

TITLE XV.

HEALTH

CHAPTERS:

- 15-01. Board of Health and Health Officer.
- 15-02. RESERVED FOR FUTURE USE.
- 15-03. Public Nuisances.

## CHAPTER 15-01

### BOARD OF HEALTH AND HEALTH OFFICER.

#### SECTIONS:

- 15-0101. Board of Health; Members; Powers; City Health Officer and Assistants.
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15-0101. **BOARD OF HEALTH; MEMBERS; POWERS; CITY HEALTH OFFICER AND ASSISTANTS.** The Board of Health shall be the City Council. The Board of Health shall have and exercise all powers under the law. The City Health Officer shall be the executive officer of such board. The City Council may appoint one or more assistant City Health Officers to aid the City Health Officer in the performance of his duty.

15-0102. **DUTIES OF HEALTH OFFICER, ASSISTANTS.** The City Health Officer and his assistants, if any, shall have the following powers and duties:

1. He shall see that the health ordinances of the City, the rules and regulations of the Board of Health and the regulations of the State Board of Health and the health laws of the State are fully complied with throughout his jurisdiction and he is charged with the strict enforcement of the same.
2. Make such recommendations to the Board of Health as to him shall appear necessary for the preservation of public health.
3. Exercise all other powers and duties granted or imposed under the laws of the State of North Dakota and the ordinances of the City of Horace.

15-0103. **CITY HEALTH OFFICER, ASSISTANTS: APPOINTMENT.** The City Council shall appoint a City Health Officer for the City of Horace in the manner and for the term provided for the appointment of other officers by the City Council. The City Council may appoint one or more Assistant City Health Officers for the City of Horace, and if any such appointment is made, it shall be for the term provided for the appointment of other officers by the City Council.

15-0104. **REGULATIONS: NOTICE OF.** The Board of Health shall give notice, as provided by the laws of the State of North Dakota, of all general orders and regulations made by such Board, by publishing the same in the official newspaper within the jurisdiction of the Board, which publication shall be deemed a legal notice to all persons.

15-0105. **POWER TO ENTER BUILDING.** Whenever the Health Officer of the City of Horace, or his assistant, or the City Council shall deem it necessary for the preservation of the health of the inhabitants within the City, to enter any building within the City of Horace for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or

cause of sickness, and shall be refused entrance, the City Health Officer or his assistant or any member of the City Council may make complaint under oath to the Municipal Judge of the City of Horace, stating the facts in the case, so far as he has knowledge thereof. Such Municipal Judge shall promptly review such complaint and if such complaint is reasonably based in fact shall thereupon issue a writ of entry directed to the Chief of Police of the City of Horace, sheriff or other peace officer, authorizing him to take sufficient aid and, accompanied by the City Health Officer or his assistant, or by at least one (1) member of the City Council of Horace, between the hours of sunrise and sunset, enter said building to have such nuisances, sources of filth, or cause of sickness destroyed, removed or prevented under the direction of the City Health Officer or his assistant, or such member of the City Council as accompanied him.

CHAPTER 15-02

**RESERVED FOR FUTURE USE**

## CHAPTER 15-03

### PUBLIC NUISANCES

(Source: Ord. 2015-3, Sec. 1)

#### SECTIONS:

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- 15-0302. Nuisances Prohibited.
- 15-0303. Definitions.
- 15-0304. Sanitary Nuisances.
- 15-0305. Control of Noxious Weeds, Grasses, and Non-Noxious Weeds.
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- 15-0315. Penalty.
- 15-0316. Authorized Persons.
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15-0301. **NUISANCES – DEFINED.** In all cases where no specific provision is made defining what is a nuisance and how the same maybe removed, abated or prevented, in addition to what may be declared such herein, those offenses which are known to the common law of the land and the statutes of North Dakota as nuisances may, in case the same exist within the City of Horace, be treated as nuisances, and, in addition to those remedies otherwise provided by law, may be proceeded against as in this chapter, provided or in accordance with any other law which shall give the Court hearing the same jurisdiction.

