

CITY OF EYOTA
EYOTA, MINNESOTA

ORDINANCE NO. 109

AN ORDINANCE REGULATING PUBLIC NUISANCES IN THE CITY, AS
AUTHORIZED UNDER MINNSOTA STATUTES, CHAPTER 609.74,
AND PROVIDING FOR DUE PROCESS, AND PENALTY FOR VIOLATION.

The City Council of Eyota, Minnesota ordains:

Eyota City Ordinance #78 is hereby repealed.

Section 1. Public Nuisance Defined. Whoever by his or her act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor.

- (1) Maintains or allows a condition which unreasonably annoys, injures or endangers the safety, health, comfort or rest of any considerable number of members of the public;
or
- (2) Interferes with, obstructs or renders dangerous for passage, any public highway or right-of-way; or
- (3) Is guilty of any other act or omission declared by law or this ordinance to be a public nuisance and for which no sentence is specifically provided.

Section 2. Public Nuisances Affecting Health. The following are hereby declared to be nuisances affecting health:

- (1) Carcasses of animals not buried or destroyed within 24 hours after death;
- (2) Accumulations of manure, refuse or other debris or garbage;
- (3) Garbage cans or bags 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;
- (4) The pollution of any public well, stream or other body of water through the discharge of sewage, industrial waste or other pollutants;
- (5) Dense smoke, noxious fumes, gas and soot, cinders or other airborne pollutants, so as to bring discomfort to persons coming in contact with such pollutants;
- (6) Grass and/or weeds which have grown upon any property to a height of six (6) or more inches. Overgrown, uncontrolled vegetation, shrubs, trees and vines that are conducive

to the accumulation of refuse, debris or the harborage of vermin.

- (7) Conditions which, in the opinion of the enforcement officer and as consistent with public health practices, are conducive to the harborage or breeding of vermin;
- (8) Any truck, railroad car, or other vehicle standing on or along any street, highway, railroad track or other property within the city, carrying or containing any refuse, noxious substance or hazardous waste.

Section 3. Public Nuisances Affecting Peace and Safety. The following are declared to be nuisances affecting public peace and safety:

- (1) All snow and ice not removed from public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;
- (2) All unnecessary noises and annoying vibrations which unreasonably annoy or disturbs the peace of any considerable number of members of the public.
- (3) Obstructions and excavations effecting the ordinary public use of streets, alleys, sidewalks or public grounds except under such conditions as are permitted by code or other applicable law;
- (4) Satellite dishes, radio aerials or television antennae erected or maintained in a dangerous manner;
- (5) All hanging signs, awnings and other similar structures overhanging streets and sidewalks, or so situated so as to endanger public safety, or not constructed and maintained in a safe manner;
- (6) The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk thus causing an unsafe condition;
- (7) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;
- (8) Waste water cast upon or permitted to flow upon streets or other public properties;
- (9) In Agricultural or Residential Districts – storage in the open of discarded or disused machinery, tires, household appliances or other material, in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation amount the items so accumulated, or in a manner creating fire, health or safety hazards.
- (10) Any well, hole, or similar excavation which 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;

- (11) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter, or ditch with trash or other materials;
- (12) The placing or throwing on any street, sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over such substance;
- (13) The depositing of garbage or refuse on a public right-of-way or on adjacent private property.

Section 4. Abandoned or Disabled or Unlicensed Vehicles.

- (1) **Legislative Intent.** The unsheltered storage of old, unused, stripped or junked automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, equipment, junk or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured is hereby declared to be a nuisance and dangerous to the public health and safety. The unsheltered storage of these property items throughout the city tend to impede traffic in the streets, interfere with the enjoyment of and reduce the value of private property, invite plundering, create fire hazards and other safety and health hazards to children as well as adults, interfere with the comfort and well-being of the public and create, extend and aggravate urban blight. As such, the City Council determines that, in order to protect the public health, safety and welfare, such conditions must be regulated, abated or prohibited.
- (2) **Nuisance on Private Property.** The unsheltered storage of old, unused, stripped or junked automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, equipment, junk or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured is hereby declared to be a nuisance.
 - (a) Nothing in this section shall restrict the activities of duly established junk or salvage yards. This section does not apply to vehicles or property in an enclosed building, on the premises of a business enterprise operated in a lawful manner when necessary to the operation of such business enterprise, or in a storage or depository maintained in a lawful location and manner by the city.
 - (b) For purposes of this section, “junk” shall mean worn out or discarded material of little or no value including, but not limited to, household appliances or parts thereof, tools, discarded building materials, tin cans, broken glass, broken furniture, mattresses, box springs, boxes, crates, cardboard, tires or any other unsightly debris the accumulation of which has an adverse effect upon neighborhood or city property value, health, safety or general welfare.
- (3) **Abandoned Motor Vehicles.** No person shall place, park, permit to remain, store or leave upon an open space area of any premises located anywhere in the City any motor vehicle

unless it conforms with all of the following requirements:

- (a) The vehicle must have affixed to it a valid current motor vehicle license;
- (b) The vehicle must not lack essential parts rendering it inoperable; and
- (c) The vehicle must not be in a rusted, wrecked, partially dismantled or junked condition;
- (d) The vehicle must be parked on a surface consisting of crushed rock, cement or blacktop.
 - (i) If a motor vehicle fails to meet any of the above requirements, the owner or possessor of the motor vehicle shall be responsible to remove the motor vehicle to a duly licensed junk yard or other authorized place of deposit or storage within 10 working days of a demand by the City.
 - (ii) For purposes of this section, “motor vehicle” means every vehicle which is self-propelled.

Section 5. City Authorized to Impound. If notice is given by the city pursuant to Section 4. (3) (d) above, and the vehicle has not been removed in the required 10-day period, then the City may proceed to impound such vehicle under this ordinance, and to dispose of it according to the procedures in subdivisions 6. 7. 8 and 9, below.

Section 6. Impound Facility. The City Council shall designate a storage facility as the impound facility. Such place shall be reasonably safe from theft and vandalization. The City may contract with any individual or corporation for the use of such a facility as the designated facility. All costs of removal to and storage at the designated facility shall be the responsibility of the registered owner of the motor vehicle impounded.

Section 7. Notice of Taking.

- (1) When a motor vehicle is impounded under this ordinance, as an abandoned, junk, or unauthorized vehicle, the city shall give notice of the taking within five (5) days. The notice shall:
 - (a) Set forth the date and place of the taking, the year, make, model and serial number of the vehicle, if easily obtained, and the place where the vehicle is being held.
 - (b) Inform the owner and any lien holders of an abandoned, junk or unauthorized vehicle of their right to reclaim the vehicle and contents. The notice shall also state that failure to exercise that right shall be deemed as a waiver by them of all rights, title and interest in the vehicle and a consent to the sale of the vehicle at a public auction pursuant to this section.

- (2) The notice for abandoned, junk or unauthorized vehicles shall be sent by mail to the registered owner, if any, and to all readily identifiable lien holders of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lien holders, the notice shall be published once in the official newspaper. Published notices may be grouped together for convenience and economy.

Section 8. Right to Reclaim.

- (1) The owner or any lien holder of an abandoned, junk or unauthorized vehicle shall have the right to reclaim the vehicle upon payment of towing and storage charges resulting from taking the vehicle into custody within twenty (20) days after the day of the notice.
- (2) Nothing in this section shall be construed to impair any lien of a garage keeper under the laws of this State, or the right of a lien holder to foreclose. For the purposes of this section, "garage keeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair or maintenance of motor vehicles.

Section 9. Disposal of Unclaimed Motor Vehicles by Public Sale.

- (1) An abandoned, junk or unauthorized motor vehicle and contents taken into custody and not reclaimed under Section 8 shall be sold to the highest bidder at public auction or sale, following the expiration of the reclamation period for the vehicle. The purchaser shall be given a receipt in a form prescribed by the Register of Motor Vehicles, which shall be sufficient title to dispose of the vehicle. The receipt shall also entitle the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership.
- (2) From the proceeds of the sale of an abandoned, junk or unauthorized motor vehicle, the City shall reimburse itself for the cost of towing, preserving and storing the vehicle, and all administrative notice and publication costs incurred pursuant to this section. Any remainder from the sale shall be held for the owner of the vehicle or entitled lien holder for ninety (90) days and then shall be deposited in the General Fund of the City.
- (3) Disposal of Vehicles not Sold. When no bid has been received for an abandoned, junk or unauthorized vehicle, the City may dispose of it in compliance with Minnesota law.
- (4) Contract on Disposal.
 - (a) The City may contract with a qualified person for the collection, storage, incineration, volume reduction, transportation or other services necessary to prepare abandoned, junk or unauthorized vehicles and other scrap metal for recycling or other methods of disposal.
 - (b) Where the City enters into a contract with a person duly licensed by the Minnesota Pollution Control Agency, the Agency shall review the contract to

determine whether it conforms to the Agency's plan for solid waste disposal. A contract that does so conform may be approved by the Agency. Where the City enters into a contract with a person duly authorized by the Minnesota Pollution Control Agency, the Agency shall review the contract to determine whether it conforms to the Agency's plan for solid waste disposal for the purpose of obtaining reimbursement.

- (c) If the city utilizes its own equipment and personnel for disposal of the abandoned, junk or unauthorized vehicles, it shall be entitled to reimbursement for the cost thereof along with its other costs as herein provided. However, the City may dispose of no more than five (5) vehicles using its own resources without advertising for or receiving bids for such disposal in any 120 day period.

