

CHAPTER ELEVEN

PUBLIC NUISANCES

ARTICLE 1 - SANITARY NUISANCES

11.0101 Residence - When Sewer and Water Required

It shall be unlawful for any person to use or occupy or permit to be used or occupied, any premises or building within the corporate limits of this City without first making or causing to be made proper connections with said sewer and water facilities and mains.

The term "proper connections", when used in this section, shall be construed to mean connections with such water mains and sanitary sewers which are equipped and furnished with proper valves and fittings so as to enable such water connections to be used at all times and sanitary toilets and drains and such equipment shall at all times be kept in repair and in a manner so as to make them available for household use and in condition to be used at all seasons of the year.

Source: Sections 40-28-01, 40-28-02, 40-28-03, 40-05-01 (1, 44, 45, and 49) NDCC

11.0102 Outhouses - Cesspools - A Nuisance

The use, construction, maintenance, building or erection of any outhouse, privy, vault or cesspool within this City is hereby declared to be a nuisance and a menace to public health, when in violation of Section 11.0101.

Source: Sections 40-28-01, 40-28-02, 40-28-03, 40-05-01 (1, 44, 45, and 49) NDCC

11.0103 Outhouses - Cesspools - Offensive Odors

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

Source: Sections 40-05-01 (44, 45, 48, 49), 23-05-04 through 23-05-06 and Chapters 42-01, and 42-02 NDCC

11.0104 Outhouses - Cesspools - Cleaning of

In the cleaning of private septic tanks and sewage systems the contents thereof shall be removed in containers fitted so as to prevent the escape of odors or materials therefrom and disposed of in a proper manner.

The pumping of a private sewage system on the surface of the ground or hauling contents thereof in such a manner as to allow the material to spill on the ground, street, or public ways is hereby declared to be a public nuisance.

Source: Sections 40-05-01 (44, 45, 48, 49), 23-05-04 through 23-05-06 and Chapters 42-01, and 42-02 NDCC

11.0105 Dead Animals

Any person who owned or had possession or control of a dead animal prior to its death shall remove or cause the same to be removed within five (5) hours from the time the animal dies and have the same buried or disposed of in a sanitary way approved by the Chief of Police. Any dead animal remaining in any street, alley or other public place in this City or on any private premises within this City for more than five (5) hours after the animal shall have died, is hereby declared to be a nuisance; and any person permitting any dead animal in the street, alley, or public place of the City or allowing any animal which he owned or which was in his possession or under his control prior to its death, to remain on any street, alley, or public place or on any private premises within the City for more than five (5) hours after its death shall be guilty of a violation of this article.

Source: Section 40-05-01 (44, 45, 49) NDCC. See also: Garbage and Refuse, Chapter Ten, Medora City Code

11.0106 Water Pools - Putrid Substances

It shall be unlawful for the owner or occupant of any parcel of ground in this City

to suffer or permit water or putrid substance, whether animal or vegetable, to accumulate or stand so as to cause an offensive odor to be emitted therefrom or to become injurious or dangerous to the health of the neighborhood, and any pool of water and any putrid substance permitted to become offensive or injurious to the public health is hereby declared to be a nuisance and the owner or occupant shall be guilty of a violation of this ordinance.

Source: Section 40-05-01 (44, 45, 49) NDCC

11.0107 Dirt, Filth, etc. on Streets and Property

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

Source: City of Medora Ordinances 1979 and Sections 23-05-04 through 23-05-06 and 40-05-01 (44, 45, 49) NDCC

11.0108 Stables, Barns, Sheds

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

Source: City of Medora Ordinances 1970 and Sections 23-05-04 through 23-05-06 and 40-05-01 (44, 45, 49) NDCC

11.0109 Solid Waste Disposal

It shall be unlawful for any person within the city limits of the City of Medora to Dispose of solid waste or any other dirt, filth, sewage, sweepings, rags, dung, garbage,

Source: Section 40-05-01 (44, 64) and Chapter 42-02 NDCC

11.0302 Noise Levels - Zoning Districts

It shall be unlawful to project a sound or noise, excluding noise emanating from a motor vehicle, from one property into another, which exceeds the limiting noise criteria set forth in Table I below.

