

## Chapter 54 - NUISANCES<sup>11</sup>

Footnotes:

--- (1) ---

**State Law reference**— Public nuisances, MCL 600.3801 et seq.; nuisance abatement, MCL 600.2940.

Sec. 54-1. - Definitions; prohibitions.

- (a) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Public nuisance* means whatever annoys, injures or endangers the safety, health, comfort or repose of the public; offends public decency; interferes with, obstructs or renders dangerous any street, highway, navigable lake or stream; or in any way renders the public insecure in life or property.

- (b) *Unlawful act.* No person shall commit, create or maintain any nuisance. A person who commits, creates or maintains a nuisance is responsible for a municipal civil infraction.

(Code 1972, § 9.1)

**Cross reference**— Definitions generally, § 1-2.

Sec. 54-2. - Structures where controlled substances and/or drug paraphernalia found.

- (a) *Findings.* The city hereby determines that whenever the use, sale, furnishing, giving or possession of controlled substances or drug paraphernalia occurs on any property, the result is increased criminal activity in the neighborhood surrounding the property, increased pedestrian and/or vehicular traffic in the surrounding neighborhood and disruption of the peace and quiet of residents living in the neighborhood surrounding the property, thereby creating a public nuisance.
- (b) *Declaration of public nuisance; public hearings; notice.*
- (1) Whenever the use, sale, furnishing, giving or possession of controlled substances or drug paraphernalia occurs on any property, the city commission may, by resolution, declare such property a public nuisance. Prior to such declaration, notice shall be given to the owner, a public hearing shall be held and a recommendation shall be submitted from the appropriate department.
  - (2) Notice to the property owner of the public hearing shall consist of either personal service or certified or registered U.S. mail, return receipt requested, to the owner in whose name the property appears upon the last local tax assessment roll. Notice to the owner shall occur at least 14 calendar days prior to the date of the public hearing.
- (c) *Abatement; costs.*
- (1) If the city commission determines that a property is a public nuisance, then, in addition to any other remedies available to the city in law or equity, the city commission, by resolution, may:
    - a. Authorize the department of engineering and public works to prohibit the occupancy of the property by either padlocking a portion of the property or boarding up the property, whichever is appropriate, for a period of up to one year from the date the city commission adopted the resolution; and/or

- b. Determine that the owner shall be liable for the full cost and expense of any and all city employees utilized to padlock or board up the property, including any and all employees utilized to remove padlocks and/or boarding devices, as well as the full cost and expense of any and all police officers involved in each drug related activity, including arrests and drug raids on the property. Such costs shall be assessed against the property.
- (2) If the city commission determines that property which is the subject of the public hearing is, according to current court documents, the subject of eviction proceedings, the city commission may take the matter under advisement and withhold declaration of the property as a public nuisance until such time as evidence is submitted to the clerk that the eviction proceedings have been completed, terminated or otherwise resolved.
- (d) *Persuasive presumption of a public nuisance.* It shall be a persuasive presumption that a property is a public nuisance if the following criteria are met:
  - (1) Controlled substances and/or narcotic paraphernalia are used, sold, furnished, given or possessed on the property, or the property has been raided by the police and controlled substances and/or drug paraphernalia are found by the police.
  - (2) A letter has been sent to the property owner informing the owner that controlled substances and/or drug paraphernalia have been found by the police at the property. The letter must inform the owner of potential consequences if a similar activity occurs at the property. The letter shall either be sent by certified or registered, return receipt requested, U.S. mail, or personally served on the property owner in whose name the property appears upon the last local tax assessment roll.
  - (3) Controlled substances and/or narcotic paraphernalia are sold, furnished, given or possessed on the property again within 365 days from the date that such controlled substances and/or narcotic paraphernalia were first sold, furnished, given or possessed on the property, or the same property is raided again within 365 days from the date of the first raid, and controlled substances and/or narcotic paraphernalia are found in the raid.

(Code 1972, § 9.39(a—d))

Sec. 54-3. - Noxious odors.

