

CHAPTER XII  
PUBLIC NUISANCES

ARTICLE 1

12.01 Nuisance - Definition

A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
2. Offends decency;
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any public park, street, or highway; or
4. In any way renders other persons insecure in life or in the use of property.

12.02 Public nuisance

A public nuisance is a nuisance which at the same time affects the entire community of Hazen or a neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

12.03 Remedies

The remedies against a public nuisance are:

1. Bringing a criminal action before a district judge;
2. A civil action; or
3. Abatement.

12.04 Public officer authority

All public officers of the City of Hazen are hereby granted the authority to prevent, abate and remove nuisances in accord with these ordinances and state law. "Public officer" includes, without limitation, all police, the city forester, the city building inspector, and public health officers.

12.05 Examples of nuisances

As examples, but not complete nor to be construed as limitations, the following are declared to be nuisances:

1. The use, construction, maintenance, building or erection of any outhouse, privy, vault or cesspool within this City is hereby declared to be a nuisance and a menace to public health. Portable privies complying with state and local sanitation requirements are exempt from this provision when used for a temporary basis.

2. It is unlawful for the owner or occupant of any lot or piece of ground within the corporate limits of this City to suffer or permit any private sewer system to emit any offensive odors or to become dangerous or injurious to public health or offensive to sense of smell of the people of the City, and any private sewer system emitting such odor is hereby declared to be a nuisance and menace to public health of the City.

3. Any dead animal remaining in any street, alley or other public place in this City, or in any private premises within this City, for more than five (5) hours after the animal died, is hereby declared to be a nuisance

4. It is unlawful for the owner or occupant of any parcel of ground in this City to suffer or permit water or putrid substance, whether animal or vegetable, to accumulate or stand so as to cause an offensive odor to be emitted therefrom or to become injurious or dangerous to the health of the neighborhood, and any pool of water and any putrid substance permitted to become offensive or injurious to the public health is hereby declared to be a nuisance.

5. It is unlawful for any person, firm or corporation to throw, place, deposit, leave or cause to be thrown, placed, deposited or left in any of the public streets, highways, alleys, parks or thoroughfares, or on any private premises in this City any dirt, filth, sewage, sweepings, rags, dung, garbage, compost, wastepaper, straw, hay, leaves, brush, weeds, dry grass, shavings, barrels, boxes, wooden crates, lumber, stable manure, ashes, vegetables, slops or litter of any kind, and any place or property having left or deposited thereon any of the things or substances aforesaid is hereby declared to be a nuisance.

6. It is the duty of all persons having stables, barns, kennels, or sheds, whether as owners or tenants or as agents having control thereof, to remove or cause to be removed therefrom all manure and refuse of every kind at least once each week between the 15th day of March and the 15th day of December of each and every year.

7. No person may spit upon any sidewalk, or upon the stairs, hallway, floor, carpet, furniture or walls of any public or office buildings in this City.

8. The emission of dense smoke, ash, dust, soot, cinders or noxious gases from any machine, contrivance, or from the smoke stack or chimney of any building or premises in such quantities as to cause injury or detriment to any person or persons, or to the public, or to endanger the comfort, health or safety of any person or persons, or in such manner as to cause or tend to cause damage or injury to property, is hereby declared to be a nuisance.

9. It is unlawful for any person knowingly to maintain, use, operate or cause to be operated within this City, any machine, device, appliance, equipment or apparatus of any kind whatsoever, the operation of which causes reasonably preventable electrical interference with radio or television reception within the municipal limits, and the maintenance, use or operation within the city of any machine, device, appliance, equipment or apparatus of any kind so as to interfere with radio or television reception in violation hereof, is hereby declared a public nuisance.

10. The making, creating, or maintenance of loud, unnatural or unusual and disturbing noises is a detriment to public health, comfort, convenience, safety and welfare and is hereby declared to be unlawful and a public nuisance. The following acts, among others, are declared to be prohibited noises in violation of this section, but this enumeration is not exclusive:

- a. The sounding of horns or signaling devices on any motor vehicle, or motorcycle on any street or public place except as a danger warning or their sounding for an unnecessary and unreasonable period of time.
- b. Radios, Phonographs, etc. The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in a manner so as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which the machine or device is operated, and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device in a manner as to be plainly audible at a distance of more than fifty (50) feet from the building, structure or vehicle in which it is located is prima facie evidence of a violation of this section.
- c. Loudspeakers, Amplifiers for Advertising.  
The use, operating, or permitting to be played, used or operation of any radio receiving set, musical instrument, phonograph, loudspeaker, amplifier, or other machine or device for the producing or reproducing

of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

- d. Yelling, Shouting, etc. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11 p.m. and 7 a.m. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, hotel, or other type of residence, or of any persons in the vicinity.
- e. Schools, Courts, Churches, Hospitals. The creation of an excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of the institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in the street indicating that it is a school, hospital or court street.

