

CHAPTER 94: HEALTH AND SANITATION; NUISANCES

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HAZARDOUS PROPERTY ABATEMENT**§ 94.01 PROHIBITION.**

No person shall maintain or operate any building, structure or premises, including a yard or lot or any part thereof so as to:

(A) Be detrimental to the public health, safety or public welfare; or

(B) Cause or produce a nuisance as set forth in § 94.02.

(Prior Code, § 8.04.010)

§ 94.02 DECLARATION BY TOWN COUNCIL.

(A) The Town Council may pass a resolution which declares any building, structure, premises or any part thereof in violation of § 94.01 to be a public nuisance.

(B) The Town Council may declare as a public nuisance any building, structure, premises or any part thereof which:

(1) Exists in an impaired structural condition or state which makes it unsafe to any person;

(2) Constitutes a fire hazard;

(3) Due to its age or condition, creates a hazard to public health, safety, sanitation or welfare;
and/or

(4) Attracts or provides possible harborage for pests, including, but not limited to rats, mice, termites or other vermin or animals.

(Prior Code, § 8.04.020)

§ 94.03 REMEDIAL ORDER.

(A) Upon enactment of a resolution in accordance with § 94.02, the Town Council shall issue an order compelling the owner, occupant or agent of the owner or occupant of the property described in the resolution to take remedial action to correct the nuisance.

(B) The Town Council may order the person to whom the order is issued to take one or more of the following remedial actions:

- (1) To correct or repair the building, structure, premises or any part thereof;
 - (2) To seal the building or structure or any part thereof so that it is not accessible to any human or animal;
 - (3) To exterminate or eliminate any animal or vermin existing on the property;
 - (4) To remove any health or sanitation hazards existing on the property; or
 - (5) Any other remedy reasonably necessary to abate the public nuisance.
- (Prior Code, § 8.04.030)

§ 94.04 CONTENTS OF REMEDIAL ORDER.

An order issued according to § 94.03 shall contain the following information:

- (A) The name of the person to whom the order is issued;
- (B) The address and a brief description of the property which is the subject of the order;
- (C) The action which the order requires the person to perform;
- (D) The period of time in which the action is to be accomplished, beginning the day after service of the order has been accomplished. In no case shall the period allotted for remedial action be less than 4 days after service of the order;
- (E) A statement indicating that:
 - (1) The Town Council enacted a resolution declaring the property to be a nuisance;
 - (2) The person to whom the order is directed has the right to demand a prompt hearing before the Town Council at which hearing that person has the right:
 - (a) To appear with or without legal counsel;
 - (b) To present evidence; and
 - (c) To cross-examine opposing witnesses and make argument.

(3) If the hearing is requested, the Town Council, after conducting the hearing may modify or rescind the order;

(4) The person to whom the order is directed may appeal the Town Council's remedial order to a court of competent jurisdiction, regardless of whether a hearing in accordance with division (E)(2) above has been requested or held;

(F) A statement indicating the action that may be taken by the Town Council if the order is not complied with; and

(G) The name, address and telephone number of the Town Attorney.
(Prior Code, § 8.04.040)

§ 94.05 SERVICE OF REMEDIAL ORDER.

(A) An order issued according to § 94.03 shall be served as follows:

(1) By personally delivering a copy of the order to the person being notified;

(2) By sending a copy of the order by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested; or

(3) By leaving a copy of the order at the person's home or place of business or employment with some person of suitable age and capacity.

(B) If service, after a reasonable effort, cannot be obtained by a means described in division (A) above, service may be made by publication. Where service is made by publication, a notice of the order shall be published 2 times, at least 1 week apart, in a newspaper of general circulation in the county, which is authorized by law to publish notices, in the event there is no qualifying newspaper published in the town.

(C) Where service is made by any of the means described in this section, except by mail or by publication, the person making service shall make an affidavit stating:

(1) That he or she has made the service;

(2) The manner in which the service was made;

(3) The nature of the order; and

(4) The date of service.

