

## CHAPTER 652

### Nuisances

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### CROSS REFERENCES

Health and sanitation generally - see Mich. Const. Art. 4, §51;

M.C.L.A. §§750.466 et seq.

Barking dogs - see Animals – 604.07

Junk vehicles - see GEN. OFF. 668.03

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#### **652.01 NUISANCE DEFINED AND PROHIBITED.**

Whatever annoys, injures or endangers the safety, health, comfort or repose of the public; offends public decency, interferes with, obstructs or renders dangerous any street, highway, navigable lake or stream, or in any way renders the public insecure in life or property, is hereby declared to be a public nuisance. Public nuisances shall include, but not be limited to, whatever is forbidden by any provision of this chapter. No person shall commit, create, or maintain any public nuisance.

### **652.02 OWNER DEFINED.**

For purposes of this chapter "owner" shall be defined as the last interest holder of record and shall include each and every person, partnership, corporation or other legal entity who or which has any ownership interest, whether legal or equitable, in all or in any part of premises containing or constituting a public nuisance as defined in this chapter, whether such interest be acquired by deed, land contract, succession inheritance, assignment, adverse possession, or otherwise. Each and all such owners shall be jointly and severally liable both civilly and criminally hereunder.

### **652.03 OWNER'S RESPONSIBILITY.**

No person, corporation, or unincorporated group of persons, shall cause, erect, maintain, or allow to exist, any public nuisance, or allow any conditions to exist, which may result in a public nuisance within the City of Evart. The owner or owners of any parcel of land or building, or any tenant or occupant thereof, or person in possession of or having charge of said land or building shall be hereby charged with notice of the existence of any public nuisance in or upon said lands or building and subject to the provisions of this chapter.

### **652.04 NUISANCES PER SE.**

The following things, acts, failures to act, and uses of property are hereby specifically enumerated, but not by way of limitation, and declared to be public nuisances and are hereby expressly prohibited as follows:

(a) No person shall burn any garbage, hides, feathers, animal matter, or any other matter, the burning of which may emit offensive odors, within the City of Evart.

(b) No person shall burn leaves, papers, or refuse, or kindle any open fire in any manner which may be or which may cause a fire hazard, within the City of Evart.

(c) No person shall maintain or operate any slaughterhouse, or other premises, place, room or shop where animals or fowl are killed or slaughtered without first obtaining a permit therefore from the City Council.

(d) No person shall distribute or give away any drug or medicine or any chemical compound or mixture containing drugs or medicine upon any public street, alley or other public place, or by going in or upon private premises or property.

(e) No person shall solicit funds upon the public streets of the City of Evert without first securing a permit from the City.

(f) No person shall solicit, peddle, or hawk merchandise, nor solicit orders for the sale of merchandise or service, either on the public streets or from door to door, without first obtaining a permit from the City therefore.

(g) No person shall maintain any tree, the roots of which, are causing damage to any public sewer, sidewalk, pavement or other public property, nor shall any person set out or plant any tree in the public street or public right-of-way, without a permit from the City Manager.

(h) No person shall permit or allow any manure, offal, rubbish, rubble, refuse, junk or waste paper to collect or lie upon any property owned or occupied by him or her in such a manner that may attract flies, vermin or rodents, or as to emit offensive odors, or that may annoy or offend ordinary public decency.

(i) No person shall attach post or paint any sign, advertisement or other written or printed matter or any picture or device upon any lamp post, electric light or telephone pole, tree, hydrant, bridge, pavement, sidewalk, street, or public property located within or on any public street, alley or other place within the City. No person shall throw, scatter or deposit, or cause to be thrown, scattered or deposited, any poster, handbills, cards or other written or printed matter or any waste paper in any public street, alley or public place, nor shall any person leave or deposit the same or cause the same to be left or deposited on any motor vehicle or other private property in such a manner as to permit them to be blown or to fall on any street, alley or other public place.

(k) No person shall deposit, place or throw any dead or sick or injured animal, or part thereof, or any garbage, rubbish or other animal or organic matter into any reservoir or into or upon the banks of any stream, lake, pond, sewer or well within the City.

(l) No person shall operate or maintain an automobile wrecking yard nor a yard for storage of secondhand building material, or for any other storage of used automobile

parts, junk, cinders, or other materials the piling of which or open storage of which may be offensive to owners or residents of the City.

(m) No person or persons shall use or operate a mechanical loudspeaker or amplifier or similar device on any truck, or other moving vehicle or elsewhere, except within a building when the sound emitted therefrom is confined to said building, without first obtaining a permit from the City.

