

CHAPTER 15

NUISANCES

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ARTICLE I. IN GENERAL

15-1-1. Public nuisances prohibited. No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the city, or within one-half mile of the corporate limits of the city.

15-1-2. Public nuisances defined. (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.

(b) Public nuisances affecting health. The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances, but shall not be construed to exclude other health nuisances coming within the definition of subsection (a) of this section:

- (1) All decayed, harmfully adulterated or unwholesome food or drinks sold or offered for sale to the public;

(2) Carcasses of animal parts of animals, including but not limited to deer, turtles and pigs, and birds or fowl not buried or otherwise disposed of in a sanitary manner within 12 hours after death.

(Ordinance 09-C-1, amended April 06, 2009)

(3) Accumulations of decayed animal or vegetable matter, trash, (including but not limited to tires, appliances and batteries), junk or junk vehicles or machinery, rubbish, rotting lumber, bedding, packing material, scrap metal or

any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed, or which 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; or any act in violation of the Illinois Environmental Protection Act (Chapter 111- ½, Sections 1001, et seq., Illinois Revised Statutes);

(7) The pollution or obstruction of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial waste or other substances, or any act in violation of the Illinois Environmental Protection Act;

(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 stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons with the city;

(9) Any barn, stable, yard, shed, pen or other place where animals or fowl are kept which is not maintained in a clean condition, or animals or fowl which because of disease, unsanitary conditions, odor or noise, discomfort or injure the health or well-being of residents of the city; and

(10) All abandoned wells or cisterns not securely covered or secured from public use.

(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 moral and decency coming within the definition of subsection (a) of this section:

(1) All disorderly houses, bawdy houses, house of ill fame, gambling houses and buildings or structures kept or restored to for the purpose of prostitution, promiscuous sexual intercourse or gambling;

(2) All gambling devices and slot machines;

(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;

(4) Any place or premises within the city where city ordinances or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated; and

(5) Any place or premises resorted to for the purpose of drinking intoxicating or fermented malt beverages in violation of the laws of the State of Illinois or the ordinances of the city.

(6) This section (c) shall not apply to any device for which a license or permit has been issued by the Illinois Gaming Board pursuant to the Illinois Video Gaming Act, 230 ILCS 40/1 et seq., so long as such device is conducted in compliance with all the requirements of said Act and all rules and regulations of the Illinois Gaming Board.

(Ordinance 12-C-2, amended 05-21-12)

(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 subsection (a) of this section:

(1) All building erected, repaired or altered within the fire limits of the city in violation of the provisions of the ordinances of the city relating to materials and manner of construction of buildings and structures within said district;

- (2) All unauthorized signs, signals, marking 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, billboards 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 sidewalk;
- (4) All limbs of trees which project over a public sidewalk less than 8 feet above the surface thereof or less than 10 feet above the surface of a public street;
- (5) Any 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 loud and discordant noises or vibrations of any kind;
- (9) 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;
- (10) All open and unguarded pits, wells, excavations or unused basements freely accessible from and public street, alley or sidewalk;
- (11) All abandoned refrigerators or iceboxes from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside by pushing with the strength of a small child;
- (12) Any structure, material or condition which constitutes a fire hazard or will impair extinguishing a fire; and
- (13) 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.

15-1-3. Abatement of public nuisances. (a) Inspection of premises.

Whenever a complaint is made that a public nuisance exists, or has existed, within the city, the Mayor, Chief of Police, police officer, or some other city official whom the Mayor shall designate shall forthwith inspect or cause to be inspected the premises and shall make a written report of his findings. Whenever practicable, the inspecting officer shall cause photographs to be made of the premises and shall file the same in the office of the City Clerk.

(Ordinance 09-C-1, amended April 06, 2009)

(b) Summary abatement.

(1) Notice to owner. If the inspecting officer shall determine 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 city police 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 person causing, permitting, or maintaining such nuisance to abate or remove such nuisance with 24 hours and shall state that unless such nuisance is so abated, the city will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the same as the case may be.

(2) Abatement by city. If the nuisance is not abated with the time provided or if the Mayor, occupant or person causing the nuisance cannot be found, the Mayor, police, or some other city official whom the Mayor shall designate, shall cause the abatement or removal of such public nuisance.