(Prior Code, § 8.04.050)

§ 94.06 ENFORCEMENT PROCEEDINGS.

(A) In the event that the person to whom the remedial order is directed does not comply with the terms of that remedial order, the Town Council may institute an action in a court of competent jurisdiction to enforce the remedial order.

(B) Upon judicial approval of the Town Council's remedial order, the Town Council may proceed to abate the nuisance, including the remedy of total partial destruction of the property maintaining the nuisance.

(Prior Code, § 8.04.060)

§ 94.07 COSTS OF ABATEMENT.

(A) The costs of abating the nuisance shall be charged to the person to whom the remedial order issued, or to anyone the court shall direct.

(B) Costs may be assessed against the property as a lien.

(C) In the event that amounts received by the Town Council exceed the actual costs of abatement, the excess shall be paid to the person to whom the remedial order was issued, or to whomever the court may direct.

(Prior Code, § 8.04.070)

WEEDS AND RANK VEGETATION

§ 94.20 REMOVAL.

All owners of real property within the corporate limits of the town shall cut and remove all weeds and/or rank vegetation growing upon the property in a manner consistent with the provisions of this subchapter.

(Prior Code, Ch. 8.29, § I)

§ 94.21 DEFINITION.

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

WEEDS AND/OR RANK VEGETATION.

(1) Any vegetable matter, not cultivated in plants beds by the landowner, which exceed the height of 12 inches.

(2) The definition shall not include trees, nor bushes or shrubs which have been planted or cultivated by the landowner, nor shall it include agricultural crops, such as hay and pasture.
(Prior Code, Ch. 8.29, § II)

§ 94.22 NOTICE ISSUED.

Upon determination by the Town Council that weeds and/or rank vegetation exist, as defined in this subchapter, the Clerk-Treasurer shall issue a written notice to the property owner that the weeds and/or rank vegetation must be removed within 5 days of service of the notice. The notice shall advise the landowner of the penalty for failing to remove the vegetation.
(Prior Code, Ch. 8.29, § III)

§ 94.23 NOTICE SERVED.

The notice required by § 94.22 shall be served upon the landowner by the Town Marshal, a copy of which notice shall be returned to the Clerk-Treasurer with the notation as to the date service was accomplished and the name of the officer serving the notice, if the landowner is a resident of the town. In the event the landowner is a non-resident, the notice shall be mailed certified mail addressed to the last known address of the owner.
(Prior Code, Ch. 8.29, § IV)

§ 94.24 TOWN REMOVAL OF WEEDS AND/OR RANK VEGETATION.

(A) If the landowner fails to remove the weeds and/or rank vegetation, or appeal the notice of violation in writing to the Town Council by filing same with the Clerk-Treasurer, within 5 days of service of the notice, following the Council meeting in the event of an appeal, or any extension of that time granted to the landowner by the Town Council, the town or its contractors, may remove the vegetation.

(B) In the event of an appeal by the landowner, the Town Council shall consider the appeal at its next regular meeting.

(C) If the Council confirms its notice of violation, the landowner shall have 5 days from the day of the meeting to remove the weeds or vegetation.

(D) The town, or its contractors, shall remove the vegetation from the landowner's property only during the hours from 8:00 a.m. until 5:00 p.m., Monday through Friday, and shall use all reasonable efforts not to otherwise disturb landowner's property.

(Prior Code, Ch. 8.29, § V)

§ 94.25 COSTS OF TOWN REMOVAL.

(A) In the event that the town, or its contractors, removes such vegetation, the Clerk-Treasurer shall make a certified statement of the actual cost incurred by the town in the removal, including administrative costs and removal costs.

(B) The statement shall be served upon the landowner in the same manner as the service of notice detailed in this subchapter.

(Prior Code, Ch. 8.29, § VI)

§ 94.26 NOTICE SERVED IN WRITING.

