

CITY OF NEWPORT
ORDINANCE NO. 2171

AN ORDINANCE AMENDING CHAPTER 8.10 OF THE
NEWPORT MUNICIPAL CODE ADDING A CHRONIC NUISANCE
PROPERTY SECTION AND RELATED CHANGES

WHEREAS, Chapter 8.10 provides enforcement tools to address nuisances; and
WHEREAS, additional enforcement tools are recommended to address properties where repeated complaints occur; and
WHEREAS, a new Section 8.10.140 - Chronic Nuisance Property - has been added to Chapter 8.10 to address such properties; and
WHEREAS, other sections in Chapter 8.10 have been revised to clarify, clean-up, or add language to existing provisions.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

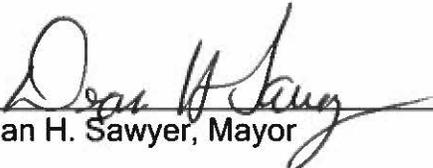
Section 1. The above findings are adopted as support for the amendment below.

Section 2. Chapter 8.10 of the Newport Municipal Code is hereby amended as set forth in the attached Exhibit A.

Section 3. This ordinance shall take effect 30 days after its adoption.

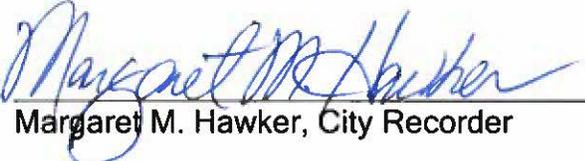
Date adopted and read by title only: February 16, 2021.

Signed by the Mayor on February 19, 2021.



Dean H. Sawyer, Mayor

ATTEST:



Margaret M. Hawker, City Recorder

Exhibit A
Ordinance No. 2171

(Deleted language shown in ~~strikethrough~~ and language to be added is depicted with underline.
Staff comments in right margin are provided for context and are not part of the amendment.)

CHAPTER 8.10 NUISANCES

8.10.005 Purpose and Process

The purpose of this chapter is to protect the public health and safety and to improve the aesthetics of the city by eliminating health and safety hazards and prohibiting or restricting conditions and actions that adversely impact the beauty and livability of the city. The nuisance process described in this chapter is intended to abate ongoing conditions, which is to lessen, reduce, or remove such conditions. ~~But~~ some nuisances may be of short duration, and the civil infraction process may be used to impose sanctions on those responsible for the nuisance, whether or not the nuisance abatement process is also used.

8.10.010 Definitions

- A. **Fence** means a barrier intended to prevent escape or intrusion or to mark a boundary. A fence may consist of wood, metal, masonry, plastic, or similar materials, or a hedge or other planting arranged to form a visual or physical barrier.
- B. **Inoperable Vehicle** means any vehicle which has no current valid state vehicle license, or which cannot be moved without being repaired or dismantled, or which is no longer usable for the purposes for which it was manufactured, and which has been in that condition for at least 15 days.
- C. **Person** means a natural person, firm, partnership, association, company, corporation, or other entity of any kind.
- D. **Person in Charge of Property** means an agent, occupant, lessee, contract purchaser, or person, other than the title owner, having possession or control of the property.
- E. **Public Place** means a building, place, or accommodation, whether publicly or privately owned, open and available to the general public.

- F. **Screened and Fenced** means surrounded by a fence to prevent unauthorized entry into an area and effectively screened from view from public rights of way and adjacent properties.
- G. **Street** means the area within the right-of-way improved for vehicular travel, including bike lanes and motor vehicle travel lanes.
- H. **Vermin** means wild or feral animals normally considered to be pests such as rats, mice, feral cats, raccoons, and opossums.

8.10.020 Nuisances Declared

The following actions or omissions are declared to be nuisances.

~~A. Any act or omission that causes injury to or endangers the comfort, health, repose, or safety of citizens of the city generally.~~

Commented [DA1]: Moved to 8.10.140(B)(17) below.

~~B. Any act or omission that unlawfully interferes with, obstructs, or renders unsafe personal safety or property.~~

Commented [DA2]: Moved to 8.10.140(B)(18) below.

