

CHAPTER 68-NUISANCES AND WEEDS

(ORD #1-18)

CHAPTER 68-NUISANCES AND WEEDS

SECTION 1. GENERAL PROVISIONS

68.010. Definitions.

- City: When used herein, the term "City" shall mean the City of Holden, Missouri.
- City Clerk: When used herein, the term "City Clerk" shall mean the City Clerk or her designee.
- Chief: When used herein, the term "Chief" shall mean the Chief of Police or his designee.
- Junked Motor Vehicle: For the purposes of this Chapter, the term "junked motor vehicle" or "junked vehicle" is defined as:
 1. any motor vehicle left unattended at the same place on any roadway in the City for a period of time in excess of seventy-two (72) consecutive hours, or
 2. any partially dismantled, non-operative, wrecked, discarded, unlicensed, unregistered, improperly licensed, or improperly registered boat, trailer, camper trailer, or recreational vehicle.

Nuisance: For the purposes of this Chapter, the word "nuisance" is hereby defined, when not otherwise defined, as an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition, or thing either:

1. Injures or endangers the comfort, repose, health, or safety of others;
or
2. Offends decency; or
3. Is offensive to the senses; or
4. Unlawfully interferes with, obstructs, or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
5. In any way renders other persons insecure in life or the use of property; or
6. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others;
or
7. Any property which is in violation of this Chapter.

68.020. Illustrative enumeration.

The maintaining, using, placing, depositing, leaving, or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be

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conclusive, limiting or restrictive:

1. Noxious weeds, grass, and other rank vegetation over ten (10) inches in height.
2. Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber, or other things.
3. Any condition which provides harborage for rats, mice, snakes, and other vermin.
4. Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.
5. All unnecessary or unauthorized noises and annoying vibrations, including animal noises.
6. All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
7. The carcasses of animals or fowl not disposed of within a reasonable time after death.
8. The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, creamery, industrial wastes, or other substances.
9. Any building, structure or other place or location where any activity which is in violation of local, state, or federal law is conducted, performed, or maintained.
10. Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
11. Dense smoke, noxious fumes, gas, soot, dust, or cinders, in unreasonable quantities.
12. Dead trees and dead limbs of trees so located that the falling thereof would endanger the safety of persons using any public sidewalks in the City or endanger the safety of any pedestrian or occupant of any motor vehicle traveling upon any public street.
13. Tree limbs and branches which overhang any public sidewalk or public street of such height above the sidewalk or street as shall impede and interfere with the use of said sidewalk by any person, or impede and interfere with the use of said street by a pedestrian or the operator of any motor vehicle, or shall endanger the safety of any person using any public sidewalk, or endanger the safety of any pedestrian or occupant of any motor vehicle traveling upon any public street.
14. Junked Motor Vehicles.
15. All ashes, cinders, slop, filth, excrement, sawdust, stones, rocks, dust,

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straw, sticks, shavings, bones, cans, paper, trash, rubbish, manure, refuse, offal, wastewater, fish, putrid meats, entrails, decayed fruits or vegetables, broken ware, rags, old iron, or other metal, old wearing apparel, all animal or vegetable matter, all dead animals, or any other offensive or disagreeable substance or thing thrown or left deposited, by anyone in or upon any street, alley, sidewalk, pond, pool of water, or other place.

16. Ice and/or snow that has accumulated on any sidewalk and remained for more than twenty-four (24) hours after the conclusion of the weather event that resulted in such ice and/or snow.

17. The excreta of any animal that is deposited and not immediately removed in any public or private area not designed to receive such waste, including but not limited to streets, sidewalks, parking lots, and public parks or recreation areas. This subsection shall not apply to a guide dog accompanying any visually impaired person.

18. Any encampment, unless such encampment exists upon public property and is designated for camping by the Park Board and the persons occupying the encampment are in compliance with all rules promulgated by the Park Board, or unless the persons occupying such encampment have continuous and uninterrupted access to verified restroom and personal sanitation facilities within one hundred (100) yards of the encampment that are compliant with City Code Section 61.140, Sewage disposal.

68.025. Prohibited.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

68.030. Inspections.

1. It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

2. It shall be the responsibility of any owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant having control of any occupied lot or land or any part thereof in the City to permit or maintain on any such lot or land, or on or along the sidewalk, street or alley adjacent to the same between the property line and the curb, any nuisance as defined herein and it shall be the duty of any owner, lessee or occupant of any lot or land to remove or abate any such nuisance in accordance with Chapter.

