

ORDINANCE #78

AN ORDINANCE REGULATING PUBLIC NUISANCES WITHIN THE CITY OF UNDERWOOD, MINNESOTA

THE CITY COUNCIL OF THE CITY OF UNDERWOOD, MINNESOTA DOES ORDAIN: that Ordinance #60 is hereby repealed and replaced by Ordinance #78.

SECTION ONE. PUBLIC NUISANCE PROHIBITION.

A person must not act, or fail to act, in a manner that is or causes a public nuisance. For purpose of this ordinance, a person that does any of the following is guilty of maintaining a public nuisance:

- (A) Maintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public; or
- (B) Interferes with, obstructs, or renders dangerous for passage, any public highway or right-of-way, or waters used by the public; or
- (C) Does any other act or omission declared by law or this ordinance to be a public nuisance.

SECTION TWO. PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

- (A) The exposed accumulation of decayed or unwholesome food or vegetable matter;
- (B) All diseased animals running at large;
- (C) All ponds or pools of stagnant water;
- (D) Carcasses of animals not buried or destroyed within twenty-four (24) hours after death;
- (E) Accumulation of manure, refuse, or other debris;
- (F) Privy vaults and garbage cans which are not rodent-free or fly-tight, or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
- (G) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste, or other substances;
- (H) All noxious weeds and other rank growths of vegetation upon public or private property;
- (I) Dense smoke, noxious fumes, gas, soot, or cinders in unreasonable quantities;
- (J) All public exposure of people having a contagious disease;
- (K) Any offensive trade or business as defined by statute not operating under local license; and
- (L) Any other land use or condition found unreasonably to injure or endanger the health of any members of the public.

SECTION THREE. PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

The following are hereby declared to be nuisances affecting public morals and decency:

- (A) All gambling devices, slot machines, and punch boards, except otherwise authorized and permitted by federal, state, or local law;
- (B) Betting, bookmaking, and all apparatus used in those occupations;
- (C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdy houses;

(D) All places where intoxicating or 3.2 malt liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort, for the purpose of drinking intoxicating or 3.2 malt liquor, or where intoxicating or 3.2 malt liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place; and

(E) Any vehicle used for the unlawful transportation of intoxicating or 3.2 malt liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose.

SECTION FOUR. PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following are declared to be nuisances affecting public peace and safety:

(A) All snow and ice that is not removed from public sidewalks within twelve (12) hours after the snow or other precipitation causing the condition has ceased to fall;

(B) All trees, hedges, billboards, or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;

(C) All wires and limbs of trees which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;

(D) Any person participating in any party or other gathering that causes the unreasonable disturbing of the peace, quiet, or repose of another person;

(E) All unnecessary and annoying vibrations;

(F) Obstructions and excavations affecting the ordinary public use of streets, alleys, sidewalks, or public grounds, except under conditions as are permitted by this ordinance or other applicable law;

(G) Radio aerials or television antennae erected or maintained in a dangerous manner;

(H) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk that causes large crowds or people to gather, obstructing traffic and the free use of the street or sidewalk;

(I) All hanging signs, awnings, and other similar structures over streets and sidewalks, so situated as to endanger public safety, or not constructed and maintained as provided by ordinance;

(J) The allowing of rainwater, ice, or snow to fall from any building or structure upon any street or sidewalk or to follow across any sidewalk;

(K) Any barbed wire fence located less than six (6) feet above the ground and within three (3) feet of a public sidewalk or way;

(L) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;

(M) Wastewater cast upon or permitted to flow upon streets or other public properties;

(N) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies, scrap metal, rags, paper, rubber products, glass products, lumber products, products resulting from the wrecking of automobiles or other vehicles, or other materials in a manner conducive to the harboring of rats, mice, snakes, or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health, or other safety hazards from such accumulation;

(O) Any well, hole, or similar excavation that is left uncovered or in such other condition as to constitute a hazard to any child or other person coming on the premises where it is located;

(P) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter, or ditch with trash or other materials;

(Q) The placing or throwing on any street, sidewalk, or other public property of any glass, tacks, nails, bottles, or other substances that may injure any person or animal or damage any pneumatic tire when passing over such substance;

(R) The depositing of garbage or refuse on a public right-of-way or on adjacent private property;

(S) Reflected glare or light from private exterior lighting exceeding 0.5 foot-candles as measured on the property line of the property where the lighting is located when abutting any residential parcel, and one (1) foot-candle when abutting any commercial or industrial parcel; and

(T) Any building that has been destroyed by fire, has been abandoned, or is in such condition as to constitute a hazard to any person on the premises.

(U) All other conditions or things which are likely to cause injury to the person or property of another.

SECTION FIVE. NOISE VIOLATIONS.

(A) Prohibited noises.

The following are declared to be nuisances affecting public health, safety, peace, or welfare:

(1) Any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person, or precludes their enjoyment of property, or affects their property's value (this general prohibition is not limited by any specific restrictions provided in this ordinance);

(2) All obnoxious noises, motor vehicle or otherwise, in violation of Minn. R. Ch. 7030, as they may be amended from time to time, are hereby incorporated into this ordinance by reference;

(3) The use of any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise;

(4) The discharging of the exhaust or permitting the discharge of the exhaust of any statutory internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle (ATV), snowmobile, or any recreational device, except through a muffler or other device that effectively prevents loud or explosive noises there from and complies with all applicable state laws and regulations;

(5) Any loud or excessive noise in the loading, unloading, or unpacking of any vehicle; and

(6) The use or operation, or permitting the use or operation, of any radio receiving set, television set, musical instrument, music device, paging system, machine, or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet, and comfort of any person nearby.

(B) Hourly restriction of certain operations.

(1) **Domestic power equipment.** No person shall operate a power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, drill, or other similar domestic power equipment, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 8:00 a.m. and 10:00 p.m. on Saturday, 10:00 a.m. and 10:00 p.m. on Sundays and holidays. Snow removal equipment is exempt from this provision.

(2) **Refuse hauling.** No person shall collect or remove garbage or refuse in any residential district, except between the hours of 6:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

(3) **Construction activities.** No person shall engage in or permit construction activities involving the use of any kind of electric, diesel, or gas-powered machine or other power equipment, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 8:00 a.m. and 10:00 p.m. on Saturday, 10:00 a.m. and 10:00 p.m. on Sundays and holidays.

(4) **Radios, music devices, paging systems, and the like.** The operation of any device referred to in subdivision (A) (6) between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of a violation of this section.

(5) **Special Events – Exemptions.** It is recognized by the City that public policy requires discretion in enforcing this section in the context of certain special events. It is further recognized that special events are by their nature unique and infrequent. Therefore, noise levels relating to special events operating with approval of the City, including, but not necessarily limited to, the annual town celebration of Harvest Festival, and the MIA-POW Motorcycle Run; public dances; and other special events sanctioned by the City, shall be exempt from the prima facie provisions of Section 5, sub-sections A6 and B4.

(C) **Noise impact statements.** The Council may require any person applying for a change in zoning classification or a permit or license for any structure, operation, process, installation, alteration, or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the Council. The Council shall evaluate each such statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning changes requested.

SECTION SIX. NUISANCE PARKING AND STORAGE.

(A) **Declaration of nuisance.** The outside parking and storage on residentially zoned property of large numbers of vehicles and vehicles, materials, supplies, or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because it: (1) obstructs views on streets and private property, (2) creates cluttered and otherwise unsightly areas, (3) prevents the full use of residential streets for residential parking, (4) introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited, (5) decreases adjoining landowners' and occupants' use and enjoyment of their property and neighborhood, and lake views, and (6) otherwise adversely affects property values and neighborhood patterns.

(B) Unlawful parking and storage.

(1) A person must not place, store, or allow the placement or storage of ice fishing houses, skateboard ramps, playhouses, or other similar non-permanent structures outside continuously for longer than twenty-four (24) hours in the front yard area of residential property unless more than one hundred (100) feet back from the front property line.

(2) A person must not place, store, or allow the placement or storage of pipe, lumber, forms, steel, machinery, or similar materials, including all materials used in conjunction with a business, household furnishings or appliances outside on residential property, unless shielded from public view by an opaque cover or fence.

