

ORDINANCE NO. O-2018-02

AN ORDINANCE AMENDING WHEATON CITY CODE, CHAPTER 78 "VEGETATION", BY REPLACING ARTICLE I, SECTION 78-9 AND SECTION 78-10 AND ARTICLES II – IV IN THEIR ENTIRETY

WHEREAS, the City of Wheaton, Illinois ("City") is an Illinois home-rule municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this ordinance pertains to the government and affairs of the City and its residents; and

WHEREAS, the City has completed a comprehensive evaluation of Wheaton City Code, Chapter 78 – Vegetation.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home-rule powers, as follows:

SECTION 1: The Wheaton City Code is hereby amended by repealing and replacing Section 78-9 "*Overhanging Branches-Duty of Owner to Remove*" of Chapter 78, Article I with a new Section 78-9 of Chapter 78, Article I "*Overhanging Branches – Duty of Owner to Remove*" which shall read as follows:

"Sec. 78-9. - Overhanging branches—Duty of owner to remove.

(a) 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:

Owner shall mean a person or entity who has a vested interest in the property whether by deed, as beneficiary or owner in equity.

Public Way for purposes of this article only, public way shall mean that are that runs between property lines, dedicated for public conveyance.

Right-of-Way for purposes of this article only, right-of-way shall mean that area that runs between property lines, dedicated for streets.

(b) Any tree or tree limb, shrub or other planting which overhangs any public way or right-of-way in such a way as to impede or interfere with traffic or travel, including safe line of sight, or interferes with any public or city utility or is dead, decaying or broken and likely to fall on or across any public way or right-of-way, may be determined to be a public hazard by the police chief, director of public works or their designees. Upon such determination, the director of public works or his designee shall serve or cause to be served upon the owner of the premises, a written notice to remove the overhanging branches within twenty-one (21) days. If the police chief, director of public works or their designee(s) determine that the overhanging branches

creating the public hazard imminently endangers the safety of the public, the written notice served upon the owner of the premises shall require removal of the overhanging branches within seven (7) days. If upon diligent search, the identity, or whereabouts of the property owner of any real estate containing hazardous overhanging branches cannot be ascertained, the notice provided for in this section shall be posted near the main entrance of the structure on the property or in a conspicuous place on the property. It shall be unlawful for anyone to deface, tamper with or remove the notice from the property where it is posted unless authorized by the City.

(Code 1996, § 78-9; Ord. No. F-1739, § 1, 12-2-2013)

SECTION 2: The Wheaton City Code is hereby amended by repealing and replacing Section 78-10 "Same-Removal by City; Costs" of Chapter 78, Article I with a new Section 78-10 of Chapter 78, Article I "Removal by City; Lien Procedures; Foreclosure of Lien or Other Collection; Release of Lien" which shall read as follows:

Sec. 78-10. - Removal by City; Lien Procedures; Foreclosure of Lien or Other Collection; Release of Lien.

- (a) *Removal by City.* If the identified hazard is not removed within the twenty-one (21) day or seven (7) day removal period specified in the notice served or posted as required by Section 78-9 of this article, the director of public works or his designee may proceed to remove or trim the hazard at the owner's expense. All costs incurred by the City for removing or abating the hazard shall be charged to the property and/or owner and shall be considered a debt owed to the City. The director of finance is further authorized to charge the property and/or owner a fee to cover the administrative costs incurred by the City associated with the removal or abatement of the hazard, including any subsequent lien filing fees and lien removal costs, and all such costs shall also be considered a debt.
- (b) *Lien Procedures.* All unpaid costs incurred by the City for removing or abating the hazard, and related fees, shall constitute a lien upon the real estate affected, superior to all other liens and encumbrances, except tax liens or the liens of any mortgage, judgment creditor, or other lienor whose rights in and to the real estate affected arose before the filing of the City's notice of lien; provided that within one (1) year after the City incurs costs associated with its hazard removal or abatement services, the City files notice of lien in the office of the recorder of deeds for DuPage County.
 - (1) Whenever a bill for hazard removal or abatement costs and administrative fees addressed to the property owner of the affected real estate remains unpaid after thirty (30) days, the City shall send a statement to the property owner of the affected real estate along with a letter stating that the failure to pay within ten (10) days of the date printed on the statement shall result in the City's filing of a lien upon the real estate affected in accordance with this Article.
 - (2) When a property owner fails to pay in accordance with subparagraph (b)(1) of this Section, the City may file a notice of lien with the DuPage County Recorder of Deeds. The notice of lien shall consist of a sworn statement reciting a description of the real estate sufficient for the identification thereof, the amount of money representing the costs and expenses incurred by the City for the service and for the removal of any materials utilized for removing or

