

CHAPTER 12 NUISANCES

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12.01 **DEFINITIONS** *Ord. 08-2-2*

In addition to those terms defined in Appendix A of this Code, the following terms, whether capitalized or not, are defined as follows for the purposes of this Chapter:

Authorized Private Receptacle: A City-authorized container for the collection and storage of rubbish, waste, refuse, litter, garbage or other matter.

Litter: Any discarded, used or consumed substance or waste. Litter may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspapers, magazines, glass, metal, plastic or paper containers or other packaging, construction material, motor vehicle parts, furniture, oil, carcass of any dead animal, any nauseous or offense matter of any kind, any object likely to injure a person or create a traffic hazard, potentially infectious medical waste as identified by characteristics or listing as hazardous under Section 3001 of the Resource and Recovery Act of 1976 or pursuant to the Illinois Pollution Control Board, or anything else of an unsightly or unsanitary nature which has been discarded, abandoned or otherwise improperly disposed of, including any material which, if thrown or deposited improperly, may tend to create a danger to the public health, safety and welfare.

Park: A park reservation, playground, beach, recreation center or any other public area in the City, owned or used by the City, and devoted to active or passive recreation.

Public place: Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

Refuse: All putrescible and non-putrescible solid waste (except body waste) including garbage, rubbish, ashes, street cleanings, dead animals, abandoned vehicles and solid market and industrial

wastes.

Rubbish: Non-putrescible solid waste consisting of both combustible and noncombustible wastes such as paper, wrappings, cigarettes, cardboard, metal cans, yard clippings, leaves, tree stumps, dirt, wood, glass, bedding, crockery and similar materials.

Trash: Discarded, unwanted or worthless materials or objects.

12.02 PUBLIC NUISANCES PROHIBITED

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City or within the police jurisdiction of the City.

12.03 PUBLIC NUISANCES DEFINED *Amended, 12-5-3, 08-2-2*

A. GENERALLY: A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

1. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
2. In any way render the public insecure in life or in the use of property;
3. Greatly offend the public morals or decency;
4. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way.
5. Litter in public and private places.

B. PUBLIC NUISANCES AFFECTING HEALTH: The following acts, omissions, places and things hereby specifically declared to be public health nuisances, but shall not be construed to exclude other health nuisances coming within the definition of Section 12.03-A herein.

1. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale the public;
2. Carcasses of animals, birds or fowl not buried or otherwise disposed of in a sanitary manner within 24 hours after death;
3. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, abandoned vehicles or machinery, scrap metal, discarded appliances or any material in which flies, mosquitoes,

disease carrying insects, rats or other vermin may breed; or which may constitute a fire hazard.

4. All stagnant water in which mosquitoes, flies or other insects can multiply;
5. Garbage cans which are not fly-tight;
6. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the City limits in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property;
7. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial wastes or other substances;
8. Any use of property, substances or things within the City emitting or causing any foul, offensive noisome, nauseous, noxious or disagreeable odors, effluvia or stench extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the City;
9. All abandoned wells not securely covered or secured from public use;
10. Any barn, stable or shed used for keeping animals;
11. Any obstruction in or across any water course, drainage ditch or ravine;
12. Any open burning contrary to City ordinance;
13. The deposit of garbage, rubbish or any offensive substance on any street, sidewalk or public place, or on any private property, except as may be permitted by ordinance;
14. Any noxious weed on private property as defined by 505 ILCS 100/1 *et seq.*; and

C. PUBLIC NUISANCES OFFENDING MORALS AND DECENCY: The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of Section 12.03-A herein:

1. All disorderly houses, bawdy houses, houses of ill fame, and buildings or structures kept or resorted to for the purpose of prostitution or promiscuous sexual intercourse;

2. All gambling devices of any kind except as authorized by Section 33.38 of this Code;
3. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by this Code; and
4. Any place or premises within the City where ordinances or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
5. Any person throwing, tossing, discarding or depositing litter in or upon any street, sidewalk or other public place within the City except in public trash receptacles, authorized private receptacles for collection or in an official City disposal facility.