68.040. Notice to abate.

Whenever a nuisance is found to exist within the City or within the City's extraterritorial jurisdiction, the Chief shall give written notice, in accordance with Subsection F of this Section, to the owner of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance.

68.045. Contents of notice.

All notices to abate a nuisance issued under the provisions of this article shall contain the date of the notice and each of the following:

1. A full description of what constitutes the nuisance, and the location of the nuisance, if the same is stationary.

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2. A statement of acts necessary to abate the nuisance.
3. An order to remove the nuisance, notice of procedures to request a hearing, and a reasonable time either to remove the nuisance or request a hearing.
4. A statement of notice that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the City will abate such nuisance and assess the costs thereof against such person as outlined in Subsections H and I of this Section.
5. If the nuisance involves any building or structure the notice shall also include an order that the building or structure to be vacated if such be the case, reconditioned, or removed, giving a reasonable time for commencement of the work, and requiring the work to proceed continuously without unnecessary delay.
6. If the nuisance is a Junked Motor Vehicle then the Notice shall also include a description of the vehicle in question, a statement that the vehicle has been found to be a Junked Motor Vehicle, a declaration that if the owner fails to abate the nuisance within ten (10) days, the City will abate the nuisance at the owner's expense and a statement that the City may abate the nuisance by towing the vehicle or otherwise.

68.050. Service of notice.

Notice to abate a nuisance shall be served on all Owners. For purposes of this Chapter, Owner shall be determined to be:

1. Any owner, occupant, or lessee.
2. If the nuisance abatement could include demolition of any structure, then Owner shall also any mortgagee, agent and all other persons having an interest in the building, structure, or property where the nuisance is located, as shown by the land records of the recorder of deeds for the appropriate county that such building, structure or property has been found to be a public nuisance.
3. If the nuisance is a Junked Motor Vehicle, the owner of the vehicle shall also include the person(s) registered with the Missouri Department of Revenue as the owner(s), unless the Chief has knowledge of some other person who is claimed to be the owner, in which case such putative owner shall be given notice as provided above in addition to the registered owner.

Service may be accomplished by any of the following:

1. By posting Notice in a conspicuous place on the property upon which the Nuisance is located and mailing Notice to the Owner; or
2. If the nuisance concerns a Junked Motor Vehicle, then by posting notice in a conspicuous place on the automobile and mailing Notice to all owners as recorded by the Missouri Department of Revenue; or
3. If the address of the owner shall not be known, the service of notice shall be by posting and by publication. The publication shall contain the full text of the notice and shall be published at least once a week for three consecutive weeks on the same day of the week in some newspaper of general circulation published in the appropriate county, and the time specified in the notice for a hearing to be held, or for

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the commencement of work or for any other thing to be done shall be at least thirty (30) days from the date of the first publication of notice.

4. By any other legal process pursuant to law.

68.060. Request for hearing.

1. Right to Request a Hearing: If an owner or person receiving Notice of the determination of public nuisance does not agree with said determination, they may request a hearing within 10 days of the date of the notice. The request must be in writing and must be received by the City Clerk within 10 days of the date of the Notice. The City Clerk may at his or her sole discretion, extend the time for filing the Request.
2. Form of Request: The request for a hearing shall be on a form promulgated by the City Clerk or shall be in writing and contain at least the name of the person requesting the notice, their mailing address, their phone number (if any), a statement that they request a hearing on the determination of a nuisance and the location of the nuisance.
3. City Clerk's Right to Set a Hearing: The City Clerk may at his or her discretion order that a hearing date be scheduled and placed into the Notice to the owner without receipt of a written request. Further the City Clerk may cancel the hearing if a timely request for a hearing is not received within the allotted time provided that the Notice served on the owner contains language that the Hearing will be cancelled and the right to a hearing waived if a timely request is not received by the City Clerk.
4. Waiver of Request: If a request is not received within 10 days the right to a hearing shall be deemed to be waived. Nothing in this Section shall preclude the City Clerk from holding a hearing if the City Clerk deems the same necessary.
5. When Request is Received: If the City Clerk receives a Request for hearing within the prescribed time, the City Clerk shall call and conduct a Hearing in accordance with Subsection I of this Section.
6. Hearing Required without Request, when: Where abatement of a nuisance may require demolition of a building or structure, or mandatory repair and maintenance of a building or structure, in order to maintain the health, safety or welfare of the residents of the City, and inadequate action has been taken to remedy the situation a full and adequate hearing shall be called and conducted regardless of whether the owner of the property has requested a hearing.