CA. The acts, conditions, or objects specifically enumerated in this chapter or designated a nuisance by city code or ordinance.

DB. Violations of the zoning ordinance and any failure to comply with a condition of a land use approval.

EC. Violation of any ordinance imposing health, safety, or sanitary standards for housing.

D. Real property where chronic unlawful activities specifically enumerated in Section 8.10.140 occur, or where those chronic unlawful activities result from the use of the real property.

Commented [DA3]: Reference to new section 8.10.140 below.

8.10.030 Animals

- A. No person may permit an animal or bird owned or controlled by the person to be at large if the animal or bird is known to be afflicted with a communicable disease or is a dangerous animal.

- B. No person may permit livestock or poultry to run at large within the city nor permit any barn, stable, chicken coop or other similar structure to cause an odor noticeable at the property line of the property.
- C. Livestock or poultry or other domesticated animals or fowl running at large in the city may be taken up and impounded by a police, animal control, or code enforcement officer with reasonable efforts to preserve the animal's life. If the owner or other responsible person cannot be located after reasonable efforts, the animal may be sold, transferred to a responsible agency, or disposed of.
- D. No person may permit any fowl or animal carcass owned by him or under his control to remain upon the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of such carcass.
- E. No person shall scatter or deposit any food or other attractants on public or private property with the intent of attracting and/or feeding wild animals, including, but not limited to, bears, raccoons, coyotes, cougar, and deer. This subsection does not apply to birdseed held in receptacles that are reasonably designed to avoid access by wild animals as described above.

(Section 8.10.030 (E) adopted by Ordinance No. 2141 on October 1, 2018; effective October 31, 2018)

8.10.040 Nuisances Affecting Public Health and Safety

No person may permit or cause a nuisance affecting public health or safety. Nuisances affecting public health or safety include, but are not limited to:

- A. Privies and Improperly Functioning Septic System. An open vault or privy, cesspool, or improperly maintained septic tank that causes odor or improper disposal of wastes. Portable privies placed on a temporary basis in connection with construction projects or temporary events in accordance with the State Board of Health regulations are not nuisances, and portable privies placed with city approval are not nuisances.
- B. Debris.
 - 1. Accumulations of debris, rubbish, manure, junk, and other refuse located on private property that is not

removed within a reasonable time. A reasonable time for materials that can be disposed of through normal solid waste collection is one week. A reasonable time for other materials is 15 days.

2. Unprotected garbage or refuse. Garbage or refuse stored or allowed to remain outdoors other than in receptacle that provides protection from weather and animals, including garbage or refuse that overflows from dumpsters. A dumpster will be considered to be overflowing if the lid cannot be fully closed because the accumulation of garbage. For purpose of this section, construction waste is not considered to be garbage or refuse.
- C. **Junk Machinery, Junk Vehicles And Inoperable Vehicles.** Junk machinery, junk vehicles, and inoperable vehicles that are not removed within 15 days. Junk machinery, junk vehicles, and inoperable vehicles within an enclosed building and those that are screened and fenced on the premises of a business lawfully engaged in wrecking, junking, storage or repair of vehicles are exempt from this section.
- D. **Stagnant Water.** Stagnant water which affords a breeding place or drinking source for mosquitoes, insects, and other insect pests.
- E. **Water Pollution.** Pollution of a body of water, surface water, groundwater, well, spring, stream or drainage ditch by sewage, industrial wastes or other hazardous substances placed in or near such water without necessary permits in a manner that will cause harmful material to pollute the water.
- F. **Odor.**
1. Premises that are not properly maintained so that they are in a state or condition that causes an offensive odor.
 2. Offensive odors noticeable outside the property where the odor is created, including chemical odors, odors from coffee roasting, sewage odors, and other offensive odors, beyond the level of odors normally associated with this type of activity.