(5) Persons Who May Not Purchase – Exception.

- (a) No employee of the City who is a member of the administrative staff, department head, a member of the Council, or an advisor serving the City in a professional capacity, may be a purchaser of a vehicle under this section. Other City employees may be purchasers, if they are not directly involved in the sale, if they are the highest bidder, and if at least one week's published or posted notice of sale has been given.
- (b) It is unlawful for any person to be a purchaser of a vehicle under this section if such purchase is prohibited by the terms of this section.

Section 10. Abatement. In all cases of nuisances, the City Administrator, or his designee, shall cause a written notice to be served upon the person or entity that maintains, operates or permits a nuisance. The notice shall be substantially as follows:

NOTICE TO ABATE NUISANCE

City of Eyota to _____.

You are hereby notified that the nuisance maintained, operated or permitted to exist by you located at _____ and consisting of _____ must be abated by the (removal) (destruction) (discontinuance) of the same and that if you do not comply with this notice, you are directed to appear before the undersigned at the Eyota City Hall on _____, 20__, at _____ o'clock a.m./p.m. to show cause why the same should not be abated. If you fail to appear, the undersigned will take the necessary steps to abate such nuisance. The costs of abatement incurred by the City shall be assessed against you, and a lien may be imposed on the property to secure such payment, in addition to any other remedies available to the City.

Dated this ___ day of _____, 20__.

Title of Signer

A copy of the foregoing notice was served on _____ on the _____ day of 20____.
By _____ (describe manner or service).

Name of Server

- (a) If such person or entity cannot be found, then a copy of the notice may be served by delivery to any member of the family or upon an office or agent of the entity over eighteen years of age and found on the premises described in the notice or at the residence of the person named therein, and if service cannot be had in such manner, then by posting a copy in some conspicuous place on the premises or entity at the last known address.
- (b) At the same time and place specified in the notice, the city Administrator, or his designee, shall hear the matter. The person or entity so complained of shall have the right to appear in person or by counsel. At the conclusion of the hearing, the City Administrator, or his designee, may vacate the notice or may declare such condition to be a nuisance and order it abated summarily.
- (c) In all cases where the city Administrator, or his designee, shall have determined, after hearing or notice of hearing and default, that any nuisance shall be abated, he shall issue an order requiring the abatement of the nuisance within a time named in the order, and shall serve the order of abatement upon the person or entity who maintains, operates or permits the nuisance. In the event the nuisance is not abated by the party within the time provided in the order, the City Administrator, or his designee, shall cause the nuisance to be abated.
- (d) Any person aggrieved by an order of abatement may appeal the order to the City council. An appeal shall be taken within ten days from the date of service of the order of abatement by filing with the City Administrator a notice of appeal which shall specify the grounds of appeal. The matter shall be placed on the City council's next regularly scheduled meeting for a public hearing. An appeal stays all proceedings in furtherance of the action appealed from.
- (e) The city council may reverse or affirm, in whole or in part, or may modify, the order of abatement and may issue an order, requirement, decision or determination as is consistent with City Ordinances.
- (f) Any person or entity who fails to remove and abate any nuisance after proper notice, the opportunity to be heard, and final order shall be liable to the city for all expense incurred in the removal and abatement of the nuisance. The City shall

have the right to recover all such costs and a lien may be imposed upon the property to secure payment of such costs. The procedure for establishing such lien shall be in accordance with Minn. Stat. 429.101.

- (g) **Emergency Procedure. Summary Enforcement.** In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in paragraphs (1) and (2) above 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 officer charged with enforcement shall determine that a public nuisance exists or is being maintained on premises in the City and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The enforcement officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the City's intention to seek summary enforcement and the time and place of the Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in paragraphs (a) through (f) above, and may order that such 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.
- (h) **Immediate Abatement.** Nothing in this ordinance shall prevent the City, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

Section 11. Recovery of Costs.

- (1) **Personal Liability.** The owner of premises on which the City has abated a nuisance shall be personally liable to the City for the cost of the abatement, including administrative costs. When the abatement is complete and the cost is determined, the City Administrator or other official designated by the Council shall prepare a bill and mail it to the owner. The amount shall be due immediately and payable at the office of the City Administrator.
- (2) **Assessment.** If the public nuisance is a 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-infested trees, any unpaid charges for the cost of eliminating the nuisance may be collected by the City as a special assessment.

Section 12. Penalty. Any person convicted or violating a provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine of at least \$150.00 per occurrence plus the costs of prosecution in any case.

PASSED AND ADOPTED BY THE EYOTA CITY COUNCIL this 10TH day of NOVEMBER, 2004.

SUMMARY PUBLISHED IN THE ROCHESTER POST BULLETIN ON the 30TH day of NOVEMBER, 2004.

Barbara Hampel, CMC
City Administrator

Danny Sturm
Mayor