15-0302. **NUISANCES PROHIBITED – PERSONS DEFINED.** No person, as owner or occupant of any lot or tenement, shall cause or permit any nuisance to be or remain in or upon any such lot or tenement or between the same and the center of the street or alley adjoining. For purposes of this Title, the term “person” includes, where relevant, corporations, unincorporated associations, or other legal entities. For purposes of this Title, words used in the singular include the plural, and the plural, the singular. Words in the masculine gender include the feminine and neuter genders.

15-0303. **DEFINITIONS.** Whenever used in this Title, each of the following words and phrases shall have the meaning ascribed to it:

1. “Garbage” shall mean all manner of kitchen and table refuse and offal, including decayed fruit, animal and vegetable matter, manure, metal cans, bottles, and other foreign waste matter.
2. “Noxious Weeds” shall include noxious vegetation and unhealthful vegetation.
  - (a) The term “noxious vegetation” shall mean and include all weeds, of the kinds known as Canadian thistle, sow thistle, quack grass, leafy spurge (“Euphorbia esula or Euphorbia virgate”), field bindweed, Russian knapweed (“Centaurea Picris”), hoary cress (“Lepidium draba, Lepidium repens and Hemenophysa pubescens”) and dodder.
  - (b) The term “unhealthful vegetation” shall mean and include all vegetation which is in such a state of growth as to constitute a health hazard and/or which is conducive to the breeding of disease.
3. “Junk” shall include, without limitation, parts of machinery, farm equipment, tractors, combines, or motor vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal or any other cast-off material of any kind, whether or not the same could be put to any reasonable use.
4. “Junk automobiles” shall include, without limitation, any motor vehicle which is not licensed for use upon the highways of the State of North Dakota for a period in excess of sixty (60) days, and shall also include whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of sixty (60) days, provided however, that excepted from this definition are unlicensed but operative vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.
5. “Abandoned vehicle” shall include, without limitation, any vehicle which has remained on private property for a period of forty-eight (48) continuous hours, or more, without the consent of the owner or occupant of the property or for a period of forty-eight (48) continuous hours or more after the consent of the owner or occupant has been revoked.
6. “Building materials” shall include, without limitation, lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, or any other material used in constructing any structure.
7. “Demolition materials” shall include, without limitation, debris resulting from the demolition of buildings; such as concrete, stone, plaster, bricks, concrete blocks, and other materials that are the result of demolition and construction operations.
8. “Earth material” shall include any rock, gravel, natural soil or fill or any combination thereof.
9. “Hazardous Waste” means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which (a) because of its quantity,

concentration, or physical, chemical, or other characteristic, in the judgment of the North Dakota State Health Department may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (b) is identified by the mechanisms established in this chapter. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) toxicity, corrosivity, ignitability, or reactivity. The definition of hazardous waste above shall automatically be amended to adopt any amendments to Section 23-20.3-02(6), North Dakota Century Code, and any such amendments shall be of the same force and effect as if fully set out in this Ordinance.

10. "Trash and rubbish" shall include any and all forms of debris not herein otherwise classified.

