

Chapter 28 - NUISANCES

ARTICLE I. - IN GENERAL

Sec. 28-1. - Nuisance defined.

The term "nuisance" means any substance, matter, emission, or thing which creates a dangerous or unhealthy condition or which threatens the public peace, health, safety, or sanitary condition of the city or which is offensive or has a blighting influence on the community and which is found upon, in, being discharged or flowing from any street, alley, highway, railroad right-of-way, vehicle, railroad car, water, excavation, building, erection, lot, grounds, or other property located within the city. Nuisances shall include, but not be limited to:

- (1) Refuse material, noxious substances, hazardous wastes. Refuse material, noxious substances, or hazardous wastes laying, pooled, accumulated, piled, left, deposited, buried, or discharged upon, in, or being discharged or flowing from any property, structure, or vehicle; except for:
 - a. Refuse deposited at places designated and provided for that purpose by this Code;
 - b. Refuse stored in accordance with provisions of this Code or vehicle parts stored in an enclosed structure;
 - c. Compost piles established and maintained in accordance with the regulations of the department of inspections.
- (2) Weeds. Grass or weeds which have grown upon any property to a height of ten or more inches or which have gone or are about to go to seed.
- (3) Vermin harborage. Conditions which in the opinion of the enforcement officer are conducive to the harborage or breeding of vermin including materials stored less than 12 inches off the ground.
- (4) Vermin infestations. Infestations of vermin such as rats, mice, skunks, snakes, bats, grackles, starlings, pigeons, bees, wasps, cockroaches, or flies.
- (5) Sanitary structures. Structures for sanitation such as privies, vaults, sewers, private drains, septic tanks, cesspools, drain fields which have failed or do not function properly or which are overflowing, leaking, or emanating odors. Septic tanks, cesspools, or cisterns which are abandoned or no longer in use unless they are emptied and filled with clean fill. Any vault, cesspool, or septic tank which does not meet the following criteria:
 - a. The bottom and sides are cemented to make impervious to water;
 - b. The bottom is at least six feet below grade;
 - c. Proper ventilating pipes and covers are provided;
 - d. It is located at least 20 feet from any house, residence, building, or public street;
 - e. It is cleaned at least once a year; and
 - f. The property served is located such that connection to the public sewer is impractical.
- (6) Unsecured unoccupied buildings. Unoccupied buildings or unoccupied portions of buildings which are unsecured.
- (7) Hazards. Any thing or condition on the property which in the opinion of the enforcement officer may contribute to injury of any person present on the property. Hazards which shall include, but not be limited to, dangerous structures, abandoned buildings, open holes, open foundations, open wells, dangerous trees or limbs, abandoned refrigerators, or trapping devices.
- (8) Fire hazards. Any thing or condition on the property which in the opinion of the enforcement officer creates a fire hazard or which is a violation of the city fire code.

- (9) Health hazards. Any thing or condition on the property which in the opinion of the enforcement officer creates a health hazard or which is a violation of any health or sanitation law.
- (10) Graffiti. Any writing, printing, markings, signs, symbols, figures, designs, inscriptions, or other drawings which are scratched, painted, drawn or otherwise placed on any exterior surface of a building, wall, fence, sidewalk, curb or other structure or equipment on public or private property and which have the effect of defacing the property.
- (11) Statutory and common law nuisances. Any thing or condition on property which is known to the common law of the land as a nuisance, or which is defined or declared to be a nuisance by state law or this Code.
- (12) The discharge of more than a de minimis amount of fats, oils or greases, food waste, or similar material into the sanitary sewer, as prohibited by section 40-218.
- (13) Trees, hedges, billboards, or other obstructions, except buildings erected in accordance with this Code, which prevent persons driving vehicles approaching an intersection of public highways from having a clear view of traffic approaching such intersection from cross streets for 100 feet along such cross streets, measured from the property line, when 100 feet from such intersection, measured from the property line.
- (14) Limbs of trees that project over a public sidewalk or street and are less than nine feet above the surface of such public sidewalk and 13 feet above the surface of such street. Trees, shrubs or hedges which are planted less than one foot from the alley or sidewalk edge.
- (15) Wires except clothes line wires that are strung less than 15 feet above the surface of the ground.
- (16) Explosives, inflammable liquids and other dangerous substances stored in any manner or in any amount other than that provided by this Code.
- (17) Use of public streets or sidewalks which causes large crowds of people to gather, obstructing traffic and the free use of the streets or sidewalks.
- (18) Allowing of water, rainwater, ice, or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.
- (19) Dangerous, unguarded machinery, in any public place, or so situated or operated on private property as to attract the public.

(Code 1986, §§ 615.02, 2005.59)

Sec. 28-2. - Other definitions.

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

Abandoned building means any manufactured home, building or portion of a building which has stood with an incomplete exterior shell for longer than three years or any building or portion thereof which has stood unoccupied for longer than one year and which is unsecured or is boarded or has multiple exterior housing code or building code violations.

Abatement deadline means the date before which the nuisance must be abated as specified in a written order.

Dangerous structure means any structure which is potentially dangerous to persons or property, including, but not limited to:

- (1) A structure which is in danger of partial or complete collapse;
- (2) A structure which has any exterior parts such as chimneys, eaves, porches, siding, railings, or trim which are loose or in danger of falling; or

- (3) A structure which has any parts such as porches, stairs, ramps, rails, balconies, floors, or roofs which are accessible and which are either collapsed, in danger of collapsing, or not able to carry their designed weight.

Enforcement officer means the city manager or his designee.

Extermination means the eradication of rodents and other vermin by any or all approved methods such as poisoning, fumigation or trapping.

Hazardous waste means any waste material so defined by M.S.A. § 116.06, subd. 11 or described or listed as hazardous waste in Minn. Admin. Rules ch. 7045.

Interested party means any owner of record, occupying tenant, or lien holder of record.

Last known address means the address shown on the records of the county department of property taxation or a more recent address known to the enforcement officer. In the case of parties not listed in these records, the last known address shall be that address obtained by the officer after a reasonable search.

Mail means service by mail by depositing the item with the United States Postal Service addressed to the intended recipient at his last known address with first class postage prepaid thereon.

Noxious substances means substances, solid or fluid, which are offensive, detrimental to health, hurtful, or dangerous. Noxious substances shall include, but not be limited to, any dead animal, or portion thereof, putrid carcass, decayed animal matter, green hides, or any putrid, spoiled, foul, or stinking beef, pork, fish, offal, hides, skins, fat, grease, liquors, human or animal excrement, or manure.

Owner means those shown to be owner on the records of the county department of property taxation.

Personal service means service by personally handing a copy to the intended recipient or by leaving a copy at the intended recipient's residence or place of business with a person of suitable age and discretion.

Privy means any type of non-flush fixture for the receipt and storage of human waste including fixed units with vaults as well as portable units.

Property means any parcel of land whether vacant or not, whether any structure thereon is occupied or not, or whether submerged or not.

Refuse means all putrescible and non-putrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and market and industrial solid wastes.

