

CHAPTER 1

CODE OF ORDINANCES

1.01 Title
1.02 Definitions
1.03 City Powers
1.04 Indemnity
1.05 Personal Injuries
1.06 Rules of Construction
1.07 Extension of Authority

1.08 Amendments
1.09 Catchlines and Notes
1.10 Altering Code
1.11 Severability
1.12 Warrants
1.13 General Standards for Action
1.14 Standard Penalty
1.15 Right of Entry

1.01 TITLE. This code of ordinances shall be known and may be cited as the Code of Ordinances of the City of Asbury, Iowa. *(Ord. 6-2010 – Dec. 10 Supp.)*

1.02 DEFINITIONS. Where words and phrases used in this Code of Ordinances are defined in the Code of Iowa, such definitions apply to their use in this Code of Ordinances unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provision. Other words and phrases used herein have the following meanings, unless specifically defined otherwise in another portion of this Code of Ordinances or unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provision:

1. “Alley” means a public right-of-way, other than a street, affording secondary means of access to abutting property.
2. “City” means the City of Asbury, Iowa.
3. “Clerk” means the city clerk of Asbury, Iowa.
4. “Code” means the specific chapter of this Code of Ordinances in which a specific subject is covered and bears a descriptive title word (such as the Building Code and/or a standard code adopted by reference).
5. “Code of Ordinances” means the Code of Ordinances of the City of Asbury, Iowa. *(Ord. 6-2010 – Dec. 10 Supp.)*
6. “Council” means the city council of Asbury, Iowa.
7. “County” means Dubuque County, Iowa.
8. “May” confers a power.
9. “Measure” means an ordinance, amendment, resolution or motion.
10. “Must” states a requirement.

11. “Occupant” or “tenant,” applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others.
12. “Ordinances” means the ordinances of the City of Asbury, Iowa, as embodied in this Code of Ordinances, ordinances not repealed by the ordinance adopting this Code of Ordinances, and those enacted hereafter.
13. “Person” means an individual, firm, partnership, domestic or foreign corporation, company, association or joint stock association, trust, or other legal entity, and includes a trustee, receiver, assignee, or similar representative thereof, but does not include a governmental body.
14. “Public way” includes any street, alley, boulevard, parkway, highway, sidewalk, or other public thoroughfare.
15. “Shall” imposes a duty.
16. “Sidewalk” means that surfaced portion of the street between the edge of the traveled way, surfacing, or curb line and the adjacent property line, intended for the use of pedestrians.
17. “State” means the State of Iowa.
18. “Statutes” or “laws” means the latest edition of the Code of Iowa, as amended.
19. “Street” or “highway” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

Words that are not defined in this Code of Ordinances or by the Code of Iowa have their ordinary meaning unless such construction would be inconsistent with the manifest intent of the Council, or repugnant to the context of the provision.

1.03 CITY POWERS. The City may, except as expressly limited by the Iowa Constitution, and if not inconsistent with the laws of the Iowa General Assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the City and of its residents, and preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents and each and every provision of this Code of Ordinances shall be deemed to be in the exercise of the foregoing powers and the performance of the foregoing functions.

(Code of Iowa, Sec. 364.1)

1.04 INDEMNITY. The applicant for any permit or license under this Code of Ordinances, by making such application, assumes and agrees to pay for all injury to or death of any person or persons whomsoever, and all loss of or damage to property whatsoever, including all costs and expenses incident thereto, however arising from or related to, directly, indirectly or remotely, the issuance of the permit or license, or the doing of anything thereunder, or the failure of such applicant, or the agents, employees or servants of such applicant, to abide by or comply with any of the provisions of this Code of Ordinances or the terms and conditions of such permit or license, and such applicant, by making such application, forever agrees to indemnify the City and its officers, agents and employees, and agrees to save them harmless from any and all claims, demands, lawsuits or liability whatsoever for any loss, damage, injury or death, including all costs and expenses incident thereto, by reason of the foregoing. The provisions of this section shall be deemed to be a part of any permit or license issued under this Code of Ordinances or any other ordinance of the City whether expressly recited therein or not.

1.05 PERSONAL INJURIES. When action is brought against the City for personal injuries alleged to have been caused by its negligence, the City may notify in writing any person by whose negligence it claims the injury was caused. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the City believes that the person notified is liable to it for any judgment rendered against the City, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in any action by the City against any person so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the City to the plaintiff in the first named action, and as to the amount of the damage or injury. The City may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the City in the suit.

(Code of Iowa, Sec. 364.14)

1.06 RULES OF CONSTRUCTION. In the construction of this Code of Ordinances, the rules of statutory construction as set forth in Chapter 4 of the Code of Iowa shall be utilized to ascertain the intent of the Council with the understanding that the term “statute” as used therein will be deemed to be synonymous with the term “ordinance” when applied to this Code of Ordinances.

1.07 EXTENSION OF AUTHORITY. Whenever an officer or employee is required or authorized to do an act by a provision of this Code of Ordinances,

the provision shall be construed as authorizing performance by a regular assistant, subordinate or a duly authorized designee of said officer or employee.

1.08 AMENDMENTS. All ordinances which amend, repeal or in any manner affect this Code of Ordinances shall include proper reference to chapter, section, subsection or paragraph to maintain an orderly codification of ordinances of the City.