(Chapter 8.10.040(F.) (2.) amended by Ordinance No. 1930, adopted on July 16, 2007; effective August 15, 2007)

- G. **Surface Drainage**. Drainage of liquid wastes from private premises without required permits.
- H. **Smoke, Fumes, Cinders And Dust**. Dense smoke, noxious fumes, gas soot, cinders, or dust in unreasonable quantities. Reasonableness shall take into account the purpose of the action resulting in the smoke, fumes, soot or cinders and the availability of alternatives.
- I. **Harborage for Vermin**. It is unlawful for any person who owns and/or is in charge of property to allow the accumulation of any litter, filth, garbage, decaying animal or vegetable matter, which may or does offer harborage or source of food for vermin.
- J. **Properties Declared "Unfit for Use."** Property placed on the Oregon Health Division "unfit for use list" because it has been used for the manufacture of illegal drugs and that has not been issued a "Certificate of Fitness" by the Oregon Health Division.
- K. **Appliances And Containers**. No person may leave in a place accessible to children an abandoned, unattended or discarded appliance or similar container which has a door with a snap lock or lock or other mechanism which may not be released for opening from the inside, without first removing the lock or door.
- L. Premises that are in an unsanitary condition that create a health risk.
- M. **Offensive Littering**.
1. Discarding or depositing any rubbish, trash, garbage, debris, litter or other refuse upon the land of another without permission of the owner, or upon any right of way, park, beach or other public property, other than in a receptacle intended for refuse collection, and then only if the receptacle is intended for public use or with the permission of the person in charge of the receptacle.
 2. Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way.

3. Discarding any lighted tobacco product, matches, or other lighted material.

8.10.050 Attractive Nuisances

- A. No owner or person in charge of property may permit:
1. Unguarded machinery, equipment or other devices on such property that are attractive, dangerous and accessible to children;
 2. Lumber, logs, firewood, building materials or pilings placed or stored on such property in a manner so as to be attractive, dangerous and accessible to children;
 3. An open pit, quarry, cistern, or other excavation without erecting adequate safeguards or barriers to prevent such places from being used by children.
 4. Structures such as partially completed, partially demolished, or abandoned buildings that are attractive, dangerous and accessible to children.
 5. Outdoor storage of inoperable vehicles and other vehicles not used for transportation without a sight-obscuring fence, wall, or other visual and physical barrier, regardless of whether vehicle storage is a permitted use in the zone.
- B. This section shall not apply to authorized construction projects, if during the course of construction reasonable safeguards are maintained to prevent injury or death to playing children.

8.10.060 Vegetation and Vision Obstructions

The following things, practices, or conditions on any property are nuisances. For purpose of this section, "property" includes any portion of a right-of-way adjacent to the property.

- A. Grass, thistles, cockleburrs, weeds, or other noxious vegetation greater than eight inches in height or that are a fire hazard. The city shall have discretion to not enforce this section based on the totality of circumstances, including the type and location of the property, whether the property is appropriately left in a natural state, whether the property has even been cleared without appropriate

measure to prevent invasive plant species, and other similar factors.

- B. Dead, decaying, or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property.
- C. Brush, bushes, shrubbery, tree limbs, or other growth that projects over a sidewalk at less than 8 feet above the sidewalk level, or that projects over a street at less than 13 feet above the street level.
- D. Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the top of the curb, or where no curb exists, from the street centerline grade. Vegetation, walls, fences, or structures that obstruct vision constitute a safety hazard if they are within a clear vision area pursuant to [Chapter 14.17](#) of the Newport Municipal Code.

(8.10.060(D) enacted by Ordinance No. 2054, adopted on June 3, 2013; effective June 13, 2013.)

8.10.070 Rubbish, Composting and Burning

- A. No person may throw, dump, deposit or discard in any way upon public or private property any injurious or offensive substance or any kind of litter, rubbish, trash, debris or refuse which would mar the appearance, create a stench or detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.
- B. No person may compost materials that either cause offensive odors, or create a health hazard, or are capable of attracting or providing food for potential disease carriers such as birds, rodents, flies or other vermin. A properly contained and maintained compost heap with no noticeable odor at the nearest property line is not a nuisance.
- C. No person may burn materials that cause offensive odors or create a health hazard. Examples of materials that may not be burned include plastic, rubber, and wet or putrescible garbage.

8.10.080 Fences

- A. No person may construct or maintain a barbed-wire fence or allow barbed wire to remain as a part of a fence along a

sidewalk or public way. Fences that include barbed wire above a level at least six feet above ground level and placed and maintained by a governmental entity for the purpose of public safety or security are exempt from this section.