Refuse material means refuse not placed in the refuse cart, bulk refuse items that do not fit into the refuse cart, yard waste bags that do not have yard waste stickers on them and brush piles placed at a designated pickup location without appropriate arrangements made for collection.

Responsible party means any one or more of the following:

- (1) Agent;
- (2) Assignee or collector of rents;
- (3) Holder of a contract for deed;
- (4) A mortgagee or vendee in possession;
- (5) Receiver or executor or trustee;
- (6) Lessee;
- (7) Other person, firm, or corporation exercising apparent control over a property.

Unoccupied means a building which is not being used for a legal occupancy or a building which has been ordered vacated by the city.

Unsecured means open to entry by unauthorized persons without the use of tools or ladders.

Weeds means useless and troublesome plants commonly known as weeds, including noxious weeds such as cocklebur, burdock, tumble mustard, wild mustard, wild oats, Canadian thistle, oxeye daisy, quack grass, Frenchweed, and Russian thistle, and also including noxious weeds as defined in M.S.A. § 18.77.

(Code 1986, § 615.01)

Sec. 28-3. - Violations.

- (a) No person shall, directly or indirectly or by omission, create a nuisance. It is a nuisance, a violation of this Code, and a misdemeanor to do any act or occupation, or to fail to act, such that the act or failure to act:
 - (1) Annoys, injures, or endangers the safety, health, comfort, or repose of any considerable number of persons;
 - (2) Offends the public decency;
 - (3) Unlawfully interferes with, obstructs, or tends to obstruct or renders, dangerous for passage, a lake, stream, canal, or basin, or a public park, square, street, alley, or highway; or
 - (4) In any way renders any considerable number of persons insecure in life or in use of property.
- (b) No owner or responsible party shall allow a nuisance to remain upon or in any property or structure under his control.

(Code 1986, §§ 615.03, 2005.59)

Sec. 28-4. - Disclosure of responsible party.

Upon the request of the enforcement officer or the city clerk, a responsible party or owner shall disclose the name of any other responsible party or owner known to him. This shall include, but not be limited to, the persons for whom he is acting, from whom he is leasing the property, to whom he is leasing the property, with whom he shares joint ownership, or with whom he has any conveyancing contract.

(Code 1986, § 615.04)

Sec. 28-5. - Inspection of unoccupied buildings.

An owner or responsible party shall, upon the request of the enforcement officer, provide the officer with access to all interior portions of an unoccupied building in order to permit the officer to make a complete inspection.

(Code 1986, § 615.05)

Sec. 28-6. - Order to cease.

In the event that an enforcement officer observes a person creating a nuisance, the officer may, after presenting proper identification, order that the person cease creating a nuisance.

(Code 1986, § 615.06)

Sec. 28-7. - Enforcement officer authorized to enter.

The enforcement officer shall be authorized to enter any property or structure in the city for the purpose of enforcing and ensuring compliance with the provisions of this chapter.

(Code 1986, § 615.07)

Secs. 28-8—28-53. - Reserved.

ARTICLE II. - ABATEMENT

Sec. 28-54. - Authority to abate.

- (a) The city is authorized to abate nuisances in accordance with the procedures set forth in sections 28-56 through 28-58. All abatement costs incurred shall be charged against the property as a special assessment to be assessed and collected in the manner provided in M.S.A. § 429.101 or in any alternative manner provided elsewhere in state law except that when a request is filed for a review of an emergency abatement the assessment hearing shall be replaced by the hearing provided for in section 28-58.
- (b) Abatement may include, but shall not be limited to, removal, cleaning, extermination, cutting, mowing, grading, covering or filling dangerous unfinished or abandoned excavations, sewer repairs, draining, securing, boarding unoccupied structures, barricading or fencing, removing dangerous portions of structures, and demolition of dangerous structures or abandoned buildings.
- (c) Abatement costs shall include the cost of the abatement; the cost of investigation, such as title searches, inspection, and testing; the cost of notification; filing costs; and administrative costs.

(Code 1986, § 615.08)

Sec. 28-55. - Service.

When service of an order or notice is required, any one or more of the following methods of service shall be adequate:

- (1) By personal service;
- (2) By mail, unless it is a written order which gives three days or less for the completion of any act it requires; or
- (3) If the appropriate party or address cannot be determined after reasonable effort, by posting a copy of the order in a conspicuous place on the property. If a mailed order or notice is returned by the United States Postal Service, a good faith effort shall be made to determine the correct address, unless the order or notice orders abatement and that abatement has been completed.

(Code 1986, § 615.09)

Sec. 28-56. - General abatement procedure.

Unless the nuisance is as described in sections 28-57 or 28-58, the city may abate the nuisance by the procedure described below.

- (1) Order. The enforcement officer shall serve a written order upon the owner. The written order shall also be served upon any responsible party known to the officer and may be served upon any party known to have caused the nuisance. The written order shall contain the following:
 - a. A description of the real estate sufficient for identification;

- b. A description and the location of the nuisance and the remedial action required to abate the nuisance;
 - c. The abatement deadline, to be determined by the enforcement officer allowing a reasonable time for the performance of any act required;
 - d. A statement that if the remedial action is not taken within the time specified, the city will abate the nuisance and charge all costs incurred therein against the real estate as a special assessment to be collected in the same manner as property taxes.
- (2) Abatement. If the remedial action is not taken, the city may abate the nuisance.
- (3) Notice of abatement. Following abatement as set forth in this section, as soon as the costs incurred are known to the enforcement officer, he shall serve written notice upon the owner. The notice shall contain:
- a. A description of the nuisance;
 - b. The action taken by the city;
 - c. The amount and basis of the abatement costs;
 - d. A notice of intent to assess the costs incurred in abating the nuisance;
 - e. A statement that the owner may request, by writing to the city clerk within ten working days of the date of the notice, a hearing before an administrative hearing officer appointed by the city council to determine the validity and amount of the proposed assessment;
 - f. A statement that the owner must file written objections to the assessment along with the request for the administrative hearing;
 - g. A statement that the owner may appeal the assessment to district court within 30 days after the adoption of the assessment by the city council at an annual meeting; and
 - h. A statement informing the owner of the provisions of M.S.A. §§ 435.193 to 435.195 and of the existence of any deferment procedure.
- (4) Administrative hearing. The city council will periodically approve a list of lawyers, from which the city clerk will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. The responsible party or owner will have the right to request no later than five days before the date of the hearing that the assigned hearing officer be removed from the case. One request for each case will be granted automatically by the city clerk. A subsequent request must be directed to the assigned hearing officer who will decide whether he cannot fairly and objectively review the case. The city clerk may remove a hearing officer only by requesting that the assigned hearing officer find that he cannot fairly and objectively review the case. If such a finding is made, the officer shall remove himself from the case, and the city clerk will assign another hearing officer. The hearing officer is not a judicial officer but is a public officer as defined by M.S.A. § 609.415. The hearing officer must not be a city employee. The city manager must establish a procedure for evaluating the competency of the hearing officers, including comments from affected owners and city staff. These reports must be provided to the city council.
- (5) Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may issue a subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the matter being heard. The party requesting the subpoena is responsible for serving the subpoena in the manner provided for civil actions and for paying the fees and expenses of a witness. A person served with a subpoena may file an objection with the hearing officer and a copy of the objection shall be given to the city clerk and the accused no later than the time specified in the subpoena for compliance. The hearing officer may cancel or modify the subpoena if it is unreasonable or oppressive. A person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to a subpoena is guilty of a

misdemeanor. Alternatively, the party requesting the subpoena may seek an order from district court directing compliance.