D. PUBLIC NUISANCES AFFECTING PEACE AND SAFETY: The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of Section 12.03-A herein:

1. All building erected, repaired or altered in violation of the provisions of the ordinances of the City relating to materials and manner of construction of building and structures;
2. All unauthorized signs, signals, markings or devices which purport to be or may be mistaken as official traffic control devices placed or maintained upon or in view of any public highway or railway crossing;
3. All trees, hedges or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk;
4. All limbs of trees which project over a public sidewalk less than eight feet above the surface thereof or less than 10 feet above the surface of a public street;
5. All use or display of fireworks except as provided by the laws of the State of Illinois and ordinances of the City;
6. All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use;

7. All wires over streets, alleys or public grounds which are strung less than 15 feet above the surface of the street or ground;
8. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the City or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable length of time after the purpose thereof has been accomplished;
9. All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk;
10. All abandoned appliances;
11. Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks;
12. Any advertisements or signs affixed to any building, wall, fence, sidewalk, street or other private or public property without permission of the owner thereof;
13. Any sign, marquee or awning which is in an unsafe condition, or which overhangs any roadway, or which overhangs any sidewalk less than eight feet above the sidewalk surface;
14. Any condition or practice constituting a fire hazard;
15. Any nuisance so defined by the Illinois Compiled Statutes;
16. All unsheltered storage of old, unused, stripped, junked, and other automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, and/or equipment and personal property of any kind which is no longer safely usable for the purposes for which it was manufactured, within the corporate limits of this City;
17. All unsheltered storage of unlicensed automobiles for a period of 10 days or more within the corporate limits of the City; and
18. All signs advertising garage sales, yard sales or other similar sales other than those located on the property on which the sale is being conducted.

12.04

ABATEMENT OF PUBLIC NUISANCES

A. **INSPECTION OF PREMISES:** Whenever complaint is made to the Mayor that a public nuisance exists, or has existed, within the City, the Mayor shall promptly notify the Chief of Police, or some other City official whom the Mayor shall designate, who shall forthwith inspect or cause to be inspected the premises and shall make a written report of his findings to the Mayor. Whenever practicable, the inspecting officer shall cause photographs to be made of the premises and shall file the same in the office of the Administrator.

B. **SUMMARY ABATEMENT:**

1. **Notice to Owner:** If the inspecting officer determines that a public nuisance exists on private property and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Mayor may direct the Chief of Police, Code Enforcement Officer or a deputy sheriff, to serve a notice on the owner, or, if the owner cannot be found, on the occupant or person causing, permitting or maintaining such nuisance and to post a copy of the notice on the premises. Such notice shall direct the owner, occupant or persons causing, permitting or maintaining such nuisance to abate or remove such nuisance within 24 hours.
2. **Abatement by City:** If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the Chief of Police, the Coordinator of Public Works or some other City official whom the Mayor shall designate, may cause the abatement or removal of such public nuisance, or person causing, permitting or maintaining such nuisance to abate or remove such nuisance within 24 hours.

C. **ABATEMENT BY COURT ACTION:** If the inspecting officer determines that a public nuisance exists on private premises but the nature of such nuisance is not an immediate danger to the public health, safety, peace, morals or decency, he shall file a written report of his findings with the Mayor, who shall cause an action to abate such nuisance to be commenced in the name of the City.

12.05 COST OF ABATEMENT

In addition to the penalty imposed by this Code for the erection, contrivance, creation, continuance or maintenance of the public nuisance, the cost of abating a public nuisance by the City shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as other special taxes.

