

ORDINANCE NO. 202

AN ORDINANCE TO REPEAL CHAPTER 12, "OFFENSES – MISCELLANEOUS", OF THE CODE OF ORDINANCES OF THE CITY OF NEW BUFFALO, MICHIGAN, TO ESTABLISH A NEW CHAPTER 12 PERTAINING TO "NOISE, NUISANCE, PROHIBITED ACTS AND OTHER MISCELLANEOUS PROVISIONS".

THE CITY OF NEW BUFFALO ORDAINS:

SECTION I. The Code of Ordinances of the City of New Buffalo, Chapter 12, "Offenses – Miscellaneous" is hereby repealed.

SECTION II. The Code of Ordinances of the City of New Buffalo, Chapter 12, "Offenses—Miscellaneous" is hereby replaced as follows:

Chapter 12 – NOISE, NUISANCE, PROHIBITED ACTS AND OTHER MISCELLANEOUS PROVISIONS

Article I. In General

Section 12-1. Purpose.

The purpose of Chapter 12 of the City of New Buffalo Code of Ordinances is to maintain the present tradition of this community regarding noise and nuisances. It is meant to exempt certain activities which are currently acceptable and eliminate the need for those activities to seek permits. This Chapter is not meant to advance nor inhibit religion and is enacted to avoid the excessive government entanglement that issuing permits would entail with those activities which are currently acceptable in the community.

The City of New Buffalo encourages a lively social environment, economically viable downtown with a wide variety of uses in a pedestrian-oriented setting and peaceful and pleasant residential areas.

Sections 12-2 thru 12-5. Reserved

Article II. Noise

Section 12-6. Definitions.

For the purpose of this article, the following items have the meaning ascribed to them as hereinafter defined, unless where otherwise expressly stated or where the context clearly defines a different meaning.

Commercial area means a district that has been assigned a zoning designation of CBD, GCD, WM or I-1 in accordance with Appendix A of this Code.

Construction means any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, for or of private rights-of-way, structures, buildings, utilities or similar property.

Continued duration means fifteen (15) or more minutes.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Fireworks means any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects, as defined under Michigan Fireworks Safety Act, Act 256 of 2011 as amended.

Frequently means one (1) or more times in every thirty-minute period for at least four (4) out of five (5) successive periods.

Motor vehicle means every vehicle that is self-propelled, but for purposes of the Michigan Motor Vehicle Code, Chapter 4 of Act 300 of 1949, as amended, motor vehicle does not include industrial equipment such as a forklift, a front-end loader, or other construction equipment that is not subject to registration under this act. Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act, as amended. Motor vehicle does not include an electric personal assistive mobility device.

Motorcycle means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than 3 wheels in contact with the ground but excluding a tractor.

Muffler or sound dissipative device means a device for abating the sound of escaping gases of an internal combustion engine, or for abating sound transmitted in a duct, chase, pipe or other opening.

Noise means any sound which annoys or disturbs a reasonable person or which causes or tends to cause an adverse psychological or physiological effect on humans.

Noise disturbance means any sound which endangers or injures the safety or health of persons or animals; or would be unreasonably loud and disturbing to the average member of the community of normal sensitivities under the circumstances; that is louder than and would disrupt any part of a normal conversation between two (2) people or endangers or injures persons or real property.

Person means any individual, association, partnership, or corporation, and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

Powered model vehicle means any self-propelled airborne, waterborne, or land borne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

Public space means any real property, buildings or structures thereon which are owned or controlled by a governmental entity.

Real property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

Residential area means a district that has been assigned a zoning designation of district R in accordance with Appendix A of this Code.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium, and is the objective cause of hearing. The description of sound may include any characteristic of such sound, including duration, level and frequency.

Vessel means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water irrespective of the method of operation or propulsion.

Weekday means any day Monday through Friday which is not a legal U.S. holiday.

Section 12-7. Prohibited acts.