68.070. Hearing procedure.

If a Hearing is called by the City Clerk before the City Council, the following procedure shall be followed:

1. The City Council shall consider the evidence and issue an order in accordance with the procedures of this Chapter.
2. The person or person requesting a hearing shall have an opportunity

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to be heard and shall be served notice of the hearing (personally or by mail; if those methods fail, service may be had by publication) allowing at least ten (10) days written notice. The notice shall include the date, time, and place of the hearing.

3. Any party may be represented by counsel and have the right to present evidence.
4. In the event that any or all of the parties fail to appear at the hearing, the evidence of the existence of facts which constitute grounds alleged in the Notice shall be considered unrebutted.
5. The technical rules of evidence shall not apply in the hearing. Any relevant evidence may be admitted and considered by the City Council if it is the sort of evidence of which responsible persons are accustomed to rely in the conduct of serious affairs. Objections to evidence shall be noted and a ruling given by the hearing examiner.
6. All testimony shall be under oath, which may be administered by the City Clerk or a notary public, and a recording shall be made by the City, or a written record of the hearing may be made by a reporter to be employed by the City, the cost of which shall be paid by the City should the proceeding be eventually held against the City and by the owner if it should not. In the latter case the cost of such reporting shall be a lien upon the lot, tract, or parcel of land upon which the building or structure stands and shall be added to the cost of performance for demolition or repair in the event the City shall be required to do so, and payable as provided for such costs.
7. The hearing shall proceed in the following manner. The City will give opening remarks first, followed by any opening remarks by the owner. The City will then be allowed to present its evidence. Witnesses called by the City will be directly examined with an opportunity for the owner to cross-examine, followed by an opportunity for the City to re-direct. Once the City's case is presented, the owner will have an opportunity to present his or her case. The same procedure for questioning witnesses will be followed. Then the City will have an opportunity for rebuttal if it so chooses. Finally, the City and the property owner will have an opportunity to make closing remarks in that respective order.

68.075. Findings of City Council following hearing.

Within thirty (30) days from the date of the hearing, the City Council shall, upon the basis of competent and substantial evidence offered at the hearing, make a conclusion of law as to whether or not a nuisance exists under the terms of this article. If the nuisance is found to exist, then the City Council shall make a finding as to whether the procedures required by this Chapter have been substantially met and complied with and whether or not the abatement order of the Chief to abate the nuisance was reasonable in its terms and conditions and within the standards of this Section. Finally, the City Council shall make a finding as to the appropriate abatement for the nuisance and enter an order instructing the nuisance to be abated in accordance with Subsection K of this Section. If it is found that the nuisance is detrimental to the health, safety, and welfare of the residents of the City, that finding shall be specifically

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stated in the Findings of Fact. If the City Council find that the nuisance does not exist or that the procedures of this article have not been substantially met and complied with, the proceedings against the building or structure shall be dismissed.

If the nuisance involves a Junked Motor Vehicle, the City Council shall determine whether or not the vehicle is a Junked Motor Vehicle and whether the Chief is entitled to abate the nuisance. The City Council shall not have authority to determine the validity of a parking citation. If the City Council determines that the vehicle is not a Junked Motor Vehicle, the decision of the Chief shall be withdrawn and the Chief shall be prohibited from again determining that the vehicle is a Junked Motor Vehicle for thirty (30) days.

68.080. Abatement by City.

- 1.** Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this article to abate the same, a duly designated agent or employee of the City shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.
- 2.** Where a City official is obliged to abate a violation of this Chapter, and such abatement requires the painting of the structure or parts thereof, then the City official shall cause the painting thereof to be in a color or colors most similar to the colors last used to paint the structure, even if use of such colors is not the least expensive means of abating the nuisance.
- 3.** Where a City official is obliged to abate a violation of any City ordinance related to Dangerous Buildings as nuisances, the City Council may issue an order directing the building or structure to be completed, repaired, or demolished and vacated as the case may be, within the standards of Dangerous Buildings ordinances of the City. This order, together with the findings of fact and conclusions of law, shall be in writing and shall be immediately delivered or mailed to each party to the hearing or to his or her attorney of record. The order shall state a reasonable time which shall not be less than thirty (30) days from the date of issuance within which to comply with the order and shall further provide that if it is not complied with within such time, the Chief shall cause the work to be done by the City and its own crews or by contractors employed by the City for that purpose.
- 4.** Where a City official is obliged to abate a Junked Motor Vehicle, it may, in addition to any other remedy available to it, have the vehicle towed.

68.085. Costs of abatement to be assessed.

- 1.** Any and all costs incurred by the City in the abatement of a nuisance under the provisions of this Section shall be certified to the City Clerk, who shall cause a special tax bill or assessment therefor against the property be prepared and collected by the official responsible for collecting personal property taxes. The special tax bill or assessment shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.

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- 2.** In addition to any charges for the actual abatement of the nuisance, and as part of the charges assessed in paragraph A., above, the City Clerk shall impose a fee to cover the City's administrative costs for abating the nuisance. The City Council determines this cost to be One Hundred and no/100 Dollars (\$100.00) based upon the average administrative cost for abating nuisances, in lieu of an independent determination of costs in each case.
- 3.** A tax bill for repair or demolition of a building or structure may be paid in twelve (12) equal monthly installments without accruing interest if a request for such is delivered to the City Clerk prior to the tax bill being recorded. If any payment shall not be paid within thirty (30) days of its due date the entire remaining balance of the tax bill shall immediately become due, payable, and subject to interest at the maximum rate per annum allowable by law.

68.090. Enforcement of tax bills.

Tax bills issued under the Section shall be prima facie evidence of the validity of the bill, the doing of the work and the liability of the property for the damages stated in the bill and shall be collected if default should occur by suit brought in a court of competent jurisdiction by the City Attorney on behalf of the City. Judgment in any such suit shall be special and against the property only and shall be satisfied by sale of the property or so much thereof as is necessary to satisfy the judgment and the costs of the sale.

68.100. Appeals under administrative review act.

Any owner, occupant, lessee, mortgagee, agent, or other person having a property interest in the nuisance property may appeal from the order and determination of the City Council made under the provisions of this Section. The appeal shall be to the Circuit Court of Johnson County, or at the option of the appellant, the Circuit Court of Cole County as established in Chapter 536 of the Revised Statutes of Missouri.

68.150. Summary abatement where immediate danger exists.

In all cases where it reasonably appears that an immediate danger to the health, safety or welfare of any person exists, the Chief may take emergency measures to vacate, repair, remove or demolish the public nuisance found under the provisions of this article including but not limited to buildings or structures.

68.155. Municipal judge may direct abatement and assess costs.

If, upon trial and conviction for causing or maintaining any nuisance defined and prohibited by this Chapter and other ordinances of this City, it shall appear that the nuisance complained of continues to exist, the municipal judge may, in addition to the penalty imposed for causing or maintaining such nuisance, make an order directing the Chief to abate the nuisance forthwith and report the expense thereof to the Municipal Court, who may make such cost a part of the judgment in addition to the fine imposed. Such costs shall be collected in the same manner as other fines and penalties.

SECTION 2. WEEDS

68.200. Weeds defined.

As used in this Article, the term "weeds" means all vegetation, other than commonly known and recognized trees, decorative shrubs and ornamental grasses, which has attained a height of ten (10) inches or more and which meets any one of the following tests:

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1. Vegetation which may exhale unpleasant or noxious odors.
2. Vegetation which does or could conceal deposits of trash or other material or which does or could afford food or harborage for rats, mice or snakes.
3. Vegetation which is commonly known and recognized as weeds and grasses.
4. Vegetation which causes a safety hazard by obstructing the line of sight of a motor vehicle driver, bicyclist or pedestrian at a street intersection or to a street sign.
5. Vegetation which could interfere with the passage of motor vehicles, bicycles or pedestrians on any public right-of-way.
6. Poison ivy, poison oak and poison sumac, at any height or stage of maturity are "weeds" for the purposes of this Section.

68.210. Weeds declared a nuisance.

Any growth of weeds on any lot or ground is hereby declared to be a nuisance.

68.220. Weeds prohibited.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of any growth of weeds in violation of this Section.