- B. No person may install, maintain, or operate an electric fence along a street or sidewalk, or along the adjoining property line of another person.
- C. Improperly maintained fences are nuisances. A fence is improperly maintained if components are missing or loose, or the fence is sagging, leaning or otherwise not in good repair.

8.10.090 Surface Water and Drainage

- A. No owner or person in charge of any building or structure may direct or allow rainwater to fall from the building or structure directly onto a street or public sidewalk or to flow across a public sidewalk. Rainwater falling from a canopy, awning or similar structure is exempt from this section if the awning, canopy or other structure provides shelter from rain for at least two and a half feet of sidewalk width. Nothing in this section prohibits a person from directing a rain drain into a ditch or portion of the street that operates as part of the storm drainage system, provided that there is no surface flow across a sidewalk
- B. The owner or person in charge of property shall install and maintain in a proper state of repair adequate drain pipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across the surface of any sidewalk. Any flow from a property into a ditch or street portion of the storm drainage system that crosses a sidewalk shall be directed through a pipe or culvert under the sidewalk.
- C. Any owner or person in charge of property shall keep open drainageways on property that they possess or control cleared of debris.
- D. Nonpublic stormwater facilities that malfunction and result in flooding or damage to other property not possessed or controlled by the owner or person in charge of the stormwater facility are nuisances. The owner or person in charge of property served by an access drive is responsible for culverts under the access drive, even if the

culvert is in the right of way. Nonpublic stormwater facilities include but are not limited to:

1. A stormwater facility not located on city-owned property, city right-of-way, or city easement;
 2. A private parking lot storm drain or drywell;
 3. A stormwater facility not designed and constructed for use by the general public;
 4. Access-drive culverts in the public right-of-way or on private property;
 5. A stormwater detention or retention system not constructed or otherwise acquired by the city.
- E. No person may dispose of waste oil, paints, solvents, or other toxic chemicals into any stream, storm drain or other portion of the storm drainage system. "Dispose of" includes placing materials in locations where they will ultimately enter the storm drainage system.

8.10.100 Graffiti

- A. It is every property owner's duty to remove graffiti promptly from their property in a manner acceptable to the city.
- B. **Graffiti** means any unauthorized painting, writing, drawing, carving or inscription which can be seen from any public right-of-way, sidewalk, alley or park and which damages, defaces or destroys any real or personal property through the use of paint, spray paint, indelible marker, ink, knives or any similar method, regardless of the content of the message delivered or nature of the material used in the commission of the act.

8.10.110 Notices and Advertisements

- A. No person may affix or cause to be distributed any placard, bill, advertisement, poster or other thing upon real or personal property, public or private, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the city regulating the use of and the location of signs and advertising or as a prohibition on distributing information to the owner or occupant of a property.

- B. No person, either as principal or agent, may scatter or cause to be scattered on public or private property any placards, advertisements or any other materials.
- C. This section does not prohibit any person from distributing information or other materials directly to a person, to leave information at a property directed to the owner or occupant of the property in such a way that the information will not become litter, or to make materials available from a table, display rack or similar structure where the person has the right to place the table, display rack, or other structure. This section is to be interpreted so that it does not restrict any person's constitutional rights.

8.10.120 Buildings and Structures

- A. An improperly maintained building or structure is a nuisance. An improperly maintained building is one that is an obviously dilapidated state, such as a building or structure that has:
 1. A substantial amount of missing siding, roofing or other component. A building with a temporary covering such as a tarp or plywood for more than 30 days is considered to have missing siding or roofing.
 2. Has missing windows or doors, or windows, doors or screens that are not properly attached or that do not properly close.
 3. Has substantial visible damage or deterioration of any type, including smoke damage or peeling or flaking paint.
 4. Has any component or attachment that is visibly broken or damaged.

~~B. In enforcing this section the city will normally attempt to resolve the nuisance by informal means prior to formally initiating the nuisance process, but is not required to do so.~~

Commented [DA4]: Handled administratively through civil infraction process in NMC Chapter 2 15

8.10.125 Garage Sales

- A. **Garage Sale** means an event in a residential zone at which personal belongings and other goods are displayed and offered for sale by one or more persons at the residential premises of one of the owners. Garage sales include

events such as yard sales, patio sales, rummage sales, and other similar sales.

