

CHAPTER 96: NUISANCES; WEEDS

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WEEDS

§ 96.01 SHORT TITLE.

This chapter shall be cited as the Weed Ordinance.

§ 96.02 JURISDICTION.

The jurisdiction of this chapter shall apply to properties within the City of Rushville.

(Am. Ord. 2014-22, passed 9-2-2014)

§ 96.03 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PROPERTY OWNER. Any person having a legal or equitable title in the real estate or premises.

WEEDS, GRASSES and RANK VEGETATION.

(1) **RANK VEGETATION.** Any plant exceeding ten inches in height. Trees, shrubberies, flowers, ornamental grasses, and agricultural crops are not to be considered **RANK VEGETATION** unless they constitute an extreme deviation from the aesthetic appearance of the existing neighborhood or cause an immediate safety hazard.

(2) **NOXIOUS WEEDS** shall include:

- (a) Canada thistle (*Cirsium arvense*);
- (b) Johnson grass and *Sorghum album* (*sorghum halepense*);
- (c) Bur cucumber (*sicyos angulatus*);
- (d) Shattercane (*sorghum bicolor* (L.) Moench spp. *Drummondii* (Steud.) deWet);
- (e) Poison ivy;
- (f) Poison sumac;
- (g) Poison oak;
- (h) Quackgrass (*Elytrigia repens*);
- (i) Carolina horsenettle (*Solanum carolinense*);
- (j) Cocklebur (*Xanthium strumarium*);
- (k) Wild mustard (*Brassica kaber* var. *pinnatifida*).

(3) **WEEDS, GRASSES and RANK VEGETATION** is the uncontrolled, uncultivated growth of annuals and perennial plants.

(4) **WEEDS, GRASSES or RANK VEGETATION** does not include shrubs, trees, cultivated plants or crops.

(Am. Ord. 2014-22, passed 9-2-2014)

§ 96.04 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.

All property owners within the corporate limits of the city shall be required and be financially responsible for the removal, cutting, or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of ten inches in average height, and in no event, exceeds 15 inches maximum height on at least 20% of the surface area of the property.

§ 96.05 FILING COMPLAINT.

(A) Any person, including the city, who believes there is a property which has growing plant matter in violation of this chapter, shall notify the Code Enforcement Officer.

(B) The Code Enforcement Officer or his or her designee shall investigate all complaints regarding violations of this chapter.

(Am. Ord. 2014-22, passed 9-2-2014)

§ 96.06 NOTICE OF VIOLATIONS.

(A) If it is determined that a violation exists the Code Enforcement Officer shall issue written notice of the violation to the property owner of record as listed on the property ownership records in the Rush County Auditor's Office.

(B) Service of this notice is adequate if personally delivered to the owner of the property in person, or sent by first-class mail.

(C) The notice shall specify the date, but not less than ten calendar days in which the weeds, grass and/or rank vegetation are to be cut, mowed and removed from the property.

(D) Written notice to abate the violation shall include:

(1) Address of the affected property, legal description is not required;

(2) Description of what constitutes the violation;

(3) Statement of the action necessary to abate the violation;

(4) Statement that if the violation is not abated and no request for a hearing is made within the prescribed timeframe, the city will abate the violation and assess the cost of the abatement against the property as set out in § 96.06.

(Am. Ord. 2011-10, passed 7-19-2011; Am. Ord. 2013-12, passed 8-20-2013; Am. Ord. 2014-22, passed 9-2-2014)

§ 96.07 APPEALS.

(A) The property owner may file a written appeal of the violation notice or invoice for cost incurred to abate the violation with the Code Enforcement Officer within two days of receipt excluding days city offices are not open to conduct business. It is the property owner's responsibility to demonstrate that the property in question is not in violation of this chapter.

(B) An appeal by a property owner shall be brought before the Board of Works and shall be decided by a majority vote of the members of the Board of Works in attendance and such being at a regularly scheduled or special meeting of the Board of Works.

(Am. Ord. 2014-22, passed 9-2-2014)

§ 96.08 ABATEMENT.

(A) In the event the property owner fails to comply with the written notice within the prescribed timeframe and an appeal has not been filed within the prescribed timeframe, the city or its hired contractor may enter the property in violation of his chapter and abate the violation.

(B) The city may use city employees or outside contractors to abate violations of this chapter.

(C) When the city uses city employees to abate a violation of this chapter, the city shall establish an appropriate hourly rate based on the employee's rate of pay, equipment used by the city, as well as supplies or chemicals used in the abatement of the violation.

(Am. Ord. 2014-22, passed 9-2-2014)

§ 96.09 CONTINUOUS ABATEMENT.

