**ORDINANCE NO. \_\_\_\_\_\_\_\_\_\_**

**AN ORDINANCE REPEALING AND REPLACING TITLE I, CHAPTER 3 “PENALTY”, AND REPEALING AND REPLACING TITLE III, CHAPTER 2 “NUISANCES”, AND REPEALING TITLE I, CHAPTER 4 “PROCEDURE FOR HEARINGS BY THE CITY COUNCIL” OF THE CODE OF ORDINANCES OF THE**

**CITY OF KINROSS, IOWA**

**SECTION I. PURPOSE.** The purpose of this ordinance is to ensure the enforcement of the City of Kinross’s nuisance ordinances to protect the health and well-being of the citizens of Kinross.

To further effectuate the City’s purpose above, certain chapters of the City Code of Ordinances must be repealed and replaced to provide for the efficient enforcement of nuisance violations and the uniform execution of nuisance abatement within the city limits of Kinross, Iowa.

**SECTION II. CHAPTER REPEALED.** Title I, Chapter 4 “Procedure for Hearings by the City Council” of the City Code is hereby repealed in its entirety.

**SECTION III. CHAPTER REPEALED AND REPLACED.** Title I, Chapter 3 “Penalty” of the City Code is hereby repealed in its entirety and replaced with the following provisions. No underline/strikethrough text is included in this section, as the entirety of Title I, Chapter 3 as shown below constitutes newly added language:

**TITLE I GENERAL PROVISIONS**

**CHAPTER 3 PENALTY/MUNICIPAL INFRACTIONS**

|  |  |
| --- | --- |
| **1-3-1 General Penalty** | **1-3-4 Civil Citations** |
| **1-3-2 Municipal Infraction** | **1-3-5 Alternative Relief** |
| **1-3-3 Municipal Infraction Penalties** | **1-3-6 Alternative Penalties** |

**1-3-1 STANDARD PENALTY.** Unless another penalty is expressly provided by the Code of Ordinances, any person who shall be found guilty of violating the provisions of any section of this Code now existing, or hereafter enacted, shall be punished as provided in Iowa Code sections 903.1(1)(a) and 364.3(2) in the case of simple misdemeanors or as provided in Iowa Code section 364.3(6) in the case of Municipal infractions.

**1-3-2 MUNICIPAL INFRACTION.** A violation of this Code of Ordinances or any ordinance or code herein adopted by reference or the omission or failure to perform any act or duty required by the same, with the exception of those provisions specifically provided under State law as a felony, an aggravated misdemeanor, or a serious misdemeanor, or a simple misdemeanor under Chapters 687 through 747 of the *Code of Iowa*, is a municipal infraction punishable by civil penalty as provided herein.[[1]](#footnote-1)†

*(Code of Iowa, Sec. 364.22[3])*

**1-3-3 MUNICIPAL INFRACTION PENALTIES.** A municipal infraction is punishable by the following civil penalties:

*(Code of Iowa, Sec. 364.22[1])*

1. Standard Civil Penalties.
2. First offense – not to exceed $750.00
3. Each repeat offense – not to exceed $1,000.00

Each day that a violation occurs or is permitted to exist constitutes a repeat offense.

1. Special Civil Penalties.
2. A municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. §403.8, by an industrial user is punishable by a penalty of not more than $1,000.00 for each day a violation exists or continues.
3. A municipal infraction classified as an environmental violation is punishable by a penalty of not more than $1,000.00 for each occurrence. However, an environmental violation is not subject to such penalty if all of the following conditions are satisfied:

(1) The violation results solely from conducting an initial startup, cleaning, repairing, performing scheduled maintenance, testing, or conducting a shutdown of either equipment causing the violation or the equipment designed to reduce or eliminate the violation.

(2) The City is notified of the violation within 24 hours from the time that the violation begins.

(3) The violation does not continue in existence for more than eight hours.

**1-3-4 CIVIL CITATIONS.** Any officer authorized by the City to enforce this Code of Ordinances may issue a civil citation to a person who commits a municipal infraction. A copy of the citation may be served by personal service as provided in Rule of Civil Procedure 1.305, by certified mail addressed to the defendant at defendant’s last known mailing address, return receipt requested, or by publication in the manner as provided in Rule of Civil Procedure 1.310 and subject to the conditions of Rule of Civil Procedure 1.311. A copy of the citation shall be retained by the issuing officer, and the original citation shall be sent to the Clerk of the District Court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

*(Code of Iowa, Sec. 364.22[4])*

1. The name and address of the defendant.
2. The name or description of the infraction attested to by the officer issuing the citation.
3. The location and time of the infraction.
4. The amount of civil penalty to be assessed or the alternative relief sought, or both.
5. The manner, location, and time in which the penalty may be paid.
6. The time and place of court appearance.
7. The penalty for failure to appear in court.
8. The legal description of the affected real property, if applicable.