(n) No person, firm or corporation, or owner of land, shall allow noxious weeds to go to seed within the City; and it shall be the duty of every owner, possessor or occupant of land, within the City of Ewart, and of every person or persons, firm or corporation having charge of any such lands, to cut, or cause to be cut down and be destroyed, all Canada thistles, milkweed, wild carrots, oxeye daisies, and all other noxious weeds growing thereon, at least twice in each year, once before the first week in July of each year and again before the first week in September of each year, and as much oftener as may be necessary to prevent them from going to seed, or becoming a fire hazard.

(Adopting Ordinance)

**652.05 SMOKE CONTROL; DETRIMENTAL EMISSIONS PROHIBITED.**

(a) Declaration of Nuisance. No person shall permit or cause the escape of such quantities of dust, gases, mists, vapors or smoke in such places or manner as to be detrimental to any person or to the public, by endangering the health, comfort and safety of any person or of the public, or in such manner as to cause injury or damage to property or business. The unlawful escape of such matter is hereby declared to be a public nuisance and a violation of this chapter and, in addition to the penalties provided in Section 652.99, may be abated by the City of Evert.

(b) Prohibited Density. No person shall permit the emission of any smoke, from any source whatever, of density equal to or greater than the density described as No.2 on the Ringelmann Smoke Chart, for periods aggregating six minutes or more in any sixty-minute period. The emission of such dense smoke is hereby declared to be a public nuisance and a violation of this chapter and, in addition to the penalty provided in Section 652.99, may be abated by the City. For the purpose of defining the term "dense smoke," which shall constitute a prohibited density hereunder, the standards established by the Ringelmann Smoke Chart are hereby adopted. Smoke of a density equal to or greater than the density described as number two on the Ringelmann Smoke Chart shall be considered and held to be "dense smoke" as the term is used in this chapter. (1981 Code §9.87)

(c) Enforcing Officer. The Zoning Administrator or his or her designee is hereby charged with the enforcement of subsections (a) and (b) hereof. No person shall in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or attempt to interfere with the Zoning Administrator or his or her designee in the performance of his or her duties or refuse said Zoning Administrator or his or her designee access to any premises at all reasonable hours for the purpose of inspection or enforcement of subsections (a) and (b) hereof. (Adopting Ordinance)

(d) Use of Ringelmann Smoke Chart. Use of the Ringelmann Smoke Chart will be made by placing it at such a distance from the observer that the squares appear as even shades of coloring, or no white spaces between the lines are visible. Comparison of the smoke under observation with the various shades of the Chart will then indicate the density of the smoke. Observation distances shall not be less than 100

feet nor more than one-quarter mile from the smoke observed. Whenever possible, all observations shall be made with the sun at the back of the person making such observations

**652.06 DANGEROUS BUILDINGS AND OTHER STRUCTURES.**

(a) Declaration of Nuisance. The following buildings, structures, and conditions, wherever located within the City of Ewart, are hereby declared to be public nuisances which adversely affect the health, safety and welfare of residents and members of the general public within the City of Ewart;

(b) Unhealthy Conditions. Any dwelling, mobile home, barn, shed, outbuilding, other building, fence or other man-made structure which because of its condition may cause or tend to cause disease, the spread of disease, the propagation of rodents, insects, or other vermin, or other injury to the health and safety or welfare of such buildings, their occupants, or neighboring persons or property;

(c) Fire Hazards. Any dwelling, mobile home, barn, shed, outbuilding, other building, fence or other man-made structure which because of faulty construction, age, vandalism, fire, wind or other storm damage, neglect, abandonment, lack of reasonable and proper care and maintenance or any other cause creates or constitutes a fire hazard;

(d) Other Potential Hazards. Any dwelling, mobile home, barn, shed, outbuilding, fence or manmade structure which by reason of faulty construction, age, vandalism, fire, wind or other storm damage, neglect, abandonment, lack of reasonable and proper care and maintenance or any other cause creates or is likely to create injury or damage by collapsing or by a collapse or fall of any part of such structure upon persons or property.

(e) Accessibility to Others. Any dwelling, mobile home, barn, shed, outbuilding, other building, fence or man-made structure which because of its abandonment, use for illegal or immoral purposes, poor or dilapidated condition, damage, or lack of doors, windows or other access is available to and/or constitutes a danger to the health and safety of or is frequented by children and/or other persons who are not the lawful occupants of such structure.