#### 15-0304. **SANITARY NUISANCES.**

1. **PUMPING SEWAGE INTO OPEN GROUND PROHIBITED.** It shall be a nuisance and offense for any person to pump the contents of any cesspool or septic tank or privy vault or other receptacle for the disposal of sewage upon the ground or into any open ditch or drainage course or to dispose of sewage in any manner other than by depositing the same in sewers, privy vaults, cesspools, septic tanks, or similar receptacles or by having said sewage or the contents of any of said receptacles hauled to some place far enough from the platted portions of this City so as not to create any offensive odor or be a menace to health, and there to dispose of the same by the use of fire, chemicals, or other methods best suited to eliminate odor, destroy pathogenic bacteria and flies.
2. **PRIVIES AND SEPTIC TANK NUISANCES.** It shall be a nuisance and offense for the subsurface contents of any privy to be above the surface or within two (2) feet of the surface of the earth; and all other privies and all septic tanks that are foul and emitting smells and odors.
3. **HARBORAGE FOR RATS PROHIBITED.** It shall be a nuisance and offense for any person to accumulate on any premises, improved or, vacant, and on all open lots and alleys in the City of Horace, any lumber, boxes, barrels, bricks, stones, or similar materials that may be permitted to remain thereon unless the same shall be placed on open racks that are elevated not less than eighteen (18) inches from the ground, and evenly piled or stacked so that these materials will not afford harborage for rats.
4. **DECAYED ANIMAL MATTER NOT TO REMAIN IN CITY.** It shall be a nuisance and offense for any person having ownership or control of any animal matter which is unsound or in process of decay within the City of Horace to permit the same to be and remain, while in such condition, within said City, or within one (1) mile of the limits thereof, more than twelve (12) hours after such animal matter shall have become unsound, or after the process of decay shall have begun in the same, whether it be at any establishment for the rendering or changing the character

thereof, or elsewhere within the said City, or within one (1) mile of the limits thereof.

5. **CASTING, THROWING OR DEPOSITING GARBAGE IN PUBLIC PLACES PROHIBITED.** It shall be a nuisance and offense for any person to cast, throw, deposit or allow to accumulate in or upon any street, alley or other public place or in any ditch adjacent to any street, alley or other public place, any ashes, tin cans, garbage, rubbish, manure or refuse of any kind
6. **ACCUMULATION OF RUBBISH AND GARBAGE IN CITY LIMITS PROHIBITED.** It shall be a nuisance and offense for any person to permit or suffer to accumulate in or about any yard, lot, place or premises, or upon any street, alley, sidewalk or City property, adjacent to or abutting upon any lot, block, place or premises owned or occupied by him within the City limits, refuse, vegetables, decayed or decaying substances, garbage, paper, rubbish, manure, dead animals or ashes or filth of any kind nor suffer such yard, lot, place or premises to be or in such condition. Provided, however, that such section shall not preclude a person from maintaining a compost heap on property owned or leased by that person from materials obtained from that property and to be used on that property.
7. **STAGNANT WATER, DUTY TO DRAIN.** It shall be a nuisance and offense to allow stagnant water to stand or to remain along the line of any railroad, street, highway, alley, public place or along or upon any land within the City of Horace. It shall be the duty of all persons having, using, or occupying land, either as owners, tenants, or having control thereof as agents or otherwise, to remove or drain or cause to be removed or drained all stagnant water therefrom, and upon the order of the Building Inspector to take all necessary steps to permanently alleviate that problem, including, but not limited to, filling the area in which the stagnant water is or has been standing.

**15-0305. CONTROL OF NOXIOUS WEEDS, GRASSES, AND NON-NOXIOUS WEEDS.**

(Source: Ord. 2018-10, Sec. 1)

1. **NOXIOUS WEEDS PROHIBITED.** It is a violation of this section for any person owning or occupying any lot or tenement in the City of Horace, to grow or allow to grow thereon any Noxious Weeds.
2. **GRASSES OR NON-NOXIOUS WEEDS HEIGHT.** Grasses or non-noxious weeds are not allowed to grow more than eight inches (8") in length upon or along the line of any railroad, street, highway, alley, public place, along or upon any vacant lot or other lot or place within the City. An area having more than thirty percent (30%) of grass plants or non-noxious weeds in excess of eight inches (8") in length shall be deemed a violation of this section.
3. **MAINTENANCE.** It is the duty of all property owners, occupants, or persons having control over private property to maintain the growth of grasses or non-noxious weeds on such property so that it does not exceed eight inches (8") in length. These requirements apply to areas along and upon any railroad, street,



highway, alley, public place or along or upon any vacant lot or other lot or place within the City. An area having more than thirty percent (30%) of grass plants or non-noxious weeds in excess of eight inches (8") in length is deemed a violation of this section.