12.06 ABANDONED AND DERELICT MOTOR VEHICLES *Amended, 04-11-2*

A. **LEGISLATIVE FINDINGS AND DETERMINATIONS:** The City Council, in keeping with the policy of the Illinois General Assembly as found in Section 5/4-301 of the Illinois Vehicle Code (Chapter 625 of the Illinois Compiled Statutes), finds and determines that:

Abandoned and derelict vehicles constitute a safety hazard and a public nuisance; are detrimental to the health, safety and welfare of the general public by harboring disease, providing breeding places for vermin, inviting plundering, creating fire hazards and presenting physical dangers to children and others; produce scenic blights which degrade the environment and adversely affect land values and the proper maintenance and continuing development of the State of Illinois and all of its subdivisions; represent a resource out of place and an energy loss to the Illinois economy and require state and local governmental attention, in conjunction with any federal governmental attention, in order to assure the expeditious removal and recycling of these abandoned and derelict vehicles.

B. ABANDONMENT OF VEHICLES OR RETENTION OF DERELICT VEHICLES PROHIBITED: The abandonment of a motor vehicle or any part thereof or the retention of a derelict vehicle anywhere in the City, in view of the general public, is unlawful except on the property of the owner in a completely enclosed permanent building or structure. Removal of the abandoned or derelict vehicle, or any part thereof, may be authorized by order of the Chief of Police after expiration of seven days from the date of violation.

C. ABANDONMENT OF MOTOR VEHICLE; PRESUMPTION: The person to whom last was issued the certificate of title to the vehicle by the Secretary of State is presumed to be the person to have abandoned that vehicle but such presumption may be rebutted.

D. RETENTION OF DERELICT VEHICLE ON PRIVATE PROPERTY; PRESUMPTION: The person who owns the property on which the derelict vehicle is retained or who occupies the property on which the derelict vehicle is retained, or both, is presumed to be the person responsible for disposing of the vehicle in a safe and timely manner.

E. NOTICE TO POLICE: When an abandoned, derelict, lost, stolen or unclaimed motor vehicle or other vehicle comes into the temporary possession or custody of a person in this state, not the owner of the vehicle, such person shall immediately notify the Police Department when the vehicle is within the corporate limits of the City.

Upon receipt of such notification, the Chief of Police shall authorize a towing service to remove and take possession of the abandoned, lost, stolen or unclaimed motor vehicle or other vehicle.

The towing service will safely keep the towed vehicle and its contents, maintain a record of the tow until the vehicle is claimed by the owner, or any other person legally entitled to possession thereof, or until it is disposed of as provided by this Section 12.06.

F. REMOVAL OF VEHICLES:

1. When a motor vehicle or other vehicle is abandoned on a public right-of-way in the City 10 hours or more, its removal by a towing service may be authorized by order of the Chief of Police.

2. When an abandoned, derelict, unattended, wrecked, burned or partially dismantled motor vehicle or other vehicle is creating a traffic hazard because of its position in relation to the highway, a towing service may be authorized by order of the Chief of Police.
3. When a vehicle is removed from either public or private property, as authorized by order of the Chief of Police, the owner of the vehicle will be responsible for all towing costs.

G. **RECORDS OF VEHICLE REMOVED:** When a motor vehicle or other vehicle is authorized to be towed away, the Police Department shall keep and maintain a record of the vehicle towed, listing the color, year of the manufacture, manufacturer's trade name, manufacturer's series name, body style, vehicle identification number and license plate year and number displayed on the vehicle. The record shall also include the date and hour of tow, location towed from, location towed to, reason for towing and the name of the officer authorizing the tow.

H. **SEARCH FOR OWNER:** When the Police Department does not know the identity of the registered owner or other legally entitled person, they will cause the motor vehicle records of the State of Illinois to be searched by a directed communication to the Secretary of State for the purpose of obtaining the required ownership information.

The Police Department shall cause the stolen vehicle files of the Illinois State Police to be searched by a directed communication to the Illinois State Police for stolen or wanted information on the vehicle. When the Illinois State Police files are searched with negative results, the information contained in the National Crime Information Center (NCIC) files will be searched by the Illinois State Police. The information determined from these record searches will be used by the Police Department in sending a notification by certified mail to the owner or legally entitled person advising where the vehicle is held, requesting a disposition be made and setting forth public sale information.

