

COUNCIL ACTION FORM

SUBJECT: PROPERTY MAINTENANCE CODE ADOPTION

BACKGROUND:

In the Summer of 2020, staff had several code enforcement cases that they were struggling to achieve compliance with, which resulted in several communications from neighbors to the Council. At the City Council meeting on August 25, 2020, Council requested a memo from staff regarding recommendations for potential additions or changes to the Property Maintenance Code that would provide staff with additional enforcement tools.

Staff reviewed the Municipal Code and found that sections enforced by the Community Codes Liaison (CCL) spanned nine different chapters within the Code resulting in contradictions and inconsistent language and enforcement processes. Additionally, staff reviewed ordinances from numerous other jurisdictions and found that most had one comprehensive property maintenance code that encompassed many of our existing codes and provided swift and effective compliance techniques.

On May 25, 2021, Staff presented the Council with a very rough draft of a proposed property maintenance ordinance that consolidated current code requirements, added a few new sections based on previous complaints, added additional enforcement tools, and added an appeal process. Council requested that a workshop be scheduled to receive public input and that a website be established to gather input from those unable to attend a workshop.

A press release was issued after the Council meeting notifying citizens of the workshop on June 15, 2021, and providing a link to an online survey on the proposed ordinance. This was also emailed to neighborhood associations and other interested parties (landlords, realtors, etc.) for their input. The workshop and survey results provided an abundance of input from the community (20 citizens spoke at the workshop and about 250 provided survey responses). Council decided to work with staff to set another workshop or place items by category on a future agenda for discussion.

Staff compiled and studied the survey responses and public input. The findings were incorporated into a second draft of the ordinance. These findings were presented to Council at the workshop on June 20, 2023. Council reviewed 19

different code items and made a motion on whether to include each item in a draft ordinance. Those motions have been incorporated into the attached draft ordinance.

LEGAL CONCERNS:

A few concerns have been raised by the Legal Department since the workshop on June 20th. The first concern involves moving away from the DOT standard of 10' of clearance above the sidewalk. This was discussed at the workshop as staff had recommended keeping the 10' clearance even though the citizens were requesting 8'. **Many of our projects receive federal funding and would be subject to the 10' minimum established by the DOT.** Additionally, staff often uses vehicles to clear snow and maintain shared use paths. The 8' minimum would prohibit vehicles from having access to these areas.

The second concern raised by the Legal Department is regarding the requested abatement tool. **A survey of other municipal attorneys indicates that the City would not have the authority to enter a property to abate without a court order. Staff will have to seek a warrant from the court to access the property and abate.** This process would still be quicker than the citation process, but there is a possibility that the request gets denied and abatement would not be authorized.

ALTERNATIVES:

1. Place the proposed property maintenance code on the City Council agenda for July 11, 2023 to receive public input and then pass on first reading.
2. Direct staff to revise the proposed maintenance code before bringing it back to the City Council to approve on first reading.

CITY MANAGER'S RECOMMENDED ACTION:

Staff has diligently worked to incorporate the abundance of citizen feedback into a code that balances the needs of the community. The proposed ordinance will help maintain the integrity of our neighborhoods while still allowing our citizens many of the freedoms of home ownership that they currently enjoy. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby placing the proposed property maintenance code on the City Council agenda for July 11, 2023 to receive public input and then pass on first reading.

Chapter 30 - PUBLIC NUISANCES

30.1. Purpose.

The purpose of this chapter is to protect the health, welfare and safety of the citizens of the City of Ames and to preserve the value of property owned by these citizens by establishing minimum property maintenance standards; to provide for the removal of nuisances as defined in this chapter; and for the enforcement and penalties for violation hereof.

30.2 Scope.

The provisions of this chapter shall apply to all properties within the City of Ames and constitute minimum requirements and standards for premises, structures, and vehicles;

Sec. 30.3. - Public nuisances prohibited; authority to abate.

