



City of Grand Island

Tuesday, August 26, 2014

Council Session - Updated

Item F-1

**#9494 - Consideration of Amending Grand Island City Code
Chapters 17-6, Notice to Remove; Noncompliance with Notice and
17-52, Notice to Abate: Remove Nuisance**

Staff Contact: Steven Lamken

Council Agenda Memo

From: Steven Lamken, Police Chief

Meeting: August 26, 2014

Subject: Amendment of Ordinance 17-6, Notice to Remove:
Noncompliance with Notice and Ordinance 17-52, Notice
to Abate; Remove Nuisance

Item #'s: F-1

Presenter(s): Steven Lamken, Police Chief

Background

The Nebraska Legislature revised State Statute 16-230 in 2013. The revisions in the statute provides for cities to establish the method of notice for specific nuisances. The Police Department and Legal Department are recommending that the City amend ordinances 17-6 and 17-52 to provide for notice of violation to be done by either personal service or by first class mail and posting of the property.

Discussion

The Nebraska Legislature revised State Statute 16-230 in 2013. The revisions in the statute provides for first class cities to establish the method of notice of violation for specific nuisances spelled out in the statute, such as litter and weeds. The changes in the statute allows for notice to be by first class mail. The statute also requires an appeal process for violators which we do not have in code.

City code currently requires notice of violations of litter and weeds to be made either by personal service and or certified or registered first class mail. The use of certified mail can create significant problems in expediting code enforcement for these violations. In addition the use of certified mail is an expensive method of notification. Certified letters cost \$6.49 per letter and must be delivered by an employee to the Post Office for posting. The Police Department sends hundreds of litter and weed violation certified letters each year.

When a violation occurs, a code enforcement officer will attempt to find the most current address for a property owner or responsible person if they cannot provide personal service. A certified letter of notice of violation then must be prepared and delivered to the

Post Office. Certified mail requires an owner or person responsible for a property in violation to receive and sign for the letter of notice. The receipt is then returned to the Police Department via the mail. The Postal Service will make multiple attempts to serve the certified letter.

Under our current code, our code enforcement officers cannot move forward with correcting a violation or taking enforcement action until the Police Department receives a signed certified letter receipt or the certified letter is returned to us unserved by the Postal Service.

Some certified letters are served and signed for and receipt returned to the Police Department within a week. Sometimes the Postal Service can affirm through their attempts to deliver the letter that the address is no longer current and will return the letter within a several days to a couple of weeks. In these cases a code enforcement officer can then move forward working to resolve the violation.

In some cases the certified letter service can become lengthy. The Postal Service either cannot serve the letter to a responsible person or they are unable to determine if the address is accurate. Some chronic violators know the system being used and will intentionally avoid responding to the Postal Service attempts to serve the letter. These situations can create significant delays in a violation being corrected. Two examples are letters that were taken to the Post Office on May 16th and on June 13th and have not been served or returned unserved to the Police Department as of August 1st.

Citizens observe and report a litter or weed violation and have the expectation that action will be taken to correct the violation. It is frustrating to citizens when nothing is done for weeks or months. Even a delay of a couple of weeks becomes an irritant. It creates the impression that City government is either incompetent or unconcerned. Such beliefs, while inaccurate, erode citizen support for City government. It is also frustrating for the code enforcement officers to receive continued complaints of inaction while there are violations pending that they cannot act upon.

The Police Department and Legal Department are recommending that the City amend ordinances 17-6 and 17-52 to provide for notice of violation to be made either by personal service or by first class mail and posting of the property. The Police Department will mail out a letter to the owner or responsible person at the last known address requiring them to correct the violation or respond to the code enforcement officer within five (5) days. The letter will also provide language informing the person of the appeal process. In addition the code enforcement officer will affix a notice of violation to the building on the property or place a notice of violation on the property. The notice will provide information as to the nature of the code violation and Police Department contact information. The posted notice will also provide language informing the person of the appeal process. The notice will be approximately the size of a standard piece of stationary and printed on highly visible, weather resistant, stock. A first class letter and posting a notice will cost less than \$1.00 per violation in material costs.

Changing the ordinances will allow CSOs to address and abate weed ordinance violations in a more efficiently and in a timely manner. The processing of litter violation complaints will also be more efficient; however, litter violations where we are unable to establish contact with an owner or responsible person and or the owner or responsible person refuses to correct the violation will continue to be problematic. We will continue to work to correct these violations and or take enforcement action.

The City code identifies either the Health Department or City employees as responsible for code enforcement. The proposed appeal hearing language in Section 17-6 provides for an appeal hearing to be heard either by the Director of the Health Department or the Police Chief or their designee depending upon which department would be responsible for the enforcement action. The appeal process meets requirement in State Statute 16-230.

The recommended changes in City code will:

- Provide adequate notice of violation by providing personal service or by first class letter and posting the property.
- Create greater efficiencies in processing code violations in the Police Department.
- Reduce the time in many instances required to take corrective action and or enforcement action on litter and weed violations.
- Provide an appeal process that is required in statute.
- Create savings in the cost of providing notice of violations.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the amending of City Code, Chapter 17, Sections 17-6 and 17-52 as presented to provide for notice of violation to be done by either personal service or by first class mail and posting of the property.

Sample Motion

Move to approve the amending of City Code, Chapter 17, Sections 17-6 and 17-52 as presented to provide for notice of violation to be done by either personal service or by first class mail and posting of the property.

(1) A city of the first class by ordinance may require lots or pieces of ground within the city or within the city's extraterritorial zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. The city may require the owner or occupant of all lots and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city.