(c) Abatement by court action. If the inspecting officer shall determine that a public nuisance exists on private premises, but that the nature of such nuisance is not such as to threaten great and 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.

15-1-4. Cost of abatement. In addition to any other penalty imposed for the erection, contrivance, creation, continuance or maintenance of a 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.

ARTICLE II. DANGEROUS BUILDINGS

15-2-1. Declared a nuisance. Any building, structure or part thereof or any premises within the corporate limits of this city, by reason of faulty construction, lack of repair, age, excavation or any other cause which shall be in such condition as to endanger the life or limb of persons passing by or near the same or residing or being in the vicinity thereof or endangering any property contiguous thereto or being attractive to children and endangering the life or limb of children is hereby declared a nuisance and dangerous to public safety.

15-2-2. Owner to abate nuisance. The owner of the building, structure or part thereof or the premises upon which any excavation has been made which is attractive to children and dangerous to their life or limb shall abate said nuisance by the razing of the building, structure or part thereof to the ground level, or by rebuilding or repairing said building, structure or part thereof in accordance with building restrictions so as to eliminate all danger to public safety, and in the event of excavations on premises shall cover the same and eliminate the conditions attractive to children, so as to eliminate all danger to public safety.

15-2-3. Order of abatement; notice. After the City Council by resolution declaring a nuisance, the City Attorney shall issue an order of abatement of the nuisance, building or premises located in the city to be served by the Arcola Police Department by depositing the notice in U. S. mail, prepaid first class postage regardless of whether the addressee accepts or refuses delivery. If the addressee refuses delivery or delivery is not otherwise affected by U. S. mail, the Police Department shall attempt personal service, and if that is unsuccessful, post a copy of the notice upon the property. If the address of the owner or owners is unknown, a copy of the order of abatement shall be published in one issue of the official newspaper publication of the city, which notice shall be directed to the unknown owner or owners of the premises or building involved and a copy of said publication shall be posted on the building if the owner or owners do not reside in the city or are unknown.

(Ordinance 11-C-10, amended August 16, 2011)

15-2-4. Abatement by the city. If the owner shall fail to abate the nuisance within a reasonable time after the service of an order of abatement or publication and posting of the order of abatement but in no event to exceed the time specified in the order of abatement, which time shall be not less than 7 days after service or publication and posting, then the city shall abate the nuisance by razing the building, structure or part thereof to ground level, or in the event of an excavation, filling the same to ground level, and such razing or work may be done by employment of labor or by contract. In the event there is any salvage the same may be sold by the Mayor, following advertisement thereof by one publication in

the official newspaper of the city and the proceeds applied on the cost of razing and the cost of prosecuting to abate the nuisance.

15-2-5. Cost of abatement. In case the proceeds are insufficient to pay the cost of abatement, then the owner or owners shall be liable to the city for the balance of the costs, to be recovered in a suit of law, and in case the proceeds are more than the costs, the balance shall be paid to the owner or deposited in the city treasury for the use of the owner.

15-2-6. Violation; penalty. Any owner failing to comply with the order of abatement within the time specified therein shall, upon conviction thereof, be fined in accordance with Section 1-13 of this Code.

ARTICLE III. PLANTS AND WEEDS

15-3-1. Weeds; declared a nuisance. Any weeds such as jimson, burdock, ragweed, thistle, cocklebur, wild lettuce or other weeds of a like kind, found growing in any lot or tract of land in the city, are hereby declared to be a nuisance, and it shall be unlawful to permit any such weeds to grow or remain in any such place.

15-3-2. Height. It shall be unlawful for anyone to permit any weeds, grass or plants, other than trees, bushes, flowers, or other ornamental plants, to grow to a height exceeding eight inches anywhere in the city. Any such weeds, grass, or plants exceeding such height are hereby declared to be a nuisance.

(Ordinance 11-C-3, amended April 04, 2011)

15-3-3. Removal; notice. It shall be the duty of the Arcola Police Department to serve or cause to be served a notice upon the owner or occupant of any premises on which weeds or plants are permitted to grow in violation of the provisions of this article, and to demand the abatement of the nuisance within 10 days.

Notice shall be deemed to be properly served by:

(1) Depositing the notice in U. S. mail, prepaid first class postage regardless of whether the addressee accepts or refuses delivery; or

(2) Personal service; or

(3) Posting of notice upon property.

(Ordinance 11-C-10, amended August 16, 2011)

15-3-4. Abatement. If the person so served does not abate the nuisance within 10 days the City Clerk may proceed to abate such nuisance, by city employees or by independent contractors as he shall determine in the individual case, keeping an account of the expense of the abatement, and such expense shall be charged and paid by such owner or occupant, who shall be jointly and severally liable for such expense.

15-3-5. Lien. Charges for such weed removal shall be a lien upon the premises. Whenever a bill for such charges remains unpaid for 60 days after it has been rendered, the Clerk may file with the Recorder of Deeds of Douglas County, a statement of lien claim. This statement shall contain the legal description of the premises, the expenses and costs incurred and the date the weeds were cut, and a notice that the city claims a lien for this amount.

Notice of such lien claim shall be mailed to the owner of the premises if his address is known.

Failure of the Clerk to record such lien claim or to mail such notice, or the failure of the owner to receive such notice, shall not affect the right to foreclose the lien for such charges as provided for in this article.

15-3-6. Foreclosure of lien. Property subject to a lien for unpaid weed cutting charges shall be sold for non-payment of the same and the proceeds of such sale shall be applied to pay the charges after deducting costs, as is the case with the foreclosure of statutory liens. Such foreclosure shall be in equity in the name of the city.

The City Attorney is hereby authorized and directed to institute such proceedings, in the name of the city, in any court having jurisdiction over such matter, against any property for which such bill has remained unpaid 60 days after it has been rendered.

15-3-7. Penalty. Any person violating any of the provisions of this article shall be fined as provided for in Section 1-13 of this Code; and a separate offense shall be deemed committed on each day during or on which such nuisance continues unabated after 10 days from receipt of notice.

ART. IV SALE OF FOOD AND BEVERAGES IN VIOLATION OF ZONING RESTRICTIONS OR WITHOUT PROPER PERMITS OR LICENSES

15-4-1. Definitions.

- (a) Pursuant to 410 ILCS 625/4, a food is "acidified" if: (i) acid or acid ingredients are added to it to produce a final equilibrium pH of 4.6 or below; or (ii) it is fermented to produce a final equilibrium pH of 4.6 or below.

- (b) Pursuant to 410 ILCS 625/3.6, “baked goods” include, but are not limited to, breads, cookies, cakes, pies, and pastries. Baked goods permitted by this article shall include high-acid fruit pies that use the following fruits: apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants, or a combination of these fruits.
- (c) Pursuant to 410 ILCS 625/4, "canned food" means food preserved in air-tight, vacuum-sealed containers that are heat processed sufficiently to enable storing the food at normal home temperatures.
- (d) Pursuant to 410 ILCS 625/4, "cottage food operation" means an operation conducted by a person who produces or packages food or drink, other than meat, poultry, fish, seafood, or shellfish; dairy, except as an ingredient in a non-potentially hazardous baked good or candy, such as caramel; eggs, except as an ingredient in a non-potentially hazardous baked good or in dry noodles; pumpkin pies, sweet potato pies, cheesecakes, custard pies, creme pies, and pastries with potentially hazardous fillings or toppings; garlic in oil or oil infused with garlic, except if the garlic oil is acidified; canned foods, except for the following, which may be canned only in Mason-style jars with new lids: fruit jams, fruit jellies, fruit preserves, or fruit butters; syrups; whole or cut fruit canned in syrup; acidified fruit or vegetables prepared and offered for sale in compliance with 410 ILCS 625/4(b)1.6; and condiments such as prepared mustard, horseradish, or ketchup that do not contain ingredients prohibited under this Article and that are prepared and offered for sale in compliance with 410 ILCS 625/4(b)1.6; sprouts; cut leafy greens, except for cut leafy greens that are dehydrated, acidified, or blanched and frozen; cut or pureed fresh tomato or melon; dehydrated tomato or melon; frozen cut melon; wild-harvested, non-cultivated mushrooms; alcoholic beverages; or kombucha.
- (e) Pursuant to 410 ILCS 625/4, "cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. "Cut leafy greens" does not mean cut-to-harvest leafy greens.
- (f) Pursuant to 410 ILCS 625/4, "department" means the Department of Public Health.
- (g) "Equilibrium pH" means the final potential of hydrogen measured in an acidified food after all the components of the food have achieved the same acidity.
- (h) Pursuant to 410 ILCS 625/4, "farmers' market" means a common facility or area where farmers gather to sell a variety of fresh fruits and vegetables and other locally produced farm and food products directly to consumers.
- (i) Pursuant to 410 ILCS 625/3.6, “Home Kitchen Operation” means a person who produces or packages non-potentially hazardous baked goods, in a

kitchen of that person's primary domestic residence for direct sale by the owner or a family member. A home kitchen operation does not include a person who produces or packages non-potentially hazardous baked goods for sale by a religious, charitable, or nonprofit organization for fundraising purposes. The following conditions must be met in order to qualify as a home kitchen operation: monthly gross sales do not exceed \$1,000; the food is a non-potentially hazardous baked good; a notice is provided to the purchaser that the product was produced in a home kitchen; the food package is affixed with a label or other written notice is provided to the purchaser that includes the common or usual name of the food product; and allergen labeling as specified in federal labeling requirements by the United States Food and Drug Administration; the food is sold directly to the consumer; and the food is stored in the residence where it is produced or packaged.

- (j) Pursuant to 410 ILCS 625/4, "leafy greens" includes iceberg lettuce; romaine lettuce; leaf lettuce; butter lettuce; baby leaf lettuce, such as immature lettuce or leafy greens; escarole; endive; spring mix; spinach; cabbage; kale; arugula; and chard. "Leafy greens" does not include microgreens or herbs such as cilantro or parsley.
- (k) Pursuant to 410 ILCS 625/4, "main ingredient" means an agricultural product that is the defining or distinctive ingredient in a cottage food product, though not necessarily by predominance of weight.
- (l) Pursuant to 410 ILCS 625/4, "microgreen" means an edible plant seedling grown in soil or substrate and harvested above the soil or substrate line.
- (m) Pursuant to 410 ILCS 625/4, "potentially hazardous food" means food that is potentially hazardous according to the Department of Public Health administrative rules, generally meaning food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation. The following are potentially hazardous and prohibited from production and direct sale by a home kitchen operation: pumpkin pie, sweet potato pie, cheesecake, custard pie, crème pie, and pastries with potentially hazardous filling or toppings.
- (n) Pursuant to 410 ILCS 625/4, "sprout" means any seedling intended for human consumption that was produced in a manner that does not meet the definition of microgreen.

15-4-2. Food or beverage sales in violation of zoning restrictions or without proper permits or licenses; declared a nuisance.

It is hereby declared a nuisance for any person, persons, or entity to sell food or beverages in, on, or at any property that has not been zoned for such sales. It is further declared a nuisance for any person, persons, or entity to sell food or beverages without first obtaining any required permit, license, or submitting to any required inspection from any city, county, state, or federal entity requiring such a permit, license, or inspection.

15-4-3. Authorization of home kitchen operations.

Home kitchen operations are allowed in the City of Arcola pursuant to 410 ILCS 625/3.6. Home kitchen operations may be inspected by the Department of Public Health or the Douglas County Health Department in the event of a complaint or disease outbreak. The following conditions must be met in order to qualify as a home kitchen operation: monthly gross sales do not exceed \$1,000; the food is a non-potentially hazardous baked good; a notice is provided to the purchaser that the product was produced in a home kitchen; the food package is affixed with a label or other written notice is provided to the purchaser that includes the common or usual name of the food product; and allergen labeling as specified in federal labeling requirements by the United States Food and Drug Administration; the food is sold directly to the consumer; and the food is stored in the residence where it is produced or packaged.