The creation or maintenance of a nuisance on any property in the City of Ames is unlawful and is prohibited. The City Manager or Manager's designee is authorized to abate nuisances either by issuance of a municipal infraction punishable by a penalty of \$500 for a person's first violation thereof, and a penalty of \$750 for each repeat violation and/or by administrative abatement procedures set forth in this article, or a combination thereof.

Sec. 30.4 – Definitions.

Garbage. Every waste accumulation of animal, fruit or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables, and including tin cans or similar food containers. Dead animals are not included in the term garbage.

Graffiti. Any marking, inscription, drawing, picture, letter, number, symbol or other defacement or other written communication, etched, scratched, or made with spray paint, paint, ink, chalk, dye, or similar substances, or in any manner, on any public or private property, including, but not limited to, streets, sidewalks, buildings, walls, bridges, fences, or other structures which was made without the consent of the property owner.

Hazardous Waste. Any substance as defined in section 455B.411(3)(a), the rules of the Iowa Department of Natural Resources.

Inoperable. Not capable of being used or operated as a motor vehicle.

Junk. Items including, but not limited to, building materials not part of an active building project authorized by a current city building permit, vehicle parts, miscellaneous steel, plastic, rubber or metal parts, tires, packing boxes, wooden pallets, discarded lumber (not including neatly stacked and cut fire wood), plastic tarps, or any other discarded or miscellaneous item or items.

Junked Vehicle. Any vehicle, trailer or semitrailer which because of any one of the following characteristics, constitutes a threat to the public health, welfare and/or safety:

- (a) That has been rendered inoperable because of a missing or broken windshield or window glass, fender, door, bumper, hood, steering wheel, driver's seat, trunk, fuel tank, two or more wheels, engine, drive shaft, differential, battery, generator or alternator or other component part of an electrical system, any component or structural part, or lack of current registration;
- (b) That has become the habitat of rats, mice, snakes or any other vermin or insects;
- (c) That is being used for storage purposes

(d) That its condition constitutes a threat to the public health or safety of the public;

(e) That contains gasoline or any flammable fuel and is inoperable.

Noxious Substances. Substances, solid or fluid, which are offensive, detrimental to health, hurtful or dangerous, including any dead animal portion thereof, together with human or animal excrement.

Noxious Weeds. Primary and secondary classes of weeds as defined by Iowa Code Section 317.1A.

Outdoor Area. All exterior areas of a property, including porches, partially enclosed sheds, lean-tos or other structures not totally enclosed by structural walls, roof and properly functioning doors. A porch is not considered to be an outdoor area if it is completely enclosed by fully intact glass or fully intact screens.

Refuse. All other miscellaneous waste materials except "yard waste" not specifically defined as garbage.

Semitrailer. Every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Sidewalk. A hard surface of any width designated for non-motorized travel.

Stagnant Water. Standing water that is trapped and does not circulate, excluding bird baths, koi ponds, landscape water features, and approved stormwater retention areas.

Trailer. Every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Trash Disposal Container. A closed, water-tight, hard receptacle that cannot be ripped open by animals. Containers that shed rain when their lids are completely closed shall satisfy the requirement for a water-tight receptacle.

Turf Grasses. Narrow-leaved grass species that form a uniform, long-lived ground cover that can tolerate traffic and mowing heights of two inches or below.

Vehicle. An automobile, truck, motorcycle, or other trackless self-propelled vehicle designed primarily to transport persons or property over public streets and highways.

Weed. A plant that is not intentionally planted and is usually of vigorous growth. It may cause economic loss to neighboring properties.

Weed Official. Person designated by the City Manager to enforce noxious weeds.

Yard Waste. Debris such as grass clippings, leaves, garden waste, brush and trees. It does not include tree stumps.

Sec. 30.5. - Nuisance defined; certain acts, conditions declared as nuisances.

Whatever is injurious to the senses or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property by the public or community shall be deemed a nuisance. Nuisances shall include, but shall not be limited to, the following:

- (1) The use of any building or other place for the exercise of any trade, employment or manufacture which, by occasioning noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public.

