CITY OF WASHINGTON, ILLINOIS
Committee of the Whole Agenda Communication

Meeting Date: September 14, 2020

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Agenda Item: City Mowing Violation Procedures

Explanation: Chapter 96 of the City Code addresses a variety of possible nuisance violations on properties in the city limits. The nuisance code does not allow for grass and weeds to grow on any lot beyond eight inches in height. This is the standard for any property in the city regardless of whether it is improved or not.

Staff tries to actively look for violations, particularly with properties that have been chronic violators. However, like most cities, there will always be a reliance on assistance from residents to bring matters to the attention of staff. Staff always seeks to confirm a violation is in place before seeking abatement. The City Code was amended two years ago to allow for a one-time annual notification to the property owner of the tall grass/weeds violation. The notice gives seven days to abate. If it is not abated following that period, the City notifies its contracted mower to schedule it for completion. Depending on the size of the property and other work orders, it may take as much as a week for the property(ies) to be mowed.

The owner is sent an invoice for the completed work. If not paid, a lien is placed on the property. While the goal has always been to obtain compliance, a fee penalty structure is also utilized as another means to seek abatement. A code amendment suggestion could be to eliminate the one-time annual property owner notification and institute a blanket notice that would allow for the abatement. The Village of Morton has such language.

Fiscal Impact: TBD depending on if any more active City-contracted abatement measures would be in place.

Action Requested: Direction on the enforcement of violations and/or any desired code amendments to Chapter 96.

CHAPTER 96

NUISANCES

§ 96.01 DEFINITION

For the purpose for this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NUISANCE. Any condition or use of premises or building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located. This includes, but is not limited to, the keeping or depositing on, or the scattering over the premises of any of the following:

(1) Lumber, junk, trash, or debris;

(2) Abandoned, discarded or unused objects or equipment such as automobiles or parts, furniture, stoves, refrigerators, freezers, cans, containers, or building materials such as lumber, windows, cement blocks, piping, or wiring;

(3) Any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gases, or attract rodents, vermin, or other disease-carrying pests, animals or insects, provided that the presence of earthworms in a compost pile shall not constitute a nuisance;

(4) Unsanitary matter on premises. It shall be unlawful for any person to keep, or permit another to keep, upon any premises deleterious or septic material, unless such material is retained in containers or vessels which deny access to humans, flies, insects, rodents, or animals.

(5) Weeds such as jimson, burdock, ragweed, thistle, cocklebur, or other weeds of the like kind.

(6) Weeds, grasses, or plants, other than trees, bushes, flowers, or other ornamental plants. It shall be unlawful for anyone to permit any weeds, grasses, plants, other than trees, bushes, flowers, or other ornamental plants to grow to a height exceeding eight (8) inches anywhere in the city; any such plants or weeds exceeding such height are declared to be a nuisance.

(7) Abandoned or inoperative motor vehicles and equipment.

(8) Things interfering with peace or comfort. Sound, animals, or things which interfere with the peace and comfort or disturb the quiet of any person in the city constitute a public nuisance.

(9) Offensive, nauseous, or dangerous things. Anything which is made, permitted, used, kept, maintained or operated, or any building or any animal that is kept in the city or outside of the city but within one-half (½) mile of its limits, in a manner that is offensive, nauseous, dangerous to life, limb, or property or detrimental to the health of the persons residing in that area shall be a public nuisance.

(10) Tanneries, soap factories, and the like. Whoever shall, within the limits of the city, establish or maintain any tallow chandlery, tannery, bone or soap factory, or shall steam, boil, or render any tainted lard, tallow, offal, or other unwholesome animal substance shall be deemed guilty of a nuisance; or whoever shall without the city limits and within one (1) mile thereof, establish or maintain any such chandlery, factory, tannery, or rendery, without first having obtained such permission and consent shall so conduct or carry on any such business as to taint the air and render it offensive or unwholesome, or so as to affect the health or comfort of persons residing in the neighborhood thereof shall be deemed guilty of a nuisance.

(11) Discharge of offensive matter. Whoever shall, within the city, place or throw, or permit to be discharged, or to flow from or out of any house or premises, any filthy, foul, or offensive matter or liquid of any kind, into any street, alley, or public place, or upon any adjacent lot or ground, or shall allow or permit the same to be done by any person connected with the premises, under his control, shall be deemed guilty of a nuisance.

(12) Or any other condition dangerous to health; offensive to community moral standards, unlawfully obstructing the public in the free use of public property; or behavior which unreasonably interferes with the health, safety, peace, comfort or convenience of the general community.

