

# REQUEST FOR COUNCIL ACTION



**Date Action Requested: (September 5, 2023)**

Order ☐ Ordinance ☒ Resolution ☐ Motion ☐ Information ☐

No. 2023-2918

Subject:

An update to NMC 8.20 concerning obnoxious vegetation.

Staff: CM, Sgt. Ronning, Code enforcement officer Winters

Department: Administration and NDPD

File No.

Business Session

Order On Agenda: New Business

Hearing Type: Legislative ☒ Quasi-Judicial ☐ Administrative ☐ Not Applicable ☐

**Is this item state mandated?** Yes ☐ No ☒

**If yes, please cite the state house bill or order that necessitated this action:**

NA

## **Recommendation:**

Staff recommends the repeal of existing language and the adoption of the updated language presented as Exhibit A for NMC 8.20.010, 8.20.020, 8.20.030, 8.20.040 and 8.20.050.

## **Executive Summary:**

The previous version of NMC 8.2.xx is inconsistent with our current workflow, job titles and process. Specifically, the current version of MNC 8.2:

- Cites the Fire Chief a position no longer within the city's establishment.
- Fails to cite the correct process that would be carried out by the new code enforcement team.

## **Fiscal Impact:**

Negligible – perhaps better use of code enforcement staff time due to clearer regulations being in place.

## **Council Goals:**

1. This directly addresses council goal 1, objective 1 as the outdated code causes confusion to the residents as to the responsible party who should solve the obnoxious vegetation issues. This creates delays for residents.
2. This indirectly addresses council goal 4 – public safety. Safety will increase if the risks of brush fires can be addressed more effectively.

# ORDINANCE NO. 2023-2918

**An Ordinance repealing and replacing sections 8.20.010, 8.20.020, 8.20.030, 8.20.040 and 8.20.050 of the Newberg Municipal code concerned with Obnoxious Vegetation**

## **Recitals:**

1. WHEREAS, the City of Newberg adopted Ordinance No. 88-2232, on June 8, 1988 requiring property owners or occupants all lots and parcels of city to cut all brush, weeds on their properties.
2. WHEREAS, Ordinance No. 88-2232 was amended on May 4, 2006 by Ordinance No. 2006-2643 to increase the flexibility of operations for the Fire Chief of Newberg.
3. WHEREAS, the current Newberg Municipal code references staff positions and processes that no longer exist.
4. WHEREAS, staff from NDPD code enforcement division have requested an update to the relevant code so they can carry out the good works of the city.

## **The City of Newberg Ordains as Follows:**

1. Repeal the obnoxious vegetation code at NMC 8.20.010, 8.20.020, 8.20.030, 8.20.040 and 8.20.050.
2. Replace the repealed code with new obnoxious vegetation code for NMC 8.20.010, 8.20.020, 8.20.030, 8.20.040 and 8.20.050 as listed in exhibit A attached.

**Effective Date** of this ordinance is the day after the adoption date, which is: September 19, 2023.

**Adopted** by the City Council of Newberg, Oregon, this 18<sup>th</sup> day of September, 2023, by the following votes:      **AYE:**      **NAY:**      **ABSTAIN:**

\_\_\_\_\_  
Rachel Thomas, City Recorder

**Attest** by the Mayor this 19th day of September, 2023.

\_\_\_\_\_  
Bill Rosacker, Mayor

## **Exhibit A – suggesting language to update**

### **NMC 8.20.010, 8.20.020, 8.20.030, 8.20.040 and 8.20.050**

The following Newberg Municipal code indicated by means of a strikethrough is proposed to be repealed:

#### **~~8.20.010 Brush, grass, and weed control.~~**

~~The owner or occupant of all lots and parcels of land within the city shall cut close to the ground all brush, grass, thistles, weeds or other rank or obnoxious vegetable growth growing to the height of 10 inches or more on said lots or parcels at least once per year, between May 15th and July 15th. The fire chief may require such cutting any time of the year as necessary in order to control such growth that may be deemed a fire hazard. Owners of large parcels of fallow land within the city will be required to cut or till a fire break of at least 30 feet along property lines as approved by the fire chief. [Ord. 2643, 5-1-06; Ord. 2232, 6-6-88. Code 2001 § 97.01.]~~