abating the hazard, and the date or dates when such costs and expenses were incurred by the City.

(3) Costs incurred by the City for removing or abating the hazard shall not be a lien on the affected real estate unless recorded at the Recorder of Deeds office. Upon recording, a notice of that recording shall be personally served on, or sent by regular mail, to the owner. If the regular mail is returned as undeliverable the notice of lien shall be posted at the property in general conformance with section 78-9(b) of this Article. The posted notice shall be photographed by City staff and placed in the property file. The posted notice shall identify the property by common description, and the location of the hazard removed or abated. The failure of the City to record such notice of lien or to mail such notice, or the failure of the owner of the affected real estate to receive such notice, shall not affect the City's right to foreclose the lien for unpaid bills for hazard removal or abatement, as provided for in the following provision. The lien shall run with the land and shall be superior to all liens other than tax liens or the liens of any mortgage, judgment creditor, or other lienor whose rights in and to the real estate affected arose before the filing of the City's notice of lien. The lien amount and associated hazard removal or abatement fees, if not already included in the lien amount, shall be paid in full prior to the City's release of the lien.

(c) *Foreclosure of Lien or Other Collection.* The lien provided for in this Section may be foreclosed, in the manner provided by law, in any court of competent jurisdiction. Reasonable attorney's fees and costs incurred by the City with respect to the filing and foreclosure of the lien shall be taxed against the owner of or the persons interested in the real estate. Foreclosure of the lien shall not be the exclusive remedy. The City may implement any lawful means to collect the debt which shall include its reasonable attorney's fees and costs.

(d) *Release of Lien.* The City shall file a release of lien with the recorder of deeds after the lien amount is paid in full."

SECTION 3: The Wheaton City Code is hereby amended by repealing and deleting Chapter 78, Article II "Insect Pests and Plant Disease" in its entirety and replacing it with a new Chapter 78, Article II "Tree and Plant Diseases and Insect Infestations.", which shall read as follows.

"ARTICLE II. – TREE AND PLANT DISEASES AND INSECT INFESTATIONS:

Sec. 78-31. – Owner – defined.

For purposes of this Article II, the term "owner" shall mean a person or entity who has a vested interest in the property whether by deed, as beneficiary or owner in equity.

Sec. 78-32. - Diseased or Infested Shrubs, Plants, Plant Parts, and Plant Products.

It shall be unlawful for the owner of any premises in the City to permit any shrubs, vines, forage and cereal plants, cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber and all other plants, plant parts and plant products to remain on such premises if any part of it is:

(a) infected with any pathological condition caused by fungi, bacteria, protozoans, viruses, or other pathogens, or;

- (b) infested with any insects, crustaceans, and vermin which is injurious or liable to injure, at any stage of their biological development, plants, plant products, animals, and humans, or;
- (c) afflicted with any other disease or insect infestation which is deemed a nuisance by the Illinois Department of Agriculture or the United States Department of Agriculture.

Sec. 78-33. - Inspection/Determination of Diseased or Infested Shrubs, Plants, Plant Parts, and Plant Products.