(A) The city may issue a continuous abatement notice on a property if the initial notice of abatement was delivered in person upon the property owner or by first-class mail. A continuous abatement notice may be posted on the property at the time of abatement instead of by personal delivery or first-class mail.

(B) A continuous abatement notice serves as notice to the property owner that each subsequent violation during the same year for

which the initial notice of the abatement was provided may be abated by the city.

(Ord. 2014-22, passed 9-2-2014)

§ 96.10 LIABILITY.

(A) The property owner is responsible for all costs incurred in the abatement of the violation, including all collection costs associated with the abatement of the violation, including, but not limited to, court costs, attorney's fees and interest on any unpaid amounts incurred by the city.

(B) The city shall send an invoice to the owner by personal hand delivery or by first- class mail. The invoice shall include all costs incurred, including administrative costs and removal costs in the abatement of the violation. All payments for these costs shall be paid to the Clerk-Treasurer and shall be deposited into the General Fund.

(C) The property owner shall pay these costs to the Clerk-Treasurer not later than ten days, excluding days the city is not open to conduct business, after the date contained on the notice.

(D) If the property owner fails to pay the incurred costs, the Code Enforcement Officer shall certify the cost of the invoice and any additional costs incurred to certify the invoice, to the Rush County Auditor. The total amount certified shall be placed on the tax duplicate for the property and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the General Fund for the city.

(E) If the property owner fails to pay an invoice issued by the city within the timeframe specified, the city may bring action in an appropriate court to collect the amount of the invoice, plus any additional costs incurred in the collection, including court costs and reasonable attorney's fees. With respect to any judgment obtained under this division (E), the city may obtain a lien in the amount of the judgment on any real or personal property of the owner.

(Am. Ord. 2014-22, passed 9-2-2014)

§ 96.11 ADDITIONAL AUTHORITY TO ABATE.

(A) The city may abate, without notice, weeds, grasses and/or rank vegetation that has grown higher than ten inches and are an immediate danger to the health, safety or welfare of any person.

(B) No later than five days after the date the city abates the violation of this chapter, the city shall give notice to the property owner by hand delivery or first-class mail. The notice shall contain:

(1) Address of affected property, legal description is not required;

(2) Description of the violation;

(3) Statement that the city abated the violation; and

(4) Statement that the property owner has the right to request a hearing before the Board of Works concerning the abatement within 15 days of the abatement.

(C) If a written request for a hearing is filed within the specified timeframe, the city shall conduct the hearing on the abatement of the violation at the next regularly scheduled meeting of the Board of Works.

(D) The owner may testify or present any witnesses or written information relating to the abatement of the violation.

(E) The property owner is responsible for all costs incurred in the abatement of the violation as set out in § 96.10.

(Ord. 2011-12, passed 9-20-2011; Am. Ord. 2014-22, passed 9-2-2014)

NUISANCES

§ 96.20 DEFINITIONS.

For purposes of this subchapter the following definition shall apply unless the context clearly indicates or requires a different meaning.

NUISANCE. The doing of an unlawful act, or the omitting to perform a duty that either:

- (1) Injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway sidewalk, stream, ditch or drainage;
- (4) In any way renders any other person insecure in life or the use of property;
- (5) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others;
- (6) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;
- (7) Any building, structure or other place or location where any activity which is in violation of local, state or federal laws is conducted, performed or maintained;
- (8) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;
- (9) Any abandoned vehicle;
- (10) Any machinery not connected with the operation of a household, equipment, including but not limited to refrigerators with doors intact, in any open or unfenced areas, or in any building or structure to which the public has access.

(Ord. 2011-12, passed 9-20-2011)

§ 96.21 ILLUSTRATIVE ENUMERATION.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be construed to be conclusive, limiting or restrictive:

- (A) Vegetation which has attained a height of 12 inches or more and has not been cut, mown or otherwise removed from private property which is abandoned, neglected or disregarded; vegetation planted for some useful or ornamental purpose is excepted from this definition.
- (B) Vegetation, trees or woody growth on private property which, due to its proximity to any governmental property, right-of-way or easements, interferes with the public safety or lawful use of their governmental property, right-of-way or easement.
- (C) A condition which causes property to become a health or safety hazard, unless specifically authorized under existing laws and regulations.
- (D) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things.
- (E) Any condition which provides refuge for rats, mice, snakes and other vermin.
- (F) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.
- (G) All unnecessary or unauthorized noises and annoying vibrations.
- (H) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
- (I) The carcasses of animal or fowl not disposed of within a reasonable time after death.
- (J) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.

(K) The unauthorized obstruction of any public street, road or sidewalk.

