

Ordinance 2012-004R1

Abatement of Nuisance Property Act

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SECTION 0. Purpose

The purpose of this ordinance is to enable the consistent enforcement for the abatement of nuisance property within the town limits to provide for the health, safety and welfare of its inhabitants.

SECTION 1. Applicability

Applicable equally to all zoning districts, except for land in its natural condition.

SECTION 2. Definitions

The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicated a different meaning:

2.01. Code Enforcement Officer shall mean in the context of this ordinance the Town Administrator

2.02. Grass and weed nuisance mean any abundance of overgrown grass weeds within the town, which is injurious to the general health, safety, and welfare by providing breeding grounds and shelter for rats, mice, snakes, mosquitoes, and other vermin, insects, and pests; or attaining such heights and dryness so as to constitute a fire threat or hazard; bearing wingy or downy seeds, when mature, that cause the spread of weeds and, when breathed, irritation to the throat, lungs, and eyes of the public; or hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property; or being unsightly, or any growth of grass or weeds, other than ornamental growth, which exceeds a height of eight inches upon any lot or parcel of land within any platted, subdivided, or improved residential, commercial, or industrial subdivision, and any growth of grass or weeds, other than ornamental growth, which exceeds a height of 12 inches on property adjacent to a platted, subdivided, or improved residential, commercial, or industrial subdivision.

2.03. Improved subdivision means a division of a tract of land or acreage into tracts or parcels, and the improvement by construction of streets, water lines, and, where applicable, sewer lines to serve the subdivided property.

2.04. Natural condition means uncultivated and unseated land, still in a state of nature; but any growth on land once it has been cleared or plowed is not a natural condition, even though it has not been planted or cultivated by anyone.

2.05. Owner of property means legal titleholder, or lessee, or occupant of property, or agent of legal titleholder or lessee, in charge, possession, or control of the property.

SECTION 3. Exceptions

Excepted from the requirements of this ordinance are:

3.01. Any property which is in its natural condition.

3.02. Any property which is located outside any improved subdivision and is located more than 200 feet from any boundary of any lot or parcel of real estate upon which any dwelling is located, and more than 200 feet from any commercial enterprise.

3.03. Cultivated row crops and garden plants in their respective growing seasons. But this exception applies only to growing crops and garden plants and shall not be construed to permit any crops or garden to become overgrown with grass and weeds in violation of the remaining terms of this ordinance.

3.04. Ornamental shrubbery and ground cover, provided that such uses are part of a landscaping theme and not associated with a general deterioration of the property.

SECTION 4. Prohibited

4.01. Overgrown Condition

It shall be unlawful and a nuisance, in violation of this ordinance, for the owner of any real property situated within the corporate limits of the town to allow such real property to become overgrown with tall grass, or with any weed or plant such as jimson, burdock, ragweed, cocklebur, or other weed of like kind, or any weed or plant bearing wingy or downy seeds, or any weed or plant that is otherwise noxious, dangerous, harmful, or poisonous.

SECTION 5. Maintenance

5.01. It shall be the duty of the owner of any real property located within the town to maintain any grass or weeds growing upon the property in such manner as not to constitute a nuisance.

5.02. The duties and obligations of the owner if any real property located within the town extend to, and include, any such real property situated within a dedicated right-of-way or easement burdening the property, except to the extent that it may be impracticable to do so because of public facilities located there. Such right-of-ways and easements must be maintained by the owner in a manner consistent with the maintenance of the owner's remaining property and within the requirements set forth in this ordinance, except to the extent it may be impracticable to do because of public facilities located there.

5.03. The dedication and existence of a right-of-way for a public road and of an easement for drainage or for public utilities represents the grant of only a limited interest in property and does not change the actual ownership of the property upon which the right-of-way or easement is located.

5.04. The public authority maintains right-of-ways and easements only to the extent necessary to maintain the public facility and to maintain safety. The owner of the burdened property continues to control the property, except to the extent that such control interferes with the public use.

