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**CHAPTER TWELVE
PUBLIC NUISANCES**

ARTICLE 1 – SANITARY NUISANCES

12.0101. Residence – When Sewer and Water Required. It shall be unlawful for any person to use or occupy or permit to be used or occupied for residence purposes, any premises or building within the corporate limits of this city without first making or causing to be made proper connections with municipal 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 and sanitary toilets and drains to be used at all times 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.

12.0102. 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 12.0101.

12.0103. Outhouses – Cesspools – Exceptions.

1. Private sewage system and private water supplies may be constructed to serve new buildings to be built in areas not included in Section 12.0101, providing such lot area is in compliance with the requirements of the City’s zoning ordinance and regulations.

2. Private sewage systems and private water systems may be installed in existing buildings in areas not included in Section 12.0101.

3. Each private sewage system or private water supply system hereafter altered or constructed shall conform to the standards established by the North Dakota Department of Health and Consolidated Laboratories for such systems; to the requirements of this ordinance; and, to the requirements of the Zoning Ordinance of the City of Rutland.

12.0104. 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 allow or permit any private sewer system to emit any offensive odors or to become dangerous or injurious to public health or offensive to the sense of smell of the people of the city, and any

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private sewer system emitting such odor is hereby declared to be a nuisance and menace to the public health of the city.

12.0105. 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 manner approved by the City Health Officer.

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.

12.0106. 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 some other sanitary way approved by the City Health Officer. Any dead animal remaining in any street, alley or other public place in this city, or in 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 in 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.

12.0107. 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 public nuisance.

ARTICLE 2 – SMOKE - GASES

12.0201. Smoke, Dust, Ashes, Gases, Cinders – A Nuisance. The emission of dense smoke, ash, dust, cinders or noxious gases from any machine, contrivance or from the smoke stack or chimney of any building or premises in such quantities as to cause injury or detriment to any person or persons or to the public, or to endanger the comfort, health or

safety of any person or persons, or in such manner as to cause or tend to cause damage or injury to property, is hereby declared to be a nuisance.

12.0202. Smoke, Dust, Ashes, Gases, Cinders – Prohibited. No person, persons, association or corporation shall cause, permit or allow the escape from any tank, bin, dust house, smoke stack or chimney into the open air, of such quantities of dense smoke, ash, dust, soot, cinders, acid or other fumes, dirt, or other material, or noxious gases, in such place or manner as to cause injury, detriment or nuisance to any person or persons, or to the public, or to endanger the comfort, health or safety to any such person or persons, or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

ARTICLE – 3 – RADIO INTERFERENCE AND NOISE CONTROL

12.0301. Radio Interference Prohibited. It shall be unlawful for any person knowingly to maintain, use, operate or cause to be operated within this city, any machine, device, appliance, equipment or apparatus of any kind whatsoever, the operation of which shall cause reasonable preventable electrical interference with radio and television reception within said municipal limits, and the maintenance, use or operation within said city of any machine, device, appliance, equipment or apparatus of any kind so as to interfere with radio and television reception in violation hereof, is hereby declared to be a public nuisance.

12.0302. Loud, Disturbing, Unnecessary Noises – Prohibited. The making, creating or maintenance of loud, unnatural or unusual and disturbing noises are a detriment to public health, comfort, convenience, safety and welfare, and are hereby declared to be unlawful and a public nuisance. The following acts, among others, are declared to be prohibited noised in violation of this section, but such enumeration is not exclusive:

1. **Motor vehicle horns.** The sounding of horns or signaling devices on any motor vehicle or motorcycle on any street or public place except as a danger warning or their sounding for an unnecessary and unreasonable period of time.

2. **Radios, phonographs, etc.** The using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated, and who are voluntary listeners thereto. The operation of any such set,

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instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

3. Loudspeakers, amplifiers for advertising. The use, operating or permitting to be played, used or operation of any radio receiving set, musical instrument, phonograph, loudspeaker, amplified or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

4. Yelling, shouting, etc. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

5. Schools, courts, churches, hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonable interferes with the works of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.

ARTICLE 4 – AUTOMOBILES – PERSONAL PROPERTY

12.0401. Automobiles, Personal Property – When a Nuisance.

Unsheltered storage of old, used, stripped, junked and other automobiles 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 which it was manufactured for a period of thirty (30) days or more (except in a licensed junk yard) 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.

