

ORDINANCE NO. 03-21-2011 #1 (332)

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ALTOONA, IOWA, 2004 BY ADDING A NEW CHAPTER PERTAINING TO PROPERTY MAINTENANCE.

Be It Enacted by the City Council of the City of Altoona, Iowa:

SECTION 1. CHAPTER ADOPTED. The Code of Ordinances of the City of Altoona, Iowa, 2004 is amended by adding a new Chapter 163, entitled Property Maintenance Code, which is hereby adopted to read as follows:

CHAPTER 163

PROPERTY MAINTENANCE CODE

163.01 TITLE. This ordinance may be referred to as the “Property Maintenance Code”, and is herein referred to as “this Code”.

163.02 PURPOSE. The purpose of this Code is to protect the public health, safety, and welfare, esthetics and property values, by establishing minimum standards for maintenance, appearance, condition, and occupancy, and for essential utilities, facilities, and other physical components and conditions to make residential premises fit for human habitation, and to make nonresidential premises fit for use according to the purpose for which they were developed; by fixing certain responsibilities and duties upon the owners and managers, and distinct and separate responsibilities and duties upon the occupants; by authorizing and establishing procedures for inspection of premises, and enforcement of this Code; establishing penalties for violations; and providing for proper repair, demolition, or vacation of premises which do not comply with this Code.

163.03 INTERPRETATION. The provisions of this Code shall be interpreted and applied as minimum requirements, and shall not be deemed a limitation or repeal of any other power granted by the Code of Iowa. Nothing in this Code shall be construed to abrogate the Federal or State Constitutions, nor to grant powers to the City that are otherwise reserved by and for Federal and State Government.

163.04 ABROGATION AND GREATER RESTRICTIONS. It is not the intent of this Code to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to law. Where two or more provisions apply the higher standard shall prevail.

163.05 DEFINITIONS. Words used in this Code shall have the same meaning as that defined by the Zoning Ordinance, unless otherwise defined by this Code.

- A. Abandoned Building. Any building or portion of a building under construction which has stood with an incomplete exterior shell for more than one year, or any completed building or portion thereof which has stood unoccupied for longer than six (6) months, and which is unsecured or has Housing Code or Building Code violations.
- B. Board of Appeals. The Board established and appointed by the City to hear appeals from the Altoona Building Code, referred to herein as “the Board”.
- C. Deterioration. A state of conditions caused by a lack of maintenance or excessive use, characterized by holes, breaks, rot, crumbling, peeling paint, rusting, or other evidence of physical decay or neglect.
- D. Enforcement Officer. The Director of Community Development or designee.
- E. Exposed to Public View. Any premises or any part thereof, which may be lawfully viewed by the public or from adjoining premises.
- F. Exterior. Yards and other open outdoor spaces on premises, and the external surfaces of any structure.
- G. Extermination. The control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination method.
- H. Farm. A tract of land having an area of thirty five or more acres, devoted to raising of crops zoned and maintained in accordance with the A-1 zoned district as stated in the Altoona Zoning Ordinance.
- I. Infestation. The presence of insects, vermin, or other pests on the premise to the extent that they constitute a health hazard, are deemed by an Enforcement Officer to be in threat of spreading to adjoining premises, or are exposed to public view.
- J. Junk. Any discarded or salvaged material or fixture; obsolete or inoperable machinery or vehicle, or parts thereof; or scrap metal. (See also Chapter 51 of the Municipal Code).
- K. Nuisance. Physical conditions that are dangerous or detrimental to the health or safety of persons on or near the premises where the conditions exist, or anything that is injurious to the senses or interferes with the comfortable enjoyment of life or property. (See also Chapter 50 of the Municipal Code).
- L. Owner. Any person who alone, jointly, or severally with others, holds legal or equitable title to any premises, with or without accompanying actual possession thereof.
- M. Premises. A lot, plot, or parcel of land, easement or public way, including any structures thereon.
- N. Public Authority. Any officer or any department or branch of the City, County, or State charged with regulating health, fire, zoning or building regulations, or other activities concerning property in the City.
- O. Refuse. Any material that has lost its value for the original purpose for which it was created or manufactured, or for its redesigned use, whether putrescible or non-putrescible, combustible or non-combustible, which is not securely stored in a building or legal outdoor storage yard for prompt disposal or resale, including but not limited to junk; paper or cardboard; plastic; metals;

glass; yard clippings, leaves, woody vegetative trimmings, and other plant wastes which have not been properly composted; vegetable or animal waste resulting from the handling, processing, storage, preparation, serving or consumption of food; crockery; bedding, furniture, or appliances; offal; rubbish; ashes or incinerator residue; construction debris; accumulation of animal feces; dead animals; or wastes from commercial or industrial processes.