~~Penalty: See NMC 1.05.200.~~

#### **~~8.20.020 Notice to cut and service.~~**

~~If any person, firm or corporation owning, possessing, or having the care or custody of any lot or parcel of land within the city shall fail to cut the said brush, grass or weeds as hereinabove required, the fire chief or the fire chief's representative shall have cause to give notice to said person, firm or corporation to remove such brush, grass or weeds within five days or the city will cause the same to be done and charge the cost of the removal as a lien against the property. Such notice shall be served upon such owner or occupant by mailing such notice by certified mail to the last known address of such owner or occupant as shown by the records of the Yamhill County tax assessor's office. In lieu of mailing notice to said owner or occupant, the city may serve such notice upon said owner or occupant. In the event the said owner or occupant or person having the custody and care of any lot or parcel of land within the city cannot be located or refuses service of said certified mail, such notice shall be posted in a conspicuous place upon said premises and a copy of the notice mailed to the last known address of the owner or occupant. [Ord. 2643, 5-1-06; Ord. 2232, 6-6-88. Code 2001 § 97.02.]~~

#### **~~8.20.030 Noncompliance and authority for work to be done.~~**

~~If any person, firm or corporation owning, possessing or having care and custody of a lot or parcel of land within the city shall fail or neglect to cut said brush, grass or weeds~~

~~within five days of said notice, the fire chief may go upon such lots or parcels of land, with such assistance as the fire chief may deem necessary, and destroy and eradicate said brush, grass or weeds in such manner as shall be most effective in the fire chief's judgment. [Ord. 2643, 5-1-06; Ord. 2232, 6-6-88. Code 2001 § 97.03.]~~

#### **~~8.20.040 Cost of work and assessment.~~**

~~Upon completion of said work, the fire chief shall file with the finance department an itemized statement of the cost of the work, plus 25 percent to cover the expense of the inspection, overhead and enforcement of this article, and the posting or service of said notice hereinabove required; but the minimum charge for any lot or parcel of land shall be \$50.00. [Ord. 2643, 5-1-06; Ord. 2232, 6-6-88. Code 2001 § 97.04.]~~

#### **~~8.20.050 Notice of intent to lien.~~**

~~The city council, after receiving an itemized statement, shall notify the property owner by certified mail of its intent to declare the correctness of said statement and create a lien upon the property involved to be enforceable against said property in the same manner as provided for the enforcement of liens for street improvements. Said notice to property owner shall be sent not later than 10 days prior to the matter appearing on the agenda for the regularly scheduled city council meeting. [Ord. 2643, 5-1-06; Ord. 2232, 6-6-88. Code 2001 § 97.05.]~~

The following updated code is proposed to replace the code listed above:

#### **8.20.010 Brush, grass, and weed control.**

The owner, occupant, or possessor of each lot or parcel of land within the city shall during the months of May, June, July, August and September of each year, cut and remove, and keep cut and removed, all noxious vegetation from (a) the owner, occupant, or possessor's lot or parcel, (b) any sidewalks abutting the owner, occupant, or possessor's lot or parcel, and (c) any street abutting the owner, occupant, or possessor's lot or parcel (up to the middle point of the street on the side of the street closest to the lot or parcel). Notwithstanding the foregoing, the code compliance officer may require cutting and removal of noxious vegetation at any time of the year as necessary to control noxious vegetation growth that may be deemed a fire hazard or a nuisance. Owners occupants, or possessors of large parcels of fallow land within the city will be required to cut or till a fire break of at least 30 feet along property lines as approved by the code compliance officer. For purposes of this section, noxious vegetation includes the following: weeds listed under any weed category in the Oregon State Noxious Weed List maintained by the Oregon State Weed Board that are more than ten inches in height; burdock, thistle, brush, grasses, and ferns that are more than ten inches in height; and any vegetation more than ten inches in height that is a fire hazard including dead or dying trees, dead bushes, stumps, or any other combustible material likely to cause a fire. Noxious vegetation does not include agricultural crops unless such crops are deemed a fire hazard. [Ord. [2643](#), 5-1-06; Ord. [2232](#), 6-6-88. Code 2001 § 97.01.]