- A. *In general.* No person shall make, continue, or cause to be made or continued, or allow anyone or anything under his or her control to make or cause any noise disturbance. The following acts, among others not herein listed, and the causing thereof, are declared to be in violation of this article, but said enumeration shall not be deemed to be exclusive, namely:
1. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:
 - a. Between the hours of 12:00 midnight and 7:00 a.m. the following day, or at any other time, inside or outside of a building or structure, in such a manner as to create a noise disturbance across a real property boundary at twenty five (25) feet in a residential area and two hundred (200) feet in a commercial area except for special events open to the public and for which the New Buffalo City Council has approved; or
 - b. In such a manner as to create a noise disturbance at twenty five (25) feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a vessel on public waters; or
 - c. In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.
 2. Owning, possessing or harboring any animal or bird which frequently or for continued duration, howls, barks, meows, squawks, or makes other sounds which create a noise disturbance across a residential real property boundary at twenty five (25) feet.
 3. Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work by the property owner or tenant:
 - a. Between the hours of 10:00 p.m. and 7:00 a.m. the following day such that the sound there from creates a noise disturbance across a residential real property boundary at twenty five (25) feet, except for emergency work.
 4. Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or vessel in such manner as to cause a noise disturbance across a residential real property boundary at twenty five (25) feet.
 5. Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary at twenty five (25) feet or in a public space between the hours of 11:00 p.m. and 7:00 a.m. the following day.

6. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snow blower, or similar device used outdoors in residential areas, by property owner or tenant, between the hours of 10:00 p.m. and 7:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary at twenty five (25) feet.
 7. Playing or permitting the playing of basketball, hockey or other recreation outdoors in residential areas between the hours of 10:00 p.m. and 7:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary at twenty five (25) feet.
 8. The sounding of any horn or signaling device on any automobile, motorcycle, vessel or other vehicle on any street, public water or public place of the City, except as a danger warning.
 9. Yelling, shouting, hooting, whistling or singing on any public street, particularly between the hours of 10:00 p.m. and 7:00 a.m. the following day, or at any time or place so as to annoy, 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.
 10. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, vessel or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises there from.
 11. The use or operation upon any street, alley or public place of a sound truck, amplifier or loud speaking device of any kind.
- B. *Rebuttal presumption.* If any vehicle is witnessed to have violated the provisions subsections A(1)(b)., A(8) or A(10) of this section and the identity of the operator is not otherwise apparent, it shall be a rebuttable presumption that the person or persons in whose name such vehicle is registered committed the violation. If the vehicle which is involved in the violation is registered in the name of a rental or leasing company and the vehicle is rented or leased to another person at the time of the violation, the rental or leasing company may rebut the presumption by providing the peace officer or prosecuting authority with a copy of the rental or lease agreement in effect at the time of violation. No prosecuting authority may bring any legal proceedings against a rental or leasing company under this section unless prior written notice of the violation has been given to that rental or leasing company by registered mail at the address appearing on the registration and the rental or leasing company has failed to provide the rental or lease agreement copy within fifteen (15) days of receipt of such notice.
- C. At any time the City Manager/Zoning Administrator, Code Enforcement Officer, Police Chief and/or any duly sworn or appointed officers under their direction may ask that the noise disturbance be reduced in volume or to cease. Failure to comply will be deemed a violation of this article and shall be subject to section 12-9 and 12-10 of this article.

Section 12-8. Exceptions.

- A. The following acts are declared exempted from the operation of sections 12-7, namely:
1. The operation of emergency and police vehicles responding to calls for service, and the operation of emergency equipment thereto;

2. The conduct of any police, military, city, administration, or emergency services exercise, simulation or training;
3. Highway, street, and utility maintenance and construction;
4. Necessary excavations or repairs of bridges, streets or highways, or any public utility installation by or on behalf of the City, or any public utility or any agency of the State, when the public safety, welfare and convenience necessitates the performance of the work at such time.
5. The conduct of any parade, march, carnival, circus, show, fair, festival, bazaar or special event having obtained the required approval, subject to any terms set forth, by the New Buffalo City Council, and otherwise complying with the provisions of this Code.

Section 12-9. Seizure of evidence.

The City of New Buffalo Police Department shall have the authority to seize as evidence any device which produces, reproduces, or amplifies sound, or which is operated, permitted to operate, played or used by any person to violate Section 12-7.

Section 12-10. Penalty for division.

- A. A person who violates any section of this division shall be guilty of a Civil Infraction and shall be subject to the following penalties which shall be assessed in addition to any other lawful sentence that the sentencing court may impose:
 1. Notwithstanding the civil fines schedule set forth in Section 1-6 of the City Code of Ordinances, violation of this Chapter shall be punishable by a civil fine of \$150.00 (if first offense), \$500.00 (if second offense), or \$1500.00 (if third offense), plus costs and all other remedies available pursuant to the City Code of Ordinances or by statute.
 2. The cost of enforcement and prosecution shall be the actual amount of attorney fees and costs of enforcement. An itemized bill of fees and costs given under oath shall be prima facie evidence of the attorney fees and costs.
 3. In addition, as an alternate remedy, the City shall have the authority to proceed in any Court of competent jurisdiction to obtain an injunction, restraining order, or other appropriate remedy to compel compliance with this ordinance. Election of one of the foregoing remedies shall not preclude the application of other remedies.