(Code of Iowa, Sec. 380.2)

1.09 CATCHLINES AND NOTES. The catchlines of the several sections of the Code of Ordinances, titles, headings (chapter, section and subsection), editor's notes, cross references and State law references, unless set out in the body of the section itself, contained in the Code of Ordinances, do not constitute any part of the law, and are intended merely to indicate, explain, supplement or clarify the contents of a section.

1.10 ALTERING CODE. It is unlawful for any unauthorized person to change or amend by additions or deletions, any part or portion of the Code of Ordinances, or to insert or delete pages, or portions thereof, or to alter or tamper with the Code of Ordinances in any manner whatsoever which will cause the law of the City to be misrepresented thereby.

(Code of Iowa, Sec. 718.5)

1.11 SEVERABILITY. If any section, provision or part of the Code of Ordinances is adjudged invalid or unconstitutional, such adjudication will not affect the validity of the Code of Ordinances as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

1.12 WARRANTS. If consent to enter upon or inspect any building, structure or property pursuant to a municipal ordinance is withheld by any person having the lawful right to exclude, the City officer or employee having the duty to enter upon or conduct the inspection may apply to the Iowa District Court in and for the County, pursuant to Section 808.14 of the Code of Iowa, for an administrative search warrant. No owner, operator or occupant or any other person having charge, care or control of any dwelling unit, rooming unit, structure, building or premises shall fail or neglect, after presentation of a search warrant, to permit entry therein by the municipal officer or employee.

1.13 GENERAL STANDARDS FOR ACTION. Whenever this Code of Ordinances grants any discretionary power to the Council or any commission, board or officer or employee of the City and does not specify standards to govern the exercise of the power, the power shall be exercised in light of the following standard: The discretionary power to grant, deny or revoke any matter shall be considered in light of the facts and circumstances then existing

and as may be reasonably foreseeable, and due consideration shall be given to the impact upon the public health, safety and welfare, and the decision shall be that of a reasonably prudent person under similar circumstances in the exercise of the police power.

1.14 STANDARD PENALTY. Unless another penalty is expressly provided by the Code of Ordinances for any particular provision, section or chapter, any person failing to perform a duty, or obtain a license required by, or violating any provision of this Code of Ordinances, or any rule or regulation adopted herein by reference shall, upon conviction, be subject to only a monetary fine of not more the one thousand dollars (\$1,000.00). *(Ord. 17-2017 – Dec. 17 Supp.)*
(Code of Iowa, Sec. 364.3[2])

1.15 RIGHT OF ENTRY.

1. For Inspection and/or Performance of Duty. A City official or City-authorized inspector may enter upon any real property, building or structure in the City in order to perform any appropriate act within the scope of the official's or inspector's duties, without permission and without authority of a court order, to the extent that the property entered upon appears to be lawfully accessible to other adult citizens without the express consent of any owner, tenant or occupant. A City official or City-authorized inspector may enter upon any other real property, building or structure in the City or part thereof in order to perform any appropriate act within the scope of the official's or inspector's scope of duties after appropriate identification and the consent of an owner, tenant or occupant thereof. A City official may obtain the aid of a court of competent jurisdiction to obtain entry upon any real property, building or structure in the City. No person shall intentionally refuse or impede any entry authorized by this section.

2. In Emergency or Exigency. A City official or City-authorized inspector may, upon appropriate identification, enter upon any real property, building or structure in the City to perform any appropriate act within the scope of the official's or inspector's scope of duties in response to an emergency or exigency, without warrant or consent. An emergency or exigency exists whenever there is probable cause to believe that a past, present or future violation of a law or ordinance presents an immediate and substantial danger to persons or property and reasonably requires action to avert the danger or its full impact before a court order or warrant authorizing entry may be obtained from a court of competent jurisdiction. Hot pursuit shall be deemed an emergency or exigency. An exigency shall also be deemed to exist whenever a City official or a City-authorized inspector observes something in plain view

from a place where the officer or inspector has a right to be and has reasonable grounds to believe that awaiting consent or a court order or warrant would prevent the effective performance of the officer's or inspector's duties. No person shall refuse or impede such entry knowing that such official or inspector is acting under the reasonable belief that an emergency or exigency exists.

3. Limits of Entry.

A. When any City official or City-authorized inspector is authorized to enter upon any real property, building or structure in the City, all persons assisting such officer or inspector shall enjoy the same privileges and be subject to the same disabilities as the officer or inspector in entering with such officer or inspector.

B. The extent of entry is limited to those areas which either appear to be accessible by members of the general public without express consent, are within the scope of consent or a court order or warrant, or reasonably required to be used in response to an emergency or exigency.

C. Identification shall be made to the adult person or persons, or the eldest minor, then present upon the premises affected by the entry.

D. All City officials and City-authorized inspectors shall act in good faith and in their honest belief in entering upon real property, buildings and structures, cognizant of the rights and concerns of all citizens.

E. Nothing in this Code of Ordinances shall be construed to prohibit the City from requiring, as a condition of issuance of any license or permit, that the licensee or permittee give prior consent in writing to all entries by the City reasonably appropriate to the enforcement of such licensing provisions, whether under State or local law.

[The next page is 9]