**1-3-5 ALTERNATIVE RELIEF.** Seeking a civil penalty as authorized in this chapter does not preclude the City from seeking alternative relief from the court in the same action. Such alternative relief may include, but is not limited to, an order for abatement or injunctive relief.

*(Code of Iowa, Sec. 364.22[8])*

**1-3-6 ALTERNATIVE PENALTIES.** This chapter does not preclude a peace officer from issuing a criminal citation for a violation of this Code of Ordinances or regulation if criminal penalties are also provided for the violation. Nor does it preclude or limit the authority of the City to enforce the provisions of this Code of Ordinances by criminal sanctions or other lawful means.

**SECTION IV. CHAPTER REPEALED AND REPLACED.** Title III, Chapter 2 “Nuisances” of the City Code is hereby repealed in its entirety and replaced with the following provisions. No underline/strikethrough text is included in this section, as the entirety of Title III, Chapter 2 as shown below constitutes newly added language:

**TITLE III COMMUNITY PROTECTION**

**CHAPTER 2 NUISANCE ABATEMENT PROCEDURE**

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| **3-2-1 Definition of Nuisance** | **3-2-6 Notice to Abate; Contents; Service** |
| **3-2-2 Nuisances Enumerated** | **3-2-7 Request for Hearing** |
| **3-2-3 Other Conditions Regulated** | **3-2-8 Abatement in Emergency** |
| **3-2-4 Nuisances Prohibited; Authority to Abate** | **3-2-9 Abatement by the City; Costs** |
| **3-2-5 Right of Entry for Inspection** | **3-2-10 Municipal Infraction Abatement Procedure** |

**3-2-1 DEFINITION OF NUISANCE.** A “nuisance” is defined as whatever is injurious to health, indecent or unreasonably offensive to the senses, or an obstruction to the free use of property so as essentially to interfere unreasonably with the comfortable enjoyment of life or property.

**3-2-2 NUISANCES ENUMERATED.** The following subsections include, but do not limit the conditions which are deemed to be nuisances in the City:

1. The erecting, continuing or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public.
2. The causing or suffering any offal, filth or noisome substance to be collected or to remain in any place to the prejudice of others.
3. The obstructing or impeding without legal authority the passage of any navigable river, harbor or collection of water.
4. The corrupting or rendering unwholesome or impure the water of any river, stream or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.
5. The obstructing or encumbering by fences, buildings or otherwise the public roads, private ways, streets, alleys, commons, landing places or burying grounds.
6. A house kept for the purpose of prostitution and lewdness, gambling houses, places resorted to by persons participating in criminal gang activity prohibited by I.C.A. Ch. 723A, or places resorted to by persons using controlled substances, as defined in I.C.A. § 124.101, sub. 5, in violation of law, or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.
7. Billboards, signboards and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard or alley or of a railroad or street railway track as to render dangerous the use thereof.
8. Any object or structure hereafter erected within one thousand feet (1,000’) of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or struct constitutes a proper use or enjoyment of the land on which the same is located.
9. The accumulation of items including, but not limited to, the following: old or scrap rope, rags, batteries, paper, trash, rubber, debris, tires, waste, used lumber, or salvaged wood; inoperable machinery, electronics, or appliances or parts of such machinery, electronics, or appliances; iron, steel, or other old or scrap ferrous materials; old or discarded glass, tinware, plastic or old or discarded household goods or hardware, except if stored inside a completely enclosed structure. Neatly stacked firewood located on a side yard or rear yard is not considered a nuisance.
10. The emission of dense smoke, noxious fumes or fly ash.
11. All weeds, vines, brush or other vegetation in any lawn or yard, including public parking or boulevard areas abutting private property, in an average excess of eight inches for developed properties and twelve inches for undeveloped properties.
12. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees on private property; trees infected with Dutch elm disease or knowingly impacted or damaged by the emerald ash borer on private property.
13. Effluent from septic tank or drain field running or ponding on the ground in the open.
14. Any article or substance placed upon a street, alley, sidewalk, public ground, or in any ditch, waterway or gutter so as to obstruct the drainage.
15. Snow and ice accumulations on sidewalks not removed within 24 hours after the precipitation has stopped.
16. Refrigerators and freezers which are not stored under a roofed enclosure, and which have doors that latch, lock or otherwise secure the door in a closed position.
17. Any break or leak in the water service line between the city water main and any house or other building.
18. The keeping or stabling of horses, mules or asses so as to cause obnoxious odors, noise, hazard, annoyances or danger because of failure of confinement.
19. The permitting of water to accumulate and stand until stagnant or upon any privately owned lot.
20. The accumulation of junk, refuse, garbage or filth on any lot or parcel.
21. All real property defaced by graffiti vandalism which is visible to public view.
22. The keeping or storing of a junk vehicle or salvage vehicle on public property or private property not in an enclosed area.  A JUNK OR SALVAGE VEHICLE is defined as having one or more of the following characteristics:
	1. Unlicensed: any vehicle not licensed for the current year as provided by law;
	2. Broken glass: any vehicle or part of a vehicle with a broken windshield or any other broken glass;
	3. Broken or loose parts: any vehicle or part of a vehicle with a broken or loose fender, door, bumper, hood, wheel, steering wheel, trunk top or tailpipe;
	4. Missing engine or wheels: any vehicle which is lacking an engine or one or more wheels or other structural parts which renders such vehicle totally inoperable;
	5. Habitat for animals or insects: any vehicle or part of a vehicle which has become a habitat for rats, mice or snakes or any other vermin or insects;
	6. Defective or obsolete condition: any vehicle or part of a vehicle which, because of its defective or obsolete condition, constitutes a threat to the public health and safety; and
	7. Inoperable condition: any vehicle that is not capable of moving in both forward and reverse gears.
23. Dangerous or unsafe building or structure. A DANGEROUS OR UNSAFE BUILDING OR STRUCTURE shall mean any structure or building meeting any or all of the following conditions or defects provided that such conditions or defect exist to the extent that the life, health, property or safety of the public or its occupants are endangered whenever:
	1. Any portion or member or appurtenance thereof is likely to fail or to become detached or dislodged or to collapse and thereby injure persons or damage property;
	2. Any portion thereof has cracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction;
	3. The building or structure or any portion thereof, because of dilapidation, deterioration or decay; faulty construction; the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; the deterioration, decay or inadequacy of its foundations; or any other cause is likely to partially or completely collapse;
	4. For any reason the building or structure or any portion thereof is manifestly unsafe for the purpose for which it is being used;
	5. The exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;
	6. The building or structure has been so damaged by fire, wind, earthquake or flood or has become so dilapidated or deteriorated as to become an attractive nuisance to children or a harbor for vagrants, criminals or immoral persons or as to enable persons to resort thereto for the purpose of committing unlawful or immoral acts;
	7. A building or structure used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities or otherwise is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that it is likely to cause sickness or disease;
	8. Any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire resistive construction, faulty electric wiring, gas connections or heating apparatus or other cause is determined by the Fire Marshal to be a fire hazard; and/or
	9. Any portion of a building or structure remains on a site after the demolition or destruction of the building or structure, or any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

**3-2-3 OTHER CONDITIONS REGULATED.**  The following actions are required and may also be abated in the manner provided in this chapter:

1. The removal of diseased trees or dead wood, but not diseased trees and dead wood outside the lot and property lines and inside the curb lines upon the public street.
2. The numbering of buildings.
3. The connection to public drainage systems from abutting property when necessary for public health or safety.
4. The connection to public sewer systems from abutting property, and the installation of sanitary toilet facilities and removal of other toilet facilities on such property.
5. The cutting or destruction of weeds or other growth which constitutes a health, safety, or fire hazard.

**3-2-4 NUISANCES PROHIBITED; AUHTORITY TO ABATE.** The creation or maintenance of a nuisance is prohibited, and a nuisance, public or private, may be abated in the manner provided for in this chapter.