Representatives of the City are hereby authorized to enter on private property on which there is located any shrub, plant, plant part and plant product having the appearance of or suspected of being diseased or infested as described in Section 78-32 for the purpose of inspecting said shrub, plant, plant part or plant product and/or removing samples or portions therefrom to assess its condition or to be tested if necessary to establish whether the shrub, plant, plant part of plant product is diseased and/or infested. A visual inspection of said shrub, plant, plant part, or plant product by the City arborist, or his duly authorized representative, who determines that a shrub, plant, plant part or plant product is diseased or infested as defined by Section 78-32, shall be sufficient for the shrub, plant, plant part or plant product to be declared a public nuisance as provided herein.

Sec. 78-34. - Diseased or Infested Trees.

It shall be unlawful for the owner of any premises in the City to permit any tree to remain on such premises if any part of it is infected or infested with any of the following diseases or insects: Dutch elm disease, oak wilt disease, Asian long horned beetles, emerald ash borers, or any other disease or insect infestation which is deemed a nuisance by the Illinois Department of Agriculture or the United States Department of Agriculture. Further, it shall be unlawful to allow infestations of gypsy moths to remain on any premises.

Sec. 78-35. - Inspection/Determination of Tree Disease or Infestation.

Representatives of the City are hereby authorized to enter on private property on which there is located any tree having the appearance of or suspected of being diseased or infested as described herein for the purpose of inspecting said tree and/or removing samples or portions therefrom to assess its condition or to be tested if necessary to establish whether said tree is diseased and/or infested. A visual inspection of said tree by a qualified arborist employed by the City who determines that a tree is infected with a disease or infested with insects as defined in Section 78-34, , shall be sufficient for the tree to be declared a public nuisance as provided herein.

Sec. 78-36. – Interference with City Representatives.

It shall be unlawful for any person to take any action to prevent City representatives from entering on any lot or parcel of land in the City for the purpose of inspection, or to interfere with such representatives in the performance of their duties under the provisions of this article.

Sec. 78-37. - Public Nuisance Declared.

- (a) Upon a determination that a tree is diseased or infested as described herein, said tree, and all dead wood or debris which, because of its condition may serve as a breeding place for such disease or insects, or enable transmission of such disease or insects, is hereby declared to be a public nuisance.

(b) Upon a determination that a shrub, plant, plant part, or plant product is diseased or infested as described herein, said shrub, plant, plant part, or plant product, and any debris which, because of its condition may serve as a breeding place for such disease or insects, or enable transmission of such disease or insects, is hereby declared to be a public nuisance.

Sec. 78-38. - Notice to Owner.

The City shall give written notice to the owner of the lot or parcel of land on which a diseased or, infested tree, shrub, plant, plant part or plant product is located requiring such owner to comply with the provisions of this Article. Said notice shall:

(a) Identify the property by common description or a description of the real estate sufficient for identification; identify the tree, or portion thereof by location and type; and any affected and associated dead wood or debris, or the shrub, plant, plant part or plant product affected and any associated debris; specify the type of disease or infestation; indicate the time frame for treatment and/or removal and disposal of the tree, shrub, plant, plant part, plant product, or designated portion thereof; and advise that if the tree, shrub, plant, plant part, plant product or designated portion thereof is not treated and/or removed and disposed of as provided herein, the City may take the necessary steps to do so and charge the costs therefor to the owner of the property in addition to any fine or penalty that may be assessed.

(b) Be given by personal service or by certified mail. If upon diligent search, the identity, or whereabouts of the owner of the property where such tree, shrub, plant, plant part, or plant product is located cannot be ascertained, the notice provided for in this section shall be posted near the main entrance of the structure on the property or in a conspicuous place on the property. It shall be unlawful for anyone to deface, tamper with or remove the notice from the property where it is posted unless authorized by the City.

Sec. 78-39. - Removal by Owner.