## **652.07 NOTICE TO OWNER.**

(a) Notice to the owner or owners of premises containing or constituting a public nuisance shall be in writing and sent as provided in Section 202.04 of the Administration Code, or as otherwise provided by law or court rule.

(b) The notice required hereunder shall contain the following:

- (1) The name and last known address of the owner or owners of premises therein declared to be a public nuisance;
- (2) The street and/or lot number of the premises therein declared to be a public nuisance;
- (3) The date on which such notice was mailed, delivered or posted;
- (4) The fact that the described premises or structure thereon contain or constitute a public nuisance as defined by City ordinance;
- (5) The condition which causes or constitutes the public nuisance;
- (6) The period of time from the date of such notice in which the specified nuisance must be fully abated by the owner or owners at his or her or their own cost and expenses;
- (7) A statement that unless the nuisance is completely abated within the time period so specified, the City may abate the nuisance without further notice or proceedings;
- (8) The further statement that the entire costs of labor, materials and actual attorney fees, if any, plus interest at the highest lawful rate, will be charged to the owner or owners of the premises containing or constituting the public nuisance;
- (9) The further statement that all such charges, costs and expenses, including actual attorney fees, if any, plus interest, if not paid in full within sixty days after a statement for the same is sent to the owner or owners by regular postpaid mail to the owner or owners' last known address shall constitute a priority lien on the premises and/or taxes as a special assessment against said premises;

(10) Such additional information or time periods as the City, the City Manager or the City Attorney may deem necessary or convenient; and

(11) A statement that said owner or owners have a period of thirty days from the date of such notice to petition the Circuit Court for the County of Osceola for an order enjoining such proposed abatement.

#### **652.08 VIOLATIONS.**

No owner of premises declared to be a public nuisance, as herein provided, shall further allow such nuisance to exist or fail to completely abate such nuisance as indicated in the notice provided in this chapter. A separate offense shall be deemed to have been committed on each and every day on which such nuisance is permitted to exist or is not completely abated after the expiration of the period specified in such notice.

#### **652.99 PENALTIES, OPTIONS AND REMEDIES.**

The City shall have in its sole discretion the following penalties, options and remedies relative to the abatement of said nuisances, and such penalties, options and remedies shall be cumulative and not exclusive and the City shall not be required to elect one option or remedy to the exclusion of any other penalty, option or remedy.

##### **1. ABATEMENT.**

(a) The City may commence an equitable action for the abatement of such public nuisance as provided by law and court rule.

(b) The City may, under its police power and in the interest of the public health, safety and welfare and after the expiration of the period specified in the notice required hereunder, abate such nuisance without further notice or proceedings and charge the entire cost of labor, materials and actual attorney fees, if any, expended therefore to the owner or owners, which costs plus interest at the highest lawful rate shall constitute a special assessment and priority lien on the subject premises.

(c) The City Manager may enter into an agreement with the owner or owners of the premises upon which such public nuisance exists to abate the same, which agreement shall be in writing, shall be signed by each and every owner and by the City of Evart

through its City Manager. Each signature shall be witnessed and all signatures shall be affixed to such agreement before a Notary Public. Further, such agreement shall recite that the City shall provide the labor and materials to abate the nuisance as the City in its sole and exclusive discretion shall determine, that the owner or owners shall reimburse the City in full for the costs of all labor and materials so used and actual attorney fees, if any, within a time specified in such agreement and that failure of the owner or owners of such premises to make the specified payment or payments at the time and in the manner therein specified shall result in such charges plus costs, interest, collection and actual attorney fees, if any, being levied as a special assessment and priority lien against the subject premises and any other premises owned by such owners within the City of Ewart, Michigan.

## 2. OPTION OF CITY TO ACQUIRE PROPERTY.

The City, through its City Manager, may in its discretion, elect to have the owner or owners of the subject property containing or constituting the nuisance execute a quit claim deed conveying to the City absolutely all of the owner's right, title and interest in all or in specified portions of the subject premises

## 3. CRIMINAL PENALTY.

(a) **First Offense** – The first violation of the above rules shall be a civil infraction, punishable by a fine not to exceed \$50.00 plus costs.

(b) **Second Offense** – The second violation of the above rules shall be a civil infraction, punishable by a fine not to exceed \$100.00 plus costs.

(c) **Third Offense** – The third or more violation of the above rules shall be a misdemeanor punishable by a fine of not greater than \$500.00 plus costs and/or jail sentence not to exceed 93 days in jail.