- P. Responsible party. Any person having possession, charge, care, or control of real or personal property, which with or without the knowledge and consent of the owner, including without limitation any one or more of the following: owner, agent, property manager, contract purchaser, mortgagee or vendee in possession, receiver, executor, trustee, lessee or tenant, or any other person, firm or corporation exercising apparent control over a property.
- Q. Vehicle. Any device designed to transport a person or property by land, air, or water, and includes without limitation a motor vehicle, automobiles, trucks, trailers, motorcycles, tractors, buggies, wagons, boats, airplanes, campers or any combination thereof, except bicycles.
- R. Vehicle, Inoperable. Any vehicle that is not licensed for the current year as required by law or which exhibits any of the following characteristics: Cannot legally travel on a public street due to broken, damaged, or missing windshield or other glass customary to the vehicle, fender, door, bumper, hood, wheel, steering wheel, or exhaust system; lacking an engine or other means of power suitable to the design, one or more wheels, or other structural parts which renders the vehicle incapable of both forward and reverse movement in the manner for which it was designed; has become a habitat for rats, mice, snakes, or any other vermin or insects; or constitutes a threat to the public health and safety because of its defective or obsolete condition.

163.06 MAINTENANCE STANDARDS.

- A. **GENERAL**. The exterior of every premises and structure shall be maintained in good repair, to the end that the premises and each structure thereon will be preserved; adjoining properties protected from blighting influences; and safety and fire hazards eliminated.
- B. **MAINTENANCE OF PREMISES**. Each and every premises shall be kept free of all nuisances, health, safety, and fire hazards, unsanitary conditions, and infestations. It shall be the duty of the responsible party to keep the premises free of all said conditions and to promptly remove and abate same, which include but are not limited to the following declared nuisances:
 - a. Weeds or grasses allowed to grow to a height greater than that which is listed in Chapter 52 of the Municipal Code or any accumulation of dead weeds or grass that are exposed to public view, on any non-farm property which is not within the jurisdiction of the County Weed Commissioner. This provision shall not apply to prairies, wetlands, or similar areas of naturalized perennial vegetation, which are certified by an Enforcement Officer to not constitute a nuisance.

- b. Accumulation of refuse to the prejudice of others.
- c. Any structure or piece of equipment which is in such a dilapidated condition that it is unfit for human habitation or the use for which it was constructed; kept in such an unsanitary condition that it is a menace to the health of people residing therein or in the vicinity thereof; any structure determined as an unsafe structure or piece of equipment by the most-current edition of the International Property Maintenance Code, as published by the International Code Council or any building that is defined as abandoned or a public nuisance by Chapter 657A, Code of Iowa, 2008.
- d. Any inoperable vehicle that is exposed to public view, unless located on the premises of a lawfully operated junkyard or undergoing repairs in an expeditious manner at a vehicle repair business.
- e. Mud, dirt, gravel or other debris or matter, whether organic or inorganic, deposited upon public property in a quantity judged by an enforcement officer to be a threat to public safety or to cause pollution, obstruction, or siltation of drainage systems, or to violate solid waste disposal regulations.
- f. Failure to establish a permanent cover of perennial grasses or ornamental ground cover on any property as soon as practical after any construction, and to thereafter maintain same in such condition as to substantially bind the surface of the soil and prevent erosion, whether by sheet or gullying, or by wind or water. Exceptions shall be permitted for densely shaded areas, landscape beds, and gardens, provided that vegetable gardens and agricultural crops shall not be placed in the front yard of a non-farm property, unless it can be demonstrated that no other viable location exists on the premises because of topography, natural vegetation, or similar circumstances out of the resident's control.
- g. Any nuisance as defined herein or described as such by Chapter 657 of the Code of Iowa, 2008.
- h. Any alteration, modification, or obstruction which prevents, obstructs or impedes the normal flow of runoff from adjacent lands, or any alteration or modification which substantially concentrates or increases the flow of water onto an adjoining premises to the extent of damaging or saturating such premises.
- i. Conditions which are conducive to the harborage or breeding of vermin.
- j. Facilities for the storage or processing of sewage, such as privies, vaults, sewers, private drains, septic tanks, cesspools, and drain fields, which have failed or do not function properly, as may be evidenced by overflow, leakage, seepage, or emanation of odors, or which do not comply with the Polk County Department of Health regulations, as applicable. Septic tanks, cisterns, and cesspools that are no longer in use shall be removed, or emptied and filled with clean dirt or sand.

- k. Vehicles parked on the lawn or other unpaved surface in the yard exposed to public view.
- l. Fences or retaining walls that are not structurally sound or which are deteriorating, as may be evidenced by leaning or loose elements.
- m. Dead or diseased trees or other woody vegetation which may lead to the spread of the disease to other specimens or pose a threat to safety or buildings; major parts thereof, such as a limb, which may be dead or broken or otherwise pose a threat to safety or buildings on adjoining premises; any vegetation located on private property which overhangs and is less than 14 feet above the traveled portion of any public street, or less than 8 feet vertically, or which protrudes into any public sidewalk.
- n. Loose, overhanging objects or accumulations of ice or snow, which by reason of location above ground level constitute a danger of falling on persons in the vicinity thereof.

163.07 BUILDING MAINTENANCE. Every building shall be maintained to be weather and water tight, and free from excessively peeling paint or other conditions suggestive of deterioration or inadequate maintenance. Exterior surfaces shall not have any holes or broken glass; loose, cracked, or damaged shingles or siding; or other defects in the exterior finish which admit rain, cold air, dampness, rodents, insects, or vermin. Basements, cellars, and crawl spaces shall be free of standing water and hazards. All wood, including floorboards, subfloors, joists, bridging, roof rafters and sheathing, and all other wood in any interior or exterior floor, wall, roof, or other part of the structure, shall be maintained to be free of cracks affecting structural integrity, termite damage, infestation, or rot. Any and all damaged or deteriorating materials shall be replaced. If infestation exists in any basement, cellar, or crawl space, such infestation shall be remedied in accordance with industry standards.

163.08 REFUSE AND INOPERABLE VEHICLES. Inoperable vehicles shall be stored within a fully enclosed building or other location not exposed to public view, or shall be removed from the premises. All refuse shall be contained in suitable collection containers; kept free from infestation; and shall be removed weekly.

163.09 RESIDING AND RECONSTRUCTION. Materials and practices used in reconstruction and residing shall be of standard quality and appearance commensurate with the character of other properties in the vicinity of the premises. Their appearance, as judged under prevailing appraisal practices and standards, shall not depreciate the value of adjoining premises or the neighborhood.

163.10 VIOLATIONS.

- A. ENFORCEMENT.** The creation or maintenance of a violation of this ordinance is prohibited and shall constitute a misdemeanor. Each day that a violation is permitted to continue constitutes a separate offense.

All inspections, enforcement actions, and hearings on violations, unless expressly stated to the contrary, shall be under the direction and supervision of an Enforcement Officer, who may appoint or designate other public officers or employees to perform duties as may be necessary to enforce this Code, including inspections and holding of hearings. The Enforcement Officers are hereby authorized to abate such violations in accordance with the procedures of this Code and to serve notice to abate same, whether upon the owner or other responsible party for a premise(s) upon which a violation is being maintained, or upon the person or persons causing or maintaining the violation.

If a violation is found to exist on an owner-occupied premise(s) and the owner(s) demonstrate that the cost of remedying such violation would exceed the household's annual disposable income and thereby cause a financial hardship, enforcement shall be held in temporary abeyance until a means of financing or assistance can be identified.

The objective of this Code being the abatement of violations, persons violating this Code shall be allowed a reasonable amount of time to voluntarily remedy the violation before action to assess costs or penalties for a violation is undertaken. Consideration will be given to evidence of a good faith effort to correct the violation; whether an imminent health or safety hazard exists; whether the person has previously been notified of or charged with violations of a similar nature; and other factors.

Violations which are not voluntarily remedied may be abated by an administrative abatement process; the municipal infraction process; by court proceedings; or by City abatement and assessment of costs therefore against the responsible party, at the discretion of the City.

It is further provided by this Code that if the City judges that an emergency exists which creates a dangerous and imminent health or safety hazard to persons, property or the general public which requires immediate action, the City may order such action as may be necessary to meet the emergency. Any orders issued pursuant to this paragraph shall be effective immediately or in the time and manner prescribed in the order itself.

The enforcement officer may, but shall not be required to, give notice to abate prior to issuance of a civil citation for a repeat offense involving the same property and occurring within one year of a prior violation and notice to abate.

