

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2011-_____._____

AN ORDINANCE AMENDING AND REORDAINING CERTAIN ARTICLES OF CHAPTER 38.5, ENTITLED "VEGETATION", OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that Article II, entitled "Weeds as Public Nuisance" and Article IV, entitled "Hazardous Tree Removal", of Chapter 38.5, entitled "Vegetation", of the Code of the City of Danville, Virginia, 1986, as amended, be, and the same is hereby, amended and reordained to read as follows:

Chapter 38.5 VEGETATION

ARTICLE II. Weeds as Public Nuisance

*Editor's note: Ord. No. 2007-02.04, adopted Feb. 6, 2007, repealed the former Art. II, §§ 38.5-16—38.5-22, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter and derived from Ord. No. 84-6.21, §§ 17-114—17-121, adopted June 19, 1984; Ord. No. 89-11.9, adopted Nov. 9, 1989; Ord. No. 90-2.9, adopted Feb. 6, 1990; Ord. No. 90-4.9, adopted April 17, 1990; Ord. No. 93-12.15, § 1, adopted Dec. 7, 1993; Ord. No. 96-6.3, adopted June 4, 1996; Ord. No. 96-8.8, adopted Aug. 6, 1996.

State law references: General authority of City with respect to removal of weeds, Code of Virginia, § 15.2-1115.

Sec. 38.5-16. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon responsibility means the continued failure of the property owner(s) to abate a weed nuisance, after the second consecutive notice of the season, during the remainder of the season.

Abatement cost means the City's cost of labor, equipment, and supplies for, or the contract price of, and any charges to the City, with respect to its removal and disposal of weeds from a parcel.

Occupant means any lessee, tenant or other person, other than an owner, occupying or having the right to occupy a parcel.

Owner means any person shown by any public record maintained by any Circuit Court, General District Court, Treasurer, Commissioner of the Revenue, City Clerk, or any other official record to have an ownership or possessory interest in real estate located in the City; or any successor in title or interest taking with actual or constructive notice of the existence of a public nuisance.

Parcel means any tract or parcel of land as described in the deed of the current owner or as shown on any recorded plat or on a current tax map, lying in the City and identified by a City official tax number.

Person means any natural person, partnership, corporation, trust, or any other entity capable of owning an interest in real estate.

Season means a calendar year January 1st through December 31st.

Weeds means any plant, grass, or other vegetation of uncontrolled growth over twelve (12) inches high, other than trees, shrubbery, agricultural plants, or flowering landscaping with controlled growth, and excluding there from the following:

- (1) Growth located on banks of continually flowing streams.
- (2) Natural and undisturbed slopes of a vertical angle of thirty (30) degrees or greater.
- (3) Cliffs, bluffs, ravines, and other similar areas with vegetation foliage.
- (4) Natural and industrial wooded areas.
- (5) Undeveloped property with no known improvements pertaining to infrastructure.**

(Ord. No. 2007-02.04, 2-6-07)

Sec. 38.5-17. Nuisance declared.

(a) It shall constitute a public nuisance for an owner or occupant of any parcel to permit weeds to grow thereon within one hundred twenty-five (125) feet of a residential, commercial or industrial structure designed and constructed for human occupancy or within such distance of such structure on the public right-of-way between such a parcel bordering on a public street and the curb line or pavement edge of the street.

(b) It shall be unlawful for any owner or occupant of a parcel to cause or allow a public nuisance as described in this section to exist with respect to such parcel or such area of public right-of-way. An owner or occupant of such a parcel shall abate any such public nuisance on said parcel and where required on any public right-of-way bordering such parcel.

(Ord. No. 2007-02.04, 2-6-07)

Sec. 38.5-18. - Duty of property owner or occupant to remove weeds.

Whenever weeds on any parcel constitute a public nuisance under the provisions of section 38.5-17, the owner or occupant of such real estate situated in the City shall, at his sole expense, abate such nuisance and cause to be removed from his property and where required from the public right-of-way bordering his parcel all such weeds.

(Ord. No. 2007-02.04, 2-6-07)

Sec. 38.5-19. Excessive growth of weeds or grass.