- B. Garage sales have benefits for those holding the sales and their customers, but have a detrimental impact on neighboring property because of additional traffic and noise. Garage sales in excess of four per calendar year or in excess of 48 consecutive hours are a nuisance. Garage sales in excess of two per calendar month are a nuisance.

(Chapter 8.10.125 was adopted by Ordinance No. 1973, on February 2, 2009; effective March 4, 2009)

8.10.130 Dangerous Excavations

No owner or person in charge of property shall allow an excavation to be unguarded in the absence of suitable barriers, with warning lights or area lighting to be provided during hours of darkness.

8.10.135 Outdoor Storage

Outdoor storage of machinery, equipment, parts, supplies, and other items shall be maintained so as to present a neat and orderly appearance or shall be screened from view from public rights-of-way and adjacent properties. Failure to maintain outdoor storage in compliance with the section is a nuisance. Normal outdoor storage of fishing gear on boats or on dock or harbor areas is exempt from this section. ~~No citation or notice of nuisance shall be issued for improper outdoor storage unless there has been prior contact as provided in Section 2.15.020(C.) at least 15 days before the citation or notice of nuisance.~~

Commented [DA5]: Handled administratively through civil infraction process in NMC Chapter 2.15.

(8.10.135 adopted by Ordinance No. 1950 on February 19, 2008; effective March 20, 2008)

8.10.140 Chronic Nuisance Property

Commented [DA6]: New section 8.10.140.

Any real property within the City that becomes a chronic nuisance property is in violation of this Chapter and subject to its remedies.

A. Chronic nuisance property means:

- 1. Property upon which the owner or person in charge of property permits three or more separate incidents listed below to occur within any 30-day period, or five or more separate incidents listed below within any 90-day

period, at least one of which separate incidents must have resulted in a citation or arrest;

2. Property, the use of which has a causal relation to three or more separate incidents listed below occurring within any 30-day period, or five or more separate incidents listed below within any 90-day period, at least one of which separate incidents must have resulted in a citation or arrest, and all of which occurred within 100 feet of the boundary line of the subject property; or
3. Any combination of separate incidents as specified in Subsection (A)(1) or (A)(2) above which amounts to three or more separate incidents listed below occurring within any 30-day period, or five or more separate incidents listed below within any 90-day period, at least one of which separate incidents must have resulted in a citation or arrest.

B. For purposes of Section 8.10.140, the following offenses shall constitute incidents which would support a finding of chronic nuisance property:

1. Disorderly conduct under ORS 166.025;
2. Unlawful use of weapon or possession of firearms under ORS 166.220 or 166.250;
3. Noise disturbance in violation of NMC Chapter 8.15;
4. Providing alcohol to minor or minor in possession of alcohol under ORS 471.410 or 471.430;
5. Public indecency under ORS 163.465;
6. Criminal mischief under ORS 164.345 to 164.365;
7. Prostitution or related offenses under ORS 167.002 to 167.027;
8. Possession, manufacture, or delivery of controlled substances or related offenses under ORS 167.203 to 167.262, 475.005 to 475.285, or 475.940 to 475.980;
9. Endangering the welfare of a minor under ORS 163.575;
10. Harassment under ORS 166.065;

11. Assault under ORS 163.160 to 163.185;
12. Public consumption of alcohol in violation of NMC Chapter 9.55;
13. Menacing or bias under ORS 163.190, 166.155, and 166.165;
14. Recklessly endangering another person under ORS 163.195;
15. Animal abuse, neglect, abandonment or fighting, or dogfighting under ORS 167.315 to 167.330, 167.340, 167.355, and 167.365;
16. Theft or related offenses under ORS 164.015 to 164.140;
17. Any act or omission that causes injury to or endangers the comfort, health, repose, or safety of citizens of the city generally;
18. Any act or omission that unlawfully interferes with, obstructs, or renders unsafe personal safety or property.

C. To qualify, all incidents must be based on either:

1. The statement of a person who personally witnessed the alleged incident;
2. Personal observation of a law enforcement officer; or
3. A determination by a law enforcement officer after an investigation that there are reasonable grounds to conclude that the alleged incident did, in fact, occur.

