



CITY OF WASHINGTON, ILLINOIS

City Council Agenda Communication

Meeting Date: March 6, 2023

Prepared By: Jon Oliphant, AICP, Planning & Development Director

Agenda Item: First Reading Ordinance – Nuisance Code Amendment

Explanation: Chapter 96 of the City Code establishes the minimum standards for property maintenance within the city limits. It enumerates several possible nuisances that can be detrimental to others and cause the diminution in the value of neighborhood property values. The first part of a two-part code amendment would be to specify another possible nuisance that would consist of the filling or blocking of waterways with garbage, or other materials. While this does not occur often, staff has attempted to address a few instances where a property owner has had materials enter a waterway. This can impact the quality of the water source and the ability of the water to flow through the source.

The second part of the amendment would allow for the City to place a lien to recover unpaid costs due to an abatement of a nuisance. This process is currently in place for lack of payment associated with the cutting or removal of tall grass, weeds, and plants. While that category of nuisances covers the majority of annual code enforcement cases, staff would like to have clearer City Code language to offer the ability to file a lien for unpaid costs whenever City abatement occurs. Property owners are given 60 days to make payment through two invoices sent by the Finance Department. Following that period, a lien can be filed with the County Recorder.

Fiscal Impact: The ability to file a lien for the cost of any unpaid nuisance abatements is intended to allow the City to eventually recover its expenses. That payment and subsequent lien release in some cases does not occur immediately and may not happen until such time when a property is to be sold. But it does allow for the City to be made whole for its costs at a later time. This would ensure that the City receives payment for all nuisance abatement expenses.

Action Requested: Approval of the attached ordinance. A first reading ordinance is scheduled for the March 6 City Council meeting and a second reading will be scheduled for the March 20 meeting.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CHAPTER 96 OF THE CITY CODE TO ADD AN
ENUMERATED NUISANCE AND TO ALLOW THE CITY TO FILE A LIEN FOR THE
COST INCURRED FOR THE CITY'S
ABATEMENT OF ANY NUISANCE**

WHEREAS, Chapter 96 of the City Code (the "Code") of the City of Washington (the "City") sets forth the provisions of the nuisance code of the City; and

WHEREAS, the City has determined that the filling or blocking of creek tributaries, rivers, and other waterways is a nuisance and wishes to expand the Code to codify such a nuisance; and

WHEREAS, from time to time, upon the failure of a property owner to abate a nuisance on his or her own property after notice and demand by the City, the City must abate the nuisance; and

WHEREAS, the City incurs costs to abate nuisances and thus, a proper procedure is needed to better ensure that the City is reimbursed for its nuisance abatement; and

WHEREAS, the Code currently allows for charges for grass, weed, and plant cutting/removal to be a lien upon the premises where the nuisance was located; and

WHEREAS, the City desires to expand the types of charges for nuisance abatement that may be a lien upon the premises where the nuisance was located; and

WHEREAS, the City Council has determined it is in the best interests of the City to amend the Code to allow the City to file a lien for the cost incurred for the City's abatement of any nuisance and to expand the enumerated nuisances contained within the Code.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Washington, Illinois as follows:

Section 1: The recitals; as set forth above, are incorporated herein as though fully set forth and shall be considered the express findings of the City Council.

Section 2: That Section 96.01 of Chapter 96 of the City Code of the City of Washington, Tazewell County, Illinois, be, and the same hereby is amended as follows:

"§ 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 ($\frac{1}{2}$) 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) Maintenance of downspouts and/or sump pump lines in violation of Section 96.08 herein.
- (15) **Filling or blocking of creek tributaries, rivers, and other waterways with garbage, debris, or other materials, any of which may impact the quality of the water source or the ability of water to flow through the water source.**

~~(15)~~(16)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.”

Section 3: That Section 96.05 of Chapter 96 of the City Code of the City of Washington, Tazewell County, Illinois, be, and the same hereby is amended as follows:

“§ 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. **In accordance with Section 96.99, failure by the owner or occupant to pay the cost of abating the nuisance may result in the City filing a lien for the City's costs of the abatement against the real estate where the nuisance violation was located;** 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, weed, 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.~~

Intentionally Omitted.

(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.

Section 4: That Section 96.99 of Chapter 96 of the City Code of the City of Washington, Tazewell County, Illinois, be, and the same hereby is amended as follows:

§ 96.99 PENALTY

(A) Fines

- (1) 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.

- (a) 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.
- (b) This penalty shall be in addition to the costs and penalty provided for the abatement of nuisances as provided in-§ Section 96.05(C) and §96.05(E), as well as the lien procedure set forth below, 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.

(B) Cost of Abatement To Be Lien

- (1) If the City corrects the nuisance violation itself, or arranges for the violation to be corrected on its behalf, a lien for the amount of time and expense involved in correcting the nuisance violation shall be imposed against the real estate where the violation occurred. There is an established charge of Fifty Dollars (\$50.00) per hour for the abatement. Whether the nuisance abatement 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). The property owner or occupant shall be notified in writing of the cost incurred for the nuisance abatement and he or she shall have forty-five (45) days from the date of such notice to reimburse the City for the costs incurred due to such nuisance abatement.
- (2) Charges for the City’s abatement of a nuisance shall be a lien upon the premises. If no payment of the nuisance abatement costs is received by the City after the City notifies the property owner or occupant of the same, 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; the date of abatement; and a notice that the City claims a lien in this amount.
- (3) Notice of such lien claim shall be mailed to the owner of the premises if his or her address is known.
- (4) Foreclosure of lien.
 - (a) Property subject to a lien for the City’s charges relating to the abatement of a nuisance 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 City Council in the name of the City, in any court having jurisdiction over such matter, against any property for which such nuisance abatement 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.

(5) Prior to utilizing this Section, the City must first follow the Abatement Procedure set forth in Section 96.05.”

Section 5: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they are in conflict with this ordinance.

Section 6: If any provision of this ordinance is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudged invalid.

Section 7: This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

PASSED AND APPROVED this _____ day of _____ 2023.

AYES: _____

NAYS: _____

ATTEST:

MAYOR

CITY CLERK