

Section 615 - Nuisance Abatement

615.01 Definitions. Subd. 1. Abandoned building. Abandoned building shall mean any manufactured home, building or portion of a building which has stood with an incomplete exterior shell for longer than three years or any building or portion thereof which has stood unoccupied for longer than one year and which meets one or more of the following criteria:

- a) unsecured, or
- b) boarded, or
- c) having multiple exterior Housing Code or Building Code violations.

Subd. 2. Abatement deadline. Abatement deadline shall mean the date before which the nuisance must be abated as specified in a written order.

Subd. 3. Dangerous structure. Dangerous structure shall mean any structure which is potentially dangerous to persons or property including but not limited to:

- a) a structure which is in danger of partial or complete collapse; or
- b) a structure which has any exterior parts such as chimneys, eaves, porches, siding, railings, or trim which are loose or in danger of falling; or
- c) a structure which has any parts such as porches, stairs, ramps, rails, balconies, floors, or roofs which are accessible and which are either collapsed, in danger of collapsing, or not able to carry their designed weight.

Subd. 4. Enforcement Officer. Enforcement Officer shall mean the City Manager or his/her designee.

Subd. 5. Extermination. Extermination shall mean the eradication of rodents and other vermin by any or all approved methods such as poisoning, fumigation or trapping.

Subd. 6. Hazardous waste. Hazardous waste shall mean any waste material so defined by Minn. Stat. 116.06, Subd. 13 or described or listed as hazardous waste in Minn. Rules Chapter 7045, known as Minnesota Pollution Control and Hazardous Waste Division Hazardous Waste Rules.

Subd. 7. Interested party. Interested party shall mean any owner of record, occupying tenant, or lien holder of record.

Subd. 8. Last known address. Last known address shall mean the address shown on the records of the Hennepin County Department of Property Taxation or a more recent address known to the Enforcement Officer. In the case of parties not listed in these records, the last known address shall be that address obtained by the Officer after a reasonable search.

Subd. 9. Mail. Service by mail shall mean by depositing the item with the United States Postal Service addressed to the intended recipient at his or her last known address with first class postage prepaid thereon.

Subd. 10. Noxious substances. Noxious substances shall mean substances, solid or fluid, which are offensive, detrimental to health, hurtful, or dangerous. Noxious substances shall include but not be limited to any dead animal, or portion thereof, putrid carcass, decayed animal matter, green hides, or any putrid, spoiled, foul, or stinking beef, pork, fish, offal, hides, skins, fat, grease, liquors, human or animal excrement, or manure.

Subd. 11. Owner. Owner shall mean those shown to be owner or owners on the records of the Hennepin County Department of Property Taxation.

Subd. 12. Personal service. Personal service shall mean service by personally handing a copy to the intended recipient or by leaving a copy at the intended recipient's residence or place of business with a person of suitable age and discretion.

Subd. 13. Privy. Privy shall be any type of non-flush fixture for the receipt and storage of human waste including fixed units with vaults as well as portable units.

Subd. 14. Property. Property shall mean any parcel of land whether vacant or not, whether any structure thereon is occupied or not, or whether submerged or not.

Subd. 15. Refuse. Refuse shall mean all putrescible and non-putrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and market and industrial solid wastes.

Subd. 16. Refuse material. Refuse material shall mean refuse not placed in the refuse cart, bulk refuse items that do not fit into the refuse cart, yard waste bags that do not have yard waste stickers on them and brush piles placed at designated pickup location without appropriate arrangements made for collection. (Amended Ord. 2006-975)

Subd. 17. Responsible party. A responsible party shall be any one or more of the following:

- a) agent,
- b) assignee or collector of rents,
- c) holder of a contract for deed,
- d) a mortgagee or vendee in possession,
- e) receiver or executor or trustee,
- f) lessee,
- g) other person, firm, or corporation exercising apparent control over a property.

Subd. 18. Unoccupied. An unoccupied building is a building which is not being used for a legal occupancy or a building which has been ordered vacated by the City.

Subd. 19. Unsecured. Unsecured shall mean open to entry by unauthorized persons without the use of tools or ladders.

Subd. 20. Weeds. Weeds shall mean useless and troublesome plants commonly known as weeds including noxious weeds such as cocklebur, burdock, tumble mustard, wild mustard, wild oats, Canadian thistle, oxeye daisy, quack grass, Frenchweed, and Russian thistle, and also including "Noxious Weeds" as defined in Minnesota Statutes Section 18.171, Subd. 5, as amended.