(a) The owner of property on which a diseased or infested tree exists shall cause the treatment and/or removal and disposal of said tree, or portion thereof designated by the City, within forty-five (45) days of notification as provided herein, or within such additional period of time agreed to by the City, unless the City arborist or his duly authorized representative determines that the nuisance identified in accordance with this article imminently endangers the health and safety of the public, in that case the nuisance shall be treated, removed and disposed of within seven (7) days of notification herein. Treatment and/or removal and disposal of all diseased or infested tree material shall be done in compliance with applicable State and federal regulations.

(b) The owner of property on which a diseased or infested shrub, plant, plant part or plant product exists shall cause the treatment and/or removal and disposal of said shrub, plant, plant part or plant product, or portion thereof designated by the City, within ten (10) days of notification as provided herein, or within such additional period of time agreed to by the City, unless the City arborist or his duly authorized representative determines that the nuisance identified in accordance with this article imminently endangers the health and safety of the public, in that case the nuisance shall be treated, removed and disposed of within five (5) days of notification herein. Treatment and/or removal and disposal of all diseased or infested shrub, plant, plant parts or plant products shall be done in compliance with applicable State and federal regulations.

Sec. 78-40. – Removal by City.

Where the owner of the parcel of land on which a diseased or infested tree, shrub, plant, plant part or plant product is located cannot be found, or if found and notified as provided herein, neglects or refuses to abate said nuisance within the thirty (30) day, ten (10) day, seven (7) day, or five (5) removal period as provided herein and as specified in the notice to owner, or within such additional period of time as may be agreed to by the City, the city manager or his duly authorized representative may proceed to remove and properly dispose of the identified nuisance at the owner's expense. All costs incurred by the City for abating a nuisance on private property as provided herein, shall be charged to the property and/or owner and shall be considered a debt owed to the City. The director of the Finance Department is further authorized to charge the property and/or owner a fee to cover the administrative costs incurred by the City associated with the abatement of the nuisance as provided herein, including any subsequent lien filing fees and lien removal costs, and all such costs shall be considered a debt.

Sec. 78-41. – Lien Procedures; Foreclosure of Lien or Other Collection; Release of Lien

(a) *Lien Procedures.* All unpaid costs incurred by the City for abating a nuisance on private property as provided herein, and related fees, shall constitute a lien upon the real estate affected, superior to all other liens and encumbrances, except tax liens or the liens of any mortgage judgment creditor, or other lienor whose rights in and to the real estate affected arose before the filing of the City's notice of lien; provided that within one (1) year after the City incurs costs associated with its abatement of the nuisance as provided herein, the City files a notice of lien in the office of the recorder of deeds for DuPage County.

- (1) Whenever a bill for nuisance abatement costs and administrative fees addressed to the property owner of the affected real estate remains unpaid after thirty (30) days, the City shall send a statement to the property owner of the affected real estate along with a letter stating that the failure to pay within ten (10) days of the date printed on the statement shall result in the City's filing of a lien upon the real estate affected in accordance with this Article.
- (2) When a property owner fails to pay in accordance with subparagraph (a)(1) of this Section, the City may file a notice of lien with the DuPage County Recorder of Deeds. The notice of lien shall consist of a sworn statement reciting a description of the real estate sufficient for identification thereof, the amount of money representing the costs and expenses incurred by the City for abating the nuisance, and the date or dates when such costs and expenses were incurred by the City.
- (3) Costs incurred by the City for abating the nuisance shall not be a lien on the affected real estate unless recorded at the Recorder of Deeds office. Upon recording, a notice of that recording shall be personally served on, or sent by regular mail, to the owner. If the regular mail is returned as undeliverable, the notice of lien shall be posted at the property in general conformance with section 78-38 of this Article. The posted notice shall be photographed by City staff and placed in the property file. The posted notice shall identify the property by common description, and the location of the abated nuisance. The failure of the City to record such notice of lien or to mail such notice, or the failure of the owner of the affected real estate to receive such notice, shall not affect the City's right to foreclose the lien for unpaid bills for nuisance abatement services, as provided for in the following provision. The lien shall run with the land and shall be superior to all liens other than tax liens or liens of any mortgage, judgment creditor, or other lienor whose rights in and to the real estate affected arose before

the filing of the City's notice of lien. The lien amount and nuisance abatement fees, if not already included in the lien amount, shall be paid in full prior to the City's release of the lien.