- (6) The hearing shall be scheduled to occur within 45 days of receiving a request for a hearing. Notice of the hearing must be served on the owner at least 14 days in advance, unless a shorter time is accepted by all parties. Service of the notice will be by first class mail and will be complete upon mailing. At the hearing, the owner will have the opportunity to present testimony and question any witnesses, but strict rules of evidence will not apply. The hearing officer must tape record the hearing and receive testimony and exhibits. The officer must receive and give weight to evidence, including hearsay evidence that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.
- (7) The hearing officer has the authority to determine that a valid nuisance abatement occurred, to allow the city to collect full reimbursement of abatement costs or to reduce the amount due to the city either unconditionally or upon compliance with appropriate conditions. The hearing officer's decision and supporting reasons must be in writing. When determining validity or cost of abating a nuisance condition, the hearing officer may consider any or all of the following factors:
 - a. The duration of the nuisance;
 - b. The frequency or reoccurrence of the nuisance;
 - c. The seriousness of the nuisance;
 - d. The good faith effort by the owner to comply;
 - e. The economic impact on the owner;
 - f. The impact of the nuisance condition upon the community; and
 - g. Any other factors appropriate to a just result.
- (8) The failure to attend the hearing constitutes a waiver of the owner's rights to an administrative hearing. A hearing officer may waive this result upon good cause shown. Examples of good cause are death or incapacitating illness of the owner; a court order requiring the owner to appear for another hearing at the same time; and lack of proper service of the notice of abatement or notice of the hearing. The term "good cause" does not include forgetfulness and intentional delay.
- (9) The decision of the hearing officer will be mailed promptly to the appellant following the hearing. It will include the hearing officer's decision, the amount due and the statement in subsection (3)g of this section. The decision of the hearing officer is final without any further right of administrative appeal and shall stand as the hearing for the assessment. An owner who disagrees with the hearing officer's decision may obtain judicial review of the decision of the hearing officer by proceeding under a writ of certiorari in district court.
- (10) Assessment of abatement costs. Except as otherwise modified by subsection (5) of this section, the service charges imposed under subsection (3) of this section shall be assessed against the owner's property and shall be payable in a single installment, or by up to ten equal installments as the council may provide.

(Code 1986, § 615.10)

Sec. 28-57. - Substantial abatement procedure.

When the enforcement officer determines that a nuisance exists on a property and the cost of abatement of the nuisance is estimated to exceed \$10,000.00 or the abatement involves demolition of a building other than a structure accessory to a residential building or the abatement substantially diminishes the value of the property and except in the case of an emergency as provided for in section 28-58, the city shall abate the nuisance by the procedure described below. A good faith estimate of the

abatement costs, not the actual cost calculated after the abatement is completed, shall be the basis which determines whether this abatement procedure shall be used.

- (1) *Orders.* The enforcement officer shall serve a written order upon the owner, all interested parties, and any responsible party known to the officer. The order shall contain the following:
 - a. A description of the real estate which is sufficient for identification and which shall include the legal description;
 - b. The location of the nuisance on the property;
 - c. A description of the nuisance and the basis upon which it is declared to be a nuisance;
 - d. The remedial action required to abate the nuisance;
 - e. The abatement deadline, to be determined by the enforcement officer allowing a reasonable time for the completion of any act required; and
 - f. A statement that if the remedial action is not taken before the abatement deadline, the matter will be referred to the city council who, after a public hearing, may order the city to abate the nuisance and charge all costs incurred against the real estate as a special assessment to be collected in the same manner as taxes.
- (2) *Notice to public.* When an order requires, exclusively or as an option, the demolition of a building, the public shall be put on notice as follows.
 - a. A copy of the order shall be placed on file in the office of the city clerk.
 - b. The enforcement officer shall notify the city council of each property subject to a demolition order as follows. The enforcement officer shall send to the city council a list of the properties that have become subject to a demolition order. The list shall be in the form of a resolution declaring that an enforcement action has been commenced and that as a result of the nuisance status of a building on the property an order has been issued detailing the violations and requiring, exclusively or as an option, that the building be demolished and that a copy of this order is on file in the office of the city clerk. This resolution shall include the legal description of each property and shall authorize and direct the city clerk to file a copy of the resolution with the county recorder.
- (3) *Setting a hearing date.* If the remedial action is not taken within the time specified in the written order, the enforcement officer may notify the city council that substantial abatement is necessary and appropriate. Upon being notified by the enforcement officer, the city council shall, within two weeks, fix a date for an abatement hearing.
- (4) *Notice.* Written notice of the time, date, place and subject of the hearing shall be given as set forth in this subdivision.
 - a. The city clerk shall immediately notify the enforcement officer.
 - b. At least ten days prior to the hearing, the enforcement officer shall notify the owner and all interested parties by personal service of the notice upon the owner or his duly authorized representative and upon each interested party or his duly authorized representative. If, after reasonable effort, personal service cannot be made, either of the following methods of notice shall be considered adequate.
 1. Confirmed mail service which is either certified mail with a signed receipt returned or first class mail confirmed by written response.
 2. Mailing the notice to the last known address and publishing the notice once a week for two weeks in the official city newspaper of general circulation in the city and posting the notice in a conspicuous place on the building or property.
 - c. At least ten days prior to the hearing, the enforcement officer shall mail a notice to any responsible party known to the enforcement officer.

- (5) *Hearing.* At the time of the public hearing, the city council shall hear from the enforcement officer and any other parties who wish to be heard. After the hearing, the city council shall adopt a resolution, describing what abatement action, if any, it deems appropriate. If the resolution calls for abatement action it may either order the city to take the abatement action or fix a time within which the nuisance must be abated and provide that if corrective action is not taken within the specified time, the city shall abate the nuisance. The city clerk shall give a copy of this resolution to the enforcement officer who shall mail copies to any of the parties required to be notified in subsection (4) of this section for whom the enforcement officer has a current mailing address.

(Code 1986, § 615.11)

Sec. 28-58. - Emergency abatement procedure.

When the enforcement officer determines that a nuisance exists on a property and the nuisance constitutes an immediate danger or hazard which if not immediately abated will endanger the health or safety of the public and there does not exist sufficient time to follow the procedures of sections 28-56 or 28-57, the city may abate the nuisance by the procedure described below.