- (2) Refuse, garbage, or junk that is not contained in a trash disposal container; noxious substances; or hazardous wastes remaining in any outdoor place for more than 72 hours.
- (3) Yard Waste stored on the exterior of a property in anything other than a trash disposal container for longer than seven days. Yard waste may be retained for longer than seven days if composting is being completed. Composting shall comply with the state regulations contained in Chapter 105 of the Iowa Administrative Code.
 - (a) Composting piles may include: yard waste including leaves, grass clippings, straw and hay, sawdust, and finely chopped shredded tree and shrub prunings; kitchen scraps including fruit and vegetable trimmings (including rhubarb leaves), coffee grounds, and eggshells; shredded newspapers; wood ashes (no more than one cup per bushel of compost).
 - (b) Composting piles cannot include: human or animal feces; diseased plant material or weeds that have gone to seed; kitchen scraps that include animal meat, bones or fat; and all other materials not listed in subsection (a) above.
- (4) Stagnant water on any property for more than 48 hours, including any open container or material kept in such a condition that water can accumulate and stagnate therein, creating a breeding ground or habitat for insects or rodents.
- (5) The obstructing or encumbering, by fences, buildings, structures, signs or otherwise, of the public streets and rights-of-ways.
- (6) Snow, ice, mud, gravel, grass clippings, leaves or other accumulations remaining on a sidewalk longer than 10 daylight hours after the cessation of the storm or cause of the accumulation.
- (7) Depositing ice or snow from private property, sidewalks, or driveways onto the traveled way of a public street after the street has been cleared so as to obstruct gutters or impede the passage of vehicles upon the street or alley or to create a hazardous condition therein.
- (8) Vegetation located in the City right-of-way exceeding 12 inches in height within one foot of the traveled portion of the street. Streets designated as no parking may have vegetation exceeding 12 inches in height within one foot of the traveled portion of the street. Plantings that cause safety issues would be subject to removal, regardless of height, at the City's discretion. Non-vegetative materials such as trellises or chicken wire are prohibited in the right-of-way. Exceptions: those areas approved by the City as stormwater or native vegetation preservation areas.
- (9) Vegetation located on private property hanging over public streets with less than 16 feet of clearance above the public street or vegetation located on private property that hangs over or into public sidewalks with less than 8 feet of clearance above the sidewalk.
- (10) Vines, brush or other vegetation, including dead bushes, dead woody plants, overgrown or unkempt bushes, that restrict egress from or ingress to a building through doors or below grade egress windows.
- (11) Turf grasses exceeding 12 inches in height.
- (12) Trees in such a state of deterioration, as determined by the City Forester, that any part of such tree presents an immediate threat to the safety of persons or property in the right-of-way.
- (13) Weeds over 12 inches tall and any noxious weeds.
- (14) Any excavation, hole, or other depression in the ground in or on any lot or parcel of land in the city of a depth of more than three feet below the surrounding grade, other than as part of the active construction of a building or other structure on the lot which will ultimately close in and completely cover such excavation, hole or depression. Upon a finding by the enforcement officer that the owner of the lot or parcel of land has violated the provisions of this subsection, the lot owner shall be required to fill in any such excavation, hole or depression and grade the same to a topographic elevation equal to or level with the surrounding adjacent grade. Exceptions: egress window wells, fire pits, or excavations completely secured by a fence or similar method.