B. NOTICE. When service of a notice to abate is required, the following methods of service shall be deemed adequate:

- a. By personal service upon the owner or other responsible party of the property upon which the nuisance exists, or upon the person or persons causing or maintaining the violation; or
- b. Sending the notice by certified mail, return receipt requested to the last known address; or
- c. Publishing the notice once a week for two consecutive weeks in a newspaper of general circulation in the City Altoona, Iowa; or
- d. By posting the notice in a conspicuous place on the property or building deemed a nuisance.

C. APPEAL. Any person affected by any notice to abate a violation of this Code may request a hearing on the matter before the Board of Appeals, provided that a written appeal shall be filed with the Enforcement Officer within ten days after the notice to abate was served. The appeal shall be filed on a form provided by the City for that purpose, and shall state the particular section of the ordinance or interpretation thereof being appealed, and a brief statement of the grounds upon which such appeal is taken. Failure to file a timely appeal as prescribed herein shall constitute a waiver of the right to a hearing, and the notice shall become final.

The Board's determination and order shall be appealable to the County District Court by writ of certiorari. Such appeal shall be filed within thirty (30) days from the date of the Board's decision. The Board's order shall not be carried out until the time for filing the writ of certiorari has expired.

D. ABATEMENT REMEDIES AND PENALTIES. In the event that the violation is not abated as ordered and within the time specified, the City may abate such violation by any of the following means:

- a. By undertaking such abatement and assessing the costs therefore against the property.
- b. By issuance of a civil citation charging the owner or responsible party with a municipal infraction.

Abatement may include but is not limited to repair, removal, cleaning, extermination, cutting, mowing, grading, sewer repairs, draining, securing, barricading or fencing, demolition of dangerous or abandoned structures or portions thereof, and elimination of nuisances. Abatement costs may include the cost of removing or eliminating the violation; the cost of investigation, such as title searches, inspection, and testing; the cost of notification; filing costs; and other related administrative costs. Inoperable or obsolete vehicles which have been impounded may be sold in accordance with state law. If an inoperable or obsolete vehicle is not sold or if the proceeds of such sale or redemption are not sufficient to pay the costs of abatement, storage, and sale

of said inoperable or obsolete vehicle, such cost or the balance of such cost may be assessed against the premises in the same manner as a property tax.

Before the assessment of any charges for work done or caused to be done by the City, the owner of the property proposed to be assessed shall be provided notice and opportunity for hearing before the City Council. The notice shall set forth the amount proposed to be assessed, and include a statement of the time, place, and date of hearing.

The court may order any one or more of the following:

1. Place a judgment against the person and/or property of defendant for the costs of abatement.
2. Order abatement of the violation in any manner.
3. Assess costs of abatement against the premises.

E. EMERGENCY ABATEMENT PROCEDURE. If an Enforcement Officer determines that a violation exists and constitutes an imminent, clear, and compelling danger to health, safety or welfare of persons or property, the enforcement officer is authorized to abate the violation or have it abated without prior notice and opportunity for hearing. The costs of such action may be assessed against the premises. However, prior to such assessment, the City shall give a property owner notice and the opportunity for a hearing before the City Council in accordance with Section 50.07 of the Municipal Code.

An appeal shall not stay the effect of a notice or order under the emergency provisions of this article unless so ordered by the Board.

163.11 BOARD OF APPEALS.

- A. AUTHORITY.** The Board is hereby empowered to hold hearings on appeals from the regulations of this Code.
- B. PROCEDURE.** Upon receipt of a timely-filed appeal, the Enforcement Officer shall set a time and place for the Board to hear such appeal and shall publish notice thereof. The hearing shall be open to the public and shall be recorded either electronically or manually. All parties shall be afforded an opportunity to respond and present evidence and argument. If the appellant fails to appear at such hearing, the Board may proceed with the hearing and made a decision in the absence of the appellant.
- C. DECISION OF THE BOARD.** No hearing shall be valid unless a majority of the Board is present, and no appeal shall be granted unless reached by a majority of all members of the Board.

The Board shall render a decision based upon the record, at the conclusion of the hearing or within a reasonable time thereafter. The Board may affirm, modify or reverse any action, interpretation, notice or order which has been issued in connection with the enforcement of this Code. Following the decision of the Board, all parties shall be notified of the decision personally or by general mail service delivered to the address provided by the party. Any party to the hearing, including the City, may seek judicial review by filing a petition in the County District Court within thirty (30) days after the issuance of the decision by the Board.

SECTION 2. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and approved by the Council the 4th day of April, 2011.

Signed: Timothy J. Burget, Mayor
ATTEST: Randy Pierce, City Clerk