4. NOTICE. Notice of a violation of this section will be mailed to the registered property owner as shown in the property tax records, upon any agent of the property owner, or upon any occupant of the property when appropriate. The notice will state the property involved, the type of nuisance, the action that must be taken to remedy the nuisance, and a specified period of time, not less than forty eight (48) hours, to remedy the nuisance. The owner, agent, tenant, or person in charge of the property must take appropriate action to cut, mow, and maintain all grasses and non-noxious weeds so as not to exceed eight inches (8") in height. Such notice may include notice to fill excavations and remove dirt piles so as to allow for the proper cutting, mowing, or spraying of noxious weeds, non-noxious weeds, and/or grasses. If the owner, agent, tenant, or person in charge of the property fails to take such appropriate action within the specified time period as directed by the City, the City will have the authority to cut, mow, or spray the noxious weeds, non-noxious weeds, and/or grasses, fill any excavations, or remove dirt piles, and assess the costs against the property described in the notice.

#### 15-0306. TREES AND HEDGES AS TRAFFIC HAZARDS – NUISANCES.

1. HEDGE, TREE, OR GROWTH – WHEN A NUISANCE. Any hedge, tree, or growth of any kind or character maintained on any property in the City of Horace, so located or of such height as to constitute a traffic hazard by obstructing the view of the driver of any vehicle upon the streets of the City to the extent that such driver is unable to readily observe the approach of other vehicles on the streets, alleys, and at intersections, or which is likely, because of its location or height, to cause accidents or injury to any person, is hereby declared a nuisance and offense.
2. CITY AUDITOR – DUTIES. It shall be the duty of the city auditor, or his designee, whenever it may be called to the attention of the City that any hedge, tree, or growth of any kind or character on any property within the City of Horace has been so planted or maintained so as to constitute a nuisance and offense as described in Subsection 1 of this Section, to make a thorough inspection of the premises upon and with respect to which such condition is alleged to exist and to make a full and complete report thereof to the Superintendent of Streets.
3. SUPERINTENDENT OF STREETS – DUTIES. If it is the finding of the Superintendent of Streets and the City Auditor, after review and investigation, that a condition exists with respect to the premises complained against which is dangerous as a traffic hazard and is likely to cause accident or injury to any person, it shall be the duty of the Superintendent of Streets to give or cause to be given notice to the offending person as provided for in Section 15-0312 that such dangerous or hazardous condition exists and that the same is a nuisance and must be abated and eliminated.

**15-0307. JUNK, JUNK AUTOMOBILES, BUILDING MATERIALS – STORAGE OR ACCUMULATION CONTRARY TO PUBLIC HEALTH AND WELFARE.** It is hereby determined that the storage or accumulation of trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, upon any private property within the City of Horace, tends to result in blighted and deteriorated neighborhoods, the increase in criminal activity, the spread of vermin and disease, and is contrary to the public peace, health, and safety and general welfare of the community.

1. **UNLAWFUL TO ACCUMULATE ABANDONED VEHICLES AND JUNK.** It shall be a nuisance and offense for any person to store or permit the storage or accumulation of trash, rubbish, junk, junk automobiles, or abandoned vehicles on any private property in the City of Horace except within a completely closed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods, or junk gatherer.
2. **UNLAWFUL TO DISMANTLE AUTOMOBILE - EXCEPTION.** It shall be a nuisance and offense for any person to dismantle, cut up, remove parts from, or otherwise disassemble any automobile or farm equipment, whether or not the same be a junk automobile, abandoned vehicle, farm equipment or otherwise, or any appliance or machinery except in a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods, or junk gatherer.
3. **UNLAWFUL TO STORE BUILDING MATERIALS - EXCEPTION.** It shall be a nuisance and offense for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock in trade of a business located in said property, or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the City of Horace, and unless said construction is completed within a reasonable period of time.
4. **CITY AUDITOR – REMOVAL OF JUNK OR ABANDONED VEHICLES – DUTIES.** It shall be the duty of the City Auditor, or his designee, acting in accordance with Section 15-0312, to remove or cause to be removed any junk automobile or abandoned vehicle determined to be a nuisance as defined in this section. Such junk automobiles or abandoned vehicles or parts of either shall be removed to the automobile pound and disposed of in accordance with the law.
5. **CITY HEALTH OFFICER – REMOVAL OF BUILDING MATERIALS – DUTIES.** It shall be the duty of the City Health Officer or his assistant to remove or cause to be removed in accordance with Section 15-0312 any building material found to be a nuisance as defined in this section.