615.02. Nuisance. A nuisance shall mean any substance, matter, emission, or thing which creates a dangerous or unhealthy condition or which threatens the public peace, health, safety, or sanitary condition of the City or which is offensive or has a blighting influence on the community and which is found upon, in, being discharged or flowing from any street, alley, highway, railroad right of way, vehicle, railroad car, water, excavation, building, erection, lot, grounds, or other property located within the City of Hopkins. Nuisances shall include but not be limited to those set forth in this Section.

Subd. 1. Refuse Material, noxious substances, hazardous wastes. Refuse material, noxious substances, or hazardous wastes laying, pooled, accumulated, piled, left, deposited, buried, or discharged upon, in, being discharged or flowing from any property, structure, or vehicle; except for:

- a) refuse deposited at places designated and provided for that purpose by the Hopkins City Code;
- b) refuse stored in accordance with provisions of the Hopkins City Code or vehicle parts stored in an enclosed structure;
- c) compost piles established and maintained in accordance with the regulations of the Department of Inspections;

Subd. 2. Weeds. Grass or Weeds which have grown upon any property to a height of ten or more inches or which have gone or are about to go to seed.

Subd. 3. Vermin harborage. Conditions which in the opinion of the Enforcement Officer are conducive to the harborage or breeding of vermin including materials stored less than 12 inches off the ground.

Subd. 4. Vermin infestations. Infestations of vermin such as rats, mice, skunks, snakes, bats, grackles, starlings, pigeons, bees, wasps, cockroaches, or flies.

Subd. 5. Sanitary structures. Structures for sanitation such as privies, vaults, sewers, private drains, septic tanks, cesspools, drain fields which have failed or do not function properly or which are overflowing, leaking, or emanating odors. Septic tanks, cesspools, or cisterns which are abandoned or no longer in use unless they are emptied and filled with clean fill. Any vault, cesspool, or septic tank which does not meet the following criteria:

- a) the bottom and sides are cemented to make impervious to water,
- b) the bottom is at least six feet below grade,
- c) proper ventilating pipes and covers are provided,
- d) it is located at least 20 feet from any house, residence, building, or public street,
- e) it is cleaned at least once a year, and
- f) the property served is located such that connection to the public sewer is impractical.

Subd. 6. Unsecured unoccupied buildings. Unoccupied buildings or unoccupied portions of buildings which are unsecured.

Subd. 7. Hazards. Any thing or condition on the property which in the opinion of the Enforcement Officer may contribute to injury of any person present on the property. Hazards which shall include but not be limited to dangerous structures, abandoned buildings, open holes, open foundations, open wells, dangerous trees or limbs, abandoned refrigerators, or trapping devices.

Subd. 8. Fire hazards. Any thing or condition on the property which in the opinion of the Enforcement Officer creates a fire hazard or which is a violation of the Fire Code.

Subd. 9. Health hazards. Any thing or condition on the property which in the opinion of the Enforcement Officer creates a health hazard or which is a violation of any health or sanitation law.

Subd. 10. Graffiti. Any writing, printing, markings, signs, symbols, figures, designs, inscriptions, or other drawings which are scratched, painted, drawn or otherwise placed on any exterior surface of a building, wall, fence, sidewalk, curb or others structure or equipment on public or private property and which have the effect of defacing the property. (Added by Ord. #94-741)

Subd. 11. Statute and Common Law Nuisances. Any thing or condition on property which is known to the common law of the land as a nuisance, or which is defined or declared to be a nuisance by the Statutes of Minnesota or the Hopkins Code of Ordinances.

615.03 Violations. Subdivision 1. No person shall, directly or indirectly or by omission, create a nuisance.

Subd. 2. No owner or responsible party shall allow a nuisance to remain upon or in any property or structure under his or her control.

Subd. 3. No owner of any truck, trailer, railroad car or flat, or other vehicle shall leave the vehicle standing on or along any street, highway, freeway, or railroad track, or other property within the City of Hopkins carrying or containing any refuse, noxious substance, or hazardous waste, except as otherwise permitted by the Hopkins Code of Ordinances.

615.04 Disclosure of responsible party. Upon the request of the Enforcement Officer or the City Clerk, a responsible party or owner shall disclose the name of any other responsible party or owner known to him/her. This shall include but not be limited to the persons for whom he/she is acting, from whom he/she is leasing the property, to whom he/she is leasing the property, with whom he/she shares joint ownership, or with whom he/she has any conveyancing contract.

615.05 Inspection of unoccupied buildings. An owner or responsible party shall, upon the request of the Enforcement Officer, provide the Officer with access to all interior portions of an unoccupied building in order to permit the Officer to make a complete inspection.

615.06 Order to cease. In the event that an Enforcement Officer observes a person creating a nuisance, the Officer may, after presenting proper identification, order that the person cease creating a nuisance.

615.07 Enforcement Officer authorized to enter. The Enforcement Officer shall be authorized to enter any property or structure in the City for the purpose of enforcing and assuring compliance with the provisions of this Chapter.

615.08 Authority to Abate. Subdivision 1. The City is authorized to abate nuisances in accordance with the procedures set forth in Sections 615.10, 615.11 and 615.12. All abatement costs incurred shall be charged against the property as a special assessment to be assessed and collected in the manner provided in Minnesota Statutes Section 429.101 or in any alternative manner provided elsewhere in Minnesota Statutes except that when a request is filed for a review of an emergency abatement the assessment hearing shall be replaced by the hearing provided for in Section 615.12.

Subd. 2. Abatement may include but shall not be limited to removal, cleaning, extermination, cutting, mowing, grading, covering or filling dangerous unfinished or abandoned excavations, sewer repairs, draining, securing, boarding unoccupied structures, barricading or fencing, removing dangerous portions of structures, and demolition of dangerous structures or abandoned buildings.

Subd. 3. Abatement costs shall include the cost of the abatement; the cost of investigation, such as title searches, inspection, and testing; the cost of notification; filing costs; and administrative costs.

615.09. Service. When service of an order or notice is required, any one or more of the following methods of service shall be adequate:

Subd. 1. by personal service; or

Subd. 2. by mail, unless it is a written order which gives three days or less for the completion of any act it requires; or

Subd. 3. if the appropriate party or address cannot be determined after reasonable effort, by posting a copy of the order in a conspicuous place on the property. If a mailed order or notice is returned by the United States Postal Service, a good faith effort shall be made to determine the correct address, unless the order or notice orders abatement and that abatement has been completed.

615.10. Abatement Procedure. Unless the nuisance is as described in Sections 615.11 or 615.12, the City may abate the nuisance by the procedure described below.

Subd. 1. Order. The Enforcement Officer shall serve a written order upon the owner. The written order shall also be served upon any responsible party known to the Officer and may be served upon any party known to have caused the nuisance. The written order shall contain the following:

- a) a description of the real estate sufficient for identification;
- b) a description and the location of the nuisance and the remedial action required to abate the nuisance;
- c) the abatement deadline, to be determined by the Enforcement Officer allowing a reasonable time for the performance of any act required;
- d) a statement that if the remedial action is not taken within the time specified, the City will abate the nuisance and charge all costs incurred therein against the real estate as a special assessment to be collected in the same manner as property taxes. (Amended Ord. 2006-975)

Subd. 2. Abatement. If the remedial action is not taken, the City may abate the nuisance. (Amended Ord 2006-975)

Subd. 3. Notice of Abatement. Following abatement as set forth in Section 615.10, as soon as the costs incurred are known to the Enforcement Officer, he/she shall serve written notice upon the owner. The notice shall contain:

- a) a description of the nuisance,
- b) the action taken by the City,
- c) the amount and basis of the abatement costs,
- d) a notice of intent to assess the costs incurred in abating the nuisance,
- e) a statement that the owner may request, by writing to the City Clerk within ten (10) working days of the date of the notice, a hearing before an administrative hearing officer appointed by the City Council to determine the validity and amount of the proposed assessment,
- f) a statement that the owner must file written objections to the assessment along with the request for the administrative hearing,
- g) a statement that the owner may appeal the assessment to district court within thirty (30) days after the adoption of the assessment by the City Council at an annual meeting, and
- h) a statement informing the owner of the provisions of Minnesota Statutes Sections 435.193 to 435.195 and of the existence of any deferment procedure. (Amended Ord. 2006-975)

Subd. 4. Administrative Hearing. The city council will periodically approve a list of lawyers, from which the city clerk will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. The responsible party or owner will have the right to request no later than five days before the date of the hearing that the assigned hearing officer be removed from the case. One request for each case will be granted automatically by the city clerk. A subsequent request must be directed to the assigned hearing officer who will decide whether he or she cannot fairly and objectively review the case. The city clerk may remove a hearing officer only by requesting that the assigned hearing officer find that he or she cannot fairly and objectively review the case. If such a finding is made, the officer shall remove himself or herself from the case, and the city clerk will assign another hearing officer. The hearing officer is not a judicial officer but is a public officer as defined by Minn. Stat. § 609.415. The hearing officer must not be a city employee. The city manager must establish a procedure for evaluating the competency of the hearing officers, including comments from affected owners and city staff. These reports must be provided to the city council. (Amended Ord. 2006-975)