- (1) *Order by city manager.* The city shall order emergency abatement by an administrative order to be signed by the city manager or, in the case of unavailability of the city manager, by the official authorized to act in the manager's behalf as established by the chain of authority stated in the city legislative policy manual. A good faith effort shall be made to inform the owner that the action is being taken.
- (2) *Notice of the abatement.* Following an emergency abatement as soon as the costs incurred are known to the enforcement officer, he shall serve written notice upon the owner. The notice shall contain:
 - a. A description of the nuisance;
 - b. The action taken by the city;
 - c. The reasons for immediate action;
 - d. The costs incurred in abating the nuisance; and
 - e. A statement that the owner may request, by writing to the city clerk within ten working days of the date of the notice, a hearing at which the city council shall review the actions taken by the enforcement officer.
- (3) *Setting hearing date.* In the event that the owner files a request for a review of the action, with the city clerk, the city council shall, within two weeks, fix a date for a public hearing.
- (4) *Notice.* The city clerk shall notify the enforcement officer and the owner of the date, time, place, and subject of the hearing.
- (5) *Hearing.* At the time of the hearing, the city council shall hear from the enforcement officer and any other parties who wish to be heard. After the hearing, the city council may adopt a resolution levying an assessment for all or a portion of the costs incurred by the enforcement officer in abating the nuisance. A copy of the resolution shall be mailed to the owner. A copy shall also be given to the enforcement officer.

(Code 1986, § 615.12)

Sec. 28-59. - Penalty.

Any person who violates any provision of this article or fails to comply with a lawful written order issued pursuant to sections 28-56 or 28-57 or a lawful verbal order issued pursuant to section 28-6 shall be guilty of a misdemeanor.

(Code 1986, § 615.13)

Sec. 28-60. - Other remedies.

This chapter shall not be construed to establish the exclusive penalties for maintaining public nuisances or the exclusive procedure for nuisance abatement. Any penalties or abatement procedures that are authorized elsewhere in state law or in this Code, including, but not limited to, sections 28-56, 28-57 and 28-1, shall be in addition to and not in limitation of the penalties and abatement procedures established by this article.

(Code 1986, § 615.14)

Secs. 28-61—28-78. - Reserved.

ARTICLE III. - NOISE

Sec. 28-79. - Purpose and intent.

It is recognized that loud, unpleasant, raucous or prolonged noise has a harmful debilitating and detrimental effect upon human beings, adversely affecting their mental and physical health, safety and well-being. Such loud, unpleasant, raucous or prolonged noise is hereby declared to be a public nuisance. In an endeavor to provide for the mental and physical health, safety and well-being and for peaceful repose of the citizens and neighborhoods of the city, it is hereby declared to be in the public interest that loud, unpleasant, raucous and unnecessary or prolonged noise be abated.

(Code 1986, § 2005.61(1))

Sec. 28-80. - Activity prohibited.

No person shall, between the hours of 10:00 p.m. and 7:00 a.m. conduct, permit, congregate at, participate in or be present at any party or gathering of people from which noise emanates of such volume as to be plainly audible at a distance of 50 feet from a residential dwelling unit wherein such party is taking place, or from which noise emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area.

(Code 1986, § 2005.61(2))

Sec. 28-81. - Person not to visit, remain or be present in or about nuisance structure.

Persons except the owner, tenant or other lawful occupant shall visit, remain or be present at or within any residential dwelling unit, adjacent yard or structures wherein an activity prohibited by this article of this article is taking place except persons who have gone there for the sole purpose of abating the prohibited activity.

(Code 1986, § 2005.61(3))

Sec. 28-82. - Enforcement and penalties.

A police officer may order all persons present in any such group or gathering from which such noise emanates, other than the owners or tenants of a dwelling unit, to immediately disperse from said party in lieu of being charged under this article. Refusal to disperse is a violation of this subsection. Violation of this subsection is a misdemeanor.

(Code 1986, § 2005.61(4), (5))

Secs. 28-83—28-107. - Reserved.

ARTICLE IV. - CLANDESTINE DRUG LAB AND CHEMICAL DUMP SITES

Sec. 28-108. - Purpose and Intent.

The purpose of this section is to reduce public exposure to health risks where law enforcement officers have determined that hazardous chemicals or residue from a suspected clandestine drug lab site or chemical dumpsite may exist. Professional reports, based on assessments, testing and investigations, show that chemicals used in the production of illicit drugs can condense, penetrate, and contaminate surfaces, furnishings, and equipment of surrounding structures. The city council finds that such sites, and the personal property within such sites, may contain suspected chemicals and residues that place people, particularly children or adults of child bearing age, at risk when exposed through inhabiting or visiting the site or using or being exposed to contaminated personal property.

(Code 1986, § 625.01(1))

Sec. 28-109. - Interpretation and application.

In the interpretation and application of this article, the provisions herein shall be construed to protect the public health, safety and welfare. Where the conditions imposed by any provision of this section are either more or less restrictive to the public than comparable provisions imposed by any other law, ordinance, statute, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements on the public shall prevail. Should any court of competent jurisdiction declare any section or subpart of this section to be invalid, such decision shall not affect the validity of the section as a whole or any part thereof, other than the provision declared invalid.

(Code 1986, § 625.01(2))

Sec. 28-110. - Definitions.

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

Chemical dump site means any place or area where chemicals or other waste materials used in a clandestine drug lab operation have been located.

Clandestine drug lab operation means the unlawful manufacture or attempt to manufacture a controlled substance.

Clandestine drug lab site means any place or area where law enforcement has determined that an unlawful clandestine drug lab operation exists or existed. A clandestine drug lab site may include, but is not limited to, dwellings, accessory buildings, structures or units, vehicles, boats, trailers or any other area or locations.

Controlled substance means any drug, substance or immediate precursor in Schedules I through V of M.S.A. § 152.02 together with any amendments or modifications thereto. The term "controlled substance" shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

Household hazardous waste means waste generated from a clandestine drug lab operation.

Manufacture means in places other than a pharmacy, means and includes the production, cultivation, quality control, and standardization, by mechanical, physical, chemical or pharmaceutical means, and the packing, repacking, tableting, encapsulating, labeling, relabeling, or filling of a controlled substance.

Owner means any persons, firms, corporations or other entities who or which own, in whole or in part, the land, building, structure, vehicle, boat, trailer or other location associated with a site.

Site means chemical dumpsite or clandestine drug lab site.

(Code 1986, § 625.03)

Sec. 28-111. - Declaration of site as a public health nuisance.

A site, all areas in proximity to a site and all personal property located on areas in proximity to a site, are potentially unsafe due to health hazards and are hereby declared to be a public health nuisance.

(Code 1986, § 625.05)

Sec. 28-112. - Law enforcement action.

- (a) When a law enforcement authority determines the existence of a site, the site and all personal property located in proximity to the site, shall be declared a public health nuisance. Law enforcement authorities who identify conditions associated with a site are authorized to take the following action:
 - (1) Promptly notify the building official, child protection officials, public health authorities and the appropriate enforcement division of the federal drug enforcement administration. This notice must, at a minimum, identify the location of the site, the property owner, if known, and the conditions found on the site;
 - (2) Treat, store, transport or dispose of all household hazardous waste found at the site in a manner consistent with state department of health, state pollution control, and county health department rules and regulations;
 - (3) Issue a temporary declaration of public health nuisance for the site and post a copy of the declaration on all doorway entrances to the site or, in the case of bare land, post the declaration in several conspicuous places on the property. This temporary declaration of public health nuisance issued by law enforcement shall not expire until after the building official inspects the site and determines the appropriateness of issuing a permanent declaration of public health nuisance;
 - (4) Notify all persons occupying the site that a temporary declaration of public health nuisance has been issued;
 - (5) Require all persons occupying the site to immediately vacate the site, to remove all pets from the site, and not to return to the site without written authorization from the building official;
 - (6) Notify all occupants vacating the site that all personal property at the site may be contaminated with dangerous chemical residue; and
 - (7) After all occupants have vacated the site, put locks on each doorway entrance to any buildings located on the site to prohibit people from entering the site without authorization.
- (b) Prompt notification of the persons and/organizations mentioned above may be delayed to accomplish appropriate law enforcement objectives, but only to the extent that public health and child protection responsibilities are not unnecessarily compromised.

(Code 1986, § 625.07)

Sec. 28-113. - Seizure of property.

When the site is inside a vehicle, boat, trailer or other form of moveable personal property, law enforcement authorities shall immediately seize it and not allow it to be transported except to a more secure location. In such circumstances, all other requirements of this section shall be followed as closely as possible given the specific type of property in which the site is discovered.

(Code 1986, § 625.09)

Sec. 28-114. - Action by building official.

- (a) *Inspection and declaration of nuisance.* Within 48 hours of notification that law enforcement authorities have determined the existence of a site, the building official shall cause the site to be inspected to determine whether to issue a permanent declaration of public health nuisance. Based on the results of the inspection, the building official may then promptly issue a permanent declaration of public health nuisance and a "do not enter - unsafe to occupy order" for the site to replace the temporary declaration issued and posted by law enforcement. A copy of the permanent declaration and order shall be posted on all doorway entrances to the site or, in the case of bare land, shall be posted in several conspicuous places on the property.
- (b) *Abatement order.* Within 24 hours after the permanent declaration of public health nuisance has been issued and posted, the building official shall send written notice to the site owner ordering abatement of the public health nuisance. The abatement order shall include the following information:
 - (1) A copy of the declaration of public health nuisance and "do not enter - unsafe to occupy order" and a copy of this section;
 - (2) Information about the potentially hazardous condition of the site;
 - (3) Notification of the immediate suspension of the site's rental license if applicable; and
 - (4) Information that may help the owner locate appropriate services necessary to abate the public health nuisance.
- (c) *Notice to concerned parties.* Within three days after the permanent declaration of public health nuisance has been issued and posted, the building official shall also mail a copy of the permanent declaration of public health nuisance, a copy of this section, and a notification of the suspension of the site's rental licenses, if applicable, to the following concerned parties at their last known address:
 - (1) Occupants or residents of the site if the identities of such persons are known;
 - (2) Neighbors in proximity to the site who may be affected by the conditions found, as determined by the building official pursuant to subsection (a) of this section;
 - (3) The city manager and the city police chief or his duly authorized representatives; and
 - (4) The federal drug enforcement administration; the state pollution control agency, the state department of health, and the state department of natural resources.
- (d) *Modification or removal of declaration.* The building official is authorized to modify or remove the permanent declaration of public health nuisance after the building official receives documentation from a city-approved environmental hazard testing and cleaning firm stating that the suspected health and safety risks, including those to neighbors and potential dwelling occupants, either do not exist or have been sufficiently abated or corrected to justify amendment or removal of the declaration.

(Code 1986, § 625.11)

Sec. 28-115. - Site owner's responsibility to act.

Within ten business days of the date the abatement order is mailed to the owner of the site, the owner shall accomplish the following:

- (1) Provide the building official with written notification:
 - a. That the owner has confirmed that all persons and their pets have vacated the site;
 - b. Of the names of all children who the owner believes were residing at the site; and
 - c. That the site will remain vacated and secured until the public health nuisance is completely abated as required by this section;
- (2) Contract with one or more city-approved environmental hazard testing and cleaning firms to conduct the following work in accordance with the most current state department of health guidelines:
 - a. A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;
 - b. Soil testing of the site and testing of all property and soil in proximity to the site which the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the site;
 - c. A complete clean-up of the site, including, but not limited to, the clean-up or removal of plumbing, ventilation systems, fixtures and contaminated soil or a demolition of the site and a complete clean-up of the demolished site;
 - d. A complete clean-up, or disposal at an approved dump site, of all personal property in the site;
 - e. A complete clean-up of all property and soil in proximity to the site which is found to have been affected by the conditions found at the site;
 - f. Remediation testing and follow-up testing, including, but not limited to, testing of the ventilation system and plumbing, to determine that all health risks are sufficiently reduced, according to state department of health guidelines, to allow safe human occupancy and use of the site and use of the personal property therein and of all property and soil in proximity to the site;
 - g. Provide the building official with the identity of the testing and cleaning firm with which the owner has contracted for abatement of the public health nuisance as required above; and
 - h. Provide the building official with a written clean-up schedule with reasonable deadlines for completing all actions required by the abatement order.

(Code 1986, § 625.13)

Sec. 28-116. - Site owner's verification of compliance.

The site owner must meet all deadlines established on the clean-up schedule. Pursuant to the deadlines established by the clean-up schedule, the site owner is required to provide the building official with a signed statement from a city-approved environmental hazard testing and cleaning firm that the site, all personal property therein and all property and soil in proximity to the site, is safe for human occupancy and use and that the clean-up was conducted in accordance with the most current state department of health guidelines.

(Code 1986, § 625.15)

Sec. 28-117. - Site owner's responsibility for costs.

The site owner is responsible for all costs, including those of the city, of dealing with and abating the public health nuisance, including contractor's fees and the city's costs for services performed in association with the site. The city's costs may also include, but shall not be limited to:

- (1) Posting of the site;
- (2) Notification of affected parties;
- (3) Securing the site, providing limited access to the site, and prosecution of unauthorized persons found at the site;
- (4) Expenses related to the recovery of costs, including the assessment process;
- (5) Laboratory fees;
- (6) Clean-up services;
- (7) Administrative fees;
- (8) Legal fees; and
- (9) Other associated costs.

(Code 1986, § 625.17)

Sec. 28-118. - City action and recovery of costs.

- (a) If the site owner fails to comply with any of the requirements of this section, the building official is authorized to take all reasonable actions necessary to abate the public health nuisance, including, but not limited to, contracting with a city-approved environmental hazard testing and cleaning firm to conduct the work outlined in section 28-115(2).
- (b) If the costs to clean the site or to clean or dispose of the personal property at the site are prohibitively high in relation to the value of the site or the personal property, the city is authorized to remove or demolish the site, structure or building or dispose of the personal property therein. These actions shall be taken in accordance with the provisions of M.S.A. ch. 463 together with any amendments or modifications thereto.
- (c) If the city abates the public health nuisance, in addition to any other legal remedy, the city shall be entitled to recover all of its out-of-pocket costs plus an additional 25 percent of such costs for administrative and legal expense. The city may recover its costs both by civil action against the owner of the site, and by assessing such costs as a special charge against the site as taxes and special assessments are certified and collected pursuant to M.S.A. § 429.101 or according to the provisions of M.S.A. ch. 463 together with any amendments or modifications thereto. The building official is authorized to notify any lien or mortgage holders of the affected site.

(Code 1986, § 625.19)

Sec. 28-119. - Recovery of costs from persons causing damage.

No provisions of this section are intended to limit the site owner's, residents' or the city's right to recover costs incurred under this section from either the persons contributing to the public health nuisance, such as the operators of the site, or from other lawful sources.

(Code 1986, § 625.21)

Sec. 28-120. - Site owner and address.

When the site is real property and the owner or the address of the owner of the site is unknown, the owner and the owner's address is deemed to be that of the property's taxpayer's name and address as that information is maintained by the county auditor's office. When the site is a vehicle, boat or trailer and the owner or the address of the owner of the site is unknown, the owner and the owner's address is deemed to be that of the person on file as the owner on the current or most recent title to the vehicle, boat or trailer.

(Code 1986, § 625.23)

Sec. 28-121. - Unauthorized removal of postings.

It is unlawful for any person, except authorized city personnel, to remove a temporary or permanent declaration of public health nuisance or "do not enter - unsafe to occupy" order from a site.

(Code 1986, § 625.25)

Sec. 28-122. - Entry into or onto site.

While a declaration of public health nuisance for an affected site is in effect and has been posted at the site, no persons are permitted to be inside the site, or on the site property without prior written consent of the building official or as otherwise authorized by this section. To confirm compliance with this section and to execute their duties under this section, law enforcement officers, the building official, and any persons designated by the building official, may enter onto the site property or enter into the site at any time while a declaration of public health nuisance is in effect for the site.

(Code 1986, § 625.27)

Sec. 28-123. - Removal of personal property from the site.

While a declaration of public health nuisance for an affected site is in effect and has been posted at the site, no personal property may be removed from the site without prior written consent from the building official. Consent to remove personal property shall only be granted at the reasonable discretion of the building official, and only in cases of hardship after:

- (1) A city-approved environmental hazard testing and cleaning firm has advised the city, in writing, that the items of personal property can be sufficiently cleaned to remove all harmful contamination; and
- (2) The owner of the personal property agrees in writing:
 - a. That the owner is aware of the danger of using the contaminated property;
 - b. That the owner will thoroughly clean the property to remove all contamination before the property is used; and
 - c. That the owner releases and agrees to indemnify the city, its staff, and the city council from all liability to the owner or third persons for injuries or damages caused, or alleged to have been caused, by the contaminated property.

(Code 1986, § 625.31)

Sec. 28-124. - Violations and penalties.

Any person violating any provision of this section is guilty of a misdemeanor. In addition, the city shall be entitled to seek any other remedy available at law or in equity in order to protect the health, safety and welfare of the community, including temporary and permanent injunctions.

(Code 1986, § 625.33)

Secs. 28-125—28-146. - Reserved.

ARTICLE V. - DISEASED TREES

Sec. 28-147. - Policy.

The council has determined that the health of the elm, ash and oak trees within the municipal limits are threatened by fatal diseases known as Dutch elm disease, Emerald Ash Borer (EAB) infestation and oak wilt disease, respectively. It has further been determined that the loss of elm, oak and ash trees growing upon private and public properties would substantially depreciate the value of property within the city and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the council to control and prevent the spread of these diseases and this section is enacted for that purpose.

(Code 1986, § 635.01)

Sec. 28-148. - Tree inspector.

The position of tree inspector is hereby created within the city to carry out the provisions of this section and of M.S.A. § 18.023. The city manager is directed to employ or retain on a continuing basis a suitably qualified person as tree inspector, who shall promptly become and remain certified as a tree inspector by the state commissioner of agriculture. It shall be the duty of the tree inspector to coordinate, under the direction and control of the council, all activities of the city relating to the control and prevention of Dutch elm disease, oak wilt disease, and Emerald Ash Borer infestation. The tree inspector shall recommend to the council the details of the program for the control of such diseases, and perform the duties incident to such a program adopted by the council.

(Code 1986, § 635.02)

Sec. 28-149. - Shade tree disease control program.

It is the intention of the city to conduct a program of shade tree disease control pursuant to the authority granted by M.S.A. § 18.78. This program is directed specifically at the control and elimination of Dutch elm disease, EAB infestation and oak wilt disease and is undertaken on the recommendation of the state commissioner of agriculture. The tree inspector shall develop a program plan in compliance with M.S.A. § 18.78 and the regulations issued pursuant thereto by the state department of agriculture, for the identification and control of diseased elm, ash and oak trees, and shall be responsible for the making and maintenance of all records and reports related to the program. The tree inspector shall act as coordinator between the state commissioner of agriculture and the city in the conduct of this program.

(Code 1986, § 635.03)

Sec. 28-150. - Nuisances declared.

The following are declared to be public nuisances whenever they may be found within the city:

- (1) Any standing or living tree or part thereof infected to any degree with the Dutch elm disease fungus, Ceratocystis ulmi (Busiman) Moreau, or which harbors any of the elm bark beetles, Scolytus multistriatus (Eichh) or Hylurgopinus rufipes (Marsch). And also, any dead elm tree or part thereof with bark intact including logs, branches, stumps, or firewood which has not been disposed of properly.
- (2) Any living or standing tree or part thereof in the red oak group (red oak, pin oak) infected to any degree with the oak wilt fungus, Ceratocystis fagacearum (Bretz) Hunt.
- (3) Also, any living or standing tree in the white oak group (white oak, bur oak) that poses a threat of transmission of the oak wilt fungus to other trees of the same species through interconnected root systems.
- (4) Any other shade trees with epidemic diseases, including Emerald Ash Borer infestation.

(Code 1986, § 635.04)

Sec. 28-151. - Abatement.

It is unlawful for any person to permit a public nuisance as defined in section 28-150 to remain on any premises owned or controlled by that person within the city. Such nuisances may be abated in the manner prescribed by this section.

(Code 1986, § 635.05)

Sec. 28-152. - Inspection and investigation.

- (a) *Annual inspection.* The tree inspector or his assistants shall inspect all premises and places within the city as often as practicable to determine whether any condition described in section 28-150 exists thereon. He shall investigate all reported incidents of infestation by Dutch elm fungus or elm bark beetles, emerald ash borer or oak wilt. He shall also inspect all premises and places within the city by April 1 of each year for elm wood, logs, or stumps that meet any of the conditions described in section 28-150, and require by April 15, removal or debarking of all wood, logs, and stumps to be retained.
- (b) *Entry on private premises.* The tree inspector or his designee may enter upon private premises at any reasonable time for the purpose of carrying out the duties assigned to him under this article. Before making any inspection on private property within the city, the tree inspector shall give notice of the intent of the inspections by publishing a notice annually in a local newspaper.
- (c) *Diagnosis.* Whenever possible, diagnosis shall be based upon accepted field symptoms. The tree inspector shall, upon finding indications of oak wilt, Emerald Ash Borer or Dutch elm disease, take such steps for diagnosis as may be appropriate, including analysis of twig samples from actively wilting branches by the state department of agriculture tree disease laboratory, or other laboratories capable of performing such services approved by the state commissioner of agriculture.

(Code 1986, § 635.06)

Sec. 28-153. - Abatement of shade tree disease nuisances.

In abating or ordering the abatement of the nuisances defined in section 28-150, the tree inspector shall cause or order the infected tree or wood to be removed or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of the diseases. Such abatement procedures shall be carried out in accordance with prescribed methods approved by the state commissioner of agriculture. If

the tree inspector finds that Dutch elm disease or oak wilt threatens to cross property boundaries or disease control area boundaries, the tree inspector may require root graft disruption to prevent the spread of disease in this manner. If plowing or trenching is not possible due to terrain, location, or buried utilities, the tree inspector may require chemical root graft disruption. These barriers will be placed in accordance with current technology and plans, as may be designated by the state commissioner of agriculture.

(Code 1986, § 635.07)

Sec. 28-154. - Procedure for abatement of nuisances.

- (a) *On private property.* Whenever the tree inspector finds with reasonable certainty that a public nuisance defined in section 28-150 exists in any tree or wood located on private property in the city, he shall notify the owner of such property by certified mail of the infestation, and specify therein a time (in any event not less than five or more than 20 days from the date of mailing of such notice) in which the infected tree or part thereof shall be removed or otherwise treated by such owner in the manner specified in the notice and to the satisfaction of the tree inspector. The notice shall also state that if such nuisance shall not have been abated by the owner within the time provided, it will be immediately abated by the city, and the entire cost thereof will be billed to the owner, and if not paid shall be assessed against the property owner under M.S.A. § 429.101.
- (b) *Assessment of costs.* The tree inspector shall keep a record of trees removed and the cost of abatements done under this section and shall report monthly to the city clerk all work done for which assessments are to be made, stating and certifying the description of the land, lots and parcels involved and the amounts chargeable to each. On or before September 1 of each year, the city clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section. The council may then spread the charges or any portion thereof against the property involved as a special assessment under M.S.A. § 429.101 and other pertinent statutes for certification to the county auditor and collection in the following year along with current taxes.

(Code 1986, § 635.08)

Sec. 28-155. - City assistance.

The council may, by appropriate resolution, provide for subsidies to certain property owners to assist in the abatement of a public nuisance defined in section 28-150 in accordance with the provisions of M.S.A. § 18.78.

(Code 1986, § 635.09)

Sec. 28-156. - Transporting elm wood and oak wood prohibited.

It is unlawful for any person to transport within the city any bark intact elm wood, ash wood or wood from the red oak group that is determined to be hazardous, without having obtained a permit from the tree inspector. The tree inspector shall grant such permits only in conformity with the state-approved removal and wood disposal practices.

(Code 1986, § 635.10)

Sec. 28-157. - Interference prohibited.

It is unlawful for any person to prevent, delay or interfere with the tree inspector or his agents while they are engaged in the performance of duties imposed by this section.

(Code 1986, § 635.11)

Sec. 28-158. - Penalty.

Any person who violates this article is guilty of a misdemeanor.

(Code 1986, § 635.12)

Secs. 28-159—28-184. - Reserved.

ARTICLE VI. - ABANDONED AND OTHER NUISANCE VEHICLES

Sec. 28-185. - Definitions.

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

Abandoned motor vehicle means a motor vehicle as defined in M.S.A. § 168B.011, subd. 2.

Junk vehicle means a vehicle that:

- (1) Is three years old or older;
- (2) Is extensively damaged, with the damage including such things as broken or missing wheels, motor, drive train, or transmission;
- (3) Is apparently inoperable;
- (4) Does not have a valid, current registration plate; and
- (5) Has an approximate fair market value equal only to the approximate value of the scrap in it.

Motor vehicle means a motor vehicle as defined in M.S.A. § 169.011.

Towing contractor means a person, firm or corporation under contract awarded by the city under this article to tow and impound vehicles.

Vehicle constituting a public nuisance means any motor vehicle, whether occupied or not, that is found stopped, standing, or parked in violation of the ordinances of the city or state law, or that is reported stolen, or that is found impeding firefighting, snow removal or plowing, or the orderly flow of traffic.

Vital component parts means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

Racing car means any motor vehicle designed or intended for operation on a speedway, race track, or other facility used or designed for high speed contests between two or more vehicles or for timing of speed.

Stock car means any motor vehicle of standard design and construction which is modified, adapted or altered in any manner to increase its speed or intended for operation on a speedway, race track, or other facility used or designed for high speed contests between two or more vehicles or for timing of speed.

Sec. 28-186. - Unlawful parking or storage.

- (a) No person shall cause or permit the parking, keeping or storage for more than two hours of any bus, camper, or truck, or other similar vehicles for the purpose of repair, replacement or exchange of parts or any other maintenance work thereon, in or on any public street, alley, road, highway, parking lot, park or other public property or premises in or on any private lands or premises unless such vehicles on any such private lands are within an enclosed building.

- (b) No person shall cause or permit the parking, keeping or storage for more than 24 hours of any tractor, semi-trailer, racing or junk cars or other similar vehicles, in or on any public street, alley, road, highway, parking lot, park or other public property or premises in or on any private lands or premises unless such vehicles on any such private lands are within an enclosed building.

(Code 1986, § 1325.01)

Sec. 28-187. - Service and repair on public place prohibited.

No person shall service, repair, paint, dismantle, overhaul, or otherwise maintain or do work upon any motor vehicle on, or in any public street, avenue, alley, road highway, boulevard, parking lot or facility, park or other public property or premises.

(Code 1986, § 1325.05)

Sec. 28-188. - Other nuisance vehicles; stock and junk cars; removal and impounding.

- (a) Any vehicle constituting a public nuisance and any stock or junk car not kept in an enclosed garage or storage building is hereby deemed and declared to be a public nuisance and such nuisance may be abated in the manner set forth in this article.
- (b) The city manager, any police officer, firefighter, or other duly authorized personnel, may immediately order any abandoned motor vehicle or any vehicle constituting a public nuisance to be removed and impounded in the manner herein provided, and it shall be surrendered to the duly identified owner thereof by the towing contractor only upon payment of the towing, impoundment, storage, clerical and administrative charges set forth in the current schedule of charges and the furnishing of proof of insurance complying with the provisions of M.S.A. ch. 65B.

(Code 1986, §§ 1325.07, 1325.09)

Sec. 28-189. - Impounded vehicles to be tagged for identification.

Any motor vehicle ordered impounded under this article shall be immediately tagged for identification by the police department, which tag shall show the disposition of the car ordered by the police department, and the reason for which impounded. The tag shall be delivered to the towing contractor.

(Code 1986, § 1325.11)

Sec. 28-190. - Report of police officer.

Any police officer or other authorized person directing the impounding of any motor vehicle shall prepare a written report of the description of such vehicle, which report shall, among other things, include the following: make of car; license number; number of tires; tools and other separate articles of personal property; general description of the car with regard to condition, damaged parts, and such other information as may be necessary to describe adequately the vehicle and property delivered to the towing contractor. A copy of such report, signed by the officer, shall be delivered to the towing contractor at the time of impounding. The towing contractor shall receipt for such report, and shall check such report, and his signature thereon shall be considered a receipt for the vehicle and property described in the report. The original and one copy of the report, and towing contractor's receipt shall be filed in the police department.

(Code 1986, § 1325.13)

Sec. 28-191. - Immediate sale of certain vehicles.

When a vehicle constituting a public nuisance or an abandoned motor vehicle is more than seven model years of age, is lacking vital component parts, and does not display a license plate currently valid in the state or any other state or foreign country, it shall immediately be eligible for sale at public auction pursuant to section 28-194 and shall not be subject to the notification, reclamation, or title provisions of this article.

(Code 1986, § 1325.15)

Sec. 28-192. - Notice.

When a motor vehicle constituting a public nuisance or an abandoned motor vehicle does not fall within the provisions of section 28-188(b), the towing contractor shall give notice of taking within 72 hours. The notice shall:

- (1) Set forth the date and place of the taking, the year, make, model and serial number of the vehicle and the place where the vehicle is being held.
- (2) Inform the owner and any readily identifiable lienholders of record of the towing charges then accrued against the vehicle and shall provide a schedule of storage and other charges to be made by the towing contractor.
- (3) Inform the owner and any readily identifiable lienholder of record of their right to reclaim the vehicle under section 28-193.
- (4) State that failure of the owner or readily identifiable lienholders of record to exercise their right to reclaim the vehicle within 15 days from the date of the notice shall be deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale of the vehicle at a public sale or auction pursuant to section 28-194 and that the vehicle will be sold after the expiration of such 15-day period.
- (5) The notice shall be sent by registered mail to the registered owner, if any, of the vehicle and to all readily identifiable lienholders of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.

(Code 1986, § 1325.17)

Sec. 28-193. - Right to reclaim.

- (a) The owner or any lienholder of a motor vehicle shall have a right to reclaim such vehicle from the towing contractor upon payment of the towing, impoundment, storage, clerical and administrative fees stated in the current schedule of charges and the furnishing of proof of insurance within 15 days after the date of the notice required by section 28-192.
- (b) Nothing in this article shall be construed to impair any lien of a garagekeeper under the laws of this state, or the right of a lienholder to foreclose. For the purposes of this section, the term "garagekeeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.

(Code 1986, § 1325.19)

Sec. 28-194. - Sale of unclaimed vehicles.

- (a) An abandoned motor vehicle or vehicle constituting a public nuisance taken into custody and not reclaimed shall be sold to the highest bidder at public auction or sale, following reasonable published notice thereof. The purchaser shall be given a receipt which shall be sufficient title to dispose of the vehicle. The receipt shall also entitle the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership.
- (b) If, in the opinion of the city manager, the value of an abandoned motor vehicle or vehicle constituting a public nuisance does not justify its sale in the manner set forth in this section the vehicle shall be summarily sold.
- (c) All motor vehicles taken into custody and not reclaimed shall be sold within a reasonable time, which shall not exceed the period of time in which the sum of all towing and storage charges, plus notice and publication costs, would equal the value of the vehicle. The towing contractor shall advise the city manager or his designee of the estimated market value of each vehicle when taken into custody and of the estimated date by which charges against the vehicle will equal its value.
- (d) From the proceeds of the sale of any vehicle constituting a public nuisance or an abandoned motor vehicle, the towing contractor shall receive the cost of towing, preserving and storing the vehicle as stated in the towing contract. The city shall reimburse itself for all notice and publication costs incurred pursuant to this article and clerical and administrative expenses stated in the towing contract. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for 90 days and then shall be deposited in the general fund of the city treasury.

(Code 1986, § 1325.21)

Sec. 28-195. - Designation of city towing contractor; contract requirements.

- (a) *Towing contractor.* The city manager shall recommend to the city council that a contract be made with a person or entity desiring to act as towing contractor for vehicles impounded under this article. The city council may by motion or resolution authorize the mayor and city manager to enter into a contract with the recommended person, firm, or corporation.
- (b) *Contracts.* Contracts shall be entered into in writing for a period not exceeding three years. Such towing contract shall include provisions setting forth the fees to be paid and the services to be rendered by the towing contractor, bonding and insurance requirements as determined by the city manager, and a schedule of towing, impoundment, storage, clerical and administrative charges.
- (c) *Schedule of charges.* A schedule of the towing, impoundment, storage, clerical and administrative charges as set forth in the towing contract shall be prepared by the city clerk and a copy thereof shall be posted by the towing contractor in a conspicuous place at his place of business, a second copy thereof shall be posted in the office of the city police department and a third copy shall be kept by the city clerk for public inspection. Such schedule of charges is hereby declared to be a part of this article as fully and to the same effect as if set forth herein verbatim.
- (d) *Prohibited activity.* The towing contractor shall not solicit, directly or indirectly, the impounding or towing of cars under this article.

(Code 1986, § 1325.23)

Sec. 28-196. - Storage of impounded vehicles.

A vehicle directed to be impounded as herein provided, for the time it is taken possession of by the towing contractor and during the time it is impounded and until the same is released to the owner as herein provided, is considered to be in the custody of the city and no work shall be done thereon by an official towing contractor until such car has been released to the owner as herein provided. All such cars when ordered released by the city manager or police department shall be released to the owner without charge, other than the impounding and storage fees herein provided. The towing contractor during the

time the vehicle is impounded shall not permit the owner or any other person to take or remove from the vehicle any part, or change or repair any part. Vehicles which have been involved in criminal proceedings and which are designated by the police department as being held for that reason, shall be held and stored in garages or other suitable buildings. Vehicles impounded for other reasons may be stored inside garages or on designated fenced or otherwise enclosed parking lots.

(Code 1986, § 1325.27)

Sec. 28-197. - Release form.

At the time of return of the vehicle the official towing contractor shall release the same by a release in writing which shall state the date of such release together with the charges enumerated thereon and the purpose for which such charges were made. The release shall be made in one original and two copies, all of which shall be signed by the towing contractor and the person to whom such release is made. The official towing contractor shall retain the original of such release and shall deliver one copy thereof to the owner of the vehicle and two copies to the police department.

(Code 1986, § 1325.29)