12.0402. 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 limits of the city, or otherwise to remove it to a location outside of corporate limits.

12.0403. 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.

12.0404. Removal and Impoundment by City. The Police Department may remove or cause to be removed to the City Hall, or any other place within the city, selected for the purpose of any personal property described in 12.0401 and may impound and retain the same until the expense of 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 the possession thereof.

12.0405. Removal and Impoundment – When Sold. If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of thirty (30) days after impounding, any article of personal property described in 12.0401 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 o'clock a.m. and 5:00 o'clock p.m. of the day specified in the notice. Such sale shall be held at the front door of the City Hall, or at such 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.

12.0406. Removal and Impoundment Proceeds. Within thirty (30) days after such sale, the person making the sale shall make out, in writing, and file with the city a full report of such sale specifying the property sold, the amount received therefore, the amount of costs and expenses, 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.

ARTICLE 5 – NOXIOUS WEEDS.

12.0501. Definition. 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 *Humenophysa pubescens*), dodder, dandelions or any similar unwanted vegetation over six (6) inches in height.

12.0502. Weeds Prohibited. No owner or any lot, place or area within the City or the agent of such owner, 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.

12.0503. Notice to Destroy. The City Health Officer is hereby authorized and empowered to notify in writing the owner of any such lot, place, or area within the City or the agent of such owner, 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 registered or certified mail addressed to said owner or agent of said owner at his last known address and shall give such owner or his agent a minimum of five days to cut or destroy said noxious weeds.

12.0504. Action Upon Non-Compliance. Upon the failure, neglect, or refusal of any owner or agent so notified to cut, destroy 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 for in 12.0503 above or within five days after the date of such notice in the event the same is returned to the City Post Office Department because of inability to make delivery thereof, provided the same was property addressed to the last known address of such owner or agent, the health officer 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.

12.0505. Cost Assessed to Property. When the City has effected the removal of such noxious weeds or has paid for their removal, the actual cost thereof, 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 governing body. Such assessments shall be subject to the same procedure for certification to the county auditor, payment and collection as are other special assessments under state law.

ARTICLE 6 – DUTCH ELM DISEASE.

12.0601. Dutch Elm Disease and Elm Bark Beetles. The City Council has determined that there are many elm trees growing on public and private premises within the City of Rutland, the loss of which would substantially depreciate the value of public and private property, impair the use and enjoyment of public and private premises and erode the tax base of the city and that the health and life of such trees is threatened by a fatal disease known as Dutch Elm Disease, which is spread by the elm bark beetles (*Scolytus Multistriatus* (Eichb.) or *Hylurgopinus Rufipes* (Marsh.)), the Council hereby declares its intention to control and prevent the spread of such disease and the insect pests and vectors which carry such disease and declares Dutch Elm Disease and the elm bark beetles which carry such disease to be public nuisances.

12.0602. Definitions. As used in this ordinance, unless otherwise clearly indicated by the context:

1. “Public Nuisance” means
 - (1) Dutch Elm Disease
 - (2) Elm Bark Beetles *Scolytus Multistriatus* (Eichb.) or *Hylurgopinus Rufipes* (Marsh.)
 - (3) Any living or standing elm tree or part thereof infected with the Dutch Elm Disease fungus or in a weakened condition which harbors any of the elm bark beetles, *Scolytus Multistriatus* (Eichb.) or *Hylurgopinus Rufipes* (Marsh.).
 - (4) Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.
2. “Public Property” means premises owned or controlled by the city including without limitation because of enumeration, public

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sites, parks, playgrounds, streets, alleys, sidewalks, boulevards, and the terrace strip between the lot line and the curb or improved portion of any public way.

3. "Person" means person, firm or corporation.

12.0603. Inspection. The Shade Tree Committee, defined in Chapter 3, Article 5, shall inspect or cause to be inspected at least once each year all premises and places within the city to determine whether any public nuisance exists thereon. It shall also inspect or cause the inspection of any elm tree reported or suspected to be infected with the Dutch Elm disease or any elm bark bearing material reported or suspected to be infested with elm bark beetles.

Whenever necessary to determine the existence of Dutch Elm disease or elm bark beetles in any tree, the person inspecting such tree shall remove or cut specimens from the tree in such manner as to avoid permanent injury thereto and deliver such specimens to the Shade Tree Committee who shall forward them to an official diagnostic laboratory for analysis to determine the presence of such nuisances.

The Shade Tree Committee and their agents or employees shall have authority to enter upon private premises at reasonable time for the purpose of carrying out any of the provisions of this ordinance.

12.0604. Abatement of Nuisances: Duty of Shade Tree Committee. The Shade Tree Committee shall order, direct, supervise and control the abatement of public nuisances as defined in this ordinance by spraying, removal, burning or by other means which it determines to be necessary to prevent as fully as possible the spread of Dutch Elm disease fungus or the insect pests or vectors known to carry such disease fungus.

Whenever the Shade Tree Committee after inspection or examination shall determine that a public nuisance as herein defined exists on public property in the city, it shall abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch Elm disease or the insect pests or vectors known to carry such disease fungus.

When the Shade Tree Committee shall determine with reasonable certainty that a public nuisance exists upon private premises (or upon the terrace strip between the lot line and the curb), it shall serve or cause to be served personally or be registered mail upon the owner of such property (or the abutting property), if said owner can be found, or upon the occupant thereof, a written notice of the existence of such nuisance and

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of a time and place for a hearing, not less than 14 days after service of such notice, on the abatement action to be taken. Such notice shall describe the nuisance and recommended procedures for its abatement, and shall further state that unless the owner shall abate the nuisance in the manner specified in the notice, or shall appear at the hearing to show that such nuisance does not exist or does not endanger the health of elm trees in the city, the Shade Tree Committee shall cause the abatement thereof at the expense of the property served (or abutting property). If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the city.

If after hearing held pursuant to this subsection it shall be determined by the Shade Tree Committee that a public nuisance exists, it shall forthwith order the immediate abatement thereof. Unless the property owner abates the nuisance as directed within 24 hours after such hearing, the Shade Tree Committee shall proceed to abate the nuisance and cause the cost thereof to be assessed against the property in accordance with the procedures provided in this ordinance. The Shade Tree Committee may extend the time allowed the property owner for abatement work but not to exceed 10 additional days.

12.0605. Spraying. Whenever the Shade Tree Committee shall determine that any elm tree or part thereof is infected with Dutch Elm disease fungus or is in a weakened condition and harbors elm bark beetles, it may cause all elm trees within a 1,000-foot radius thereof to be sprayed with an effective elm bark beetle destroying concentrate as recommended by the State Entomologist.

In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this ordinance, the Shade Tree Committee shall cause to be given advance public notice of such operations by newspaper, radio, television, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees are to be sprayed at least 24 hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Shade Tree Committee shall also notify the chief of police, who shall take all necessary steps to make and enforce temporary parking and traffic regulations on such streets as conditions require. Temporary “no parking” notices shall be posted in each block of any affected street at least 24 hours in advance of spraying operations.

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When appropriate warning notices and temporary “no parking” notices have been given and posted in accordance with subsection b. of this section, the city shall not allow any claim for damages to any vehicle caused by such spraying operations.

When trees on private property are to be sprayed, the Shade Tree Committee shall notify the owner of such property and proceed in accordance with the requirements of subsection 6. of Section 5 of this ordinance.

12.0606. Cost of Tree Care. The entire cost of abating any public nuisance or spraying any elm tree or part thereof when done at the direction of the Shade Tree Committee shall be borne by the city out of general funds.

12.0607. Prohibited Acts and Penalties. Any person who does any of the following acts with the city of Rutland shall upon conviction thereof forfeit not less than \$10 nor more than \$100 together with the costs of prosecution and in default of payment thereof shall be imprisoned in the city jail until such costs and forfeiture are paid, but not exceeding 90 days:

- a. Transports any bark bearing elm wood, bark or material on public streets or highways or other public premises without first securing the written permission of the Shade Tree Committee;
- b. Interferes with or prevents any acts of the Shade Tree Committee or its agents or employees while they are engaged in the performance of duties imposed by this ordinance;
- c. Refuses to permit the Shade Tree Committee or its duly authorized representative to enter upon their premises at reasonable times to exercise the duties imposed by this ordinance;
- d. Permits any public nuisance to remain on said premises when ordered by the Shade Tree Committee to abate such nuisance.

12.0608. Separability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase hereof.

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Adoption: Articles 1 through 5 adopted by the Rutland City Council, June 3, 1996.

Amended: Section 12.0501 Amended July 2, 2018 to modify height from eight inches to six inches.

Adoption: Article 6 adopted November 5, 2018