Subd. 5. Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may issue a subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the matter being heard. The party requesting the subpoena is responsible for serving the subpoena in the manner provided for civil actions and for paying the fees and expenses of a witness. A person served with a subpoena may file an objection with the hearing officer and a copy of the objection shall be given to the City Clerk and the accused no later than the time specified in the subpoena for compliance. The hearing officer may cancel or modify the subpoena if it is unreasonable or oppressive. A person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to a subpoena is guilty of a misdemeanor. Alternatively, the party requesting the subpoena may seek an order from district court directing compliance. (Amended Ord. 2006-975)

Subd. 6. The hearing shall be scheduled to occur within 45 days of receiving a request for a hearing. Notice of the hearing must be served on the owner at least 14 days in advance, unless a shorter time is accepted by all parties. Service of the Notice will be by first class mail and will be complete upon mailing. At the hearing, the owner will have the opportunity to present testimony and question any witnesses, but strict rules of evidence will not apply. The hearing officer must tape record the hearing and receive testimony and exhibits. The officer must receive and give weight to evidence, including hearsay evidence that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. (Amended Ord. 2006-975)

Subd. 7. The hearing officer has the authority to determine that a valid nuisance abatement occurred, to allow the City to collect full reimbursement of abatement costs or to reduce the amount due the City either unconditionally or upon compliance with appropriate conditions. The hearing officer's decision and supporting reasons must be in writing. When determining validity and/or cost of abating a nuisance condition, the hearing officer may consider any or all of the following factors:

- a) the duration of the nuisance;
- b) the frequency or reoccurrence of the nuisance;
- c) the seriousness of the nuisance;
- d) the good faith effort by the owner to comply;
- e) the economic impact on the owner;
- f) the impact of the nuisance condition upon the community; and
- g) any other factors appropriate to a just result. (Amended Ord 2006-975)

Subd. 8. The failure to attend the hearing constitutes a waiver of the owner's rights to an administrative hearing. A hearing officer may waive this result upon good cause shown. Examples of "good cause" are: death or incapacitating illness of the owner; a court order requiring the owner to appear for another hearing at the same time; and lack of proper service of the notice of abatement or notice of the hearing. "Good cause" does not include: forgetfulness and intentional delay. (Amended Ord 2006-975)

Subd. 9. The decision of the hearing officer will be mailed promptly to the appellant following the hearing. It will include the hearing officer's decision, the amount due and statement Subd. 3(g) of this section. The decision of the hearing officer is final without any further right of administrative appeal and shall stand as the hearing for said assessment. An owner who disagrees with the hearing officer's decision may obtain judicial review of the decision of the hearing officer by proceeding under a writ of certiorari in district court. (Amended Ord 2006-975)

Subd. 10. Assessment of abatement costs. Except as otherwise modified by subd. 5. of this section the service charges imposed under subd. 3. of this section shall be assessed against the owner's property and shall be payable in a single installment, or by up to ten equal installments as the council may provide. (Amended Ord 2006-975)

615.11. Substantial abatement procedure. When the Enforcement Officer determines that a nuisance exists on a property and the cost of abatement of the nuisance is estimated to exceed ten thousand dollars or the abatement involves demolition of a building other than a structure accessory to a residential building or the abatement substantially diminishes the value of the property and except in the case of an emergency as provided for in Section 615.12, the City shall abate the nuisance by the procedure described below. A good faith estimate of the abatement costs, not the actual cost calculated after the abatement is completed, shall be the basis which determines whether this abatement procedure shall be used. (Amended Ord 2006-975)

Subd. 1. Orders. The Enforcement Officer shall serve a written order upon the owner, all interested parties, and any responsible party known to the Officer. The order shall contain the following:

- a) a description of the real estate which is sufficient for identification and which shall include the legal description;
- b) the location of the nuisance on the property;
- c) a description of the nuisance and the basis upon which it is declared to be a nuisance;
- d) the remedial action required to abate the nuisance;
- e) the abatement deadline, to be determined by the Enforcement Officer allowing a reasonable time for the completion of any act required; and
- f) a statement that if the remedial action is not taken before the abatement deadline, the matter will be referred to the City Council who, after a public hearing, may order the City to abate the nuisance and charge all costs incurred against the real estate as a special assessment to be collected in the same manner as taxes.

Subd. 2. Notice to public. When an order requires, exclusively or as an option, the demolition of a building, the public shall be put on notice as follows.

- a) A copy of the order shall be placed on file in the Office of the City Clerk.
- b) The Enforcement Officer shall notify the City Council of each property subject to a demolition order as follows. The Enforcement Officer shall send to the City Council a list of the properties that have become subject to a demolition order. The list shall be in the form of a resolution declaring that an enforcement action has been commenced and that as a result of the nuisance status of a building on the property an order has been issued detailing the violations and requiring, exclusively or as an option, that the building be demolished and that a copy of this order is on file in the Office of the City Clerk. This resolution shall include the legal description of each property and shall authorize and direct the City Clerk to file a copy of the resolution with the Hennepin County Recorder.

Subd. 3. Setting a hearing date. If the remedial action is not taken within the time specified in the written order, the Enforcement Officer may notify the City council that substantial abatement is necessary and appropriate. Upon being notified by the Enforcement Officer, the City Council shall, within two weeks, fix a date for an abatement hearing.

Subd. 4. Notice. Written notice of the time, date, place and subject of the hearing shall be given as set forth in this subdivision.

- a) The City Clerk shall immediately notify the Enforcement Officer.
- b) At least ten days prior to the hearing, the Enforcement Officer shall notify the owner and all interested parties by personal service of the notice upon the owner or his/her duly authorized representative and upon each interested party or his/her duly authorized representative. If, after reasonable effort personal service cannot be made, either of the following methods of notice shall be considered adequate.

- 1) confirmed mail service which is either certified mail with a signed receipt returned or first class mail confirmed by written response.
 - 2) mailing the notice to the last known address and publishing the notice once a week for two weeks in the official city newspaper of general circulation in the City of Hopkins and posting the notice in a conspicuous place on the building or property.
- c) At least ten days prior to the hearing, the Enforcement Officer shall mail a notice to any responsible party known to the Enforcement Officer.

Subd. 5. Hearing. At the time of the public hearing, the City Council shall hear from the Enforcement Officer and any other parties who wish to be heard. After the hearing, the City Council shall adopt a resolution, describing what abatement action, if any, it deems appropriate. If the resolution calls for abatement action it may either order the City to take the abatement action or fix a time within which the nuisance must be abated and provide that if corrective action is not taken within the specified time, the City shall abate the nuisance. The City Clerk shall give a copy of this resolution to the Enforcement Officer who shall mail copies to any of the parties required to be notified in Subd. 4 for whom the Enforcement Officer has a current mailing address.

615.12. Emergency Abatement Procedure. When the Enforcement Officer determines that a nuisance exists on a property and the nuisance constitutes an immediate danger or hazard which if not immediately abated will endanger the health or safety of the public and there does not exist sufficient time to follow the procedures of 615.10 or 615.11, the City may abate the nuisance by the procedure described below.

Subd. 1. Order by City Manager. The City shall order emergency abatement by an administrative order to be signed by the City Manager or, in the case of unavailability of the City Manager, by the official authorized to act in the Manager's behalf as established by the chain of authority stated in the City Policy Manual. A good faith effort shall be made to inform the owner that the action is being taken.

Subd. 2. Notice of the abatement. Following an emergency abatement as soon as the costs incurred are known to the Enforcement Officer, he/she shall serve written notice upon the owner. The notice shall contain:

- a) a description of the nuisance,
- b) the action taken by the City,
- c) the reasons for immediate action,
- d) the costs incurred in abating the nuisance, and
- e) a statement that the owner may request, by writing to the City Clerk within ten working days of the date of the notice, a hearing at which the City Council shall review the actions taken by the Enforcement Officer.

Subd. 3. Setting hearing date. In the event that the owner files a request for a review of the action, with the City Clerk, the City Council shall within two weeks fix a date for a public hearing.

Subd. 4. Notice. The City Clerk shall notify the Enforcement Officer and the owner of the date, time, place, and subject of the hearing.

Subd. 5. Hearing. At the time of the hearing, the City Council shall hear from the Enforcement Officer and any other parties who wish to be heard. After the hearing the City Council may adopt a resolution levying an assessment for all or a portion of the costs incurred by the Enforcement Officer in abating the nuisance. A copy of the resolution shall be mailed to the owner. A copy shall also be given to the Enforcement Officer.

615.13. Penalty. Any person who violates any provision of this Chapter or fails to comply with a lawful written order issued pursuant to Sections 615.10 or 615.11 or a lawful verbal order issued pursuant to Section 615.06 shall be guilty of a misdemeanor.

615.14. Other Remedies. This Chapter shall not be construed to establish the exclusive penalties for maintaining public nuisances or the exclusive procedure for nuisance abatement. Any penalties or abatement procedures that are authorized elsewhere in Minnesota Statutes or in the Hopkins City Code including, but not limited to, Ordinance Sections 820.03, 820.05 and 2005.59, shall be in addition to and not in limitation of the penalties and abatement procedures established by this Chapter. (Added Ord. No. 89-655)