1. Sound or noise projecting from one property into another with a different noise level limit shall not exceed the limits into which the noise is projected;

TABLE I - LIMITING NOISE LEVELS FOR ZONING DISTRICTS

Maximum number of decibels permitted from 7:00 a.m. to 11:00 p.m. daily	65
Maximum number of decibels permitted from 11:00 p.m. to 7:00 a. m. of the following day	60

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0303 Exemptions

The following uses and activities shall be exempt from the noise level regulations:

1. Noises of safety signals, warning devices, and emergency relief valves;
2. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of an emergency;
3. Noises resulting from emergency work;
4. Any construction or maintenance activities;

5. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefore has been granted by the City;

6. Any aircraft operated in conformity with or pursuant to federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0304 Application for Special Permit

Applications for a permit for relief from the noise level designated in this division on the basis of undue hardship may be made to the City Council. Any permit granted by the City Council hereunder shall contain all conditions upon which such permit has been granted and shall specify a reasonable time that the permit shall be effective. The City Council may grant the relief applied for therein if it finds:

1. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this division; or
2. The activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with other sections of this division; and
3. That no other reasonable alternative is available to the applicant; and
4. The City Council may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0305 Penalty for Violation of Article

The penalty for violation of any of the provisions of this article shall be in accordance with Section 2.0115, of the Medora City Code.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0306 Additional Remedy

As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions hereof and which cause discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

ARTICLE 4 - AUTOMOBILES - PERSONAL PROPERTY - NUISANCE

11.0401 Definitions

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them by this section:

Abandoned Vehicle: Without limitation, any vehicle which has remained on private property for a period of forty-eight continuous hours or more without consent of the owner or occupant of the property or for a period of forty-eight continuous hours or more after the consent of the owner or occupant has been revoked.

Blighted Structure: Without limitation, any dwelling, garage or outbuilding; any fence, structure, or other improvement to real property; any factory, shop, store, warehouse; or any other structure or part of a structure which, because of fire, wind or other natural disaster or physical deterioration, is no longer habitable as a dwelling nor useful for the

purpose for which it may have been intended, or which otherwise has become, through neglect or deterioration, an eyesore to the general public and a detraction from the general upkeep of the City of Medora and the Historical Integrity District within the City.

Building Materials: 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 materials used in constructing any structure.

Junk: Without limitation, parts of machinery 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 such material could be put to any reasonable use.

Junk Automobiles: Without limitation, any motor vehicle which is not licensed for use upon the highways of the state for a period in excess of sixty days and also includes, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of sixty days; provided that there is excepted from this definition unlicensed but operative vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.

Trash and Rubbish: Any and all forms of debris not herein otherwise classified.

Section 2: Section 11.0402 entitled “Certain Practices Declared Nuisances” is hereby amended and re-enacted as follows:

11.0402 Certain Practices Declared Nuisances

It is hereby determined that the following conditions tend to result in blighted and deteriorated neighborhoods, increase in criminal activity, spread of vermin and disease, and are contrary to the public peace, health, safety, and general welfare of the community:

1. Storing or permitting the storage or accumulation of trash or rubbish.
2. Storing or permitting the storage of or accumulation of junk, junk automobiles or abandoned vehicles on any private property within the City, except within a completely enclosed building and in compliance with the

provisions of this Code and other City ordinances.

3. Dismantling, cutting up, removing parts from or otherwise disassembling any automobile, whether it is a junk automobile, abandoned vehicle or any appliance or machinery.
4. Keeping or maintaining any Blighted Structure, as that term is defined in this Chapter, unless such structure is kept securely locked, the windows kept glazed or neatly boarded up and maintained.
5. Storing or permitting the storage or accumulation of building materials on any private property, except in a completely enclosed building or where such building materials are part of the stock in trade of a business located on such property or 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 and such construction is completed within a reasonable time.
6. Unsheltered storage of old, used, stripped, junked, or other automobile not in good, safe operating condition, and of any other vehicles, machinery implements and/or equipment and personal property of any kind which is no longer safe for the purposes with which it was manufactured for a period of thirty (30) days or more within the City, and any motor vehicle, animal and article of personal property which constitutes an obstruction to, hazard or detriment to public traffic, snow removal operations, public safety, and public health and morals or which may be abandoned or unclaimed within the City, is hereby declared to be a nuisance and dangerous to public safety and shall be abated in the manner prescribed in this article.

Such conditions are hereby declared to be public nuisances.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0403 Liability of Owners, Occupants, Lessees, etc., Generally

All persons maintaining or permitting the maintenance of any condition declared to be a nuisance by this chapter, whether as owner, occupant, lessee, agent, servant or

employee shall, except as herein otherwise provided, be jointly and equally liable as principals.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0404 Removal of Junked Automobile from Private Property by Police Department

The Police Department may remove or cause to be removed any junk automobile or parts of either from any private property after having notified the owner or occupant of such property, in writing, of its intention to do so at least forty-eight hours prior to such removal. Such notice shall be served personally upon the owner or occupant of the property, if occupied, or may be posted in a conspicuous place upon vacant or unoccupied property. Such junk automobiles or abandoned vehicles or parts of either shall be removed to the automobile pound and disposed of in accordance with law. Such removal by the Police Department shall not excuse or relieve any person of the obligation imposed by this article to keep his property free from storage or accumulation of junk automobiles or abandoned vehicles, parts of junk automobiles or abandoned vehicles or parts of either, nor from the penalties for violation thereof. The cost of removal shall be assessed against the property.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0405 Abatement Required by Owners