(3) A person must not cause, undertake, permit, or allow the outside parking and storage of vehicles on residential property unless it complies with the following requirements:

(a) No more than four (4) vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the city because of nonresidential characteristics of the property. The maximum number does not include vehicles of occasional guests who do not reside on the property.

(b) Vehicles, watercraft, and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away from school for periods of time but still claim the property as their legal residence will be considered residents on the property.

SECTION SEVEN. INOPERABLE MOTOR VEHICLES.

(A) **Declaration of nuisance.** Any motor vehicle described in this section shall constitute a hazard to the health and welfare of the residents of the community as such vehicles can harbor noxious diseases, furnish a shelter and breeding ground for vermin, and present physical danger to the safety and well-being of children and citizens. Motor vehicles also contain various fluids which, if released into the environment, can and do cause significant health risks to the community.

(B) **Inoperable motor vehicles.** It shall be unlawful to keep, park, or store *any* unlicensed, unregistered or inoperable vehicle, including boats, snowmobiles, trailers or any other means of conveyance, or abandon any motor vehicle that is not in operating condition, partially dismantled, used for repair of parts or as a source of repair or replacement parts for other vehicles, kept for scrapping, dismantling, or salvage of any kind, or which is not properly licensed for operation within the state, pursuant to Minn. Stat. § 168B.011, subd. 3, as it may be amended from time to time.

(C) **Screening.** This section does not apply to a motor vehicle enclosed in a lawfully erected building and/or kept out of view from any street, road, or alley, and which does not foster complaint from a resident of the city. Privacy fencing is permissible.

SECTION EIGHT. DUTIES OF CITY OFFICERS.

City officials may apply and enforce any provision of this ordinance relating to public nuisances within this jurisdiction. Any peace officer or other designated city official shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances.

SECTION NINE. ABATEMENT PROCEDURE.

(A) **Procedure.** Whenever the peace officer or other designated official determines that a public nuisance is being maintained or exists on the premises in the city, the official shall notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice shall be by certified or registered mail. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated, not to exceed 30 days. If the notice of violation is not complied with within the time specified, the official shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the City may take any and all action necessary to abate said nuisance immediately and may assess to the landowner any and all costs incurred therein, including legal fees and costs, and said assessment shall be a specific lien against any real estate owned by said landowner.

(B) **Notice.** Written notice of the violation; notice of the time, date, place, and subject of any hearing before the City Council; notice of the City Council order; and notice of motion for summary enforcement hearing shall be served by a peace officer or designated official on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premise is not occupied, the owner of record is unknown, or if the owner of record or occupant refuses to accept notice, notice of the violation shall be served by positing it on the premises.

(C) **Emergency procedure; summary enforcement.** In cases of emergency, where delay in abatement required to complete the procedure and notice requirements as set forth in subdivisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health, safety, or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the peace officer or other designated official shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement will unreasonably endanger public health, safety, or welfare. The officer or designated official shall notify in writing the

occupant or owner of the premises of the nature of the nuisance, whether public health, safety, or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in subdivision (A) of this section and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

(D) **Immediate abatement.** Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

(E) **Unlawful parties or gatherings.** When law enforcement determines that a gathering is creating such a noise disturbance as prohibited under Section Four, Subdivision D, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered to do so by law enforcement. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped.

(F) **Judicial remedy.** Nothing in this section shall prevent the city from seeking a judicial remedy when no other adequate administrative remedy exists.

SECTION TEN. RECOVERY OF COST.

(A) **Personal liability.** The owner of the premises on which a nuisance has been abated by the city, or a person who has caused a public nuisance on property not owned by that person, shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the city clerk or other city official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk.

(B) **Assessment.** After notice and hearing as provided in Minn. Stat. § 429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the city clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other such charges as well as other charges for current services to be assessed under Minn. Stat. § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and any other pertinent statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the City Council may determine in each case.

SECTION ELEVEN. PENALTY.

Any person convicted of violating any provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for not more than ninety (90) days, or both, plus the costs of prosecution in either case.

SECTION TWELVE. SEVERABILITY.

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION THIRTEEN. EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat., § 412.191, subd. 4, as it may be amended from

time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Passed by the Council this 4th day of October 2010.

Attested:

Cheryl A. Finseth
Mayor

Anna Kiser
City Clerk

Summary Published October 13, 2010