In the event that a certified statement is served upon the landowner as prescribed in § 94.25, the landowner shall have 10 days from service of the statement to pay the same to the Clerk-Treasurer or appeal the statement in writing to the Town Council by filing same with the Clerk-Treasurer. In the event of the appeal by the landowner, the Council shall consider the appeal at its next regular meeting. If the Council confirms or adjusts the statement, the landowner shall have 10 days from the day of the meeting to pay the same to the Clerk-Treasurer. If the landowner fails to pay the same, the Clerk-Treasurer shall file a certified statement of the cost, plus any administrative costs incurred in the certification, with the Auditor of Henry County for inclusion on the tax duplicate against the property affected by the work.

(Prior Code, Ch. 8.29, § VII)

§ 94.27 MOWING.

(A) Owners of real property located within the corporate limits of the town shall cut and remove weeds and other rank vegetation growing on the property unless the vegetation is part of an established agricultural enterprise and is currently being used for production of hay.

(B) The town's Building Inspector and Fire Chief shall be responsible for the administration of this section.

(C) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

WEEDS AND RANK VEGETATION SUBJECT TO REMOVAL. Those weeds or grasses which are 1 foot or longer in length and other rank vegetation subject to removal under this section shall be vegetation growing in excessive luxuriance and vigor which is at least 1 foot in length or more. For the purpose of this section, the words length and height shall be synonymous. A weed or piece of vegetation, if standing, is 1 foot or greater in height and same bends or falls over, such that its length continues to be equal to 1 foot in length or more, is in violation of the terms of this section.

(D) Any property owner who fails to remove weeds and other rank vegetation, as defined in division (C) above, shall be deemed in violation hereof. Notice of violation by the Building Inspector or the town's Fire Chief shall be made by First Class U.S. Postal Service to the property owner's address shown on records of the County Treasurer. One letter within a calendar year shall be deemed sufficient notice for each and every lot, parcel and lands owned by the offender within the corporate limits of the town in case of the party's failure to comply with the terms hereof. The town shall have the right to cut and remove weeds and rank vegetation upon the property owner's failure to do so within 7 days of the mailing the notice of violation.

(E) The town's Clerk-Treasurer shall issue a bill to the property owner at the address shown on the records of the County Treasurer, which bill shall include the administrative costs of \$20, plus the actual removal costs incurred by the town either by using its own employees or an independent contractor. The actual removal costs shall be no less than \$100 and shall be shown by the records of the town's Building Inspector.

(F) In the event the property owner disputes a notice of violation under this section or a bill issued hereunder, the property owner may file a written appeal of the town's Building Inspector for rescission or adjustment of the notice or bill within 14 days after the date of the notice or bill. Should the property owner fail to so appeal within writing within 14 days, the notice and/or billing shall be deemed final and no further appeal shall be permitted.

(G) If the property owner fails to pay a bill hereunder within 30 days, the town's Building Inspector shall certify to the County Auditor the amount of the bill, plus the administrative cost of \$20 incurred in the certification. The County Auditor shall place the total amount certified on the tax duplicate for the party affected. The total amount including any accrued interest shall be collected as delinquent taxes are collected and shall be disbursed to the General Fund of the town as provided in I.C. 36-7-10.1-4. (Ord. 3-2001, passed 3-21-2001) Penalty, see § 10.99

*NOISE CONTROL***§ 94.40 PROHIBITION.**

It shall be unlawful for any person, firm or corporation to operate or permit to be operated upon their premises, in the town any radio, Victrola, mechanical musical device or other forms of music or sound devices in such a manner that music or other noises therefrom may be heard off of the premises of the owner or operator of the devices, from 12:00 midnight until 7:00 a.m. of each day.
(Prior Code, § 8.12.010) (Ord. 409, passed 10-4-1943) Penalty, see § 10.99

§ 94.99 PENALTY.

(A) In addition to any other fines or costs assessed under §§ 94.01 through 94.07, any person violating the terms of these sections shall be fined a sum not to exceed \$25 for each offense.

(B) Each day during or on which a violation of §§ 94.01 through 94.07 occurs constitutes a separate offense.

(Ord. 3-1985, passed 4-25-1985)

(Prior Code, § 8.04.080)