The owner, owners, tenants, lessees, and/or occupants of any lot within the corporate limits of this City upon which such storage is made, and also the owner, owners, and/or lessees of said property involved in such storage (all of whom are hereinafter referred to collectively as "owners") shall jointly and severally abate said nuisance by the prompt removal of said personal property into completely enclosed buildings authorized to be used for storage purposes, if within the corporate limits of the City, or otherwise to remove it to a location outside the corporate limits.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0406 Abatement Required - Penalty for Failure

If said owners allow said nuisance to exist or fail to abate said nuisance they, and each of them, upon conviction thereof, shall be fined not less than Twenty-five and no/100 Dollars (\$25.00) nor more than Five Hundred and no/100 Dollars (\$500.00) for each infraction and a separate infraction shall be deemed committed on each day during or on which such nuisance is permitted to exist.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0407 Removal and Impoundment by City

The Police Department may remove or cause to be removed to City Hall, or any other place, selected for the purpose of any personal property described in Sections 12.0401 and 12.0402 and may impound and retain the same until the expense of such removal, storage, and impounding is paid together with the amount of any fine, costs, bail or other claims of the City against the owner or any other person lawfully entitled to possession thereof.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0408 Removal and Impoundment - When Sold

If not reclaimed and redeemed by the true owner or the person lawfully entitled to possession thereof within a period of thirty (30) days after impounding, any article of personal property described in Section 11.0401 and 11.0402 may be sold and disposed of by the Police Department in the manner hereinafter provided. Notice that such property will be sold shall be published once, at least six (6) days prior to the sale, in a newspaper published in the City or, if none, in the official newspaper of the county. Such notice shall specify a description of the property to be sold, the time and place of sale, and shall be signed by the Chief of Police. Such sale shall be held between the hours of 9:00 a. m. and 5:00 p.m. of the day specified in the notice. Such sale shall be held at the front door of City Hall or at the location of the property to be sold. Any sale may be postponed or discontinued by public announcement at the time of the sale where there are no bidders or when the amount offered is grossly inadequate, or for other reasonable cause. The City may become a purchaser of any or all property at such sale. The Chief of Police shall give

the purchaser at such sale a certificate of purchase of such property.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

11.0409 Removal and Impoundment Proceeds

Within thirty (30) days after such sale the person making the sale shall prepare and file with the City Auditor a full written report of such sale specifying the property sold, the amount received therefore, 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 Auditor and credited to the general fund.

Source: Section 40-05-01 (44, 48, 49) and Chapters 42-01 and 42-02 NDCC

ARTICLE 5 - NOXIOUS WEEDS

11.0501 Definitions

Whenever used in this ordinance, the term "noxious weeds" shall mean and include all weeds of the kind known as Canada Thistle, sow thistle, quack grass, leafy spurge (*Euphorbia esula* or *Euphorbia virgata*), field bindweed, Russian knapweed, (*Centaurea picris*), hoary cress (*Lepidium draba*, *Lepidium repens*, and *Humerophysa pubescens*), dodder, or any similar unwanted vegetation over eight inches in height. The above description of noxious weeds will not be all inclusive and means any plant propagated by either seed or vegetative parts which is determined by the Commissioner of Agriculture, to be injurious to public health, crops, livestock, land, or other property.

Source: Section 63-01.1-02 NDCC

11.0502 Weeds Prohibited

No owner or the agent of such owner of any lot, place, or area within the City shall permit on such lot, place, or area, and the one-half of any road or street lying next to the lands or boulevards abutting thereon, noxious weeds or other deleterious, unhealthful growths.

Source: Section 40-05-01 (44, 45, 49), and Chapters 23-05, 42-01, 42-02 and 42-04 NDCC

11.0503 Notice to Destroy

The City Council is hereby authorized and empowered to notify, in writing, the owner or agent of such owner of any such lot, place, or area within the City to cut, destroy, and/or remove any such noxious weeds found growing, lying, or located on such owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon. Such notice shall be by certified mail addressed to said owner or agent of said owner as shown by the tax records of Billings County and shall give such owner or agent a minimum of five days to cut or destroy said noxious weeds.

Source: Section 40-05-01 (44, 45, 49), Chapters 23-05, 42-01, 42-02 and 42-04 NDCC

11.0504 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or his agent so notified to cut, destroy, and/or remove noxious weeds growing, lying, or located upon the owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon, after receipt of the written notice provided in Section 11-0503, or within five days after the date of such notice in the event the same is returned to the City because of inability to make delivery thereof, provided the same was properly addressed to the address as shown by the tax records of Billings County of such owner or agent, the City is hereby authorized and empowered to pay for the cutting, destroying, and/or removal of such noxious weeds or to order their removal by the City.