- (15) Upholstered or finished furniture intended for indoor usage such as couches, beds, mattresses, desks, chairs, shelving or wooden tables, other household furnishings or equipment including carpeting, appliances and other typical household items intended for indoor usage, placed or used outdoors.
- (16) Unoccupied buildings or unoccupied portions of buildings which are unsecured. Accessory structures on properties where the primary structure is occupied are not considered unoccupied buildings.
- (17) Any structure, including detached accessory structures, on any commercial, residential, agricultural or industrial property that is not free from significant structural defects. The term "free from significant structural defect" means:
- (a) The roof and roofing material are of such a nature and condition that they do not permit water, snow or ice to penetrate the structure. Roofing materials shall be in good condition and made up of consistent materials and consistent coloration throughout the roof area.
 - (b) Drainage gutters and downspouts, if present, are securely attached to the structure and in proper functioning order.
 - (c) All exterior trim and exterior exposed surfaces, including siding materials, are sound, in good condition and securely attached to the structure.
 - (d) Exterior walls are free of holes and made of a consistent material, such that patches or repairs consisting of dissimilar materials or colors compared to the prevailing surface material of the exterior walls are not present.
 - (e) The foundation of the structure is sound, capable of supporting the structure and not deteriorated to the point that failure is judged to be inevitable, but not necessarily imminent. The foundation shall be plumb and free from cracks, breaks and holes to prevent the entry of animals.
 - (f) Windows and doors are intact, containing no holes, squarely hung with properly operating latches or locks to be securely closed, and where the windows have intact glass or normal window material that allows the entry of light with no holes in said window surface areas. No plastic wrap material, tarps, plywood, or similar temporary materials shall be used as a permanent substitute for doorways or windows.
 - (g) All exterior components serving doors and windows, including, but not limited to, steps, porches, ramps, landings, handrails, and guardrails are of a secure and safe design, be made of standard building materials and be intact, with no protruding or loose boards or surface materials causing a hazard.
 - (h) Exterior wall surfaces are properly painted and/or maintained with appropriate exterior wall materials, including wood, vinyl, steel or metal siding materials, stucco or exterior insulation finish system (EIFS) materials, brick or similar masonry materials, that are in all cases intact, not in a condition of deterioration, are of uniform coloration and are not patched with dissimilar materials. Plastic wrap material shall not be considered an acceptable siding material. No flaking or chipped paint or outer loose material dominates or detracts from the exterior appearance of the structure.
 - (i) All fencing, including gates, is free from damage, breaks, holes or missing structural members so as not to create a hazard for adjacent properties. All fencing shall be of consistent materials and coloration.
 - (j) All exterior wires on the exterior of the structure are fastened to the structure.
- (18) Graffiti which is visible to the public view and has not been removed within seven (7) days of notification by the enforcement officer.
- (19) Conditions that create a fire hazard, as determined by the Fire Chief or the Fire Chief's designee, or are in violation of Ames Municipal Code Chapter 8.

(20) Luminaires not in compliance with Ames Municipal Code Sec. 29.411 Outdoor Lighting Code.

(21) Junked vehicles stored outdoors on private property for more than 48 hours.

(22) Items not in compliance with Ames Municipal Code Sec. 29.408(5) Visibility at Intersections.

Exceptions:

(a) Junked vehicles stored within a garage or other enclosed structure or which are kept concealed and enclosed behind an opaque wall at least six feet in height, or completely covered by a tight-fitting opaque cloth vehicle cover or tight-fitting cloth tarpaulin

(b) Junked vehicles stored upon the premises of a duly authorized salvage yard or junk yard and meeting the requirements of the Ames Municipal Code.

(23) Travel trailers, recreational vehicles, boats, boat trailers and trailers parked in the front yard. Parking of travel trailers, recreational vehicles, boats, boat trailers and trailers is permitted behind the front yard so long as they are not being used for habitation or business purposes and they are parked on an approved parking surface.

Sec. 30.6. Responsibility for abatement; abatement defined.

(1) The owner, agent, lessee, occupant or other person in charge of any building or premises where any of the actions forbidden by this chapter exist, or whence any of such actions have originated, or any person responsible for the existence, origin or continuance of any of such actions, shall correct, remove or abate such action without delay.

(2) Abatement may include, but not be limited to, repair, removal, cleaning, exterminating, cutting, mowing, grading, draining, securing, repairing a building or structure, barricading or fencing, removing dangerous portions of buildings or structures, and demolition of dangerous structures or abandoned buildings.

Sec. 30.7. Abatement by city after notice; procedure; payment of costs.