8.10.145 Civil Penalty

Commented [DA7]: Moved from 8.10.210 below.

- A. Violation by any person of any of the provisions of this Chapter is a civil infraction punishable by a penalty not to exceed \$1,000.00.
- B. Each day's violation of a provision of this Chapter constitutes a separate violation.
- C. The abatement of a nuisance is not a penalty for violating this Chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate

a nuisance, and abatement of the nuisance does not cure any violation that occurred prior to the abatement. The municipal judge may consider any abatement by the owner in considering the appropriate civil penalty. The remedies provided in this Chapter are not exclusive and all remedies are cumulative. The city and private parties may seek other legal means, including actions in Circuit Court, to abate nuisances and recover damages from nuisances.

8.10.15040 Abatement

- A. Notice of nuisance and abatement. After determining that a nuisance exists, the city manager may cause a notice of nuisance to be posted and/or served. The city manager may attempt to resolve a nuisance by informal means prior to issuing the notice.
- B. Posting. If the nuisance involves a specific property, notice of the nuisance shall be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate such nuisance.
- C. Personal service and mailing. All notices of nuisance, whether posted or not, shall be personally served on or mailed by registered or certified mail to the owner to the last known address of the owner. The city may also provide notice in a similar fashion to any person known by the city to be in charge of the property or responsible for the nuisance.
- D. The notice of nuisance and abatement shall contain:
 - 1. If the nuisance involves a specific property, a description (street address or other) of the real property where the nuisance exists;
 - 2. A direction to abate the nuisance within ~~ten~~10 days from the date of the notice;
 - 3. A description of the nuisance;
 - 4. A statement that unless such nuisance is removed the city may abate the nuisance and the cost of abatement shall be a lien against the property ~~or against other property of the owner or person responsible for the nuisance;~~
 - 5. A statement that the owner or other person in charge of the property may protest the abatement by giving

notice to the city manager within ~~ten~~10 days from the date of the notice.

- E. On completion of the posting and mailing the person posting and mailing the notice shall execute and file a certificate stating the time and place of the mailing and posting. A public file with the notice and other materials shall be maintained in the city recorder's office.
- F. An error in the name or address of the owner, person in charge, or other person responsible for the nuisance, or the use of a name other than that of the owner or other person, or an error in maintaining the file, shall not make the notice void. If notice is posted, posting of the notice is sufficient notice. Mailing to a person that the city reasonably believes to be the owner, person in charge, or otherwise responsible for the nuisance, shall constitute sufficient notice as to that person, regardless of delivery or receipt of the notice.
- G. Nuisance determination. If a person complains in writing to the city manager alleging that a nuisance exists and the city manager determines there is a nuisance and the nuisance remains in place for 30 days without ~~any~~ action an investigation by the city to initiate the nuisance process, the person may petition to the City Council to initiate the nuisance process. On receipt of the petition, the city shall schedule the matter ~~for a public hearing~~ before the City Council, and written notice of the hearing agenda item shall be mailed to or served on the complainant, the owner of the property where the nuisance is located (if applicable), and any person believed to be responsible for the ~~alleged~~ nuisance, at least 7 calendar days prior to the hearing agenda item. ~~After the hearing the matter,~~ the Council may:
 - 1. Direct the city manager to initiate the nuisance process;
 - 2. Direct the city manager to investigate further and either initiate the nuisance process or report back to the Council why the nuisance process has not been initiated.
 - ~~3. Determine that a nuisance does not exist.~~
 - ~~4. Take other action that the Council decides is appropriate under the specific circumstances.~~

8.10.1550 Abatement or Protest

- A. Within 10 days after the posting and/or mailing of the notice as provided in Section ~~1408.10.150~~, the owner or person in charge of the property shall remove the nuisance or submit a written protest as provided in Subsection (B) below. The time to remove the nuisance may be extended as provided in Subsection 8.10.160(A.)
- B. An owner, person in charge, or other person responsible for the nuisance who wishes to protest the nuisance notice shall file with the city manager a written statement specifying the basis for the protest.
- C. On receipt of the protest, the city manager may withdraw the notice if the manager concludes that no nuisance exists. If the manager does not withdraw the notice, the protest shall be referred to the Council for consideration at either of the next two Council meetings. At the time set for consideration of the protest, the owner or other person may appear and be heard by the Council and the Council shall thereupon determine whether or not a nuisance in fact exists.
- D. If the Council determines that a nuisance does in fact exist, the owner or other person shall abate the nuisance according to the Council determination. If no deadline is included in the Council decision, the nuisance shall be abated within 10 days of the Council decision.