Source: Section 40-05-01 (44, 45, 49), Chapters 23-05, 42-01, 42-02, and 42-04 NDCC

11.0505 Cost Assessed to Property

When the City has effected the removal of such noxious weeds or has paid for removal thereof, the actual cost of such removal, if not paid by said owner prior thereto, shall be charged and assessed against the property upon which the noxious weeds were cut

or destroyed. An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessment lists, and shall be approved by the City Council and shall bear interest at seven per cent (7%) per annum. Such assessments shall be subject to the same procedure for certification to the County Auditor, for payment and collection as are other special assessments under state law.

Source: Section 40-05-01 (44, 45, 49), Chapters 23-05, 42-01, 42-02, and 42-04
NDCC

ARTICLE 6 - RESTRICTIONS ON ADULT ENTERTAINMENT CENTERS OR ESTABLISHMENTS

11.0601 Establishment and Maintenance

It shall be unlawful to establish and maintain the following:

ADULT BOOK STORE: A bookstore having as a preponderance of its publications books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this section.

ADULT ESTABLISHMENT or ADULT ENTERTAINMENT CENTER: An adult bookstore, an adult motion picture theater or an adult mini-motion picture theater, all as defined in this section, which also sells sexually oriented devices, as herein defined, in conjunction with their business as defined herein. Any establishment or center which displays or sells sexually oriented devices as herein defined as a preponderance of its business is also an adult entertainment center or adult establishment within the meaning of this section.

ADULT MINI-MOTION PICTURE THEATER: An enclosed building with a capacity for less than fifty persons and which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons of the theater.

ADULT MOTION PICTURE THEATER: An enclosed building with a capacity of

fifty or more persons and which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section for observation by patrons of the theater.

MECHANICAL AMUSEMENT DEVICE: Without limitation, any machine which, upon the insertion of a coin or the payment of consideration, operates or may be operated for use as a game, contest or amusement of any description, or which depicts, displays or projects, directly or indirectly, pictures, photographs, or other visual images.

SEXUALLY ORIENTED DEVICE: Without limitation, any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed, in whole or in part, for specified sexual activities.

SPECIFIED ANATOMICAL AREAS:

1. Less than completely and opaquely covered human genitals and pubic regions, buttocks or female breasts below a point immediately above the top of the areola.
2. Human male genitals in a discernable turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES:

1. Human genitals in a state of sexual stimulation or arousal.
2. Acts of human masturbation, sexual intercourse or sodomy.
3. Fondling or other erotic touching of human genitals and pubic regions, buttocks or female breasts.

Source: Sections 40-05-17 and 11-11-62 and generally Chapter 12.1-27.1 NDCC

11.0602 Licenses Generally

1. The annual license fee for adult entertainment centers or adult establishments and mechanical amusement devices shall be as follows:

- a. For each adult entertainment center or adult establishment, Two Thousand Dollars;
- b. For mechanical amusement devices used on a regular basis to depict or display specified anatomical areas or specified sexual activities as defined herein, Three Hundred Dollars per machine per year, irrespective of the number of machines owned by any one person.

2. The owner of any mechanical amusement device shall furnish a complete list of all devices owned or operated subject to licensing, with an indication thereon of the location of each machine and a list of all films used and the date of any film or placement during the license period.

3. The fees provided for herein shall be payable on January 1 of each year and pro-rated on a daily basis if the license becomes effective at any time other than January 1.

4. No license issued under the provisions of this article shall be transferable by a licensee, and any attempt to do so shall constitute a violation of this chapter; provided that upon the death of the licensee, the license may be transferred to the executors or administrators of such deceased licensee. For purposes of this section, the transfer of twenty-five per cent (25%) or more of the capital stock of any licensee corporation or limited liability company the change in vesting of voting rights of over twenty-five per cent of the stock of the licensee corporation or limited liability company shall be considered a transfer and change of ownership and, in such event, a new license must be obtained by such corporation or limited liability company.

Source: Sections 40-05-17 and 11-11-62 and generally Chapter 12.1-27.1 NDCC

11.0603 Severability

The provisions of this section are severable, and if any of the provisions, sentences, clauses or paragraphs shall be held unconstitutional, contrary to statute, exceeding the authority of the City or otherwise illegal or inoperative by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions, unless the court should conclude that the partial invalidation would frustrate the intent of this section.

Source: Sections 40-05-17 and 11-11-62 and generally Chapter 12.1-27.1 NDCC

11.0604 Any violation of this chapter is a Class B misdemeanor and a nuisance.