

## ORDINANCE NO. 16-01

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 10-263 PROVIDING FOR THE CUTTING AND REMOVING OF TALL GRASS AND OBNOXIOUS WEEDS AS CODIFIED AS CHAPTER 94 OF THE MONROE MUNICIPAL CODE.

THE CITY OF MONROE ORDAINS AS FOLLOWS:

### SECTION 1. DEFINITIONS.

For the purpose of this chapter the following definitions shall apply. . .

*NOXIOUS VEGETATION.* Includes:

- (1) Weeds more than ten inches high;
- (2) Grass more than ten inches high, except agricultural crops that are not a fire hazard or a vision obstruction;
- (3) Poison oak or poison ivy;
- (4) Blackberry vines or vegetation that:
  - (a) Is a fire hazard because it is near other combustibles;
  - (b) Extends into a public way
  - (c) Extends into a pathway frequented by children;
  - (d) Extends across a property line;
  - (e) Is used for habitation by trespassers;
  - (f) Is a health hazard; or
  - (g) Is a traffic hazard because it impairs the view of a public thoroughfare or creates a vision obstruction.

*PERSON IN CHARGE IS:* A person, representative or employee who has lawful control of the premises or property on which the Noxious Vegetation grows by ownership, tenancy, official position, or other legal relationship, including but not limited to full or partial authorization to manage the premises or property and authorization to enter into a rental agreement on behalf of another person in charge of the premises or property.

### SECTION 2. NOXIOUS VEGETATION CONSTITUTES NUISANCE; AUTHORITY TO ABATE.

- (1) No owner, occupant, or Person in Charge shall permit Noxious Vegetation to grow upon his or her property within the city limits. All Noxious Vegetation shall be cut and maintained at a height not to exceed ten inches.
- (2) It is hereby declared a nuisance for the owner, occupant, or Person in Charge to permit Noxious Vegetation to grow upon his or her property, or the right-of-way adjacent to such property without removing the same as prescribed above; and in case the Noxious Vegetation is not removed, then the City Council may cause it to be removed as provided within this ordinance. The cost of such removal may be assessed against the owner, occupant, or Person in Charge or against the property and made a lien thereon,

which shall be entered in the docket of city liens to be collected.

(3) The City Council may elect to charge a penalty against the owner, occupant, or Person in Charge, or against the property itself for failure to comply with this ordinance. The costs that the city incurs in the abatement, plus a penalty, may be charged against the owner, occupant, or Person in Charge or against the property itself.

### SECTION 3. WAIVER.

(1) Where strict compliance with the requirements of Section 2 would be impracticable as they apply to a type of Noxious Vegetation, to the height of weeds or grass, to height of tree branches, or to a part of a parcel of property, or to tracts of land exceeding three (3) acres historically used for farm or forest practices the City may waive those requirements as they so apply.

(2) No Council waiver is required for private tracts of land under a single ownership that exceeds one-half acre in size, provided the owner has complied with these standards for that area within the right-of-way adjacent to the subject property and an area of not less than ten feet (10') along the perimeter of the subject property where the adjacent property contains a residence or other structure within 20 feet of a common property line.

### SECTION 4. NOTICE.

(1) If the City Recorder is satisfied that a Noxious Vegetation nuisance exists, the City Recorder shall send by first class mail written notice to any owner, occupant, or Person in Charge of property containing Noxious Vegetation. The City Recorder shall also post such written notice in plain sight on the property. The City shall use the Benton County tax rolls or the records of the city or county to determine the identity of the owner, occupant, or Person in Charge. Failure to receive the mailed notice, even if due to an error in the name or address, shall not relieve any Person in Charge from the obligation to abate any noxious vegetation or to pay the cost of abatement performed by the City. The notice to abate shall contain:

- (a) A description of the real property by street address or otherwise on which the Noxious Vegetation exists;
- (b) A direction to the owner, occupant, or Person in Charge to abate the Noxious Vegetation nuisance within ten days from the date of the notice;
- (c) A description of the Noxious Vegetation nuisance;
- (d) A statement that unless the Noxious Vegetation is removed, the City may abate the nuisance and that the costs of such abatement will be charged to the owner, occupant, or Person in Charge or to the property as a lien;
- (e) A statement of failure to abate the nuisance as directed may result in the imposition of a financial penalty;
- (f) A statement that the owner, occupant, or Person in Charge may protest the order to abate by giving written notice to the City Recorder (as provided in Section

5(2)) within ten days from the date of the notice.

(g) The City shall keep a record of notices sent to any Person in Charge. Only one written notice shall be required to be provided to any Person in Charge. Where a second or repeated notice is deemed appropriate by the City Recorder, the City may move directly to the penalty phase as provided under Section 9 below and direct a citation be issued to the Person in Charge to pay the fine or appear in Municipal Court to plead his or her case before the Municipal Judge.

#### SECTION 5. PRIVATE ABATEMENT.

(1) Within ten days after the notice, as provided in Section 4, the owner, occupant or Person in Charge of the property where the Noxious Vegetation nuisance exists shall abate the nuisance, except as provided in (2) below.