**15-0308. ABANDONED AUTOMOBILES – UNCLAIMED PERSONAL PROPERTY – NUISANCE.** Any motor vehicle, animal or other article of personal property, located within the City of Horace, the use, condition or status of which is in violation of any ordinance of the City of Horace, or any law of the State of North Dakota, and constitutes an

obstruction, hazard or detriment to public traffic, snow removal operations, public safety or public health, or which may be damaged, disabled or otherwise involved in an accident, or in the commission of any violation of any ordinance of the City of Horace or any law of the State of North Dakota, or any vehicle or other article of personal property abandoned or unclaimed within the City of Horace, is hereby declared to be a nuisance.

1. **REMOVAL AND IMPOUND - PEACE OFFICER - DUTY.** Any peace officer acting in that capacity within the City limits of the City of Horace, or such other person as designated by the City Council, shall remove or cause to be removed to City Hall, or other place designated by the City Council, any personal property described in the immediately preceding paragraph and may impound and retain the same until the expense of removal, storage and impounding fee, if any, is paid, together with the amount of any fine, costs, bail or other claims of the City of Horace against the owner, or any other person lawfully entitled to the possession thereof the provisions of Section 15-0312 notwithstanding.
2. **IMPOUND PROPERTY; WHEN HELD AND SOLD.** If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of sixty (60) days after impounding, any article or personal property described in the first paragraph of this section may be sold and disposed of by the City Auditor of the City of Horace in the manner set out in Section 1-0703 of the ordinances of the City of Horace.
3. **REPORT TO CITY AUDITOR, DISPOSITION OF PROCEEDS.** Within thirty (30) days after such sale, the person making the sale shall make out in writing, and file with the City Auditor of Horace, a full report of such sale specifying the property sold, the amount received therefor, the amount of costs and expenses, and the disposition made by him of the proceeds of the sale. The proceeds arising from such sale shall be delivered over to the City Treasurer of Horace and credited to the General Fund.

15-0309. **SNOW AND ICE REMOVAL – SIDEWALKS – NUISANCES.** It shall be a nuisance and offense for any person, as owner or occupant of any lot or tenement, to allow snow or ice to accumulate and remain upon any public sidewalk which abuts such lot or tenement.

15-0310. **SNOW AND ICE REMOVAL – PUBLIC STREETS – NUISANCES.** It shall be a nuisance and offense for any person to allow a motor vehicle or other article of personal property to obstruct, prevent or otherwise hinder the removal of snow and ice from any public street, alley or other roadway customarily used for travel. The provisions of 15-0308 to the extent relevant, shall apply to the removal or abatement of such nuisance.

15-0311. **DUMPING – EXCAVATION – NUISANCE.**

1. Dumping defined – for purposes of this section, dumping shall mean placing, burying or storing on, underneath or upon any land.
2. Within the City limits of Horace it shall be deemed a nuisance for any person to engage in dumping or any landowner, tenant or occupant to permit dumping of hazardous wastes except that hazardous wastes may be stored above ground if that

person first obtains a permit from the North Dakota Department of Health pursuant to chapter 23-20.3, North Dakota Century Code.