(b) *Foreclosure of Lien or Other Collection.* The lien provided for in this Section may be foreclosed, in the manner provided by law, in any court of competent jurisdiction. Reasonable attorneys' fees and costs incurred by the City with respect to the filing and foreclosure of the lien shall be taxed against the owner of or the persons interested in the real estate. Foreclosure of the lien shall not be the exclusive remedy. The City may implement any lawful means to collect the debt which shall include its reasonable attorneys' fees and costs.

(c) *Release of Lien.* The City shall file a release of lien with the recorder of deeds after the lien amount is paid in full.

Sec. 78-42. – Removal of Diseased or Infested Trees from City Property.

Any diseased or infested trees located on City property, which constitute a public nuisance as provided by section 78-37, shall promptly be abated under the supervision of the city manager, or his duly authorized representative, at the expense of the City.

Sec. 78-43. – State Enforcement of Insect Pest and Plant Disease Act.

Nothing contained in this Article shall preempt the State of Illinois Department of Agriculture from enforcing the Insect Pest and Plant Disease Act, 505 ILCS 90/1 *et seq.*

Sec. 78-44. – Penalty for Violation of Article.

Any person violating any provision of this Article shall be fined in accordance with section 1-8 of the City Code."

SECTION 4: The Wheaton City Code is hereby amended by repealing and deleting Chapter 78, Article III, "*Dutch Elm Disease/Emerald Ash Borer Control*" in its entirety and replacing it with a new Chapter 78, Article III "*Weeds*" which shall read as follows:

"ARTICLE IV. - WEEDS

State Law reference— Authority of city to provide for destruction of weeds, 65 ILCS 5/11-20-6; authority to provide for cutting of weeds, 65 ILCS 5/11-20-7. Illinois Exotic Weed Act, 525 ILCS 10.

Sec. 78-91. - 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:

Exotic weeds are plants not native to North America which, when planted either spread vegetatively or naturalize and degrade natural communities, reduce the value of fish and wildlife habitat, or threaten an Illinois endangered or threatened species and include the designated exotic weeds listed in Section 3 of the Illinois Exotic Weeds Act, 525 ILCS 10/1 *et seq.*

Noxious weeds means and includes common ragweed (*Ambrosia artemisiifolia*), giant ragweed (*Ambrosia trifida*), musk thistle (*Carduus nutans*), perennial sowthistle (*Sonchus arvensis*), Canada thistle (*Cirsium arvense*) and all of its varieties, Kudzu, Columbus grass (*sorghum almum parodi*), Johnsongrass (*Sorghum halense*); common field weeds such as Field Pennycress (*Thlaspi arvense*), Velvetleaf (*Abutilon theophrasti*), Leafy spurge (*tithyalus esula*), Russian knapweed (*centaura repens*) and common lawn weeds such as Burdock, Cocklebur, Jimson weed, Dandelion (*Taraxacum officinale*), Broadleaf plantain (*Plantago rugelii*), Cattails (*Typha*) and similar invasive weeds.

Nuisance greenery means and includes any and all weeds, grass, plants, bushes or weed trees which:

- (a) adversely affects traffic safety; or
- (b) interferes with or obstructs the use of any street, alley, sidewalk, parkway, or public way; or
- (c) interferes with the operation, use or maintenance of utility lines; or
- (d) affects the structural integrity of foundations, driveways, sidewalks, or other structures; or
- (e) otherwise affects the health, safety, and welfare of the general public.

Owner – owner of record. A person or entity who has a vested interest in the property whether by deed, as beneficiary or owner in equity.

Parkway for purposes of this article only, parkway shall mean that area between a private property line and the closest edge of concrete curb or paved roadway.

Removal cost means the cost to abate the violation.

Toxic weeds include, but are not limited to, poison ivy, poison oak, poison sumac and nettles.