- (a) No person shall create, establish, cause, maintain or permit the continued existence of, or permit the creation, establishment, causation or maintenance on property owned or controlled by him of, any noxious, obnoxious, offensive or nauseous odor or smell which disturbs the public peace or endangers the public health, safety or welfare.
- (b) Any person who owns or is in control of any material or substance, whether solid, liquid or gas, which he knows, or has reasonable cause to believe, to have a noxious, obnoxious, offensive or nauseous odor or smell, shall not intentionally cause or permit such material or substance to disturb the public peace or endanger the public health, safety or welfare.
- (c) A person who violates any of the provisions of this section is responsible for a municipal civil infraction.

(Code 1972, §§ 1.20(21), 9.28)

Sec. 54-4. - Storage of dismantled, partially dismantled, inoperable, and unregistered motor vehicles or parts thereof.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Dismantled or partially dismantled motor vehicle* means any motor vehicle from which some part which is ordinarily a component of such motor vehicle has been removed or is missing.

*Inoperable motor vehicle* means any motor vehicle which, by reason of dismantling, lack of repair, or other cause, is incapable of being propelled under its own power.

*Unregistered motor vehicle* means any vehicle not bearing a valid and current license plate.

- (b) *Storage restrictions.* It is unlawful for any person to store or place, or permit to be stored or placed, a dismantled, partially dismantled, inoperable, or unregistered motor vehicle or any parts thereof, on any parcel of land in the city, platted or unplatted, or any street adjacent thereto, unless either such motor vehicle or parts thereof shall be kept in a wholly enclosed garage or other wholly enclosed structure, or unless the owner or occupant of such parcel of land is licensed by the city as a secondhand dealer or junk dealer, provided that, any bona fide owner or occupant of any parcel of land may store one such vehicle on such parcel of land for a period of time not to exceed a total of 48 hours, if such vehicle is registered in his name.
- (c) *Public nuisance declared.* The presence of a dismantled, partially dismantled, inoperable, or unregistered motor vehicle, or parts thereof, on any parcel of land in violation of the terms of this section is hereby declared to be a public nuisance.
- (d) *Nuisance abatement.* Whenever the city or its officials and agents determines that a dismantled, partially dismantled, inoperable or unregistered motor vehicle or parts thereof have been parked on private property, a written notice of violation shall be issued. The city inspectors are authorized to enter the subject property to post written notice. Such written notice shall be posted conspicuously on the vehicle, and shall direct the owner to cease storing such vehicle and remove it to proper storage or disposal location. The notice shall further state that failure to comply with the terms of the notice shall result in confiscation of the violating vehicle or parts of such vehicle by the city. The owner of the vehicle or the real estate upon which it is parked, will have ten days from the date of receiving such notice to either remove the vehicle or file an appeal to the city administrator. The city is hereby authorized to remove any such motor vehicle, or parts or tires of such vehicle, found to be in violation of the conditions of this section, after the ten day period has elapsed, provided that an appeal has not been filed. This provision does not prohibit the city from also issuing a municipal civil infraction citation to either the owner of the vehicle or the real estate on which it is parked, or both.
- (e) *Costs of removal and storage; notice; disposal.* Any dismantled, partially dismantled, inoperable or unregistered motor vehicle or parts thereof, removed from any premises in the city pursuant to this section, may be held by the city until claimed by the owner. The claiming owner shall pay to the city costs of removal and storage. Upon removal of the vehicle or parts, the city shall immediately send written notice to the last known address of the owner of such vehicle or parts or, if the owner's address is unknown, to the owner of the land such vehicle or parts were removed from. This notice shall inform the owner that the owner has ten days from the date of mailing of the notice in which to reclaim the property, and that should the owner fail to do so within the time limit, then the city shall declare any motor vehicle so seized to be abandoned and shall dispose of the vehicle in accordance with the provisions of the Michigan Vehicle Code relating to the disposal of abandoned vehicles. Any costs, expenses, or other fees incurred by the city in enforcing this section shall be collected as a special assessment against the premises as provided in section 70-12.
- (f) *Violations.* A person who violates any of the provisions of this section is responsible for a municipal civil infraction.

(Code 1972, §§ 1.20(24), 9.110, 9.111, 9.113; Ord. No. 06-10, 8-7-2006)

Sec. 54-5. - Outdoor wood-burning furnaces.

- (a) *Purpose.* This section is intended to promote the public health, safety and welfare and to safeguard the health, living-conditions, safety and welfare of the citizens of Adrian due to the air pollution, and other dangers and nuisances caused from outdoor wood-burning or wood-fired furnaces.

- (b) *Applicability.* This section applies to all outdoor wood-burning or wood-fired furnaces. This section does not apply to furnaces that operate by burning corn.
- (c) *Definitions.* For purposes of this section, "outdoor wood-burning furnace" shall mean any device or structure that:
  - (1) Is designed, intended, or used to provide heat and/or hot water to any residence or other structure.
  - (2) Operates by the burning of wood or other solid fuel.
  - (3) Is not located within a residential structure.
  - (4) This section does not prohibit the burning of corn.
- (d) *Conflicts.* This section shall not be construed as an exemption or exception to any other provisions of these Codified Ordinances, including the Building Code, Mechanical Code, Fire Code, Property Maintenance Code, or any other code or ordinance. In the event of a conflict between the provisions of this section and any other ordinance or other provisions of the law, the more restrictive provision shall apply.
- (e) *Existing uses.* This section shall not apply to any free-standing wood-burning furnace that was installed, connected, and operating as of the effective date of this section under the required permits. However, this section shall not be deemed as specific authorization for the use of any pre-existing free-standing wood-burning furnace and shall not be deemed to bar, limit, or otherwise affect the rights of any person to take private legal action regarding damage to nuisance caused by the use of a free-standing wood-burning furnace.
- (f) *Prohibition.* It shall be unlawful to install or operate a free-standing wood burning furnace, and to cause or permit the installation or operation of a free-standing wood burning furnace within the city.
- (g) *Declaration of a public nuisance.* Any wood burning furnace meeting the definitions of this section installed or operated in violation of this section is declared to be a public nuisance per se.
- (h) *Violations.* A person who violates any of the provisions of this article is responsible for a municipal civil infraction.

(Ord. No. 06-20, 12-18-2006)

#### **Sec. 54-6.-Air Pollution Nuisances**

**(a) Purpose.** This section is enacted to protect, preserve, and promote the health, safety, and welfare of the residents of the city through reduction, prevention and control of air pollution. It is the intent of this section to establish and provide the enforcement of air quality standards, rules and regulations, and permits that will be protective of human health and the environment and that prevent interference with the comfortable enjoyment of life or property or the conduct of business.

#### **(b) Definitions**

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

- (1) ***Air contaminant-*** Any fume, odor, smoke, particulate matter, vapor, gas or any combination thereof, but not including water vapor or steam condensate.
- (2) ***Air pollution-*** the presence in the outdoor atmosphere of one (1) or more air contaminants.

- (3) **Department-** The Community Development Department of the City of Adrian and/or any of its authorized agents.
- (4) **Emit or Emission-** To discharge, release or to permit or cause the discharge or release of one (1) or more air contaminants into the atmosphere.
- (5) **Existing facilities-** A facility for which application for all applicable permits and approvals from the city have been submitted or a facility found to be engaging in one (1) or more of the activities listed in Sec. 54-6 (c) prior to the effective date of this article.
- (6) **New facilities-** A facility seeking to be engaged in one (1) or more of the activities listed in Sec. 54-6 (c), for which application for all applicable permits and approvals from the city has NOT been submitted prior to the effective date of this article.
- (7) **Nuisance-** The doing of or failure to do something that allows or permits air contaminants to escape into the open air that are or tend to be detrimental to the health, comfort, safety or welfare of the public or that causes or tends to cause injury or substantial annoyance or inconvenience to the reasonable person exposed thereto or causes or tends to cause damage to property.
- (8) **Odor Control Plan-** An air quality or odor control plan, certified or approved by an applicable industrial engineer, explaining how the person will mitigate odors as part of their regular protocols. This will include air intake and outtake control, regular odor checks, various types of filtration ( industry specific) and certain on-site procedures and protocols.
- (9) **Owner-** The person or entity having legal or equitable interest in the real property and its fixtures and appurtenances.
- (10) **Person-** Any person, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user or owner and shall include any municipal corporation, state or federal government agency, district or any officer or employee thereof.
- (11) **Premises-** Any building, structure, land, utility or portion thereof, including all appurtenances, and shall include yards, lots, courts and properties without buildings.

(c) **Applicability.** It shall be unlawful for any person engaging in one (1) or more of the following activities to emit air contaminants that constitute a nuisance as defined in Sec. 54-6 (b):

- (1) Pet food or supplement manufacturing;
- (2) Marijuana growing, processing, or manufacturing;
- (3) Sewage treatment
- (4) Rendering and meat byproduct processing;
- (5) Dairy processing;
- (6) Grease removal service;

**(7) Any other activity determined by the department to cause or be likely to cause nuisance odors.**

**(d) Odor Control Plan-** It shall be required that any person engaging in one (1) or more of the activities listed in Sec. 54-6 (c) submit an approved odor control plan to the department annually.

**(1) Existing facilities:** Required to have approved odor control plan within 180 days of the effective date of this article.

**(2) New facilities:** Required to have certified odor control plan prior to issuance of final certificate of occupancy.

**(e) Prohibition** It shall be an unlawful nuisance for any person engaging one (1) or more of the activities listed in Sec. 54-6 (c) to cause or permit the emission of odorous air contaminants from any source so as to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of property.

Upon the following occurrence, any odor will be deemed to interfere with reasonable and comfortable use and enjoyment of property:

**(1) When the department receives five (5) or more complaints from individuals representing separate households within the city within a 12-hour period relating to a single odor description, and the department verifies the source of the odor. To be considered an odor complaint the department must have a record of it, which must include the:**

**a. Name, address and phone number of complainant.**

**b. Time and date of call.**

**c. Description of odor nuisance, including estimated location or source of complaint, and if possible, prevailing wind or weather conditions observed.**

**(f) The department must use reasonable efforts to investigate all complaints to verify the source of the odor in a timely manner.**

**(g) It is an affirmative defense to a violation of the odorous air contaminant standard that the violation was caused by an upset condition or breakdown of a device, facility, or process that: could not have been reasonably anticipated or prevented; the facility owner or operator took immediate action to eliminate the upset condition and, if necessary, repair all equipment and devices that caused or contributed to the upset condition or breakdown; the facility owner or operator notified the department about the upset condition or breakdown within eight (8) hours of its occurrence; and the facility owner or operator provided written detailed information describing the upset condition or breakdown and identifying the measures taken to correct it within three (3) working days of the occurrence.**

**(h) Fairs, circuses, rodeos, stock shows, tarring operations, and other similar temporary events are exempt from this section.**

**(i) Inspections.**

**(1) For the purpose of determining compliance with the provisions of this chapter, the department through its authorized representatives is hereby authorized and directed to make inspection of all air contamination sources. If any person refuses or restricts entry and free access to any part of a premises or refuses inspection or sampling of any device, facility or process where inspection is sought, the department through its authorized representatives shall seek from the county court a warrant for inspection and order that such person refusing inspection be required to permit an inspection at a reasonable time without interference, restriction or obstruction. The court shall have full power, jurisdiction and authority to enforce all orders issued under the provisions of this chapter.**

**(2) It shall be unlawful for any person to violate the provisions of any warrant for inspection and order issued under the provisions of this chapter.**

**(j) *Violations.* A person who violates any of the provisions of this section is responsible for a municipal civil infraction. The city shall assess fines and abatement costs of each violation together with all remedies available under MCL 600.8701 et seq. Increased civil fines may be imposed for a repeat violation. As used in this section "repeat violation" shall mean a second or any subsequent infraction of the same requirement or provision committed by a person or establishment within any 12-month period. Each day a violation continues shall constitute a separate offense. Fines for each offense shall be as set forth in Sec. 2-373 of the Adrian City Code.**