Sections 12-11 thru 12-16. Reserved.

Article III. Nuisance

Section 12-17. Definition.

A nuisance shall be deemed whatever annoys, injures, or endangers the safety, health, comfort, repose or tranquility of the public; offends public decency; interferes with or obstructs and renders dangerous any street, highway, lake, river or stream; or in any way renders the public insecure in life and property. All such conditions are hereby declared to be public nuisances.

Section 12-18. Public nuisance prohibited.

It shall be unlawful for any owner, land contract vendee, vendor or lessee, or occupant of any premises to maintain a public nuisance on either public or private property anywhere in the City.

Section 12-19. Nuisance parties.

It shall be unlawful for anyone in the City of New Buffalo to have a nuisance party. A nuisance party is a gathering of people on property that results in any of the following occurring at the site of the gathering, on neighboring property or on an adjacent public property or street:

1. Unlawful sale, furnishing, possession or consumption of alcoholic beverages;
 2. Violation of any of the provisions of Article II of this chapter (noise);
 3. Fighting;
 4. Property damage;
 5. Littering;
 6. Outdoor urination or defecation in a place open to public view;
 7. The standing or parking of vehicles in a manner that obstructs the free flow of traffic;
 8. Conduct that threatens injury to persons or damage to property;
 9. Unlawful use or possession of marijuana or any drug or controlled substance;
 10. Trespassing; or
 11. Indecent exposure.
- B. *Nuisance parties prohibited.* It shall be unlawful for any person having the right to possession of any premises, whether individually or jointly with others, to cause or permit a gathering on the premises to become a nuisance party.
- C. *Police order to disperse.* Any duly sworn law enforcement officials are authorized to order those attending a nuisance party to disperse. It shall be considered a violation of this section for any person not domiciled at the site of the nuisance party to fail or refuse to leave the premises immediately after being ordered to leave by any duly sworn law enforcement official.
- D. *Penalty.* A person(s) who violates section 12-19 either by direct violation, or by giving permission to, or allowing by silent consent, or allowing by not prohibiting, or allowing by failure to exercise control of a nuisance party shall be guilty of a Civil Infraction and shall be subject to the following penalties which shall be assessed in addition to any other lawful sentence that the sentencing court may impose:
1. Notwithstanding the civil fines schedule set forth in Section 1-6 of the City Code of Ordinances, violation of this Chapter shall be punishable by a civil fine of \$150.00 (if first offense), \$500.00 (if second offense), or \$1500.00 (if third offense), plus costs and all other remedies available pursuant to the City Code of Ordinances or by statute.
 2. The cost of enforcement and prosecution shall be the actual amount of attorney fees and costs of enforcement. An itemized bill of fees and costs given under oath shall be prima facie evidence of the attorney fees and costs.
 3. A person who violates Section 12-19(A)(2) may also be subject to Sections 12-9 and 12-10 of this Chapter.

4. In addition, as an alternate remedy, the City shall have the authority to proceed in any Court of competent jurisdiction to obtain an injunction, restraining order, or other appropriate remedy to compel compliance with the within ordinance. Election of one of the foregoing remedies shall not preclude the application of other remedies.

Section 12-20. Certain public nuisances enumerated.

The following acts, equipment, apparatus, and structures are hereby declared to be public nuisances per se, however, this enumeration shall not be deemed to be exclusive:

- A. Storing, etc. vehicles. The storing or parking of any motor vehicle, or body or chassis of a motor vehicle, not bearing a currently valid motor vehicle license registration plate; or which is being dismantled for its parts; or which has main component parts missing or unattached, or any licensed or unlicensed semi-trailer, whether attached to a tractor or not, excluding facilities licensed by the state for such use and located in an appropriately zoned district, is hereby declared to be a nuisance and prohibited, unless such vehicle, body or chassis is enclosed in a building or other enclosure so as not to be visible from surrounding property, and the owner or occupant of any property upon which such parking or storage exists shall be deemed to have permitted the same; provided, however, that a reasonable number of such vehicles, excluding semi-trailers, may be kept for sixty (60) days on the premises of businesses regularly engaged in body and vehicle repairs.

The maximum number of such vehicles which is considered reasonable shall be determined by the gross square footage of the building housing such a business at a rate of one (1) such vehicle for each one thousand (1,000) square feet of gross area of the building housing such a business. However, in no event will more than three (3) vehicles be permitted. Vehicles in excess of the number which has been found to be reasonable and any semi-trailers shall be removed within fifteen (15) days after the personal delivery or mailing of notice by certified mail to the person, firm, or corporation which owns or operates said premises, or a violation of this Chapter shall exist.

- B. Owners and occupants responsible for premises being kept clean, etc. All persons who own, manage, lease, rent, or occupy any premises whatsoever shall be equally responsible for keeping such premises in a clean and habitable condition and shall take all necessary precautions to prevent any nuisance as herein declared, or condition detrimental to public health from arising thereon, and particularly to take all reasonable precautions to prevent the throwing, placing, depositing, or leaving on any street, highway, alley, public place, or on any private place or premises any garbage, refuse, papers, tin cans, bottles, glass, rubbish, ashes, junk, inoperable machinery, or abandoned households goods or effects, where such throwing, placing, or depositing is likely to be dangerous or detrimental to public health, or likely to cause sickness or attract flies, insects, or rodents. Every person shall comply with such rules and regulations for the storage, collection, and pickup of garbage as may be established and published by the City Council from time to time.
- C. Fires and burning. No person shall kindle any fire within the City, except within a fire resistant fireplace, stove, or barbecue grill. The burning of refuse, garbage, rubbish, yard waste, or other similar materials (as defined within Section 15-2 of this Code) in open barrels, containers, enclosures, or upon any open space is expressly prohibited, excluding wood or charcoal which is to be used exclusively within a fire resistant fireplace, stove, or barbecue grill.
- D. Littering of streets, parks, playgrounds, etc. The littering of public streets, alleys, roadways, parking areas, playgrounds, school and church yards, cemeteries, parks, beaches, camping areas, or other public places is hereby expressly prohibited. No person shall throw, place, deposit, or leave any garbage, refuse, papers, tin cans, bottles, glass, rubbish, ashes, junk, inoperable machinery, or abandoned household goods or effects in any of the aforementioned places or in any public place, except in trash containers expressly provided for that purpose.
- E. Smoke, soot, cinders, noxious acids, fumes, fly ash, and gases prohibited. No person shall permit or cause the escape of such quantities of smoke, soot, cinders, noxious acids, fly ash, fumes, and gases in such place or manner as to be detrimental to any person or to the public or to endanger the health, comfort, or safety of any such person or of the public or in such manner as to cause or have a tendency to cause injury or damage to property or business.