(a) Upon determination by the Director of Public Works, or his designee, that there exists on any parcel within the City, including the area between such land or premises and the curblin, any weeds in excess of twelve (12) inches in height and constituting a public nuisance under the provisions of section 38.5-17, notice shall be served on the owner of such parcel or his agent, or on the occupant thereof, or both, to cause such weeds to be cut and removed from such land or premises within seven (7) days from the date of such notice.

(b) Service of the notice provided for in subsection (a) shall be by first class mail, personal delivery or posting in a conspicuous place upon the parcel; provided, however, that if the parcel is unoccupied and the owner or his agent cannot be found by the exercise of due diligence or are unknown, such notice shall be sufficient against the owner if given by first class mail to the owner's last known mailing address and posted in a conspicuous place upon the land or premises. The Director of Public Works, or his designee, is hereby authorized to deliver or post such notices.

(c) Failure to comply with the terms of a notice issued and served as provided in this section within the time prescribed in such notice shall constitute a Class 3 misdemeanor, and each day thereafter that the violation continues shall constitute a separate offense. In addition to any penalties imposed hereunder, the City may institute legal action to enjoin the continuing violation of this section and may remove or contract for the removal of such weeds, in which event the cost and expenses thereof, including administrative fees as prescribed by the City of Danville Fee Schedule ~~an administrative fee in the amount of one hundred dollars (\$100.00)~~, shall be chargeable to and paid by the owner or occupant of the parcel. Any such charge which is not paid within sixty (60) days of the date on which it is billed to the owner of such land or premises shall constitute a lien upon the property and may be collected in any manner provided by law for the collection of taxes, or in the same manner provided by law for liens of judgments; provided, however, that no such lien shall be valid against any owner of a parcel who was not served with the notice prescribed in subsection (a) hereinabove.

(d) Upon receipt of the written notice described above, the property owner may appeal the order to the City Manager. Such appeal must be made in writing during the seven-day interval given in the notice from the Director of Public Works, or his designee. Any actions required in the notice shall be delayed pending the City Manager's response to the appeal.

(Ord. No. 2007-02.04, 2-6-07)

Sec. 38.5-20. Abatement of public nuisance—Generally.

(a) If the owner or occupant fails to abate the public nuisance as required, the Director of Public Works shall use City forces to abate the nuisance or, at his option, the Director of Public Works may contract for this abatement on behalf of the City with a private contractor.

(b) Any owner or occupant may abate the public nuisance himself without liability to the City, provided that he does so prior to commencement of abatement by City personnel or contractors.

(c) A property abated twice consecutively in one season, may be deemed as an abandon responsibility of its owner. After owner is notified by mail of this decision, the Public Works Director or his designee may order said property abated anytime there after the property exceeds the definition of weeds in accordance with this article.

(Ord. No. 2007-02.04, 2-6-07)

Sec. 38.5-21. Same—Accounting for costs.

The Director of Public Works shall keep an account of the cost of abating public nuisances under this article and embody such account in periodic reports with assessment lists, which shall be transmitted to the City Clerk and the Director of Finance at convenient intervals. The copy retained by the City Clerk shall be available for public inspection. The report shall refer to each parcel as to which a public nuisance was abated, by description sufficient to identify the parcel, and specify in addition to the cost of abatement an additional charge for each such parcel to be assessed against the owner or owners **including administrative fees as prescribed by the City of Danville Fee Schedule** ~~an administrative fee of one hundred dollars (\$100.00).~~

(Ord. No. 2007-02.04, 2-6-07)

Sec. 38.5-22. Same—Collection of assessments; lien upon property; recordation and foreclosure of lien.

(a) The Director of Finance or his designee shall bill the owner or occupant of the land assessed with the costs of abatement, for the costs of such abatement and for the **administrative fees as prescribed** as shown on the assessment report.

(b) Whenever a bill for such assessments remains unpaid for sixty (60) days after the billing date, the City Clerk shall record with the Clerk of the Circuit Court a statement of lien claim. This statement shall contain a description of the premises and the expenses and costs incurred, including but not limited to the costs of recordation. A copy of this statement shall be mailed to the owner or occupant if his address is known. Provided, however, that failure of the City Clerk to mail such statement, or the failure of the owner or occupant to receive such notice, shall not affect the right to foreclose the lien for these assessments as provided in this section.