3. Within the City limits of Horace it should be deemed a nuisance for any person to engage in dumping or any landowner, tenant or occupant to permit the dumping of garbage, junk, demolition materials, trash and rubbish unless the dumping is at a site for which the Board of Adjustment has granted a conditional use or other permit pursuant to the zoning regulations of the City of Horace, or unless a permit to use certain material for fill is first obtained from the Building Inspector.
4. Within the city limits of Horace it shall be deemed a nuisance for any person to engage in dumping or any landowners, tenants, or occupants to permit the dumping of earth material without first obtaining a permit from the Building Inspector. Provided that no permit is necessary where the quantity of earth material is less than 100 cubic yards and the earth material when placed does not exceed 1 foot in depth. Provided further that no permit is needed when the person has first obtained a building permit and the dumping of earth material is connected with the project for which a building permit was granted.
5. Any peace officer acting in that capacity in the City of Horace is hereby given the authority to prohibit and to stop dumping by any person within the city limits of Horace unless and until the person or persons stopped from dumping can establish to the satisfaction of said officer that such dumping is permitted under the Revised Ordinances of the City of Horace. Any person prohibited from dumping by such officer shall within 24 hours be entitled to a hearing before the Building Inspector, or in his absence, a Municipal Judge of the City of Horace to determine whether or not the dumping is in violation of the ordinances of the City of Horace.
6. Within the city limits of Horace it shall be a nuisance if the Building Inspector determines that any existing or future excavation or embankment or cut or fill on private property has become a hazard to life or limb, or endangers property, or adversely affects the safety, use, or stability of a public way or drainage channel or has a significant adverse impact on the drainage of water along its natural course resulting in the creation of stagnate water or the unnatural accumulation of water upon the property of another.
7. The permit from the Building Inspector authorized by Sections 15-0311(3) and (4) shall not be granted unless the following conditions are met:
  - a. A permit fee in the amount of \$25 is paid to the Building Inspector.
  - b. No real estate taxes are delinquent on the real property covered by the application.
  - c. That a drainage plan is provided by the applicant showing the final grade of the real property after the requested dumping and which establishes, to the satisfaction of the City Engineer, that no other property will be adversely affected by the dumping.

- d. That a bond or a certified check payable to the City is deposited with the City Auditor in an amount set by the City Council. The bond or certified check shall be for the purpose of cleaning up the site if the conditions of the permit are not followed and if the applicant does not immediately clean up the site. The amount of the bond or certified check shall be based on the City Council's estimated cost to clean up the site if the conditions of the permit are not followed.
8. The permit from the Building Inspector authorized by Sections 15-0311(3) and (4) shall set forth the following conditions:
    - a. The site where the dumping may occur.
    - b. What materials may be dumped.
    - c. That the drainage plan be followed.
    - d. That if concrete or similar materials are permitted to be used as fill, the permit shall state the time period in which such materials may remain uncovered.
    - e. That the permit shall expire one (1) year after issuance.
    - f. Any other condition which the City Council deems advisable in order to control the dumping.

15-0312. **NOTICE TO REMOVE NUISANCES.** Except where otherwise provided in this chapter, if any person within the limits of the City of Horace shall permit or suffer on his premises or premises of which he may be the occupant, any nuisance, the City Council, any member of the City Council, or such persons authorized by the City Council shall cause notice to be given such person to remove or abate such nuisance. The notice shall set forth specifically the nuisance to be removed and the period of time in which it must be removed. The time period allowed for abating the nuisance shall not be less than forty-eight (48) hours after notice shall have been given, provided, however, that the time period may be less if the nuisance has caused or may cause death or injury to any person within the City of Horace. Provided further, that the provisions of this section shall in no way abrogate or restrict any emergency authority granted to the City Council or other emergency authority delegated to and exercised by persons duly authorized by the City Council.

15-0313. **FAILURE TO REMOVE – PROSECUTION.** If any person, as owner or occupant of any lot or tenement, after notice as provided in Section 15-0312, neglects or refuses to remove or abate the nuisance, the person giving such notice shall notify the City Attorney, who may commence prosecution of the offense in the Horace Municipal Court or seek injunctive relief in any courts of the State of North Dakota.