Weed is generally defined as a plant out of place and not intentionally sown; a plant growing where it is not wanted; any plant designated by a Federal, State or county government as injurious to public health, agriculture, recreation, wildlife, or property.

Weed tree means and includes a plant that is not valued where it is growing and is usually of vigorous growth, is a species or variety that has a high seed germination rate, grows rapidly, colonizes areas quickly and out-competes other tree species. Weed trees are commonly found growing where trees could not otherwise be planted.

(Code 1968, § 14-20; Code 1996, § 78-91)

Sec. 78-92. - Declared nuisance; prohibited.

- (a) All noxious weeds, weed trees and any other weeds, grass, or plants growing to a height exceeding eight (8") inches, found growing anywhere in the City are hereby declared a nuisance; and it shall be unlawful to permit such weeds or other plants to grow or remain on any such place except where those such plants are:
 - (1) Trees;
 - (2) Ornamental shrubbery;
 - (3) Ornamental flowers in defined flower beds;
 - (4) Plants planted and maintained in defined landscaping beds; or
 - (5) Plants raised in defined garden areas as food for horticultural purposes or medicinal purposes.
- (b) All planted beds and gardens shall be maintained by their owners through periodic removal of plants which exceed a height of eight inches which are not grown or maintained for food, for

horticultural purposes, or for medicinal purposes. All gardens, as well as fruit-bearing trees, shall further be maintained by the harvesting of all foods and medicinal plants within two weeks of the time when those plants and their fruits or their seeds mature or ripen. Any garden plants not so harvested within such period are hereby declared a nuisance, and it shall be unlawful to permit such plants, fruits, or seeds to grow or remain on any such place.

- (c) All noxious weeds, weed trees and any other weeds, grass or plants growing to a height exceeding eight inches (8") within a parkway shall be the obligation of the adjacent property owner to maintain in the manner required by this article.

(Code 1968, § 14-21; Code 1996, § 78-92)

Sec. 78-93. Nuisance Greenery – Duty of owner to remove

- (a) Obstruction of a parkway. Any Nuisance greenery, regardless of height or location, which overhangs any public sidewalk in such a way as to impede or interfere with pedestrian traffic or travel shall be cut and/or removed at the expense of the property owner. If the owner of the property, after reasonable notice, refuses or neglects to remove it, the City shall order the work to be done.
- (b) Detriment to the Public. All toxic weeds must be removed or otherwise lawfully destroyed to prevent the weeds from perpetuating themselves and to prevent them from becoming a detriment to public health, safety, or welfare.

Sec. 78-94 Removal of unauthorized plantings

The City may remove any unauthorized plantings of weeds, bushes, grasses, weed trees, plants or other greenery within any public way without compensation to the owner of such plants.

Sec. 78-95. - Notice of Violation and Demand to Abate; Abatement of Nuisance; Lien Procedures.

(a) Notice of Violation and Demand to Abate

- (1) If the director of the building and code enforcement department or his duly authorized designee shall find upon inspection that weeds, grass, weed trees or plants are permitted to grow in violation of the provisions of this Article, the director of building and code enforcement or his designee shall serve or cause to be served upon the owner of the premises a written notice to abate the nuisance within ten (10) days. Such notice shall specify the condition constituting the nuisance.
- (2) If upon diligent search, the identity or whereabouts of the property owner of any real estate containing the nuisance cannot be ascertained, the notice to abate provided for in this section shall be posted near the main entrance of the structure on the property or in a conspicuous place on the property.
- (3) It shall be unlawful for anyone to deface, tamper with, or remove the "Notice of Violation" from the property where it is posted unless authorized by the City.