(13) Connection of footing tile or downspouts to the sanitary sewer system. Whoever shall maintain their premises so as to cause, allow, or permit storm water, surface water, ground water, runoff water, subsurface drainage water or the like to be discharged into the sanitary sewer system of the city, by way of downspouts, footing tile, or otherwise, or whoever shall allow or permit the same to be done by any person connected with the premises, under his control, thereby contributing to the backup, surcharge, overflow, or discharge of said sanitary sewer system into or onto the premises of another shall be deemed guilty of a nuisance; whoever shall maintain their premises so as to cause, allow, or permit storm water, surface water, ground water, roof run-off water, subsurface drainage water, or the like to be discharged into the sanitary sewer system of the city, by way of downspouts, footing tiles, or otherwise, or whoever shall allow or permit the same to be done by any

person connected with the premises, under his control, thereby causing or tending to cause substantial diminution in the value of other property in the neighborhood in which such premises are located, shall be deemed guilty of a nuisance.

(14) The various nuisances described and enumerated in this section shall not be deemed to be exclusive, but shall be in addition to all other nuisances prescribed or prohibited by this code and those offenses known to the common law or to the statutes of this state as nuisances.

(Am. Ord. 1502, passed 10-7-86; Am. Ord. 2841, passed 8-3-09)

§ 96.02 DUTY TO MAINTAIN PRIVATE PROPERTY

No person owning, leasing, occupying, or having charge of any premises shall maintain or keep any nuisance thereon nor shall any such person keep or maintain such premises in a manner causing substantial diminution in the value of the other property located in the neighborhood in which such premises are located.

Penalty, see § 96.99

§ 96.03 IMPERMISSIBLE DISCHARGES INTO SANITARY SEWER SYSTEM; ABATEMENT AND OTHER REMEDIES

(A) When the existence of a violation of § 96.01(13) is brought to the attention of the City Administrator, he shall cause an inspection and investigation to be made by the appropriate agencies to determine whether abatement is necessary.

(B) The City Administrator, or any employee duly authorized by him, shall be permitted access to any part of any property where access is necessary for the purpose of inspecting, observing, measuring, sampling, or testing to determine compliance with the provisions of § 96.01(13). If any person should refuse to permit access to the City Administrator, the City Administrator may, with the assistance of the City Attorney, obtain the necessary court order to obtain access.

(C) If the City Administrator finds any violation of § 96.01(13) at the premises of any person, the City Administrator shall notify the owner, occupant, or user of the sanitary sewer system of the city in writing stating the nature of the violation, the time, place, and date of the inspection, and the right of the person to demand a retest as provided for in division (D) of this section, and providing for a reasonable time for abatement to be made. In the absence of unusual circumstances, thirty (30) days shall be considered a reasonable time. An extension of the time to abate any violation may be granted by the City Administrator upon written request signed by the owner, occupant, or user of said sanitary sewer system, acknowledging a violation of § 96.01(13) and promising to abate within a reasonable time.

(D) The owner, occupant, or user of said sanitary sewer system shall, upon request, have an absolute right to a retest in the event a violation is discovered. In order to obtain a retest, it shall be necessary that the owner, occupant, or user notify the City Administrator, in

writing, of the demand for a retest within ten (10) days of the receipt of the notice from the City Administrator of a violation.

(E) If the owner, occupant, or user of the sanitary sewer system does not abate the violation within the prescribed time limit, or any extension thereof, the following abatement remedies, or any of them, may be resorted to by the city:

(1) Abatement by the city. The city may abate the violation, under the direction of the City Administrator, and the cost of so doing shall be collected from the person who is responsible for maintaining, allowing, and permitting the violation to exist, with a penalty of ten percent (10%) of such costs, by filing suit in an appropriate court of competent jurisdiction.

(2) Disconnection of sewer service to premises. The city may abate said violation, under the direction of the City Administrator, by disconnecting or discontinuing sewer service to the premises found to be in violation; including, but not limited to, the capping of the sanitary sewer serving said premises.

(3) Suit to enjoin violation. In addition to the other remedies and penalties provided in this section, the City Attorney is authorized to file appropriate civil actions for a temporary restraining order, temporary injunction, permanent injunction, damages or for contribution, against any person violating this section.

(4) Surcharge bar city. The City Administrator may forward the pertinent information to the City Office Manager with instructions that the premises be surcharged. The surcharge shall be calculated by measuring the perimeter of footage of the dwelling, based upon the outside measurement of the dwelling's foundation. A surcharge of twenty five cents ($0.25) per linear foot so calculated plus ten percent (10%) of the water usage for each billing quarter shall be charged. There shall be no maximum charge for such surcharge calculation. The surcharges shall be billed with the regular periodic statements for water and sewer use and shall be due and payable and be deemed to become delinquent at the same time. That surcharge will be discontinued when proof is submitted to the city of a proper disconnection from the sanitary sewer system.