**3-2-5 RIGHT OF ENTRY FOR INSPECTION.**

1. Right of entry and administrative search warrants. Whenever necessary to make an inspection to enforce any ordinance or whenever there is reasonable cause to believe there exists an ordinance violation in any building or upon any premises or real estate within the jurisdiction of the city, a city official, upon presentation of proper credentials, may enter the building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the official by this code of ordinances.  Except in emergency situations or when consent of the owner and/or occupant to the inspection has otherwise been obtained, the city official shall give the owner and/or occupant, if they can be located after reasonable effort, 24-hours’ written notice of the official’s intention to inspect.
2. Warrants. If consent to enter upon or inspect any building, structure or property is withheld by any person having the lawful right to exclude, the city official having the duty to enter upon or conduct the inspection may apply to the Iowa District Court for Keokuk County, pursuant to I.C.A. § 808.14, for an administrative search warrant. No owner, operator or occupant or any other person having charge, care or control of any dwelling, unit, rooming unit, structure, building or premises shall fail or neglect, after presentation of a search warrant, to permit entry therein by the municipal officer, designee or employee.

**3-2-6 NOTICE TO ABATE; CONTENTS; SERVICE.**

1. Required. Whenever the Mayor or other authorized municipal officer finds that a nuisance exists, the Mayor or officer shall cause to be served upon the property owner as shown by the records of the County Auditor and any other party in possession of the property a written notice to abate the nuisance within a reasonable time after notice.
2. Contents of Notice to Abate. The notice to abate served under this subchapter shall contain the following:
	1. A description of what constitutes the nuisance or other condition;
	2. The location of the nuisance or condition;
	3. A statement of the necessary act to abate the nuisance or condition;
	4. A reasonable time within which to complete the abatement; and
	5. A statement that if the nuisance is not abated as directed and no request for hearing is made within the period prescribed for the abatement, the city will abate the nuisance and assess the costs against the owner of the property.
3. Service of Notice to Abate.
	1. The notice to abate shall be served either by:
		1. Personal delivery;
		2. Sending a copy of the notice by certified United States mail; or
		3. Posting the notice in a conspicuous place upon the premises where the nuisance exists.
	2. Service of the notice by personal delivery may be completed by any city official.

**3-2-7 REQUEST FOR HEARING.** Any person ordered to abate a nuisance may have a hearing with the Council as to whether a nuisance exists. A request for hearing must be made in writing and delivered to the Clerk within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered. The hearing will be before the Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.

**3-2-8 ABATEMENT IN EMERGENCY.**

1. If it is determined that an emergency exists because of the continuing maintenance of a nuisance, the city may perform any action which would be required under this chapter without prior notice.
2. A determination may be made as to whether a nuisance exists based on the following criteria:
	1. Inability to contact the property owner by normal efforts;
	2. The seriousness of the violation due to health hazards or physical hazards to a private individual or to the public as determined by a city official; and
	3. Frequency of violations of a property owner or a tenant when the property owner or a tenant has received more than two nuisance violation notifications within one calendar year. This determination is in effect for one calendar year beginning on the date of the most recent nuisance violation notification.

**3-2-9 ABATEMENT BY THE CITY; COSTS.**

1. General
	1. If the person notified to abate a nuisance neglects or fails to abate as directed, the city may perform the required action to abate, keeping an accurate account of the expense incurred.
	2. The itemized expense account shall be filed with the City Clerk who shall pay such expenses on behalf of the City.
2. Collection of costs of abatement. The City Clerk shall mail a statement of the total expense incurred to the property owner who has failed to abide by the notice to abate a nuisance under this chapter. If the amount shown on the statement has not been paid within 30 days, the costs of the abatement shall be certified to the County Treasurer, and shall then be collected with and in the same manner as general property taxes pursuant to Iowa Code Chapter 384.

3-2-10 MUNICIPAL INFRACTION ABATEMENT PROCEDURE. In lieu of the abatement procedures set forth in Sections 3-2-6 through 3-2-9, the requirements of this chapter may be enforced under the procedures applicable to municipal infractions as set forth in Title I, Chapter 3 of this Code of Ordinances.

**SECTION V. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION VI. SEVERABILITY.** If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

**SECTION VII. EFFECTIVE DATE.** This ordinance shall be effective after its passage and publication as required by law.

 PASSED AND APPROVED this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2025.

 Benjamin Mast, Mayor

ATTEST:

Tracey Wildeboer, City Clerk

1. † **EDITOR’S NOTE:** For criminal penalty for violations of this Code of Ordinances, see Section 1-3-1. [↑](#footnote-ref-1)