- F. Blocking of streets and sidewalks. Any use of the public streets or sidewalks which causes large crowds to gather or obstructs the free use of the streets or sidewalks, without first obtaining a permit from the City Council as prescribed in Chapter 13 of this Code, shall be deemed a public nuisance.
- G. Dangerous or damaged structures, excavations, ponds, or pools of water. All buildings, walls, and other structures which have been damaged by fire, decay, or otherwise, and all excavations remaining unfilled or uncovered for a period of thirty (30) days or longer, and all pools of stagnant water which are situated so as to endanger the safety of the public and to attract or endanger children are deemed to be a public nuisance.
- H. Open storage. The open storage of building materials, supplies, construction machinery, and equipment of any kind or sort whatsoever on any occupied or unoccupied lot in a residential zone is prohibited, except as may be permitted during a specified construction period as shown by a valid and existing building permit given for the erection, alteration, or repair of a building on the site where such materials and equipment are stored. The open storage of goods, supplies, furnishings, furniture, except for lawn or patio furniture during the season, household or household goods and effects whatever kind is also declared to be a nuisance and expressly prohibited on any occupied or unoccupied lot in a residential zone.
- I. Unfinished buildings or structures. It shall be unlawful to permit any unfurnished building or structure for which certificate of occupancy and compliance has not been given wherein construction, alteration, or repair was begun under a valid building permit, or where such construction, alteration, or repair was begun in an unauthorized manner or where such structures were moved upon the premises, to stand unfinished or uncompleted where such use shall constitute a menace to public health and safety or create an unreasonable detraction from the quality of the neighborhood so as to result in blight, deterioration, and the depressing of property values in the vicinity.
- J. Owner, etc., to keep dwelling, etc., inhabitable condition, etc. Every building, dwelling, or structure, including garages and outbuildings, shall be kept by the owner, land contract vendee, or occupant thereof in a clean, neat, sanitary, structurally sound, and habitable condition in order to prevent the premises from becoming a nuisance. It shall be unlawful for any such owner, land contract vendee, or occupant to allow a building to become abandoned and dilapidated by improper maintenance, or permit weeds or other vegetation to grow, and trash, rubbish, or refuse to accumulate on the property. Such owner or occupant shall be responsible for maintaining suitable and safe means of ingress and egress, for preventing fire hazards, for adequate sanitary facilities on the premises, for preventing overcrowding and for providing proper ventilation and light. Whenever such dwelling shall be deemed uninhabitable, or unusable as hereinafter provided, it shall thereupon be deemed a public nuisance.
- K. Maintenance of vacant commercial, etc., buildings. The owner, land contract vendee, or other person legally responsible shall have the duty to maintain any empty, unused, or unrented commercial or industrial buildings in a neat, clean, and structurally sound manner to prevent the premises from becoming a nuisance. Such vacant buildings shall have all windows glazed or neatly boarded up and shall be kept securely locked at all times. It shall be the owner's responsibility to keep the building free from all signs and posters not specifically authorized by such owner.
- L. Other nuisances. All other acts, equipment, apparatus, or structures that may be deemed to be a nuisance by virtue of interference with public health, safety, moral and general welfare, which shall disturb the peace, comfort, or tranquility of any person or the public, or interfere with the use, enjoyment, and benefit of property so as to depress property values and result in blight, deterioration or interfere with the normal conduct of business, shall be deemed a public nuisance. [formerly Ord. 135, 2/13/2002]
- Casinos or other gaming establishments are deemed to be public nuisance as previously defined in this paragraph. Gaming establishments as those selling Michigan State Lottery, church or other non-profit organizations fund-raising events as Las Vegas style gaming are not deemed to be public nuisances as previously defined. [formerly Ord. 117, 8/18/1998]
- M. Waste collection hours. Waste collection service activities, including obtaining and removing waste, garbage, rubbish, trash, bulk waste, and/ or recyclable materials from dumpsters, cans, bins, receptacles, and/ or similar containers, or bulk waste within a container or not, shall be an unlawful public nuisance when such activity is not conducted between the hours of 7:00 AM and 6:00 PM, Eastern Time. [formerly Ord. 187, 11/25/2008]

- N. Yard care hours for contractors. All yard care performed by contractors which is not performed between the hours of 7:00 AM and 7:00 PM Eastern Time on weekdays and between the hours of 7:00 AM and 5:00 PM Eastern Time on Saturdays shall be an unlawful public nuisance. All yard care performed by contractors on Sundays shall be an unlawful public nuisance. For the purposes of this subsection yard care shall include all activities related to the planting, maintaining, trimming, cutting, gathering, and/ or removing of live, dead, or pieces of vegetative matter, including but not limited to grass, trees, shrubs, bushes, flowers, weeds, and noxious vegetation. [formerly Ord. 188, 2/17/2009]

Section 12-21. Procedure for abatement - Service of certain notices.

Notice regarding the abatement of any nuisance prohibited by this Chapter, the expense of which, if performed by the City, may be assessed against the premises under the provisions of this Chapter, shall be served:

- A. By delivering the notice to the owner, land contract vendee, vendor, lessee or occupant, or other person legally responsible personally or by leaving the same at their residence, office, or place of business with some person of suitable age and discretion; or
- B. By mailing such notice by certified or registered mail to the owner of record at their last known address; or
- C. If the owner is unknown, by posting such notice in some conspicuous place on the premises at least ten (10) days before the action concerning which the notice is given is required or is to occur.

Section 12-22. Same - Dangerous and uninhabitable structures.

- A. Condemnation after investigation. Report, recommendation, notice and hearing. The City Council may, after investigation and a report and recommendation made by either the City Manager, Fire Chief, Building Inspector, Ordinance Enforcement Officer, or County sanitarian, or any or all of such officials, and after notice to the owner or land contract vendee, vendor or lessee, and after holding a public hearing thereon, condemn dangerous or uninhabitable structures by giving notice to the owner or land contract vendee of the land upon which structure is located, specifying in what respects such structure is a public nuisance and requiring such owner to alter, repair, tear down, or remove the same and clear and clean up the site within such reasonable time, not exceeding ninety (90) days, as may be necessary to do, or have done, the work required by such notice. Such notice shall also provide a reasonable time within which such work shall be commenced.
- B. Unlawful to occupy condemned premises. It shall be unlawful for any person to occupy or use premises condemned by the City Council until the same is put into a safe, structurally sound, sanitary, and habitable condition.
- C. Abatement. If, at the expiration of the time limit in the notice relating to dangerous or uninhabitable structures, the owner or land contract vendee has not complied with the requirements thereof, or in any case where the owner of the land or of the building or structure itself is not known or cannot be located after a diligent search the City Council may order such nuisance abated either by the proper department of the City or by contract with a private person qualified to do such work, and the cost of such abatement may be assessed against the lot, premises, or description of real property upon which such hazard or nuisance was located.