(1) In case of the failure of any person to correct, remove or abate a nuisance on written notice issued by the enforcement officer, served in the manner of an original notice, or by certified mail to the last known address of the owner, agent, lessee, occupant or other person in charge of the building or premises where the nuisance exists, and designating the time allowed for such removal, correction or abatement, the time thus allowed depending on the urgency of the case, then and at once upon such failure the enforcement officer shall have the recourse to the remedies provided by law to secure entry and cause the nuisance to be removed, corrected or abated.

(2) Emergency abatement procedure. When the enforcement officer determines that a nuisance exists on a property and constitutes an imminent and compelling danger to health, safety, or welfare of persons or property, the enforcement officer is authorized to abate or have abated the nuisance without prior notice and opportunity of hearing. A notice of costs of abatement will be sent to the property owner within 14 days of the abatement procedure. The cost of any such emergency abatement procedure may be assessed against the property for collection in the same manner as property taxes as set forth in State Code Section 364.12(3)(h).

(3) Costs of abatement. Abatement costs shall include, but shall not be limited to, the cost of removing or eliminating the nuisance, the cost of investigation, such as title searches, inspection and testing, the costs of notification, filing costs and other related administrative costs and any other costs or expenses incurred by the city in the abatement of the nuisance.

Sec. 30.8. – Means of Appeal.

(1) Application for Appeal.

Any person ordered to abate a nuisance as provided in Section 30.6 may have a hearing before the Public Nuisance Appeals Board to determine if a nuisance exists. A request for a hearing must be made in writing and delivered to the Building Official on or before the date stated in the notice of abatement issued by the City, or it shall be conclusively presumed that a nuisance exists and that it must be abated as ordered. In the case of emergency abatement, a hearing may be requested within 14 days of the mailing date of the notice of costs of abatement.

Within 14 days after the conclusion of the hearing, the Board Chairperson shall render a written decision as to whether a nuisance exists. If it is found by the Board that a nuisance exists, it shall include in the written decision what steps must be taken to abate the nuisance and the time within which such steps must be taken.

(2) Appointment and Membership of the Board.

- (a) The Public Nuisance Appeals Board shall consist of seven members who represent the citizens of the City of Ames and who are not employees of the City of Ames. The Board shall be appointed and shall serve terms in accordance with established procedures.
- (b) Board members shall be appointed by the Mayor with approval of the City Council. The term of office shall be for three (3) years, except for the terms of office for the Board when initially established. For the Board when initially established, the Mayor may prescribe a shorter than a full term of appointment in order to stagger terms. No member who has served two (2) full consecutive terms is eligible for reappointment.
- (c) Membership shall consist of seven (7) members, one from each of the four (4) wards, and three (3) from the City at large.

(3) Chairperson.

The Board shall annually select one of its members to serve as Chairperson. The Board shall also select one of its members to serve as Vice Chairperson to act as Chairperson in the absence of the Chairperson.

(4) Disqualification of Member.

A member shall not hear an appeal in which that member or an immediate family member has a personal, professional or financial interest.

(5) Secretary.

The Building Official shall designate a qualified person to serve as Secretary to the Board. The Secretary shall file a detailed record of all proceedings with the City Clerk's Office.

(6) Compensation of Members.

Members shall receive no compensation.

(7) Meeting of the Board.

The Board shall meet upon notice from the Building Official within 20 days of the filing of an appeal, or at stated periodic meetings. An appellant may waive a timely hearing by filing a written waiver explaining the cause for seeking a delay.

(8) Procedure.

The Board shall adopt and make available to the public, procedures under which hearings will be conducted.

(9) Board Decision.

The Board has authority to affirm or reverse the decision of the Enforcement Officer or to grant additional time for abatement.

(10) Stay of Enforcement.

Appeals of a notice and order (other than an Imminent Danger notice) shall stay the enforcement of the notice and order until the appeal is heard by the Board.

(11) Filing Fees.

Property owners are entitled to file one appeal per nuisance violation, at no fee. Subsequent appeals shall be assessed the same cost as listed in Appendix L of the Ames Municipal Code for appeals to the Housing Code Board of Appeals.