(F) Any person aggrieved by any notice of the City Administrator under this section may obtain a hearing upon the filing of a written request for such a hearing with the City Administrator. The request for hearing must be filed with the City Administrator within the time allowed for abatement, as provided for in division (C) above. The written request for a hearing shall contain, at a minimum, the following information: the time, date, and place of the original inspection; the time, date, and place of any retest; the name and address of the person requesting the hearing; the address of the premises subject to the abatement request; and a brief statement of the reasons for requesting a hearing. Any such written request will postpone the date for abatement contained in the original notice to abate until after the hearing has been held. The City Administrator shall set the date for the hearing, upon

receipt of a written request for such a hearing, as soon as possible, but not more than fifteen (15) days after the request is received.

(1) The hearing shall be before a board consisting of the City Administrator or his designee of the Public Works Committee, a member of the Planning and Zoning Commission designated by the Mayor, and three residents of the city appointed by the Mayor. The City Administrator shall act as the hearing board's secretary and the Public Works Director shall act as a consultant to the board. The aggrieved person may present any facts or arguments he desires to present, he may be represented by counsel, and he may present such expert testimony or technical evidence as to establish his contentions. Within ten days after the hearing, the board, by a majority vote, may affirm, modify, or reverse any decision of the City Administrator.

(2) Notice of the board's decision shall be mailed to the aggrieved person within three working days after the rendering of the board's decision. The notice shall be sent by the board to the address of the aggrieved person provided in the request for hearing, and shall contain the following information: a short statement describing the board's decision; the period in which abatement, if any, is required, which shall be at least fifteen (15) days but no more than thirty (30) days after said decision is rendered; and a statement describing the aggrieved person's right to appeal to the City Council.

(G) A person aggrieved by any decision of the hearing board under the provisions of this section may appeal to the City Council. The appeal shall be by notice, in writing, addressed to the Mayor, stating the reason for the appeal. The notice of appeal must be filed by the person aggrieved within ten (10) days after receipt of the notice of the hearing board's decision. The filing of the notice of appeal shall delay the effective date of the hearing board's order until a decision is rendered in the appeal to the City Council. The aggrieved person may present additional facts or arguments as he may desire to the City Council. The City Council may affirm, modify, or reverse any decision of the hearing board by a vote of a majority of said Council in attendance.

(Ord. 1502, passed 10-7-86)

§ 96.04 DECLARATION OF NUISANCE

Any act of any person or group within the city whereby the health or life of any person may be endangered, injured, or impaired; or any disease may, directly or indirectly, be caused by the act; or because of the act, any property may be endangered, injured, damaged, or is substantially diminished in value as described in § 96.01, is hereby declared to be a nuisance and unlawful.

§ 96.05 ABATEMENT PROCEDURE

(A) Procedure.

(1) Inspection and investigation. When the existence of a public nuisance is brought the attention of the City Administrator, he/she may cause an inspection and

investigation to be made by the appropriate agencies to determine whether removal or abatement is necessary.

(2) Notice to abate.

(a) The City Administrator may, after inspection and investigation under the provisions of division (A) (1) of this section, cause a notice in writing to be served upon the person who is responsible for the existence of the nuisance. The notice may be served by mailing a copy thereof to the last known address of the person who is responsible for the existence of the nuisance, return receipt requested.

(b) The notice shall indicate the date of the inspection and investigation, and the hour and location where the inspection was made. The notice shall set forth what the nuisance consists of and indicate the abatement remedy required.

(c) Notwithstanding the foregoing, only one such notice shall be required to be provided during any calendar year for a nuisance violation arising under §96.01(6) of the City Code, and additional notice beyond the initial notice shall not be required if the same type of nuisance recurs on the property during the calendar year (a "recurring nuisance violation").

Recurring nuisance violations shall be subject to immediate abatement and/or fines without additional notice to the person responsible for the existence of the nuisance.

(B) When any nuisance, or anything likely to become a nuisance, may be found upon any premises, and the person causing such nuisance is unknown or cannot be found, the owner, agent, or occupant of the premises shall be notified by the City Administrator to abate the same. No such owner, agent, or occupant, whose duty it is made to abate such nuisance, shall fail to promptly comply with such notice.

(C) General abatement remedies; alternative. After the expiration of (7) seven days from the date the notice was mailed, or at any time for a recurring nuisance violation, if the nuisance is not abated or other remedy made as required, the city may utilize the following abatement remedies:

(1) The nuisance may be abated by the city, under the direction of the City Administrator, and the cost of so doing shall be collected from the person who is responsible for the nuisance with a penalty of ten percent (10%) of such costs in an appropriate court of competent jurisdiction; or

(2) In addition to the other remedies and penalties provided in this chapter, the City Attorney is authorized to file appropriate civil actions for a temporary restraining

order, temporary injunction, permanent injunction or for damages, against any person violating this chapter.