(c) That the costs and expenses incurred by the City in such weed abatement, including the **administrative fees, as prescribed** with which the owner and lien holder of

any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on parity with liens for unpaid local taxes and enforceable in the same manner as provided in articles 3 and 4 of chapter 39 of title 58.1 or in the same manner provided by law for liens of judgment. The City Attorney is hereby authorized and directed to institute such proceedings in the name of the City in the Circuit Court for the City of Danville against any property for which the bill has remained unpaid sixty (60) days after it has been rendered.

(Ord. No. 2007-02.04, 2-6-07)

ARTICLE IV. Hazardous Tree Removal

Sec. 38.5-30. Nuisance declared.

Any tree which, by virtue of its condition and location, endangers the life, health, or safety of any person or structure on adjacent or adjoining real property is hereby declared to be a public nuisance and prohibited.

(Ord. No. 95-4.16, 4-4-95)

Sec. 38.5-31. - Abatement of public nuisance.

(a) If a tree which constitutes a public nuisance is located on real property which is not owned by the City, the Director of Public Works, or his designee, shall notify the owner of such tree in writing by ***first class mail*** ~~certified mail, return receipt requested~~, to the address of the owner shown on the records in the office of the City Real Estate Assessor, citing the tree's condition and the corrective action required to remove the public nuisance. If such owner cannot be identified or found, a copy of such notice shall be placed upon such tree or part thereof. Written notice shall also be given to any tenant leasing such property.

(b) Upon receipt of the written notice described above, the property owner may appeal the order to the City Manager. Such appeal must be made in writing during the fifteen-day interval given in the notice from the Director of Public Works, or his designee. Any actions required in the notice shall be delayed pending the City's Manager's response to the appeal.

(c) If any work required to be done by the Director of Public Works, or his designee, is not accomplished within the time specified, the Director of Public Works shall request the City Attorney to institute a suit for an injunction to compel the responsible party to abate or remove the public nuisance and/or see that such responsible person is prosecuted for violation of section 38.5-30

(d) If the tree constituting a public nuisance presents an imminent and immediate threat to life or property, then the Director of Public Works is authorized and directed to abate or remove such public nuisance and to request the City Attorney to bring an action against the responsible party to recover the necessary costs incurred ***including administrative fees as prescribed by the City of Danville Fee Schedule*** for the provision of emergency services reasonably required to abate any such public nuisance.

(e) The term "responsible party" shall include, but not be limited to, the owner, occupier, or possessor of the premises where the nuisance is located.

(Ord. No. 95-4.16, 4-4-95)

Sec. 38.5-32. - Severability.

The provisions of this article are severable. If any provision of this article or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provision or application.

(Ord. No. 95-4.16, 4-4-95)

Sec. 38.5-33. Penalty.

Any person, firm, or corporation violating the provisions of section 38.5-30 after receiving the notice described in section 38.5-31 shall be fined not less than five dollars (\$5.00) nor more than five hundred dollars (\$500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Ord. No. 95-4.16, 4-4-95)

Sec. 38.5-34. - Liability.

Once an owner of the property where a tree described in section 38.5-30 is situated has been notified by the Director of Public Works, as required in section 38.5-31, such owner will not be relieved from liability from damages resulting from a tree constituting a public nuisance. In no event will the City be held liable for damages resulting from a tree constituting a public nuisance located on private property.

(Ord. No. 95-4.16, 4-4-95)

Sec. 38.5-35. – Right of entry to enforce chapter.

Upon a citizen complaint, a citizen report or reasonable suspicion, the Director of Public Works or his designee, after reasonable notice for occupied property, may enter between the hours of 9:00a.m. and 5:00 p.m., upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter or regulations adopted pursuant thereto.

AND BE IT FURTHER ORDAINED that all other paragraphs, subsections, sections, divisions, articles, and provisions of said Section, Chapter and Code be, and the same are hereby, continued in full force and effect unless and until the same are hereafter amended or repealed.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney