

CHAPTER 50

NUISANCE ABATEMENT PROCEDURE

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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 that are deemed to be nuisances in the City:

(Code of Iowa, Sec. 657.2)

1. **Offensive Smells.** Erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture that, 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.
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.
3. **Impeding Passage of Navigable River.** Obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.
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.
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.
6. **Billboards.** Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, that 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)**
7. **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.
8. **Air Pollution.** Emission of dense smoke, noxious fumes, or fly ash.
9. **Weeds, Brush.** Dense growth of all weeds, vines, brush, or other vegetation in the City so as to constitute a health, safety, or fire hazard. **(See also Section 155.07[1]).**

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

11. Emerald Ash Borer. Trees infected with Emerald Ash Borer pest. **(See also Chapter 151)**

12. Airport Air Space. Any object or structure hereafter erected within one thousand (1,000) feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

13. 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.

50.03 OTHER CONDITIONS. The following chapters of this Code of Ordinances contain regulations prohibiting or restricting other conditions that are deemed to be nuisances:

1. Junk and Junk Vehicles **(See Chapter 155)**
2. Dangerous Buildings **(See Chapter 153)**
3. Storage and Disposal of Solid Waste **(See Chapter 105)**
4. Trees **(See Chapter 151)**

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 has 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 ABATEMENT OF NUISANCE BY WRITTEN NOTICE. Any nuisance, public or private, may be abated in the manner provided for in this section:

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

1. Contents of Notice to Property Owner. The notice to abate shall contain: †

† **EDITOR'S NOTE:** A suggested form of notice for the abatement of nuisances is included in the Appendix of this Code of Ordinances. Caution is urged in the use of this administrative abatement procedure, particularly where cost of abatement is more than minimal or where there is doubt as to whether or not a nuisance does in fact exist. If compliance is not secured following notice and hearings, we recommend you review the situation with your attorney before proceeding with abatement and assessment of costs. Your attorney may recommend proceedings in court under Chapter 657 of the *Code of Iowa* rather than this procedure.

- A. Description of Nuisance. A description of what constitutes the nuisance.
- B. Location of Nuisance. The location of the nuisance.
- C. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.
- D. Reasonable Time. A reasonable time within which to complete the abatement.
- E. Assessment of City Costs. A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and assess the costs against the property owner.
2. Method of Service. The notice may be in the form of an ordinance or sent by certified mail to the property owner.
(Code of Iowa, Sec. 364.12[3h])
3. 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.
4. 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 that may be required under this chapter without prior notice. The City shall assess the costs as provided in subsection 6 of this section after notice to the property owner under the applicable provisions of subsection 1 and 2, and the hearing as provided in subsection 3.
(Code of Iowa, Sec. 364.12[3h])
5. 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])
6. Collection of Costs. The Clerk shall send a statement of the total expense incurred by certified mail to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one 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])
7. Installment Payment of Cost of Abatement. If the amount expended to abate the nuisance or condition exceeds five hundred dollars (\$500.00), the City may permit the assessment to be paid in up to ten (10) annual installments, to be paid in the same manner and with the same interest rates provided for assessments against benefited property under State law.
(Ord. 679 – Aug. 13 Supp.)
(Code of Iowa, Sec. 364.13)

8. 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.

50.07 MUNICIPAL INFRACTION ABATEMENT PROCEDURE. In lieu of the abatement procedures set forth in Section 50.06, the requirements of this chapter may be enforced under the procedures applicable to municipal infractions as set forth in Chapter 3 of this Code of Ordinances.

CHAPTER 51

NOISE NUISANCES

51.01 Purpose; Definitions

51.02 Measuring Noise Levels

51.03 General Noise Restriction; Exceptions

51.04 Permits for Exception

51.05 Enforcement

51.01 PURPOSE; DEFINITIONS. The purpose of this chapter is to control excessive noise that interferes with the comfortable enjoyment of life, property, recreation or conduct of business as defined and described in this chapter. The following words and terms are defined as used in this chapter:

1. “Ambient noise” means background or surrounding noise.
2. “A-weighted sound level” means the sound pressure level in decibels as measured on a sound level meter using the A-weighted filter network. The A-weighted filter de-emphasizes the very low and very high frequency components of the sound in a manner similar to the response of the human ear. Such sound measurement is a numerical method of rating human judgment of loudness.
3. “Construction” means any site preparation, assembly, erection, substantial repair, alteration or similar action, for or of public and private rights-of-way, structures, utilities or similar property demolition.
4. “Noise measurement location” means the property line of the noise-producing property, or beyond.
5. “Noise measurement method” means the measurement of noise with a decibel meter meeting the standards prescribed by the American Standards Association and using the A-weighted or C-weighted scale, fast response. Measurements shall be taken so as to provide a proper representation of the noise being measured. The microphone shall be placed three to five feet above ground level, when possible, and positioned so as not to create any unnatural enhancement or diminution of the measured noise. Traffic, aircraft, and other transportation noise shall not be considered in taking measurements, except where such background noise interferes with the primary noise being measured.
6. “Noise nuisance” means:
 - A. Any loud, irritating, vexing, disturbing or unreasonable sound which causes distress, annoyance, discomfort or injury to or which interferes with the comfort or repose of any reasonable person of ordinary nervous sensibilities in the vicinity or hearing thereof, or any sound which endangers or injures the safety or health of humans or animals, or any sound which interferes with the physical well-being of humans or animals, or any sound which endangers or injures persons or real property.
 - B. Any noise measured in excess of 50 dBA for a residentially zoned property, or 60 dBA for any non-residentially zoned property, between the hours of 10:00 p.m. and 6:00 a.m.

7. "Receiving land use" means the use or occupancy of the property which receives the transmission of sound.
8. "Sound level" or "noise level" means the weighted sound pressure level obtained by use of a sound level meter having a standard frequency filter for attenuating part of the sound spectrum as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971).
9. "Sound level meter" means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averages, output meter and weighing network used to measure sound pressure levels.

51.02 MEASURING NOISE LEVELS. The measurement of noise shall be made with a decibel meter meeting the standards prescribed by the American Standards Association and using the A-weighted, fast response. Measurements shall be taken so as to provide a proper representation of the noise being measured. The microphone shall be placed three to five feet above ground level, when possible, and positioned so as not to create any unnatural enhancement or diminution of the measured noise. Traffic, aircraft and other transportation noise shall not be considered in taking measurements, except where such background noise interferes with the primary noise being measured.

51.03 GENERAL NOISE RESTRICTION; EXCEPTIONS. A person may not create, generate, produce, cause, permit or emanate a noise nuisance.

1. The following exceptions to the above restriction shall apply to the activities listed below at all times:
 - A. Sound produced by a vehicle motor while the vehicle is moving on a public right-of-way, public waterway, airport runway or railway;
 - B. Sound produced by any governmental body in the performance of a governmental function to include work performed by or for public or private utilities;
 - C. Sound generated at or by a parade route during a lawful and permitted parade, a scheduled stadium event, or at outdoor celebrations sponsored or co-sponsored by the City or any governmental body in the performance of its duty or as otherwise allowed by law;
 - D. The emission of sound made by safety signals, warning devices, and sound resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of an emergency;
 - E. The emission of sound during nonprofessional athletic and school events or practices;
 - F. The emission of sound from the use of snow removal equipment.
2. The following exceptions to the above restriction shall only apply to the activities listed below between the hours of 6:00 a.m. to 10:00 p.m.:
3. The emission of sound through the un-amplified human voice;
4. The activity, operation or noise source which emanates from an operation or activity (including, by way of example only, and not limited to construction, reconstruction, remodeling and rebuilding of any structure or place in conformity with applicable provisions of this Code of Ordinances and State law) that cannot

reasonably be done in an alternative manner, time or place so as to otherwise comply with the chapter;

5. The emission of sound from the use of lawn and garden equipment and chainsaws;
6. The conduct of one-day auction/sale events;
7. Downtown background music on Central Avenue between 7th and 10th Streets;
8. Agricultural activities associated with the raising and harvesting of crops, exclusive of those involving the ownership or possession of animals or birds;
9. Religious organizations conducting worship services outdoors with musical components.

51.04 PERMITS FOR EXCEPTION.

1. Applications for a permit for relief from the noise restrictions designated in this chapter on the basis of undue hardship may be made to the City Administrator. A letter of request containing the basis for the request and the applicable application fee as established by Council resolution must accompany each application. The relief requested may be granted upon a good and sufficient showing:

- A. That additional time is necessary for the applicant to alter or modify the activity or operation to comply with the provisions of this chapter;
- B. That the activity, operation, noise, or vibration source will be of temporary duration and cannot reasonably be done in a manner that would comply with this chapter; or
- C. That no reasonable alternative is available to the applicant.

2. If granted, the permit shall be in writing and contain all conditions upon which such permit is granted, including, but not limited to, the effective dates, any time-of-day, location, sound-pressure-level, or equipment limitations. The City Administrator may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding area.

3. In the event the City Administrator denies an application for a permit for relief from the noise restrictions designated in this chapter, or grants relief under conditions the applicant finds unacceptable, the affected party may appeal the decision to the City Council by filing a written letter with the City Administrator within ten (10) calendar days after receiving notice of the City Administrator's decision. The appeal letter must specifically state each and every point of contention with the City Administrator's determination. The City Administrator shall immediately cause the appeal to be placed on the next regular meeting agenda of the Council for discussion and action. At that meeting, the Council shall consider the intent contained in this chapter, the City Administrator's reason for denying a permit or applying conditions, the points raised in the letter of appeal, and relevant surrounding facts.

51.05 ENFORCEMENT.

1. Responsible Violators. The persons responsible for violations of this chapter are identified as follows:

- A. At Private Residences. Any adult resident present at the time of the offense, and any adult guest or adult trespasser with the ability to control the

- level of noise at the time of the offense when no adult resident is present at the time of the offense.
- B. At Business Locations. Any business owner, operator, manager, employee in charge, and all persons in control or in possession of the noise nuisance-generating instrument or property at the time of the offense.
- C. Other Locations. Any person who leaves unattended any machine, instrument, device, child, animal, or any combination of same, which thereafter commences producing noise in violation of this chapter.
2. Determination of Violation. An arrest, citation, summons, or complaint for the violation of any part of this chapter must be based on probable cause arising from:
- A. The complainant's physical sense perceptions and observations of the unreasonable noise as defined herein, at the time such is occurring; or
- B. Sound level measurements, taken in accordance with Section 51.02 this chapter, which exceed the stated limits, or
- C. A combination of the foregoing two (2) types of evidence.
3. Enforcement Remedies and Penalties. In the event that the noise violation is not abated as ordered and within the time specified, the City may abate such violation by one or more of the methods listed below. Each time the noise violation is not abated as directed shall be considered a separate violation, with a minimum of 30 minutes between noise violations declared by the enforcement officer. Increased fines for repeat violations may be issued for similar violations at the same location within 30 days.
- A. Issuance of a municipal infraction.
- B. Undertaking the public abatement of the violation and assessment of costs thereof.
- C. Prosecution as a misdemeanor.
- D. Remedy by means of civil court proceeding or any other lawful process pursuant to the *Code of Iowa*.

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CHAPTER 55

ANIMAL PROTECTION AND CONTROL

55.01 Definitions	55.11 Females in Heat
55.02 Livestock	55.12 Vicious Dogs and Cats
55.03 Livestock Neglect	55.13 Owner's Duty
55.04 Domestic Animals	55.14 Confinement
55.05 Animal Neglect	55.15 At Large: Impoundment
55.06 Abandonment of Cats and Dogs	55.16 Destruction in Lieu of Impoundment
55.07 Immunization	55.17 Dead Animals
55.08 At Large Prohibited	55.18 Unsanitary or Offensive Conditions Prohibited
55.09 Damage or Interference	55.19 Pet Awards Prohibited
55.10 Annoyance or Disturbance	

55.01 DEFINITIONS. The following terms are defined for use in this chapter.

1. "Advertise" means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag or articulation.
2. "Animal" means a nonhuman vertebrate.
(Code of Iowa, Sec. 717B.1)
3. "At large" means off the premises of the owner, not attached to a leash held by a competent person, restrained, within a motor vehicle, or housed in a veterinary hospital or kennel.
4. "Business" means any enterprise relating to any of the following:
 - A. The sale or offer for sale of goods or services.
 - B. A recruitment for employment or membership in an organization.
 - C. A solicitation to make an investment.
 - D. An amusement or entertainment activity.
5. "Cats" includes both male and female felines whether altered or not.
6. "Dogs" includes both male and female canines whether altered or not.
7. "Domestic animal" is a typical and customary house pet, under 100 pounds, that is not a livestock species or a dangerous animal as defined herein. This includes dogs, cats, non-dangerous aquarium fish, domesticated birds, hamsters or gerbils.
8. "Fair" means any of the following:
 - A. The annual fair and exposition held by the Iowa State Fair Board pursuant to Chapter 173 of the *Code of Iowa* or any fair event conducted by a fair under the provisions of Chapter 174 of the *Code of Iowa*.
 - B. An exhibition of agricultural or manufactured products.
 - C. An event for operation of amusement rides or devices or concession booths.
9. "Game" means a "game of chance" or "game of skill" as defined in Section 99B.1 of the *Code of Iowa*.

10. “Livestock” means an animal belonging to the bovine, caprine, equine, ovine or porcine species, ostriches, rheas and emus; farm deer as defined in Section 170.1 of the *Code of Iowa*; or poultry (i.e. chickens, turkeys, ducks, geese, pigeons, game hens, pheasants, etc.).

(Code of Iowa, Sec. 717.1)

11. “Owner” means any person owning, keeping, sheltering, maintaining, or harboring an animal.

12. “Pet” means a living dog, cat or an animal normally maintained in a small tank or cage in or near a residence, including but not limited to a rabbit, gerbil, hamster, mouse, parrot, canary, mynah, finch, tropical fish, goldfish, snake, turtle, gecko or iguana.

55.02 LIVESTOCK. It is unlawful for a person to keep livestock within the City limits except in those locations previously grand-fathered and otherwise in compliance with the nonconforming use provisions of the Hawarden Zoning Code.

55.03 LIVESTOCK NEGLECT. It is unlawful for a person who impounds or confines livestock in any place to fail to provide the livestock with care consistent with customary animal husbandry practices or to deprive the livestock of necessary sustenance or to injure or destroy livestock by any means which causes pain or suffering in a manner inconsistent with customary animal husbandry practices.

(Code of Iowa, Sec. 717.2)

55.04 DOMESTIC ANIMALS. The total number of domestic animals older than six months shall not exceed four (4) per residence or place of business (excluding bona fide pet stores).

55.05 ANIMAL NEGLECT. It is unlawful for a person who impounds or confines, in any place, an animal, excluding livestock, to fail to supply the animal during confinement with a sufficient quantity of food or water, or to fail to provide a confined dog or cat with adequate shelter, or to torture, deprive of necessary sustenance, mutilate, beat, or kill such animal by any means which causes unjustified pain, distress or suffering.

(Code of Iowa, Sec. 717B.3)

55.06 ABANDONMENT OF CATS AND DOGS. A person who has ownership or custody of a cat or dog shall not abandon the cat or dog, except the person may deliver the cat or dog to another person who will accept ownership and custody, or the person may deliver the cat or dog to an animal shelter or pound.

(Code of Iowa, Sec. 717B.8)

55.07 IMMUNIZATION. Every owner of a dog or cat shall obtain a rabies vaccination for such animal. It is unlawful for any person to own or have a dog over six months of age or a cat over four months of age in said person’s possession which has not been vaccinated against rabies. Dogs kept in State or Federally licensed kennels and not allowed to run at large are not subject to these vaccination requirements.

(Code of Iowa, Sec. 351.33)

55.08 AT LARGE PROHIBITED. It is unlawful for any owner to allow an animal to run at large within the corporate limits of the City.

55.09 DAMAGE OR INTERFERENCE. It is unlawful for the owner of an animal to allow or permit such animal to pass upon the premises of another thereby causing damage to, or interference with, the premises.

55.10 ANNOYANCE OR DISTURBANCE. It is unlawful for the owner of a dog to allow or permit such dog to cause serious annoyance or disturbance to any person or persons by frequent and habitual howling, yelping, barking, or otherwise; or, by running after or chasing persons, bicycles, automobiles or other vehicles.

55.11 FEMALES IN HEAT. The owner of any female dog or cat in heat shall confine the female dog or cat in a building or a cage/kennel or keep the same in said owner's presence so that the female dog or cat cannot come into contact with another animal except for planned breeding.

55.12 VICIOUS DOGS AND CATS. It is unlawful for any person to harbor or keep a vicious dog or cat within the City. A dog or cat is deemed to be vicious when it has attacked or bitten any person without provocation, or when propensity to attack or bite persons exists and is known or ought reasonably to be known to the owner.

55.13 OWNER'S DUTY. It is the duty of the owner of any dog, cat or other animal which has bitten or attacked a person or any person having knowledge of such bite or attack to report this act to a local health and law enforcement official. It is the duty of physicians and veterinarians to report to the local board of health and local police department the existence of any animal known or suspected to be suffering from rabies.

55.14 CONFINEMENT. If a local board of health receives information that an animal has bitten a person or that a dog or animal is suspected of having rabies, the board shall order the owner to confine such animal in the manner it directs. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded by such board, and after ten (10) days the board may humanely destroy the animal. If such animal is returned to its owner, the owner shall pay the cost of impoundment. This section does not apply if a police service dog or a horse used by a law enforcement agency and acting in the performance of its duties has bitten a person.

(Code of Iowa, Sec. 351.39)

55.15 AT LARGE: IMPOUNDMENT. Any dog or cat or other animal found at large in violation of this chapter shall be seized and impounded upon complaint; or at the discretion of the peace officer, the owner may be served a summons to appear before a proper court to answer charges made thereunder. The peace officer shall make a reasonable attempt to contact the owners of licensed animals with information available on the tag. Dogs, cats or other animals may be recovered by the owner, upon proper identification, by payment of the impounding fee of all boarding, food and care costs, and the production of a license and veterinary tag as required herein. If such dogs, cats, or other animals are not claimed within seven (7) working days after impoundment, they shall be disposed of in a humane manner. Any dog, cat, or other animal returned to the owner or adopted must be brought up to date on all vaccinations before being released.

55.16 DESTRUCTION IN LIEU OF IMPOUNDMENT. Notwithstanding any of the other provisions of this chapter, any peace officer of the City has the lawful authority to kill any animal, when such animal is caught in the act of maiming or killing any domestic animal or fowl or when such animal is attacking or attempting to bite a person without provocation.

55.17 DEAD ANIMALS. The owner of any dead animal within the City shall properly bury or otherwise properly dispose of the same within twenty-four (24) hours.

55.18 UNSANITARY OR OFFENSIVE CONDITIONS PROHIBITED. Any person who uses, keeps or harbors or owns any animals or domestic animals shall keep the same confined in an enclosed building, fenced enclosure or yard. Dogs or cats shall be allowed to be kept on a restraint consisting of a chain, rope or leash strong enough to adequately restrain such dog or cat. Any pen, yard, pasture or place in which animals are kept or confined must be kept sanitary by not allowing any filth, manure, excrement or other offensive matter to accumulate in such quantities as to create an offensive or unsanitary condition to exist.

55.19 PET AWARDS PROHIBITED.

(Code of Iowa, Ch. 717E)

1. Prohibition. It is unlawful for any person to award a pet or advertise that a pet may be awarded as any of the following:
 - A. A prize for participating in a game.
 - B. A prize for participating in a fair.
 - C. An inducement or condition for visiting a place of business or attending an event sponsored by a business.
 - D. An inducement or condition for executing a contract that includes provisions unrelated to the ownership, care or disposition of the pet.
2. Exceptions. This section does not apply to any of the following:
 - A. A pet shop licensed pursuant to Section 162.5 of the *Code of Iowa* if the award of a pet is provided in connection with the sale of a pet on the premises of the pet shop.
 - B. Youth programs associated with 4-H Clubs; Future Farmers of America; the Izaak Walton League of America; or organizations associated with outdoor recreation, hunting or fishing, including but not limited to the Iowa Sportsmen's Federation.

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CHAPTER 56

DANGEROUS AND VICIOUS ANIMALS

56.01 Definitions

56.02 Keeping of Dangerous Animals Prohibited

56.03 Seizure, Impoundment and Disposition of Dangerous Animals

56.04 Keeping of Vicious Animals Prohibited

56.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. “At large” refers to an animal’s presence outside of a structure or fixed enclosure.
2. “Dangerous animal” means:
 - A. Badgers, wolverines, weasels, skunk and mink;
 - B. Raccoons;
 - C. Bats;
 - D. Black widow spiders, brown recluse spiders and scorpions;
 - E. Red and black fire ants and other stinging ants native to Central or South America;
 - F. Africanized strains of the honey bee;
 - G. Non-domestic fowl (i.e. hawks);
 - H. Pit Bull Dogs. “Pit bull” is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier or any dog which has the appearance and characteristics of being predominately of one or more of the foregoing breeds as measured against the standards established by the American Kennel Club or United Kennel Club for any of the foregoing breeds.
2. “Euthanize” means to kill in a humane manner.
3. “Owner” means any person owning, keeping, sheltering or harboring an animal including temporary caregivers in the absence of the owners.
4. “Serious injury” means any illness, disease or bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.
5. “Unprovoked” as used in this chapter refers to an attack or bite, not the result of behavior (on the victim’s part) intended to irritate the animal.
6. “Vicious animal” means any animal, except for a dangerous animal per se, as listed above, that has (a) bitten, clawed, or attacked any person and the attack was unprovoked, or (b) bitten, clawed, or attacked another animal and caused serious injury. With respect to (a) above, if the person attacked or bitten was engaged in an unlawful act prior to the bite or attack, such incident shall not serve as a basis for declaring the offending animal a vicious animal.

56.02 KEEPING OF DANGEROUS ANIMALS PROHIBITED. No person shall keep, shelter or harbor for any reason in the City any dangerous animal except as provided in Subsection 56.03(1).

56.03 SEIZURE, IMPOUNDMENT AND DISPOSITION OF DANGEROUS ANIMALS.

1. A peace officer, on his or her own information or upon receipt of a complaint alleging that a person owns, is keeping, sheltering or harboring a dangerous animal in the City limits, may investigate to determine if a person owns, is keeping, sheltering or harboring a dangerous animal, and if after investigation, the facts indicate that the person in fact owns, is keeping, sheltering or harboring a dangerous animal, the peace officer shall order the owner, if known, or the person keeping, sheltering or harboring the animal to immediately secure the animal in a structure or fixed enclosure at all times and either to remove the animal from the City or euthanize the animal within seven (7) calendar days of receipt of the order. The removal order shall be contained in a notice to remove the dangerous animal, which notice shall be in writing and personally served upon the owner if the owner is known, or upon the person keeping, sheltering or harboring the dangerous animal. A person served with a notice and removal order under this section shall have ten days following the service of the notice and order to file a signed written notice of appeal with the Hawarden Chief of Police or the Hawarden City Clerk. In order to be effective, the notice of appeal must have attached to it a written evaluation of the animal prepared by West Sioux Veterinary Clinic evaluating whether the animal is a dangerous animal as defined in this Code. The evaluation shall be at City expense but shall be reimbursed if the animal is ultimately determined to be a dangerous animal. If the removal order is not complied with nor appealed within the time allowed, the Police Chief is authorized to seize and euthanize the animal. Upon receipt of a notice of appeal within the time allowed, a hearing shall be set before the Hawarden City Council on the issue of whether or not the animal is a dangerous animal under this Code.

2. If, after hearing, the Council determines that an animal is a dangerous animal as defined in this Code, the Council shall order the owner or the person keeping, sheltering or harboring the dangerous animal to either remove it permanently from the City or to cause it to be euthanized or to allow the City to euthanize it. The order shall be served in the same manner as the removal order and notice. The Council's decision may be appealed to the appropriate court of law within ten calendar days of the date of service the Council's order.

3. If the Council's order is not complied with within ten (10) calendar days of its service upon the owner or the person keeping, sheltering or harboring the dangerous animal, and is not appealed within that time, the Police Chief is authorized to seize and euthanize the animal.

4. Such notice to remove the dangerous animal shall not be required where such dangerous animal has previously caused serious injury or death to any person, in which case the peace officer shall cause the animal to be immediately euthanized. In the event that a dangerous animal is found at large and unattended upon public property, park property, public right-of-way or the property of someone other than its owner, thereby creating a hazard to persons or property, the peace officer may (a) seize the animal or (b) euthanize the animal. The choice of which of these options to pursue is left to the discretion of the peace officer. The peace officer shall be under no duty to attempt the seizure of a dangerous animal found at large prior to

euthanizing such animal, nor does the peace officer have a duty to notify the owner of such animal prior to pursuing any of the above options.

5. When, pursuant to the pertinent provisions of subsection 4 of this section, an animal is seized or euthanized without a prior notice to remove to the owner, the peace officer or other designated person shall, within seven (7) days thereafter, deliver to the animal's owner, if known, either in person or by ordinary mail and by certified mail, return receipt requested, a written notice of the action taken and the reasons therefor.

6. Costs incurred by the City for the removal, care, maintenance, transportation and euthanizing of a dangerous animal owned, kept, sheltered or harbored in violation of this chapter, shall be reimbursed to the City by the owner and/or by the person keeping, sheltering or harboring the dangerous animal.

56.04 KEEPING OF VICIOUS ANIMALS PROHIBITED. No person shall own, keep, shelter or harbor for any reason within the City a vicious animal, as defined in this chapter.

1. The Police Chief or other designated person, on his or her own information or upon receipt of a complaint alleging that a person owns, is keeping, sheltering or harboring a vicious animal as defined in this chapter may, in said person's discretion, initiate proceedings to declare such animal a vicious animal. A hearing on the matter shall be conducted by the Council. The owner of the animal in question shall be given not less than seventy-two (72) hours' written notice (including Saturday, Sunday and holiday) of the time and place of said hearing. Said notice shall order the owner to secure the animal in a structure or fixed enclosure at all times. The notice shall set forth a description of the animal in question and the basis for the allegation of viciousness and shall also notify the owner that should the animal be determined to be vicious, the owner will be required to euthanize it or allow the City to do so. The notice shall be personally served upon the owner of the animal if the owner is known, or upon the person keeping, sheltering or harboring the dangerous animal.

2. If, after hearing, the Council determines that an animal is vicious, the Council shall order the owner if the owner is known, or the person keeping, sheltering or harboring the dangerous animal to cause it to be euthanized or to allow the City to do so. The order shall be served upon the person against whom issued in the same manner as the notice of hearing. The Council may propose rules and regulations governing the above mentioned proceedings. The Council's decision may be appealed to the appropriate court of law.

3. If the order is not complied with within three (3) calendar days of its service upon the owner, and is not appealed, the Police Chief is authorized to seize and euthanize the animal.

4. If, after hearing, it has been determined that the animal properly falls within the category of vicious animal as defined in this chapter, and if in the Council's discretion it appears that the animal does not pose a significant threat to the safety of the public, the Council may order a probationary period for the animal. The duration and conditions of the probationary period are left to the discretion of the Council and shall be shaped with a view to the safety of the public. The reasons for the ordering of a probationary period and the terms and conditions thereof shall be committed to writing and delivered to the animal's owner by the Police Chief or other designated person. If the probationary period is successfully completed, the animal shall be free from further constraint, if not successfully completed, the animal shall be euthanized.

The Council shall determine whether or not the probationary period has been successfully completed at a hearing called for that purpose. The owner shall be given not less than seventy-two hours' written notice (including Saturdays, Sundays and holidays) of the time and place of such hearing. The notice shall be served in the manner provided for service of the notice prescribed in subsection 1 of this section. The Council's decision shall be committed to writing, and shall state the reasons for their conclusion. The decision shall be delivered to the animal's owner in the manner provided for in subsection 1 of this section. If it is determined that the probationary period has not been successfully completed, the written decision shall contain an order directing the owner to euthanize the animal within three days of the receipt of the decision. If the order is not complied with, and not appealed, any peace officer or other designated person shall seize the animal and euthanize it.

5. The notice required by subsection 1 of this section shall not be required where such vicious animal has previously caused serious injury or death to any person, in which case the peace officer shall cause the animal to be immediately euthanized. In the event a vicious animal is found at large and unattended upon public property, park property, public right-of-way or the property of someone other than its owner, thereby creating a hazard to persons or property, the peace officer may, in his or her discretion, seize and impound such animal or euthanize it if such seizure and impoundment is not possible or would expose any person to the risk of serious injury. The City shall be under no duty to attempt the seizure of a vicious animal found at large prior to euthanizing such animal, nor shall it have the duty to notify the owner of such animal prior to euthanizing it or seizing and impounding it.

6. When, pursuant to the pertinent provisions of subsection 5 of this section, an animal is euthanized without a prior notice to the owner, the peace officer shall, within seven (7) days thereafter, deliver to the animal's owner, if the owner is known either in person or by regular mail and certified mail, return receipt requested, a written notice of the action taken and the reasons therefor. When pursuant to such subsection an animal is impounded without prior notice to the owner, the Council shall, thereafter, initiate proceedings to have the animal declared a vicious animal, in the manner provided for in subsection 1 of this section. Thereafter, the procedures contained in subsections 1, 2 and 3, where applicable, shall apply.

7. Any animal which is alleged to be vicious and which is under impoundment or quarantine at the animal shelter shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing and/or end of the quarantine. Costs incurred by the City for the capture, care, maintenance, transportation and euthanizing of a vicious animal shall be reimbursed to the City by the owner and/or by the person keeping, sheltering or harboring the dangerous animal.

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