I. **NOTICE TO STATE POLICE:** When the registered owner or other person legally entitled to the possession of a motor vehicle or other vehicle cannot be identified from the registration files of this state or from the registration files of a foreign state, if applicable, the Police Department shall notify the Illinois State Police for the purpose of identifying the vehicle's owner or other person legally entitled to the possession of the vehicle. The information obtained by the Illinois State Police will be immediately forwarded to the law enforcement agency having custody of the vehicle for notification of owner.

J. **RECLAIMING VEHICLES:** Any time before a motor vehicle or other vehicle is sold at public sale or disposed of as provided herein, the owner or other person legally entitled to its possession may reclaim the vehicle by presenting to the Police Department proof of ownership or proof of the right to possession of the vehicle.

No vehicle shall be released to the owner or other person under this Section 12.06 until all towing and storage charges and fines have been paid.

K. **SALE OF VEHICLE:** Whenever an abandoned, lost, stolen or unclaimed motor vehicle or other vehicle, seven years of age or newer, remains unclaimed by the registered owner or other person legally entitled to its possession for a period of 30 days after notice has been given as provided herein, the Police Department having possession of the vehicle shall cause it to be sold at public sale to the highest bidder.

Notice of the time and place of the sale shall be posted in a conspicuous place for at least 10 days prior to the sale on the premises where the vehicle has been impounded.

At least 10 days prior to the sale, the Police Department shall cause a notice of the time and place of the sale to be sent by certified mail to the registered owner or other person known by the Police Department or towing service to be legally entitled to the possession of the vehicle. Such notice shall contain a complete description of the vehicle to be sold and what steps must be taken by any legally entitled person to reclaim the vehicle.

In those instances where the certified notification specified herein has been returned by the postal authorities to the Police Department due to the addressee having moved, or being unknown at the address obtained from the registration records of this state, the sending of a second certified notice will not be required.

L. **OLDER VEHICLES:** When the identity of the registered owner or other person legally entitled to the possession of an abandoned, lost or unclaimed vehicle of seven years of age, or newer cannot be determined by any means provided for in this section, the vehicle may be sold as provided herein or disposed of in the manner authorized by this Section 12.06 without notice to the registered owner or other person legally entitled to the possession of the vehicle.

When an abandoned vehicle of more than seven years of age is impounded as specified by this section, it will be kept in custody for a minimum of 10 days for the purpose of determining ownership, the contacting of the registered owner by the U.S. Mail, public service or in person for a determination of disposition, and an examination of the Illinois State Police stolen motor vehicle files for theft and wanted information.

At the expiration of the 10-day period, without the benefit of disposition information being received from the registered owner, the Chief of Police will authorize the disposal of the vehicle as junk only.

A motor vehicle or other vehicle classified as an antique vehicle is excluded from this Section 12.06.

M. **RECORDS:** When a motor vehicle or other vehicle in the custody of the Police Department is reclaimed by the registered owner or other legally entitled person, or when the vehicle is sold at public sale or other wise disposed of as provided in this section, a record of the transaction shall be maintained by the Police Department for a period of one year from the date of the sale or disposal.

N. **DISPOSITION OF SALE PROCEEDS:** When a vehicle located within the corporate limits of the City is authorized to be towed away by the Chief of Police and disposed of as set forth in this Section 12.06, the proceeds of the public sale or disposition after the deduction of towing, storage and processing charges shall be deposited in the City treasury.

O. **LIABILITY OF OFFICERS:** Any police officer, towing service owner, operator or employee shall not be held to answer or be liable for damages or his legal representatives, or any other person legally entitled to the possession of a motor vehicle or other vehicle when the vehicle was processed and sold or disposed of as provided by this Section 12.06.

12.07 BOATS, TRAILERS AND RECREATIONAL VEHICLES

Outdoor storage of recreational vehicles is permitted only to the extent that such vehicles are stored in a safe and orderly manner in a compact and contiguous area not to exceed 180 square feet located behind the front yard building setback line. For purposes of this Section 12.07, a boat upon a trailer shall be considered a single vehicle.

12.08 NOXIOUS PLANTS, WEEDS, BUSHES, TREES AND GRASS *Amended, 08-7-1*

A. **NUISANCE DECLARED:** Any weeds such as or known as jimson, burdock, ragweed, thistle, cocklebur, or other weeds of like kind, and plants or bushes of the species of tall, common or European Barberry, otherwise known as *Barberis Vulgaris*, or its horticultural varieties, found growing in any place or location within the corporate limits of the City, are declared to be a nuisance. It shall be unlawful for any person to cause or permit any such weeds or plants to grow or remain in any place or location within the corporate limits of the City to a height in excess of eight inches. It is also hereby declared to be a nuisance and shall be unlawful for any person to cause or permit grass, except ornamental grass, to grow or remain in any place or location within the corporate limits of the City to a height in excess of eight inches, or refuse or neglect to trim trees or bushes, or remove nuisance bushes or trees in the City.

B. **REMOVAL OF NOXIOUS PLANTS, WEEDS, GRASS, BUSHES AND TREES:** It shall be the duty of every owner or occupant of every lot or tract of land within the corporate limits of the City to (1) cut, destroy or remove, or cause to be cut, destroyed or removed, every such weed or plant or (2) cut any grass as hereinabove described or (3) trim trees or bushes, or (4) remove nuisance bushes or trees, upon every such lot or tract of land in such manner and on or before such time as such weeds, plants or grass reach or exceed the height of eight inches or such trees or bushes become a nuisance. Upon the failure of any such owner or occupant so to do, it shall be the duty of the Building Department to serve or cause to be served a notice, demanding the abatement of such growth as a nuisance, within a period of five days from the date of such service. Failure of any owner or occupant to comply with the provisions and demands of such notice shall constitute a violation of the provisions of this Section 12.08.

C. **NOTICE:** Any owner or occupant served with a 5-day notice shall be deemed to have refused or neglected to cut, trim or remove such weeds, trees, bushes, plants or grass pursuant to this

Section 12.08. The written notice shall be in force for a period of 12 months from the date the notice was issued. Failure of any owner or occupant to comply with the provisions and demands of a notice served within the previous 12 months shall constitute a violation of the provisions of this Section 12.08 and it shall be a new violation every day the nuisance is allowed to continue. For purposes of this Section, an owner or occupant shall be deemed served when notice has been sent by certified mail and posted on the subject property. An owner may also be deemed served when notice has been sent via facsimile or electronic mail.

The cost of cutting, trimming or removing of weeds, grass, plants, trees or bushes shall not be a lien on the real estate affected unless a notice is personally served on, or sent by certified mail to, the person to whom was sent the tax bill for the general taxes on the property for the last preceding year. The notice shall be sent after the cutting, trimming or removal of the weeds, grass, plants, trees or bushes on the property.

D. ABATEMENT: If, upon the expiration of the 5-day period provided in the notice, for a period of 12 months from the date of service, any owner or occupant of any premises in the City upon which any such weeds, plants, trees, bushes or grass are caused or permitted to grow in violation of the provisions of this Section 12.08, it shall be the duty of the Building Department, or any department in the City directed to do so, to proceed to eliminate the nuisance by cutting, destroying or otherwise removing the weeds, plants, trees, bushes or grass and to keep an account of the expense thereof, and such expense shall be charged to the owner, or the owner and occupant jointly, of the premises, and it shall be the duty of the owner or the owner and occupant jointly to pay such expense.

E. LIEN: The City shall have a continuing lien upon the premises and real estate upon which any noxious weeds or plants or nuisance trees, bushes or grass shall be caused or permitted to grow in violation of the provisions of this Section 12.08, for or on account of which it is necessary for any expense to be suffered or incurred by the City for the cutting, destroying or otherwise removing of any weeds, plants, trees, bushes or grass. Every lien shall, upon compliance with the conditions hereinafter set forth, become and be prior and superior to the rights and interest of creditors, encumbrances, purchasers and other parties in interest in such premises and real estate.