(D) Abatement in case of emergency. If a nuisance constitutes an emergency, the time for abatement may be reduced by the City Administrator in the notice which specifies that the emergency exists.

(E) City abatement of nuisances under §96.01(6). In the event the city chooses to abate a grass, weed, or plant nuisance, the following additional remedies are available to the city:

(1) Charges. The actual cost incurred by the City for the cutting and removal of grass, weeds, and plants; provided, however, if the City uses its own employees to cut/remove the grass, weeds, or plants, there is hereby established a charge of Fifty Dollars ($50.00) per hour for such cutting/removal. Whether such cutting/ removal is accomplished by City employees or not, the charge to the property owner or occupant shall not be less than One Hundred Dollars ($100.00), in any event.

(2) Lien.

(a) Charges for such grass, weed, and plant cutting/removal shall be a lien upon the premises. Within sixty (60) days after such cost and expense is incurred by the city, the City Clerk may file a notice of lien with the Recorder of Deeds of the County. This claim of lien statement shall contain a legal description of the premises, the expenses and costs incurred and the date of cutting/removal, and a notice that the City claims a lien for this amount.

(b) Notice of such lien claim shall be mailed to the owner of the premises if his address is known.

(3) Foreclosure of lien.

(a) Property subject to a lien for unpaid grass, wee, or plant cutting/removal charges shall be sold for nonpayment of the same and the proceeds of such sale shall be applied to pay the charges after deducting costs, as is the case in the foreclosure of statutory liens. Such foreclosure shall be in equity in the name of the City.

(b) The City Attorney is hereby authorized and directed to institute such proceedings, at the direction of the corporate authorities in the name of the City, in any court having jurisdiction over such matter, against any property for which such bill has remained unpaid for a period of sixty (60) days after the filing of said notice of lien, and for such service a reasonable attorney's fee shall be allowed against the owner of said premises in the foreclosure action.

(F) This Abatement Procedure section may be used in conjunction with the Penalty section contained in § 96.99, and is not required to be utilized as a precondition to the City enforcing the monetary penalty provisions of § 96.99 for violations of this Chapter.

(Am. Ord. 1472, passed 12-2-85; Am. Ord. 1588, passed 6-5-89; Am. Ord. 1589, passed 6-5-89, Am. Ord. 2254, passed 11-6-00; Am. Ord. 2620, passed 6-20-05; Am. Ord. 2813, passed 1-5-09; Am. Ord. 2996, passed 7-2-12; Am. Ord. 3268, passed 2-5-18)

§ 96.06 ENFORCEMENT

Enforcement of this chapter may by accomplished by the city in any manner authorized by law; and, in addition, any person who by reason of another's violation of any provision of this chapter, suffers special damage to himself different from that suffered by other property owners throughout the city generally, may bring an action to enjoin or otherwise abate an existing violation.

§ 96.07 UNLAWFUL GROWTH IN RIGHT-OF-WAY

It shall be unlawful for any owner of any property within the city limits to permit the growth of grass or weeds to a height exceeding eight (8) inches on any right-of-way located between the property line of the property and the roadway portion of an adjoining roadway or alley, inclusive of all parkways, sidewalks, and waterways found therein. This applies to all property in the city limits which is improved or subdivided. Vegetation in the curb, curb line, and gutter is prohibited regardless of height or type.

(Am. Ord. 3296, passed 8-6-18)

§ 96.99 PENALTY

Whoever violates any provision of this Chapter shall be punished by a fine not less than One Hundred Dollars ($100.00) for a first offense in any twelve-month period, a fine of not less than Two Hundred Dollars ($200.00) for a second offense within any twelve-month period, a fine of not less than Three Hundred Fifty Dollars ($350.00) for a third offense within any twelve-month period, and a fine of not less than Five Hundred Dollars ($500.00) for a fourth offense and all subsequent offenses within any twelve-month period. This penalty may be enforced by issuance of a "Notice of Violation" for the fine amounts enumerated herein, or by issuance of a "Notice to Appear." Each day any violation of this Chapter shall continue shall constitute a separate offense. This penalty shall be in addition to the costs and penalty provided for the abatement of nuisances as provided in §96.05(C) and §96.05(E), and in addition to any and all other remedies which may be available to the City under this Chapter, other Chapters of the Code of Ordinances, or other laws.

(Am. Ord. 2620, passed 6-20-05; Am. Ord. 2813, passed 1-5-09; Am. Ord. 2996, passed 7-2-12)