(2) Any city of the first class may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;

(b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.) (toun), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*); and

(c) Weeds, grasses, and worthless vegetation does not include vegetation applied or grown on a lot or piece of ground outside the corporate limits of the city but inside the city's extraterritorial zoning jurisdiction expressly for the purpose of weed or erosion control.

Credits

Laws 1901, ch. 18, § 48, XXXVII, p. 255; Laws 1915, ch. 84, § 1, p. 222; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1; Laws 2009, LB 495, § 5, eff. Aug. 30, 2009; Laws 2013, LB 643, § 1, **eff. Sept. 6, 2013.**

NOTICE

City of Grand Island
Grand Island Police Department

The property at _____ (address), legally described as _____
has been inspected and found in violation of Grand Island City Code as indicated below:

§17-3. _____ It shall be the duty of every owner, and person in possession, charge, or in control of any dwelling, flat, rooming house, apartment house, hospital, school, hotel, club, restaurant, boarding house, or eating place, or in possession, in charge, or in control of any shop, place of business, or manufacturing establishment, where garbage, litter, refuse, yard waste, or other waste material is created, or accumulated, to remove or cause to be removed from the premises where accumulated such garbage, litter, refuse, yard waste or waste material. It shall be unlawful to place garbage, litter, refuse, yard waste, or waste material in any alley, easement, or vacant property.

§17-4. _____ to permit, keep, or maintain thereon any such condition liable to become putrid or injurious to the public health, or any such condition liable to produce disease, or which is conducive to the breeding and existence of rats, mice, flies, mosquitoes, bacteria, or any other rodent or insects.

§17-50. _____ to allow or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation and upon conviction such owner, agent, occupant, or person shall be penalized in accordance with the provisions of the Grand Island City Code.

§17-10. _____ accumulation of waste occasioned by the construction, alteration, remodeling, rebuilding, repairing, and/or demolition of buildings or structures shall be removed and disposed of by the owner or contractor

§17-57. _____ to cause, maintain, or permit the placement of any unlicensed or inoperable vehicle or any vehicle parts on any tract of land within the City of Grand Island except as permitted in City Code

§32-2. _____ to permit the limbs, branches or foliage of any tree or shrub upon such property to project into or extend over any street, lane, or sidewalk in such manner that there shall be a clearance of less than fourteen feet between the surface of such street, lane, or less than eight feet between the sidewalk and such limbs, branches, or foliage.

to plant, grow, keep or maintain, or cause to be planted, grown, kept, or maintained, any hedge, bush or shrubbery of any kind or nature, within the public right-of-way to be continuous of five feet (5') or more and of a height over three feet (3') above the roadway surface measured from the nearest top of the roadway surface or the centerline grade of the roadway, whichever is higher.

§32-3. _____ to permit the limbs, branches or foliage of any tree or shrub upon such property to project into or extend over any alley in such manner that there shall be a clearance of less than fourteen feet between the surface of the alley and such limbs, branches or foliage.

*The owner or owner's duly authorized agent and/or occupant of the lot or piece of ground, within five (5) days after receipt of such notice, may request a hearing with the City to appeal the decision to abate or remove a nuisance by filing a written appeal with the Office of the City Clerk, 100 East 1st Street, P.O. Box 1968, Grand Island, Nebraska 68802-1968. A hearing on the appeal shall be held within fourteen (14) days after the filing of the appeal. The hearing officer shall render a decision on the appeal within five (5) business days after the conclusion of the hearing. If the appeal fails, the City may have such work done. If within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the City or fails to comply with the order to abate and remove the nuisance, the City may have such work done and the actual cost of such work together with an administrative fee of \$50.00 shall be assessed against such lot or land; **and/or**, the City of Grand Island may issue a citation and notice to appear in Hall County Court.*

Code Enforcement Officer

Date

ORDINANCE NO. 9494

An ordinance to amend Chapter 17 of Grand Island City Code ; to amend Section 17-6 and Section 17-52; to clarify and/or make general corrections to various code sections, to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Section 17-6 and Section 17-52of the Grand Island City Code is hereby amended to read as follows:

§17-6. Notice to Remove; Noncompliance with Notice

Whenever it shall come to the knowledge of the Health Director, his or her designee or employees of the City of Grand Island, that there exists upon such lot or parcel of ground such nuisance, the Health Director, his or her designee or employees of the City of Grand Island shall cause a notice to abate and remove said nuisance within five (5) days to be served upon the owner or the owner's authorized agent, and upon the tenant or occupant of said premises. Said notice shall be served either in person or by mailing such notice by first-class mail, postage prepaid ~~and by certified or registered mail~~ and posting notice of the violation on the property. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the City to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by the Health Director or his/her designee or the Police Chief or his/her designee. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the City may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the City or fails to comply with the order to abate and remove the nuisance, the City may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the City may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets or alleys. If such owner, lessee, tenant, or occupant shall have failed or refused to abate and remove such nuisance at the expiration of the date fixed upon such notice, the Director of Health, his or her designee or employees of the City of Grand Island may cause such nuisance to be removed from such parcel or lot, and from any roads, streets, or alleys abutting thereon as set forth in §17-7 of this Chapter.

Approved as to Form	☐ _____
August 25, 2014	☐ City Attorney

ORDINANCE NO. 9494 (Cont.)

§17-52. Notice to Abate; Remove Nuisance

Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service ~~or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed.~~ or by mailing such notice by first-class mail, postage prepaid and posting notice of the violation on the property. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

SECTION 2. Any ordinance or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 3. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: August 26, 2014.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk