.

A failure to abate a nuisance as defined in this chapter or a failure to perform an action required herein, following notice as provided in this chapter, shall constitute a municipal infraction and the requirements of this chapter may be enforced under the procedures applicable to municipal infractions in lieu of the abatement procedures set forth in this chapter.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision, or any part of this ordinance shall be judged to be invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole, or section, or provision or part thereof, not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in full force and effect from after passage its final passage, approval and posting as provided by law.

Passed and approved this 30th day of April 2018.

Rodney Ahrenstorff, Mayor

ATTEST:

Patty Anderson, City Clerk/Administrator

First Reading: March 12, 2018

Second Reading: April 9, 2018

Third Reading: April 30, 2018

I certify that the foregoing was published as Ordinance No. 349 on the 3rd day of May.

Patty Anderson, City Clerk/Administrator