68.230. Removal required.

1. It shall be unlawful for any owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant having control of any occupied lot or land or any part thereof in the City to permit or maintain on any such lot or land, or on or along the sidewalk, street or alley adjacent to the same between the property line and the curb, any growth of weeds or any accumulation of dead weeds, grass or brush.
2. It shall be the duty of any owner, lessee or occupant of any lot or land to cut and remove or cause to be cut and removed all such weeds, grass, poisonous or harmful vegetation as often as may be necessary to comply with the provisions of paragraph (1) of this Subsection.

68.240. Defense.

1. It is an affirmative defense that the defendant did not have the legal right to control the location where a violation of this Section occurred.
2. It is an affirmative defense that the growth of weeds was for agricultural purposes, provided that a fifteen-foot-wide, weed-free buffer was maintained on the perimeter of the property wherever the property adjoins property used for residential or commercial purposes.
3. It is an affirmative defense that the growth of weeds was part of a federal or state agricultural or conservation program.

68.250. Continuing violation.

Each day that a violation of this Section continues shall be deemed a separate offense.

68.255. Removal by City.

If the provisions of this Section are not complied with, the Chief, or other official designated by the Mayor, shall follow the process outlined in this Chapter.

SECTION 3. TREES

68.300. Branches overhanging public ways.

Any tree located on private property in the City, which overhangs or intrudes over or upon any public street, alley, boulevard, roadway or sidewalk to such an extent that it interferes with the safety of the traveling public, is hereby deemed and declared to be a nuisance. Any such tree shall be deemed to so interfere if the branches thereof shall overhang or intrude within an area of nine (9) feet above the traveled surface of any sidewalk or twelve (12) feet above the traveled surface of any street.

68.310. Dead or unsafe trees.

Any tree located on private property in the City, which is either dead or in such an unsafe or dangerous condition that it constitutes a hazard to the safety of persons or vehicles traveling on any public street, alley, boulevard, roadway or sidewalk in the City, or to any persons or structures living or situated on adjacent private property, is hereby deemed and declared to be a nuisance.

68.320. Inspection of premises.

Subject to constitutional limitations, authorized agents of the City are hereby authorized to enter upon any private property within the City to examine and inspect any tree thereon to determine if such tree is a nuisance as defined in Subsections A and B of this Section. It shall be unlawful for any person to interfere with any such authorized agent making any examination permitted under this Section.

68.330. Notice to abate.

Whenever the Chief finds that a nuisance exists under any provision of this Section, he or she shall give notice, by certified mail addressed to the last known address of the owner of record or by personally serving the notice upon the owner of record, and if there is more than one owner of record, by such mail or personal service to any one of such owners. In the event the owner of the property is unknown, or his or her whereabouts is unknown, notice shall be given by posting such notice upon the property where the condition of nuisance exists. Such notice shall require the owner of the property to abate the nuisance in the manner stated in Subsection E of this Section as conditions warrant.

68.335. Owner to abate nuisance.

It shall be the duty of the owner of private property upon which any tree is located whose condition constitutes a nuisance under Subsections A or B of this Section to trim or remove such trees following receipt of notice from the Chief to do so.

68.350. Abatement of nuisance by City and collection of costs.

In any case where a person required under Subsections A and B of this Section cannot be compelled for any reason to abate the nuisance defined in such Subsections, by prosecution, the City, through its contractors and/or agents, may enter upon the premises, cut the trees and/or branches, and abate such nuisance. The City shall solicit and take at least two (2) competitive bids from persons engaged in the business of cutting trees and award the job of cutting the trees and/or branches to the lowest bidder. When the contractor selected by the City cuts the trees and/or branches on **the premises where the**

condition of nuisance existed, the City shall issue its warrant to the contractor, in payment for said work, and the City Clerk shall certify the cost of the work and shall add the cost thereof to the tax bill on the real estate involved, and the cost of cutting the trees and/or branches shall be collected at the same time and in the same manner as other taxes on said realty are collected annually.

68.360. City's right of entry to abate interference with enforcement.

Subject to constitutional limitations, any authorized agent of the City shall have the right of entry for that purpose into and upon any premises, in order to abate a nuisance pursuant to the provisions of this article, and it shall be unlawful to interfere with any such authorized agents.