Section 12-23. Same - Other nuisances generally.

- A. Notice shall be required, as provided by Section 11-4, only in those cases where the cost of abating the nuisance is to be assessed against the owner of the lot or premises where such nuisance is located for failure to comply with the notice and order of abatement.
- B. No public hearing shall be required unless private property is to be condemned, razed, and removed from the lot or premises upon which a public nuisance exists.

Section 12-24. Additional Remedies.

The City Council and the duly authorized attorney for the City may prosecute violators under the provisions of this Chapter, order the abatement of such nuisances, and for failure to comply with such order, after a public hearing thereon, the City may cause the nuisance to be removed and assess the costs thereof against the owner, vendee, vendor, lessee or occupant of the premises, or proceed in any court of competent jurisdiction for an injunction, mandamus, abatement, or any other appropriate action for the enforcement of this Chapter. The City Council and the duly authorized attorney for the City, or any owners of property affected by a public nuisance, may institute injunction, mandamus, abatement, or any other appropriate action or proceedings to prevent, enjoin, or abate any unlawful nuisance. Should the City receive an Order of Demolition of a dangerous and uninhabitable structure, the City may place a lien on the property for its actual costs of removal, plus actual attorney fees and costs. Such a lien would be placed on the next tax bill for the property as a special assessment. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.

Section 12-25 thru 12-30. Reserved

Article IV. Miscellaneous

Section 12-31. Barbed wire fences, etc.

It shall be unlawful for any person to erect or place any part of any fence composed in whole or in part of barbed wire or thorn hedge within two (2) feet of any sidewalk lying in any street, alley, or highway, or being the owner or occupant thereof, knowingly to permit any such fence, or any part thereof, to be placed, erected, maintained, or to encroach by growth or decay or otherwise, within such distance of two (2) feet of any such sidewalk, or knowingly to allow any part of any fence owned or occupied by them to overhang or encroach upon any such sidewalk.

Section 12-32. Curfew – Person (s) under seventeen (17) years age. [formerly Ord. 129, 11/21/2000]

It shall be unlawful for any person under the age of seventeen (17) to be on any public street or in any public place in the City during the hours 11:00 P.M. to 6:00 A.M. unless accompanied by their parent or guardian or without having in their possession a written permit signed by their parent or guardian stating the place (s) and time (s) they are allowed to go.

Section 12-33. Disorderly persons generally.

No person shall, within the City, be a disorderly person as defined by Act 328 of the Public Acts of 1931, as amended.

Section 12-34. Driving, etc., along shores of Lake Michigan.

Except as otherwise expressly provided in this Section, it shall be unlawful for any person to drive, propel, locate, or in any manner permit the location, driving, or propulsion of any power or motor driven vehicle along the shores of Lake Michigan. The lake shores of Lake Michigan are hereby defined to be that land which lies northerly of the northerly line of any property platted or unplatted to the water's edge of Lake Michigan and bounded to the east and west by the corporate lines of the City.

It is provided, however, that any such power or motor driven vehicle may traverse along the forbidden area above described if such vehicle is specifically permitted to do so by a permit issued by the Chief of Police of the City, or is a vehicle involved in the performance of duties and/or projects for a department or duly authorized representative of the City.

Section 12-35. Fireworks and explosives - Exploding without permit.

No person shall, within the City, explode any fireworks or explosives without a written permit from the City Manager.

Section 12-36. Liquor - Consuming or offering prohibited in certain places.

No person shall, within the City, consume alcoholic liquor, or offer alcoholic liquor to another person, on any street, sidewalk, alley, public building, public park, public beach, school grounds, church property, or in any automobile while parked or being driven on any street in the City.

Section 12-37. Nude swimming or bathing.

No person shall, in the City, swim or bathe nude in any public place.

Section 12-38. Resisting, obstructing, etc., City officers; rescuing persons apprehended for violations.

If any person shall assault or resist the Chief of Police, police officer, or any other City officer, or shall hinder or obstruct any such officer while in the discharge of their official duty, or shall rescue or attempt to rescue any person apprehended by any such officer for violating any provision of this Code or any ordinances of the City, the City Charter, or any state or federal law, such person shall be guilty of a misdemeanor and subject to the penalties as prescribed by Section 1-7 of this Code.

Section 12-39. Weapons - Discharging firearm or air rifle.

No person shall, in the City, discharge any firearm or air rifle.

Section 12-40. Riding bicycle or skateboard on sidewalk. [formerly Ord. 128, 11/21/2000]

It shall be unlawful for any person to operate or utilize any bicycle, unicycle, skateboard, scooter, roller skates, roller blades, or other similar device on the sidewalks of the City within the following designated area: Whittaker Street and Buffalo Street within the City limits. This prohibition shall apply to sidewalks on both sides of the aforementioned streets as well as the other public areas located therein.

Section 12-41. Marijuana prohibited. [formerly Ord. 134, 1/22/2002]

It shall be unlawful for any person to use, possess, sell, offer to sell or be under the influence of marijuana. For the purposes of this Section, "marijuana" shall have the same definition as that set forth in Article 7 of Act 368 of the Public Acts of 1978 (MCL 333.7106(3)), as amended. Any person who violates this section shall be guilty of a misdemeanor, punishable as provided in Section 1-7 of this Code.

Section 12-42. Drug paraphernalia [formerly Ord. 140, 11/27/2002]

A. Purpose

This ordinance is enacted for the purpose of protecting public health, safety and general welfare of persons and property within the City of New Buffalo, pursuant to the authority granted by State Law and City Charter and Public Health Code (MCL 333.7453), by prohibiting the sale or dispensation of drug paraphernalia used, designed, marketed or intended for use with a controlled substance or substances without an appropriate license from the State of Michigan within the City of New Buffalo, and to provide penalties for the violation thereof.

B. Definitions

Drug Paraphernalia: means any items, equipment, product or material of any kind which is used, designed, marketed or intended for use with a controlled substance.

Controlled Substance: is defined as set forth in the "Controlled Substances Act of the State of Michigan" found at MCL Sec. 333.7101 etc., as amended.

Used, designed, marketed or intended for use with a controlled substance: means that at the time the drug paraphernalia is sold, displayed or otherwise dispensed, the drug paraphernalia either: was primarily designed, adapted or marketed because of its objective physical features, for use with a controlled substance; or was intended by the party selling or dispensing the same for use with a controlled substance.

C. Regulation

Any party who sells, offers, gives, or otherwise dispenses any drug paraphernalia shall be guilty of a misdemeanor. This regulations section shall not apply to parties licensed by the State of Michigan to engage in the activities herein prohibited.

D. Penalties

Unless otherwise stated, any violation of this ordinance shall be punishable as a Misdemeanor. The penalty for a misdemeanor violation shall be a fine not to exceed Five Hundred (\$500.00) Dollars, (plus costs of prosecution) and/or by imprisonment in the County jail for not to exceed ninety (90) days, or both such fine and imprisonment. Each day that a violation continues to exist shall constitute a separate offense.

In addition, as an alternate remedy, the City shall have the authority to proceed in any Court of competent jurisdiction to obtain an injunction, restraining order, or other appropriate remedy to compel compliance with the within ordinance. Election of one of the foregoing remedies shall not preclude the application of other remedies.

E. Severability

Should any part of this ordinance be declared unconstitutional, illegal, or of no force or effect by a Court of competent jurisdiction, such portion thereof shall not be deemed to affect the validity of any other part or portion thereof.

Section 12-43. Structures and gates. [formerly Ord. 115, 3/31/1998]

It shall be unlawful for a person, firm, corporation, association or partnership to establish, maintain or operate, on a private road, any structure, gate or other device for the purpose of impeding access to, egress from, or use by a motor vehicle on said road.

This ordinance shall not apply to any structure, gate or other device erected for the purpose of impeding access to, egress from, or use by a motor vehicle, on a private road which is in lawful existence prior to the adoption of this ordinance.

Section 12-44. Loitering. [formerly Ord. 153, 11/15/2005]

A. In this section the following words and phrases shall have the meanings respectively ascribed to them:

1. Loitering shall mean remaining idle in essentially one location and shall include the concept of spending time idly; to be dilatory; to linger; to stay; to saunter; to delay; to stand around and shall also include the colloquial expressing "hanging around."
2. Public place shall mean any place to which the general public has access and a right of resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

- B. It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone or in consort with others in a public place in such manner so as to:
1. Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians
 2. Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon and thereto.
 3. Obstruct the entrance to any business establishment, without so doing for some lawful purpose, if contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.
- C. When any person causes or commits any of the conditions in this section, a police officer or any law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this section.

Section 12-45. Parental responsibility. [formerly Ord. 154, 11/15/2005]

- A. Definitions. As used in this ordinance:
1. Delinquent Acts means those acts which violate the laws of the United States, or the statutes of the State of Michigan or the Ordinances of the City of New Buffalo, or those acts which would cause or tend to cause the minor to come under the jurisdiction of the juvenile division of the Probate Court as defined by law. but does not include traffic violations.
 2. Minor means any person under the age of eighteen (18) years residing with a parent.
 3. Parent means mother, father, legal guardian and any other person having the care or custody of a minor or any person acting in the parent's stead who has custody or control of the minor.
 4. Illegal Drugs means controlled substances obtained without a legal prescription.
 5. Juvenile Delinquent means those minors whose behavior interferes with the rights of others or menaces the welfare of the community.
- B. Parental Duties.
1. It is the continuous duty of the parent of any minor to exercise reasonable control to prevent the minor from committing any delinquent act.
 2. Included (without limitation) in this continuous duty of reasonable parental control are the following parental duties:
 - a. To keep illegal drugs or illegal firearms out of the home and legal firearms locked in places that are inaccessible to the minor;
 - b. To know the curfew ordinance of the City of New Buffalo and to require the minor to observe it,
 - c. To require the minor to attend regular school sessions and to forbid the minor to be absent from class without parental or school permission,

- d. To arrange proper supervision for the minor when the parent must be absent;
- e. To take the necessary precautions to prevent the minor from maliciously or willfully damaging or destroying any real, personal, or mixed property which belongs to the City of New Buffalo, or is located in the City of New Buffalo;
- f. To forbid the minor from keeping stolen property, illegally possessing firearms or illegal drugs, or associating with known juvenile delinquents, and to seek help from appropriate governmental authorities or private agencies in handling or controlling the minor, when necessary.

C. Notification of Parents; Record of Notification.

- 1. Whenever a minor is arrested or detained for the commission of any delinquent act within the City of New Buffalo, the parent of the minor shall be immediately notified by the City of New Buffalo, advising the parent of such arrest or detention, the reason therefore, and the parent's responsibility under this ordinance.
- 2. A record of such notifications shall be kept by the City of New Buffalo Police Department.

D. Parental Violation and Penalty.

- 1. If a minor commits a delinquent act, the parent shall be guilty of a violation of this ordinance if it is proven that any act, word, or non-performance of parental duty by the parent encouraged, contributed toward, caused, or tended to cause the commission of the delinquent act by the minor.
- 2. Any parent who violates the provisions of this ordinance, in addition to the other provisions of this ordinance, is responsible for a civil infraction, subject to payment of a civil fine of not less than Fifty (\$50.00) Dollars or more than Five Hundred (\$500.00) Dollars, plus costs and other sanctions, for each infraction. Repeat offenses shall be subject to an increased civil fine as follows:

- a. The fine for any offense which is a first repeat offense shall be not less than Two Hundred Fifty (\$250.00) Dollars, plus costs and other sanctions.
- b. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than Five Hundred (\$500.00) Dollars, plus costs and other sanctions.

A repeat offense means a second (or any subsequent) violation of this ordinance

(i) Committed by a person within any six (6) month period and

(ii) For which the person admits responsibility or is determined to be responsible.

Each day on which any violation of this ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

- E. Restitution. In addition to any civil penalty imposed pursuant to this ordinance, the Court may order the parent to pay restitution to a victim of the minor's conduct. The amount of the restitution ordered pursuant to this ordinance shall not exceed \$2,500.00.

- F. Severability. The provisions of this ordinance are severable, and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect the remainder of the ordinance, which shall continue in full force and effect.

SECTION III. This ordinance was adopted on the ____ day of _____, 2013, and shall become effective on the ____ day of _____, 2013, which date is 20 days following publication in the New Buffalo Times, a newspaper of general circulation within the City of New Buffalo.

CITY OF NEW BUFFALO, BERRIEN COUNTY, MICHIGAN

Warren Peterson, Mayor

Ryan Fellows, Acting City Clerk