**Penalty:** Violation of this section is punishable as a Class 4 civil violation See NMC [1.05.200](#).

#### **8.20.020 Notice to cut and service.**

If the owner, occupant, or possessor of any lot or parcel of land within the city shall fail to cut and remove any noxious vegetation as required in NMC 8.20.010, the code compliance officer or the code compliance officer's representative shall have cause to give notice to said person, firm, or corporation to cut and remove such noxious vegetation within five days or the city may, after the fifth day, issue a citation of up to \$100 per day as long as the violation exists. If said noxious vegetation is not cut and removed and compliance not gained within 10 days of the notice, the city may cause the same to be done and charge the cost of the removal as a lien against the property. Such notice shall be served upon such owner, occupant, or possessor by mailing such notice by certified mail to the last known address of such owner, occupant, or possessor as shown by the records of the Yamhill County tax assessor's office. In lieu of mailing notice to said owner, occupant, or possessor, the city may serve such notice upon said

owner, occupant, or possessor. In the event the said owner, occupant, or possessor cannot be located or refuses service of said certified mail, such notice shall be posted in a conspicuous place upon said premises and a copy of the notice mailed to the last known address of the owner, occupant, or possessor. [Ord. [2643](#), 5-1-06; Ord. [2232](#), 6-6-88. Code 2001 § 97.02.]

#### **8.20.030 Noncompliance and authority for work to be done.**

If the owner, occupant, or possessor of a lot or parcel of land within the city shall fail or neglect to cut noxious vegetation within ten days of the notice described in NMC 8.20.020, the code compliance officer may go upon such lots or parcels of land, with such assistance as the code compliance officer may deem necessary, and destroy and eradicate said noxious vegetation in such manner as shall be most effective in the code compliance officer judgment. [Ord. [2643](#), 5-1-06; Ord. [2232](#), 6-6-88. Code 2001 § 97.03.]

#### **8.20.040 Cost of work and assessment.**

Upon completion of the work described in NMC 8.20.030, the code compliance officer shall file with the finance department an itemized statement of the cost of the work, plus 25 percent to cover the expense of the inspection, overhead and enforcement of this article, and the posting or service of the notice described in NMC 8.20.020; but the minimum charge for any lot or parcel of land shall be \$50.00. [Ord. [2643](#), 5-1-06; Ord. [2232](#), 6-6-88. Code 2001 § 97.04.]

#### **8.20.050 Notice of intent to lien.**

The city council, after receiving an itemized statement, shall notify the property owner by certified mail of its intent to declare the correctness of said statement and create a lien upon the property involved to be enforceable against said property in the same manner as provided for the enforcement of liens for street improvements. Said notice to property owner shall be sent not later than 10 days prior to the matter appearing on the agenda for the regularly scheduled city council meeting. [Ord. [2643](#), 5-1-06; Ord. [2232](#), 6-6-88. Code 2001 § 97.05.]

**Exhibit B – Comparison Summary to proposed changes**  
**NMC 8.20.010, 8.20.020, 8.20.030, 8.20.040 and 8.20.050**

**Old Code Section**

**New Code Section**

**8.20.010 Brush, grass, and weed control.**

Narrow time frame requiring cutting (2 months) and insufficient frequency (once a year) did not adequately address fire hazards and growing seasons. Does not define or give parameters for “Obnoxious Vegetation.” Assigns authority to a position/department the city no longer has and does not control. Does not address the issue of Nuisance.

**8.20.010 Brush, grass, and weed control.**

Expands control time from 2 to 5 months and requires minimum compliance during that time to better address Fire Hazards and Nuisance. Gives standardized reference regarding obnoxious Vegetation. Rests authority with Code Compliance and adds nuisance language. More adequately addresses agricultural crops within city.

**8.20.020 Notice to cut and service.**

Assigns authority to a position/department the city no longer has and does not control. Only one enforcement remedy and costly to the city. No provisions included for citation.

**8.20.020 Notice to cut and service.**

Properly rests authority with Code Compliance. Provides clear citation option allowing an additional method to gain compliance.

**8.20.030 Noncompliance and authority for work to be done.**

Assigns authority to a position/department the city no longer has and does not control.

Ridged and restrictive (5) daytime frame for compliance. Time frame not compatible with nuisance abatement provision.

**8.20.030 Noncompliance and authority for work to be done.**

Properly rests authority with Code Compliance.

New language expands compliance time frame and more accurately reflects nuisance abatement time frames.

**8.20.040 Cost of work and assessment.**

Indicates the Fire Chief is responsible for filing cost assessment for abatement.

Minimum charge of \$50 does not adequately compensate any single action taken by a city department or employee if abatement is required.

**8.20.040 Cost of work and assessment.**

Makes the Code Compliance Officer responsible for filing cost assessments for abatements.

Increases minimum charge from \$50 to \$100 for any work done by the city.

**8.20.050 Notice of intent to lien.**

**8.20.050 Notice of intent to lien.** No change.