11. Unsheltered storage of old, used, stripped, junked and other automobiles not in good, 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 purpose for which it was manufactured for a period of thirty days or more (except in a licensed junk yard) within the city, and any motor vehicle, animal and article of personal property which constitutes an obstruction to, hazard or detriment to public traffic, snow removal operations, public safety and public health and morals or which may be abandoned or unclaimed within this City is hereby declared to be a nuisance and dangerous to public safety and must be abated in the manner prescribed in this article. For purposes of this provision, "abandoned" means a motor vehicle that has remained for a period of more than ten (10) days on public property illegally or lacking vital component parts or has remained for a period of more than ten (10) days on private property without consent of the person in control of such property or in an inoperable condition such that it has no potential for further use consistent with its useful functions unless it is kept in an enclosed garage or storage building. Also see sections 3.0402, et seq and section 9.0302 herein.

12. If any part or the whole of any tree on private premises is found after proper investigation to be dangerous or unsafe, or otherwise constitute a public nuisance, the city forester may declare the tree or portion thereof a public nuisance and cause the nuisance to be abated. If it is determined the tree is an imminent danger to life or property, the owner must be provided written notification to abate within twenty-four (24) hours of the notice. Failure to comply constitutes authorization for the city to abate the nuisance at the expense of the owner. Whenever it is impractical to notify an owner, the city forester is authorized, without notice, to

immediately abate a public nuisance which is an imminent danger to life or property, at the expense of the city.

13. The following are declared a public nuisance and may not be planted on any private premises: those selections and species of the Genus Populus producing the pistillate flowers and bearing the "cotton" filled seed capsules; any *Ulmis pumila* or Siberian Elms; and such other plants as the city forester determines to be nuisances.

14. It is the duty of landowners within the corporate limits of the City of Hazen to cut all weeds and grasses on their lands, including the weeds and grasses growing within the street and alley right-of way bordering their lands. Any weeds and/or grasses six (6) inches or longer in height are deemed to be a nuisance and must be abated.

#### 12.06 Abatement Required

The owner, owners, tenants, agent of the owner, lessees and/or occupants of any property declared to be a nuisance shall jointly and severally abate the nuisance immediately after notice the property has been declared a nuisance. Notice must be served personally or delivered by certified mail, return receipt requested, to the last reasonably known address of the owner, tenant, occupant, lessee or agent of the owner, if such address is reasonably ascertainable or may be posted on the premises at least twenty (20) days prior to city abatement of the nuisance. The notice must describe the property to be abated and provide the right to a hearing on the necessity for the abatement.

Upon the failure, neglect, or refusal of the owner, tenant, occupant, lessee or agent of the owner so notified to abate and remove the nuisance within twenty days (20), or less if the nuisance is deemed to be a present danger to the public, the city officer shall cause the nuisance to be removed or destroyed under the officer's direction, at the expense of the city, but the expense must be charged against the lots, pieces, or parcels of land upon which the work was done. If the nuisance property is real property, the cost of the removal or destruction must be assessed by the street commissioner, who shall return the assessment and file it in the office of the city auditor. The city auditor shall cause the amount of the assessment, together with a notice of the time when and place where the governing body of the city will meet to consider the approval thereof, to be published in one issue of the official newspaper of the city at least ten days prior to the meeting of the governing body at which the approval of the assessment will be considered. The city auditor shall deliver the assessment roll to the county auditor.

If the nuisance property is abandoned personal property, it may be sold in accord with subsection 40-05-02(20) NDCC after sixty (60) days and the proceeds applied to expenses, with the balance, if any, returned to the owner of the property, if the owner can be located. If the owner cannot be located, the balance may be returned to the treasury of the city. Any balance due from the owner may be assessed against the owner's property, as above, if payment in full is not received by the city within thirty (30) days after billing the owner.

#### 12.07 Opportunity for Hearing and Appeal

Any owner, tenant, occupant, lessee or agent of owner of any property within the jurisdiction of the city, who has been ordered to remove or destroy a nuisance, may seek a hearing before the governing body of the city for the purpose of making a determination whether or not a nuisance exists. Any person desiring a hearing must notify the city auditor in writing within twenty (20) days of the receipt of or posting of the required notice and must be given an opportunity to appear before the governing body within thirty (30) days after notification of a desire for hearing. The city will determine, based on a preponderance of the evidence, if the conditions of which are complained about constitute a nuisance. If it is determined a nuisance exists, the owner will have an additional ten (10) days from the date of the hearing in which to abate the nuisance, unless the nuisance presents a present danger and immediate abatement is required. The owner has the right to appeal the decision of the city to a court of law within the ten day period. Thereafter, if the owner fails to appeal and if the nuisance continues, the city may take reasonable steps to abate.

**ORDINANCE NO. 98-01**

**ORDINANCE AMENDING CHAPTER XII**

BE IT ORDAINED by the Board of City Commissioners of the City of Hazen, North Dakota, that Chapter XII of the Hazen City Ordinances concerning Public Nuisances be amended and re-enacted in the form attached hereto.

First Reading: September 8, 1998

Roll Call:       5   aye  
                    0   nay  
                    0   absent

Second Reading: September 21, 1998

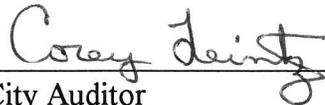
Roll Call:       5   aye  
                    0   nay  
                    0   absent

Effective Date: October 1, 1998

Published:     October 1, 1998

  
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Mark Nygard, Hazen City Commission Pres.

ATTEST:

  
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Hazen City Auditor