15-0314. **FAILURE TO REMOVE – CIVIL PENALTY.** The City official who sent notice of removal or abatement of a nuisance, may, in addition to the remedies set out in the previous section, if the nuisance is not abated within the time period set out in the notice, send notice to the violator of a hearing to be held by the City Council to determine whether or not City

officials, employees, representatives, or agents should be directed to enter the property and abate the nuisance. The violator must be given five (5) days' written notice of the time of the hearing. If at that hearing the Council determines that City officials, employees, representatives, or agents should enter the property and abate the nuisance, the Council shall direct such officials, employees, representatives, or agents of the City to do so, and direct that all costs and expenses incurred in that abatement shall be assessed against the property concerned by the City Auditor. Provided, however, if the City official determines that the nuisance presents a clear and present danger of injury or death to a person in Horace, that official can direct City officials, employees, representatives, or agents to abate the nuisance immediately without the need for Council action. Once each year, after written notice to all violators, the City Council shall review all such assessments and hear all complaints against the same and approve the assessments as finally determined by the City Council. Such special assessments shall then be certified to the County Auditor and be placed upon the tax roll for that year and to be collected as other taxes. The decision of the City Council or City official to abate the nuisance in no way relieves the violator of prosecution under the prior section.

(Source: Ord. 2018-10, Sec. 2)

15-0315. **PENALTY.** Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each forty-eight (48) hour period such violation continues shall be considered a separate offense.

15-0316. **AUTHORIZED PERSONS.** The following persons are hereby authorized by the City Council to send out notices and take other actions as set out in this chapter to abate nuisances:

1. Any member of the City Council, including the Mayor.
2. City Health Officer.
3. Chief of Police and/or Law Enforcement Officers.
4. Superintendent of Streets.
5. Chief of the Horace Fire Department.
6. Building Administrator.
7. City Forester.
8. City Auditor.
9. City Administrator.
10. City Attorney.
11. Community Development Director.

(Source: Ord. 2018-10, Sec. 3; Ord. 2022-4, Sec. 7)

15-0317. **ODOR – NUISANCE.**

1. For purposes of this Section, an “odor concentration unit” means the maximum number of standard units of odor-free air diluting a standard unit of odorous air so that the certified inspector can still detect that objectionable odor in the diluted mixture.
2. Within the city limits of the City of Horace it shall be deemed a nuisance if there is a discharge into the ambient air of any objectionable odorous air contaminant which is in excess of two (2) odor concentration units outside the property boundary from which the emissions are being discharged.
3. A Barnebey-Cheney Scentometer properly maintained, or other instrumental method as approved by the State Health Department, must be used in determination of the intensity of an odor. An odor will be considered objectionable when at least two inspectors which have been certified by the State Health Department deem that odor objectionable if the odor were present in a place of residence.
4. No person may discharge into ambient air hydrogen sulfide (H<sub>2</sub>S) in concentrations that would be objectionable on land owned or leased by the complainant or in areas normally assessed by the general public. It shall be deemed a nuisance if two (2) samples with concentrations greater than 0.05 parts per million (50 parts per billion) are sampled at least 15 minutes apart within a 60-minute period. For measuring emissions of hydrogen sulfide, an ambient air analyzer designed for monitoring hydrogen sulfide must be the method used for determining the concentrations of emissions at the point of measurement, or other instrumental methods as approved by the North Dakota State Health Department.
5. The certified inspectors, in operating the Scentometer, an air analyzer designed for monitoring hydrogen sulfide, or other instrument approved by the State Health Department, must follow North Dakota State Health Department guidelines and procedures in conducting such test.
6. For purposes of this section, if a notice to remove or abate a nuisance is given, the odor nuisance will not be deemed to have been abated unless there are no further violations of Section 15-0317 for a period of thirty (30) consecutive days.

15-0318. **SEVERABILITY.** This ordinance and the various parts, sections, and clauses thereof are hereby declared to be severable. If any part, section, paragraph, sentence, clause, phrase, or word is judged unconstitutional or invalid by any court of competent jurisdiction, it is hereby provided that such adjudication shall not affect, impair, or invalidate the remainder of this ordinance.