(2) The owner, occupant or Person in Charge of the property who denies that a nuisance exists, may file with the City a written protest. The protest shall be referred to the City Council for hearing as part of the Council's regular agenda at its next meeting or at such other time as may be convenient for the City. The Council shall consider the abatement and protest and may consider any material it deems relevant and probative. The Council may at its discretion allow verbal testimony on the abatement issue. The Council will make its decision based upon the best interests of the City, including whether the Noxious Vegetation is offensive, injurious, or detrimental to the public health, safety or welfare. After hearing the matter, the Council may determine whether a nuisance exists, may decide upon the nature of the abatement, may order the abatement, and may impose other conditions as the Council deems necessary. The Council shall make written findings in support of its decision. The Council decision shall be final. Failure to file a written protest within the time lines provided in this ordinance waives any objection the owner, occupant or Person in Charge may have to finding that a nuisance exists or to the abatement of the nuisance by the City.

#### SECTION 6. ABATEMENT BY CITY.

(1) If, within the ten days allowed by Section 5 for abating a nuisance as defined in Section 1, the nuisance has not been privately abated, the City Council or its designee may cause it to be abated.

(2) The City may authorize or retain a person or entity to abate the nuisance. Such person or entity may enter upon the property at reasonable times for the purpose of investigating and abating the nuisance, specifically to destroy the Noxious Vegetation and seeds. The person authorized to abate the nuisance shall enter upon the property only upon obtaining written consent of the owner, occupant, or Person in Charge, or upon issuance of citation by a certified police officer and guilty conviction in the Monroe Municipal Court. However, Noxious Vegetation in the public right-of-way, on a public walk or pathway, or extending across a property line may be destroyed without consent or without a warrant and the costs assessed against the Person in Charge.

(3) The City Recorder shall keep an accurate record of the expense incurred by the city in abating the Noxious vegetation and shall include therein a reasonable charge for

administrative overhead.

(4) Whenever the city abates Noxious vegetation, in addition to any penalties imposed and in addition to the costs specified in Section (3) above, there is hereby imposed on each owner, occupant, or Person in Charge or on the property a penalty of \$50 or 10% of the abatement costs, whichever is greater. The City Recorder shall add the penalty to the amount to be collected as provided in Section 7. The City Recorder shall waive the penalty if the abatement costs are paid within the time specified in Section 7.

## SECTION 7. COLLECTION OF COSTS.

(1) The City Recorder, by registered or certified mail, postage prepaid, shall forward to the owner, occupant, or Person in Charge a cost notice stating:

- (a) The total cost of abatement, including any administrative overhead charges or penalties;
- (b) That the cost will be assessed and become a lien against the property unless paid within ten days from the date of notice;
- (c) That if the owner, occupant, or Person in Charge objects to the cost of abatement as indicated, he may file a written objection with the City Recorder not more than ten days from the date of the notice and that the written objection must state the facts and reasons for the objection to the cost of abatement.

(2) The owner, occupant, or Person in Charge's written objection to the cost of abatement shall be reviewed by the City Council or its designee, who shall determine the proper amount of the bill and give written notice to the person responsible of the amount so determined. That determination shall be final.

(3) Within ten days after receiving the bill, if no objection is filed, or within ten days after the determination following an objection, the person responsible shall pay the bill. If the costs of abatement are not paid within the ten days, the City Recorder shall thereupon enter the costs of abatement plus any applicable administrative overhead charges or penalties in the docket of city liens. Upon such entry the amount shall constitute a lien upon the property.

(4) The lien shall bear interest at the rate of five percent (5%) per year. The interest shall commence from date of the entry of the lien in the lien docket. For property owners the payment of the lien may be deferred, extended or modified until sale of the subject property.

(5) An error in the name of a person responsible shall not void the assessment and lien nor will a failure to receive the notices render the assessment void, but it shall remain a valid lien against the property.

## SECTION 8. ENFORCEMENT AND DISCHARGE OF DUTIES.

In case a duty under this chapter bears on two or more persons, discharge of the duty by one of the persons shall discharge the duty for the other person and preclude any lien to enforce

discharge of the duty from being imposed on the other person's property.

SECTION 9. PENALTY.

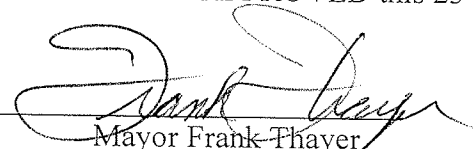
- (1) Any person violating the provisions of this chapter shall be fined not less than \$50, nor more than \$500, and possibly subject to the cost of fire suppression.
- (2) Each day's violation of this chapter constitutes a separate offense.
- (3) The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy.

SECTION 10. SEVERABILITY.

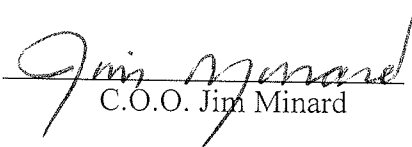
- (1) The sections and subsections of this ordinance are severable. If any part of this ordinance is held unconstitutional or invalid, the remaining parts shall remain in force unless:
  - (a) The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or
  - (b) The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

Section 3. Whereas this ordinance is necessary for the general health, safety and welfare of the citizens of the City of Monroe, an emergency is hereby declared to exist, and this ordinance shall take effect immediately upon its passage by the City Council and approval by the Mayor.

SIGNED AND APPROVED this 23<sup>rd</sup> day of May, 2016

  
Mayor Frank Thayer

ATTEST:

  
C.O.O. Jim Minard