SECTION 4. STORAGE OF GOODS

68.400. Display of certain items prohibited.

It shall be unlawful for the owner or occupant of any residential premises within the City to allow any of the following items to remain on such premises in any location outside the residence which can be viewed from a ground location off the premises: appliances, bedding, bottles, boxes, broken glass, cans, cardboard (bundled or unbundled), cartons, furniture manufactured for indoor use only, jars, machine parts, motor vehicle parts, newspapers, magazines, periodicals, catalogs, books, pallets, paper (bundled or unbundled), plumbing fixtures, rags, non-attached carpet, scrap metal, tire rims, tires, or lumber and building supply materials that are not neatly stacked, provided however, that neatly stacked lumber and building supply materials may be allowed to be stored on the yard, porch or carport pursuant to an active building permit and the owner or contractor is actively working on the improvements, barring any delays beyond the control of the owner or contractor.

68.410. Front yard and unenclosed front porch prohibitions.

1. It shall be unlawful for the owner or occupant of any residential premises within the City to allow any of the following items in front yards or on unenclosed front porches:

i. Clothes, clothes lines, and dog houses; trash containers and recycling bins are also prohibited; however, trash containers and recycling bins may be placed in the front yard next to the curb or street edge with all waste securely within the containers and with lids on the containers, up to twenty-four (24) hours prior to the time waste is scheduled for removal and up to forty-eight (48) hours after waste has been removed.

2. It shall be unlawful for the owner or occupant of any residential premises within the City to allow ATV's or motorcycles on unenclosed front porches.

68.420. Nuisance declaration and continuing violations.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the items as prohibited above in Subsections A and B of this Section are hereby declared to be and constitute a nuisance and are subject to Section 1 of this Chapter. Each day that a violation of this article continues shall be deemed a separate offense.

68.425. Definitions.

The following definitions apply to this Section:

1. "Occupant" means any person eighteen years of age or older who lives

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in a residence.

2. "Residence" means a structure designed for human habitation. The term does not include a porch or carport.
3. "Residential premises" means a tract or parcel of land upon which a structure designed for human habitation is located, regardless of the current use of the structure.

SECTION 5. Racing.

68.500. Racing declared a nuisance.

The creation of dust, noise, fumes, or odors by the operation of motor vehicles, racing cars, rides, or other motor-driven contrivances where the dust, noise, fumes or odors are carried beyond the borders of the property whereon the above enumerated vehicles may be operated in such quantities as to interfere with reasonable enjoyment of any property in the neighborhood is hereby declared to be a nuisance.

68.510. Written warning.

Before taking any action for violation of this Section, the Chief may provide written notice to the persons suspected of maintaining the nuisance. Such notice shall in general terms describe the nuisance and its location and shall state a date by which prosecution shall be started if the nuisance is not discontinued.

68.520. Injunction.

In addition to any other relief provided by this Chapter, the City Attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this Section. Such application for relief may include a temporary restraining order, temporary injunction and permanent injunction.

SECTION 6. Noise Generation Regulations

68.600. Nuisance declaration.

It is found and declared that:

1. The making and creation of excessive, unnecessary or unusually loud noises within the limits of the City is a condition which has existed for some time and the extent and volume of such noises is increasing.
2. The making, creation, or maintenance of such excessive, unnecessary, or unusually loud noises which are prolonged, unusual, and unnatural in their time, place, and use affect and are a detriment to public health, comfort, convenience, safety, welfare, and prosperity and the peace and quiet of the City and its inhabitants.
3. The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, and prosperity and the peace and quiet of the City

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and its inhabitants.

4. It shall be unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary, raucous, or unusually loud noise which terms shall mean any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities within the limits of the City.

68.610. Motor vehicle maximum levels.

Notwithstanding any other provision of this Section, the following noises emanating from motor vehicles shall be a violation of this Section:

1. Horns, Signaling Devices, etc. - The sounding of any horn or signaling device on any motor vehicle on any street or public place of the City, except as a danger warning, the creation by means of any such signaling device for an unnecessary and unreasonable period of time.
2. Exhausts - The discharge into the open air of the exhaust of any stationary internal combustion engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
3. Defect in Vehicle or Load - The use of any motor vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
4. Automobile audio systems - The using, operating, or permitting to be played of any audio system of any automobile being operated off private property which is plainly audible at a distance of fifty (50) feet from the vehicle.

68.615. Specifications.

The City hereby adopts the American National Standard, Specification for Sound Level Meters, ANSI S1.4-1971 (R 1976), published by the American National Standards Institute, Inc. The provisions of that standard shall be controlling and shall be the specification for sound level meters within the jurisdictional area of the City.

68.620. Calibration.

The sound level meter shall be maintained at calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement.