15-4-4. Cottage food operations. Pursuant to 410 ILCS 625/4, the City shall not regulate the transaction of food or drink by a cottage food operator so long as the conditions detailed in 410 ILCS 625/4 are met. Pursuant to 410 ILCS 625/4(b)(1.5), a cottage food operation shall not sell or offer to sell the following food items or processed foods containing the following food items, except as indicated: meat, poultry, fish, seafood, or shellfish; dairy, except as an ingredient in a non-potentially hazardous baked good or candy, such as caramel, subject to 410 ILCS 625/4(b)(1.8); eggs, except as an ingredient in a non-potentially hazardous baked good or in dry noodles; pumpkin pies, sweet potato pies, cheesecakes, custard pies, creme pies, and pastries with potentially hazardous fillings or toppings; garlic in oil or oil infused with garlic, except if the garlic oil is acidified; canned foods, except for the following, which may be canned only in Mason-style jars with new lids: fruit jams, fruit jellies, fruit preserves, or fruit butters; syrups; whole or cut fruit canned in syrup; acidified fruit or vegetables prepared and offered for sale in compliance with 410 ILCS 625/4(b)(1.6); and condiments such as prepared mustard, horseradish, or ketchup that do not contain ingredients prohibited under this Section and that are prepared and offered for sale in compliance with 410 ILCS 625/4(b)(1.6); sprouts; cut leafy greens, except for cut leafy greens that are dehydrated, acidified, or blanched and frozen; cut or pureed fresh tomato or melon; dehydrated tomato or melon; frozen cut melon; wild-harvested, non-cultivated mushrooms; alcoholic beverages; or kombucha.

15-4-5. Exceptions.

This Article is not intended to apply to churches, day cares, schools, hospitals, assisted living facilities, or nursing homes operating in the regular course of business which are otherwise in compliance with public health and zoning regulations and license and permitting requirements.

15-4-6. Notice.

Upon discovery of a violation of this Article, the City shall provide a written notice to any person or entity found to be in violation of this Article informing the recipient of the violation. Any person or entity found to be in violation of this Article after receiving a written notice shall be subject to a fine as detailed below.

The City shall retain a copy of the written notice in its records as evidence of written notice. For the purposes of this section, notice shall be effective upon personal delivery or by first class mailing.

15-4-7. Liability.

For the purposes of this section, each person or entity responsible for preparing, selling, or delivering any food or beverage sold in violation of this Article shall be liable for a violation of this Ordinance. In addition, any property owner or landlord found to be permitting the sale of any food or beverage in violation of this Article shall be liable for violation of this Ordinance.

15-4-8. Penalties.

Any person, persons, or entity found guilty after written notice of violating the provisions of this Section shall be fined \$100 for the first violation of this section within a 365-day period, a fine of \$200 shall be assessed for a second violation in a 365-day period, a \$300 fine shall be assessed for a third violation in a 365-day period and a fine of \$400 shall be assessed for a fourth violation in a 365-day period, and any subsequent violation within a 365-day period. Each day of sales of food or beverage in violation of this Article shall constitute a separate violation.

Any person receiving a citation under this Section shall pay the fine provided for in this section at the police station or City Clerk's office within fourteen days from the date of the citation. If any penalty is not paid within that fourteen-day period, the city attorney is authorized to file a complaint alleging the violation of this Ordinance and issue a notice to appear requiring the person to whom the citation was issued to appear in the Douglas County Circuit Court to answer the charge. Nothing in this section shall preclude the City of Arcola, its police department, or other attorney from taking or pursuing any action allowed by law as a result of the violation or from referring the matter to another entity for prosecution as allowed by law.

15-4-9. Injunction.

In the event that a person continues to receive citations for violations of this Article, or in the event the City suspects a person or entity has determined it is worth paying the fines detailed herein in order to continue to sell food or beverages in violation of this Article, the City may seek an injunction from the Court against further food or beverage sales in violation of this Article. Nothing in this Article is meant to limit the City's ability to pursue any remedy otherwise allowed under the law.

15-4-10. Interpretation with other laws and jurisdiction.

Nothing in this Article is intended to replace, supplant, or take precedence over any state, federal, county or local statute, ordinance, rule, or regulation. Nothing in this Article is intended to establish the City of Arcola as having sole or exclusive jurisdiction over the matters raised herein. Any individual, individuals, or entity may be subject to regulation, enforcement or prosecution by a health department, local government entity, Douglas County, the State of Illinois, or United States of America.

(Ordinance 21-C-3, amended October 04, 2021)