5.05. The public authority does not cut grass, weeds, and other growth upon right-of-ways or easements, except to the extent necessary for operations and safety purposes. All other maintenance is the responsibility of the owner of the property upon which the right-of-way or easement is located.

SECTION 6. Enforcement

6.01. If the owner of real property located within the corporate limits of the town shall fail or refuse to comply with the provisions of this ordinance, the code enforcement officer may, at the Code Enforcement Officer's discretion, cause to be served upon such owner a notice:

A. Delivered, in person or by first class mail, and requiring such owner to comply with this ordinance within a time stated in the notice.

B. Or, to appear for an administrative hearing before the code enforcement officer to determine whether the owner is in violation of this ordinance.

1. The notice shall appraise the owner of the facts of the claims against him and shall name a particular date, time, and place for such hearing.

2. The code enforcement officer and the owner shall have the right to compel attendance of witnesses on his own behalf at such hearing.

6.02. If, after the hearing, the code enforcement officer finds that this ordinance has been violated and a nuisance exists, the owner shall have five days from the hearing date, or five days from the date of the notice sent, by personal service or by first class mail of the code enforcement officer's determination, whichever is the later date, to comply with this ordinance.

6.03. Upon failure of the owner to take the required action, either as stated in the delivered notice, or after the hearing, the code enforcement officer may thereafter institute the following enforcement procedures:

A. The code enforcement officer may take corrective action.

B. The code enforcement officer shall keep an account of the costs of the corrective action and shall render an itemized report in writing to the town council.

C. That cost will include an administrative fee of \$50.00 in addition to costs.

D. The owner shall be notified by first class mail at least five days in advance of the time fixed by the code enforcement officer for the council to receive the report and the owner may appear at that time and present objections, if there are any, to the report.

E. At the time fixed for receiving and considering the report, the town council shall hear the report, together with any objections which may be raised by any of the owners whose property is liable to be assessed for the work and thereupon make such modifications in the report as they deem necessary, after which by motion or resolution the report shall be confirmed.

F. The amounts of the cost for the corrective action mentioned in the report shall constitute special assessments against the land and as such, made and confirmed, shall constitute a lien on the property for the amount of such assessments.

G. After confirmation of the report, a copy shall be turned over to the town clerk, whereupon it shall be the duty of the town clerk to charge the assessments against the respective lots and parcels of land for municipal purposes and thereafter such amounts shall be collected at the same time and in the same manner as ordinary municipal assessments are collected and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal assessments.

6.04. The code enforcement officer working under his own supervision may issue a Municipal Arrest Citation (MAC) to the owner of the property, requiring the owner to appear in the municipal court to answer charges for the violation of this ordinance.

A. The MAC shall name the party charged, the address of the property where the alleged violation is located, and the nature of the offense or violation. It shall also apprise the owner of the date, time, and place at which to appear for court.

B. If found guilty in the municipal court, the owner is subject to the same penalty as provided for violation of town ordinances plus court costs. Such citation, returnable to the municipal court, shall be served on the owner of the property by any enforcement officer.

C. This provision for the issuance of a citation to municipal court shall not prevent any such officer from appearing before a municipal court magistrate and making oath as to the facts and applying for a summons or warrant with respect to any alleged offense, in lieu of issuing a citation.

6.05. The code enforcement officer may institute both enforcement procedures set forth in paragraphs 6.01. and 6.04. of this section. The institute of one procedure does not preclude the subsequent or simultaneous institution of the other procedure, provided the criminal procedure is not used to collect any outstanding civil assessments against the subject property.

SECTION 7. Satisfaction of Liens

Upon payment of the itemized accounts arising under this ordinance, any liens or assessments filed under this ordinance may be marked "Satisfied" and "Paid in Full" by the town clerk.

ADOPTED THIS THE 15TH DAY OF OCTOBER, 2013.

Bob Sentell, Mayor

Attest:

Tawnie Bryant, Town Clerk