(Ord. 2011-12, passed 9-20-2011)

§ 96.22 NUISANCES PROHIBITED.

It shall be unlawful for any property owner, or occupant or other person to allow a nuisance to exist.

(Ord. 2011-12, passed 9-20-2011)

§ 96.23 NOTICE TO ABATE: CONTENTS.

(A) *Notice.* Whenever the Ordinance Enforcer, the City Engineer or their designee finds that a nuisance exists, he or she shall cause to be served upon the property owner, as shown by the record of the County Auditor, a written notice to abate the notice within a reasonable time limit after the notice. The notice shall be sent by personal service or by certified mail to the property owner.

(B) *Contents of notice to abate.* The notice to abate shall contain the following:

(1) A description of what constitutes the nuisances.

(2) The location of the nuisance.

(3) A statement of the act or acts necessary to abate the nuisance.

(4) A reasonable time within which to complete the abatement.

(5) A statement that if the nuisance is not abated as directed and no request for a hearing is made within the time prescribed, the city will abate it and assess the costs against the property owner, with such costs to be a minimum of \$300.

(6) Whenever such costs are recovered by the City of Rushville, they shall then be divided between the Rushville Parks Department Fund and the Unsafe Building Fund with the Parks Department entitled to one-third of such funds plus the cost of repair of any equipment damaged in the process of abating the nuisance.

(Ord. 2011-12, passed 9-20-2011)

§ 96.24 REQUEST FOR HEARING; APPEALS.

(A) Any person ordered to abate a nuisance may have a hearing with the Ordinance Enforcer, in order to determine whether a nuisance does exist. A request for a hearing must be made in writing and delivered to the Ordinance Enforcer ordering the abatement within the time stated in the notice, or it will be conclusively presumed that a nuisance exists that must be abated as ordered.

(B) At the conclusion of the hearing, the Ordinance Enforcer shall render a written decision as to whether a nuisance exists. If he or she finds that a nuisance exists, he or she must order it abated within an additional time of no longer than ten days. An appeal from this decision may be had by immediately filing a written notice within two days with the Ordinance Enforcer. This appeal will be heard before the Board of Public Works and Safety within a reasonable time thereafter at a time and place fixed by the Board of Public Works and Safety. The findings of the Board of Public Works and Safety shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a time reasonable under the circumstances.

(Ord. 2011-12, passed 9-20-2011)

§ 96.25 FAILURE TO ABATE.

(A) The Ordinance Enforcer shall inspect the property after the time limit for abatement, which is specified in the notice to the property owner to determine whether the violation has been abated. If the landowner has failed to abate the violation, then the Ordinance Enforcer, or the designee, may issue to the landowner a citation for an ordinance violation which states the relevant offenses of this subchapter, and the matter may be prosecuted in the appropriate court by the City Attorney.

(B) If the person notified to abate a nuisance neglects or fails to abate as directed, the city may perform the action required to abated, keeping an accurate account of the expenses incurred. An itemized expense shall be certified and filed with the Clerk-Treasurer.

(Ord. 2011-12, passed 9-20-2011)

§ 96.26 COLLECTION OF COSTS OF ABATEMENT.

The Clerk-Treasurer shall send a statement by certified mail of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not paid within one month, the Clerk-Treasurer shall certify the costs to the County Auditor. The amount due shall be collected with, and in the same manner as general property taxes and dispersed into the general fund of the city.

(Ord. 2011-12, passed 9-20-2011)

Statutory reference:

Authority to enter onto real property and correct ordinance violations and obtain a lien for same, I.C. 36-1-6-1

§ 96.27 OTHER POWERS OF BOARD OF PUBLIC WORKS AND SAFETY.

The Board of Public Works and Safety shall, where necessary, designate individuals and institute procedures to carry into force and effect this subchapter.

(Ord. 2011-12, passed 9-20-2011)

§ 96.28 SUBCHAPTER TO BE SUPPLEMENTAL.

The provisions of this subchapter are hereby declared to be supplemental to all other ordinances of the city.

(Ord. 2011-12, passed 9-20-2011)

§ 96.99 PENALTY.

Whoever violates any provision of this chapter for which no other penalty is set forth shall be subject to the penalty provisions set forth in § 10.99 of this code of ordinances and shall in addition, be assessed the costs of removing the weeds and noxious vegetation, shall also be assessed a fee of not less than \$300 plus the cost of any repairs necessitated to the city equipment that is damaged in the process of correcting the violation as provided for by such ordinance. Of those monies collected, one-third shall then be distributed to the Parks Department with the remainder going to the Unsafe Building Fund.

(Am. Ord. 2011-10, passed 7-19-2011)