Such lien may be preserved and enforced in the following manner: The Clerk shall, within 60 days after the accrual of such expense or cost or charge, file or cause to be filed with the Recorder of Deeds a claim for lien, verified by the affidavit of an officer of the City having knowledge of the facts, which shall consist of a brief statement of the facts of the claim, the amount of money representing the cost and expense incurred or payable for the service, the date or dates when such cost and expense were incurred by the City and a sufficiently correct description of the lot, lots or tract or tracts of land or real estate to properly identify such land or real estate. No such lien shall be defeated in the proper amount thereof because of error or overcharging on the part of the City, nor shall any such lien be defeated upon proof that the expense or cost or charge resulted from or was incurred by reason or fault of any tenant or occupant or other person in possession other than the owner.

F. FORECLOSURE OF LIEN: If payment is not made as provided in this Section 12.08 of any amount due by virtue of its provisions when the same shall become due, the City may file or cause to be filed a petition or bill in the appropriate court for a foreclosure of mortgages. Such suit shall be commenced within two years after the accrual of such expense or cost or charge. Any decree rendered in court may be enforced and collected as other decrees or judgments in such court.

The remedy provided in this Section 12.08 shall not be construed to abridge or in any manner interfere with the right and power of the City to enforce the collection thereof by an action at law or as otherwise provided in this Section 12.08, but the remedy herein provided shall be taken and held as an additional means to enforce payment of such delinquent expense or cost or charge.

12.09 OPEN BURNING *Amended, 24-2-3, 13-6-4, and 10-6-4*

A. PROHIBITION: Except as provided herein, the open burning of any materials or substances is prohibited within the City limits, other than the preparation of food on a temporary or permanent fireplace grill or barbecue pit and as otherwise provided herein.

B. EXCEPTIONS:

1. Preparation of food on a temporary or permanent grill or barbecue pit.
2. Duly organized units of government when conducting a controlled burn and when authorized by the City Council. Any unit of government conducting an authorized controlled burn within the City shall notify the Police Department of the time and location of the controlled burn. The Chief of Police may impose such conditions and limitations upon said controlled burns as the Chief deems appropriate.
3. Recreational campfires are allowed if the following conditions are met:
 - (a) The recreational campfire is attended by a responsible person over the age of 21 years, who shall have a garden hose connected to a water supply or other fire extinguishing equipment readily available for use.
 - (b) The recreational campfire location is not less than 30 feet from any structure and adequate provisions are made to prevent fire from spreading to within 30 feet of any structure.
 - (c) Materials burned shall only be firewood and fire logs. No refuse, leaves, grass, or shrubbery clippings may be burned.
 - (d) Recreational campfires must be kept at a maximum size of 3'x3'x3'
 - (e) No recreational campfires are permitted when winds are greater than 10 mph

- (f) Recreational campfire shall be extinguished when left unattended or abandoned

- 4. In the AT Agricultural Transition District within the City pursuant to the McHenry County Department of Health Landscape Regulations, Article III - Section 1.29 regarding open burning restrictions, as amended.

C. PENALTIES: Any person who violates Section 12.09 shall be fined not less than \$100 for the first offense. The fine for a second offense shall be not less than \$300 and the fine for a third and any other subsequent offenses shall be not less than \$500. The violation of this Section 12.09 is hereby declared to be a public nuisance, to be abated in the manner provided by law.

12.10 FALSE ALARMS

A. AUTOMATIC DIALER ALARMS: Automatic dialer alarms that dial directly into the Police Department are not allowed to be used within the corporate limits of the City, with the exception of those used by the City and those authorized by the Chief of Police based upon special facts involving medical and/or life threatening circumstances.