8.10.160 Abatement by City

- A. If the nuisance has not been abated within 10 days of posting or as within the time specified in the Council decision, the city manager may cause the nuisance to be abated by the city. The city manager may decide not to proceed with the abatement if the city lacks the resources to abate the nuisance. The city manager may agree to extend the deadline for a reasonable period of time so long as the owner or other responsible person is making reasonable efforts to abate.
- B. No abatement by the city on private property shall occur unless preceded by issuance of a judicial warrant authorizing entry and abatement, or in the alternative, written consent and release of liability by the property owner or person in charge of the property. The municipal judge shall have the authority to issue a warrant to enter and abate.

C. The city shall keep an accurate record of the actual cost incurred by the city in abating the nuisance, including any administrative expenses, and any costs incurred in posting notice or holding the hearing. Staff time in preparation for and participation at the hearing shall also be included as a cost of abatement.

~~D. The city may, at its discretion, remove dead, decaying, or unsafe trees or tree limbs on city owned or controlled property, including rights of way and easements, where the vegetation presents a safety hazard to the public or adjacent property.~~

Commented [DAB]: Inadvertently added as part of Ord. 2154. Already included in 8.10.060(B) above.

(Section 8.10.160 was adopted by Ordinance 2154 on September 3, 2010; effective October 3, 2010.)

8.10.190 Assessment of Costs

A. After the city has determined the total costs of abatement, the city, by personal services or by registered or certified mail shall provide to the owner and may provide to any other person in charge of the property or responsible for the nuisance a notice stating:

1. The total costs of abatement.
2. That the cost as indicated will be assessed to and become a lien against the property unless paid within ~~thirty~~ 30 days from the date of the notice;
3. That any objection to the cost of the abatement as stated in the notice must be filed with the city manager not more than ~~ten~~ 10 days from the date of the notice of abatement costs.

B. If no timely objection is received and payment is not received within 30 days, the amount stated in the notice shall be entered into the city's lien docket and shall constitute a lien on the property where the nuisance abatement occurred ~~and on any other property within the city of any person responsible for the nuisance to whom notice was sent as provided in this section.~~

C. If an objection is received, the objection shall be considered by the Council at its next meeting. After a hearing on the objection, the Council shall determine the amount of abatement costs payable to the city, and the amount shall be paid within 10 days of the Council

determination. If unpaid after 10 days, the amount of abatement costs determined by the Council shall be entered into the city's lien docket and shall constitute a lien on the property where the nuisance abatement occurred.

- D. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate of nine percent per annum from the date of entry of the lien in the lien docket.
- E. An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property where the nuisance abatement occurred.

8.10.200 Summary Abatement

The city manager, fire chief, of the fire department and the police chief of police may proceed summarily to abate a health or other nuisance from which there is immediate danger to human life, health, or safety or immediate danger of substantial damage to property.

~~8.10.210~~ Penalty

Commented [DA9]: Moved to 8.10.145 above.

- ~~A. Violation by any person of any of the provisions of the ordinance is a civil infraction punishable by a penalty not to exceed \$1,000.00.~~
- ~~B. Each day's violation of a provision of this chapter constitutes a separate violation.~~
- ~~C. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance, and abatement of the nuisance does not cure any violation that occurred prior to the abatement. The municipal judge may consider any abatement by the owner in considering the appropriate civil penalty. The remedies provided in this chapter are not exclusive and all remedies are cumulative. The city and private parties may seek other legal means, including actions in Circuit Court, to abate nuisances and recover damages from nuisances.~~

(Chapter 8.10 was adopted by Ordinance 1921 on June 4, 2007; effective July 4, 2007.)