68.625. Measurement of noise.

The following provisions regulate noise generation by any use or occupant within a specific zoning district:

1. *Scale.* All noise measurement shall be measured in units of the frequency-weighted sound level [dB(A)], in accordance with the American National Standards Institute specifications for sound level meters.
2. *Point of Measurement.* Sound level measurement for all districts shall be taken 50 feet from the source of the noise and no closer

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than five feet from any wall. The maximum sound levels shall be the levels at point of measurement.

- 3. Instrument of Measurement.** Measurements shall be made with a sound level meter maintained at calibration and good working order.

68.630. Measurement of noise.

The following provisions regulate noise generation by any use or occupant within a specific zoning district.

- 1. Scale.** All noise measurement shall be measured in units of the frequency weighted sound level[dB(A)], in accordance with the American National Standards Institute specifications for sound level meters.
- 2. Point of Measurement.** Sound level measurement for all districts shall be taken 50 feet from the source of the noise and no closer than five feet from any wall. The maximum sound levels shall be the levels at point of measurement.
- 3. Instrument of Measurement.** Measurements shall be made with a sound level meter maintained at calibration and good working order.

68.635. Maximum permitted sound levels

Sound levels. Exhibits A and B display the maximum permitted sound levels generated by uses or occupants in specific zoning districts, taken at the point of measurement set forth in Subsection E of this Section.

Exhibit A

Hours of Operation	Zoning District Adjacent to Measured Use	
Sunday through Thursday	Commercial & Industrial	Residential
Daytime: 7:00 a.m. to 8:59 p.m.	80dB(A)	60dB(A)
Nighttime: 9:00 p.m. to 6:59 a.m.	75dB(A)	55dB(A)

Exhibit B

Hours of Operation	Zoning District Adjacent to Measured Use	
Friday & Saturday	Commercial & Industrial	Residential
Daytime: 7:00 a.m. to 9:59 p.m.	80dB(A)	60dB(A)
Nighttime: 10:00 p.m. to 6:59 a.m.	75dB(A)	55dB(A)

Ambient noise. If the ambient noise level measurement exceeds the maximum permitted sound level, the maximum permitted sound level shall be increased to equal the ambient noise level.

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Exemptions. The following uses and activities shall not be considered in determining compliance with these standards and shall be exempt from these regulations:

- 1.** Noises emanating from construction and maintenance activities between the hours of 7:00 A.M. and 10:00 P.M.
- 2.** Noise of safety signals, warning devices, or emergency pressure relief valves.
- 3.** Transient noises from moving sources, including automobiles, trucks, airplanes, and railroads.
- 4.** Activities conducted on public parks.
- 5.** Activities conducted by churches, public or private schools upon their property.
- 6.** Outdoor events, provided such events are conducted pursuant to an appropriate license or permit issued by the proper City department.
- 7.** Noise from any construction or maintenance activity performed between the hours of 10:00 PM and 7:00 AM. when approved by the City Clerk, and has a copy of the permit to provide to any law enforcement officer inquiring of a noise violation.
- 8.** Occasional household maintenance activities utilizing power equipment including but not limited to lawn mowers, chainsaws, snow blowing, a home generator and power washer.
- 9.** Noises from agricultural activities conducted on property properly utilized for agricultural activities.
- 10.** Noise from a business that has been granted a variance and has a copy of the variance to provide to any law enforcement officer inquiring of a noise violation.

68.640. Requests for variance.

Variance Procedures.

A person may seek a variance to increase the maximum allowable levels from strict application of this Section by filing an application for a variance to the City Council. The applicant shall document all actions taken to comply with these performance standards and shall state the reasons why he/she is unable to come into full compliance.

Criteria for Variances.

In acting upon an application for a variance, the City Council shall consider the following criteria:

- 1.** The degree of nuisance caused by the violation.
- 2.** The uses of surrounding properties affected by the violation.
- 3.** The amount of time required to study the violation and increase the level of compliance.

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4. Economic considerations, including an analysis of costs and benefits produced by full compliance.
5. The health, safety, and welfare of the public.
6. Compliance with the levels creates an actual hardship.

68.650. Penalties.

Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any amount not to exceed the following for violations committed within a twelve month period: the maximum allowable fine is \$200 for the first offense, \$275 for the second offense, \$350 for the third offense, and \$450 for the fourth and subsequent offenses. Each day that a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense. Violations of this Chapter shall be prosecuted in the same manner as other violations of all other City ordinances.