B. AUDIBLE ALARMS: Any alarm that emits an audible alarm is required to have a cut-off timer that will shut the alarm off automatically after 30 minutes.

C. FALSE ALARMS: Any person owning or leasing an alarm system that transmits an alarm activation, either indirectly or directly to the Police Department, shall be deemed to have transmitted a false alarm and be in violation of this Ordinance if that person's alarm system transmits more than four false alarms within any 12-month period. For purposes of determining guilt under this Section 12.10, a person's knowledge and intent are not elements of this offense.

12.11 FIRE DISTRICT RAPID ENTRY KEY SYSTEM

A. FIRE DISTRICT RAPID ENTRY KEY SYSTEM: A Fire District Rapid Entry Key System (hereinafter referred to as "KNOX") shall be installed on all buildings equipped with a monitored fire alarm system. Installation, location and mode of KNOX box shall be approved by the fire district prior to installation.

B. EXCEPTIONS: The following situations will be exempt from the KNOX box installation requirement in Section 12.11:

- 1. Detached single family dwellings;
- 2. Alarmed buildings that are occupied 24 hours a day throughout the year;
- 3. Buildings with on-premises guard service with key access to all building areas.

12.12 NO SMOKING 08-1-3

A. In addition to those terms defined in Appendix A of this Code, for the purposes of this Section, the following terms have the meanings ascribed to them in this Section unless different meanings are plainly indicated by the context:

Bar: An establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than 10 percent of its gross revenue from the sale of food consumed on the premises. Bar includes, but is not limited to, taverns, nightclubs, cocktail lounges, adult entertainment facilities and cabarets.

Employee: A person who is employed by an employer in consideration for direct or indirect monetary wages or profits or a person who volunteers his or her services for a non-profit entity.

Employer: A person, business, partnership, association or corporation, including a municipal corporation, trust or non-profit entity that employs the services of one or more individual persons.

Enclosed area: All space between a floor and a ceiling that is enclosed or partially enclosed with (i) solid walls or windows, exclusive of doorways, or (ii) solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors.

Enclosed or partially enclosed sports arena: Any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, bowling alley or other similar place where members of the general public assemble to engage in physical exercise or participate in athletic competitions or recreational activities or to witness sports, cultural, recreational or other events.

Gaming equipment or supplies: Gaming equipment/supplies as defined in the Illinois Gaming Board Rules of the Illinois Administrative Code.

Gaming facility: An establishment utilized primarily for the purposes of gaming and where gaming equipment or supplies are operated for the purposes of accruing business revenue.

Healthcare facility: An office or institution providing care or treatment of diseases, whether physical, mental, or emotional or other medical, physiological or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories and offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. Healthcare facility includes all waiting rooms, hallways, private rooms, semiprivate rooms and wards within healthcare facilities.

Place of employment: Any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including but not limited to entrances and exits to places of employment, including a minimum distance of 15 feet from entrances, exits, windows that open and ventilation intakes that serve an enclosed area where

smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms; cafeterias and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care or other similar social service care on the premises, is not a place of employment.

Private club: A not-for-profit association that (i) has been in active and continuous existence for at least three years prior to the effective date of the Act, whether incorporated or not, (ii) is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, (iii) is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose, but not for pecuniary gain, and (iv) only sells alcoholic beverages incidental to its operation. For purposes of this definition, private club means an organization that is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, has established bylaws, a constitution, or both to govern its activities, and has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. 501.

Private residence: the part of a structure used as a dwelling, including, without limitation: a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin or cottage. For the purposes of this definition, a hotel, motel, inn, resort, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a private residence.

Proprietor: Any individual or his designated agent who, by virtue of his office, position, authority or duties, has legal or administrative responsibility for the use or operation of property.

Public place: Any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State of Illinois, or any other public entity and regardless of whether a fee is charged for admission, including a minimum distances of 15 feet from entrances, exits, windows that open and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises. A public place includes but is not limited to enclosed indoor areas used by the public or serving as a place of work including, but not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, enclosed or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, and all government owned vehicles and facilities, including buildings and vehicles owned, leased or operated by the State or State subcontract, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, and no less than 75 percent of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast or other similar public accommodation that are rented to guests, but excludes private residences.

Restaurant: An eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands and private and public school cafeterias, that gives or offers for sale food to the public, guests

or employees, and/or a kitchen or catering facility in which food is prepared on the premises for serving elsewhere. Restaurant includes a bar area within the restaurant.

Retail tobacco store: A retail establishment that derives more than 80 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. Retail tobacco store does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food or restaurant license.

Smoke or smoking: The carrying, smoking, burning, inhaling or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs or any other lighted smoking equipment.

B. SMOKING IN PUBLIC PLACES PROHIBITED: No person shall smoke in a public place or any place of employment or within 15 feet of any entrance to a public place or place of employment. No person may smoke in any vehicle owned, leased, or operated by the State, City or other political subdivision of the State. Smoking is prohibited in indoor public places and places of employment unless exempted by Section 12.12-E.

C. SMOKING PROHIBITED IN STUDENT DORMITORIES: Notwithstanding any other provision of this Section, smoking is prohibited in any portion of the living quarters, including, but not limited to, sleeping rooms, dining areas, restrooms, laundry areas, lobbies and hallways, of a building used in whole or in part as a student dormitory that is owned and operated or otherwise utilized by a public or private institution of higher education.

D. POSTING OF SIGNS; REMOVAL OF ASHTRAYS; DESIGNATION OF OTHER NON-SMOKING AREAS:

1. “No Smoking” signs or the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in each public place and place of employment where smoking is prohibited by this Section by the owner, operator, manager, or other person in control of that place.
2. Each public place and place of employment where smoking is prohibited by this Section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. All ashtrays shall be removed from any area where smoking is prohibited by this Section by the owner, operator, manager, or other person having control of the area.
4. Notwithstanding any other provision of this Section, any employer, owner, occupant lessee, operator, manager, or other person in control of any public place or place of employment may designate a non-enclosed area of a public place or place of employment, including outdoor areas, as an area where

smoking is also prohibited provided that such employer, owner, lessee or occupant shall conspicuously post signs prohibiting smoking in the manner described in this Section.

E. EXEMPTIONS: Notwithstanding any other provisions of this Section, smoking is allowed in the following areas:

1. Private residences or dwelling places, except when used as a child care, adult day care, or other healthcare facility or any other home-based business open to the public.
2. Retail tobacco stores in operation prior to January 1, 2008. The retail tobacco store shall annually file with the Illinois Department of Public Health by January 31st an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of loose tobacco, plants or herbs and cigars, cigarettes, pipes or other smoking devices for smoking tobacco and related smoking accessories. Any retail tobacco store that begins operation after the effective date of January 1, 2008, may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited.
3. Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home.
4. Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited. Not more than 25 percent of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.

F. ENFORCEMENT: The Illinois Department of Public Health, State-certified local public health departments and local law enforcement agencies shall enforce the provisions of this Section and may assess fines pursuant to Section 12.12-G. Any person may register a complaint with the Illinois Department of Public Health, a State-certified local public health department or a local law enforcement agency for a violation of this Section.

G. VIOLATIONS:

1. A person, corporation, partnership, association or other entity, who violates this Section, shall be fined no less than \$100 and not more than \$250 plus the City's cost of prosecution, including reasonable attorney fees. Each day that a violation continues shall be considered a separate offense.
2. A person who owns, operates, or otherwise controls a public place or place of employment that violates this Section shall be fined (i) not less than \$250 for the first violation, (ii) not less than \$500 for the second violation within one year after the first violation, and (iii) not less than \$750 for each additional violation within one year after the first violation.

H. INJUNCTIONS: The Illinois Department of Public Health, a State-certified local public health department, local law enforcement agency or any individual personally affected by repeated violations may institute, in the circuit court, an action to enjoin violations of this Section.