(b) Removal by City. If any nuisance under this Article IV is not abated within ten (10) days after the service of or posting of the notice as provided in this article, the director of building and code enforcement or his designee may proceed to abate the nuisance at the owner's expense and in so doing the director is authorized to cut, mow, or otherwise destroy the weeds, grasses, weed trees and/or plants constituting the nuisance. The City shall have the right, but not the obligation, to secure an independent contractor to cut, mow, or otherwise destroy the weeds, grasses, weed trees and/or plants constituting the violation. All costs incurred by the City for causing the cutting, mowing, or destruction of the weeds, grasses and/ or plants shall be charged to the property and/ or owner and shall be considered a debt owed to the City. The director of finance is further authorized to charge the property and/ or owner a fee to cover the administrative costs incurred by the City associated with the abatement of the nuisance, including any subsequent lien filing fees and lien removal costs, and all such costs shall be considered a debt.

(c) Lien Procedures. All unpaid costs incurred by the City for causing the cutting, mowing, or destruction of the weeds, grasses, weed trees and/or other plants in an effort to abate the nuisance, and related fees, shall constitute a lien upon the real estate affected, superior to all other liens and encumbrances, except tax liens or the liens of any mortgage, judgment creditor, or other lienor whose rights in and to the real estate affected arose before the filing of the City's notice of lien; provided that within one (1) year after the City incurs costs associated with its abatement of the nuisance, the City or the independent contractor performing the abatement services for the City, in its or his/her own name, files notice of lien in the office of the recorder of deeds for DuPage County.

(1) Whenever a bill for abatement costs and administrative fees, addressed to the property owner of the affected real estate, remains unpaid after 30 days, the City shall send a statement to the property owner of the affected real estate along with a letter stating that the failure to pay within ten (10) days of the date printed on the statement may result in the City's filing of a lien upon the real estate affected in accordance with this Article.

(2) When a property owner fails to pay in accordance with subparagraph (c)(1) of this Section, the City may file a notice of lien with the DuPage County Recorder of Deeds. The notice of lien shall consist of a sworn statement reciting a description of the real estate sufficient for the identification thereof, the amount of money representing the costs and expense incurred by the City or the independent contractor for the service and for the removal of any materials utilized for the abatement of the nuisance, along with any associated administrative fees, and the date or dates when such costs and expense were incurred by the city.

The costs incurred by the City or the independent contractor for the cutting of weeds, grasses, and/or plants, and for other abatement services and disposal of any materials shall not be a lien on the affected real estate unless recorded at the Recorder of Deeds office. Upon recording, a notice of that recording shall be personally served on, or sent by regular mail to the owner. If the regular mail is returned as undeliverable, the notice of lien shall be posted at the property in general conformance with Section 78-95(a)(2) of this Article. The posted notices shall be photographed by City Staff and placed in the property file. The posted notice shall identify the property, by common description, and the location of the weeds, grasses, and/or plants to be cut. The failure of the City to record such notice of lien or to mail such notice, or the failure of the owner of the affected real estate to receive such notice, shall not affect the right to foreclose the lien for unpaid bills for nuisance abatement expense, as provided for in the following provision. The lien shall run with the land and shall be superior

to all liens other than tax liens or the liens of any mortgage, judgment creditor, or other lienor whose rights in and to the real estate affected arose before the filing of the City's notice of lien. The lien amount and any associated abatement fees if not already included in the lien amount, must be paid in full prior to the City's release of the lien.

- (d) **Foreclosure of Lien or Other Collection.** The lien provided for in this Section may be foreclosed, in the manner provided by law, in any court of competent jurisdiction. Reasonable attorney's fees and costs incurred by the City with respect to the filing and foreclosure of the lien shall be taxed against the owner of or persons interested in the real estate. Foreclosure of the lien shall not be the exclusive remedy. The City may implement any lawful means to collect the debt which shall include its reasonable attorney's fees and costs.
- (e) The City shall file a release of lien with the Recorder of Deeds after the lien amount is paid in full.

(Code 1968, § 14-22; Code 1996, § 78-93)

Sec. 78-96. - County's obligation to abate.

Nothing contained in this article shall preempt the county government in its obligation to abate noxious weeds as set forth in 505 ILCS 100/1—100/24.

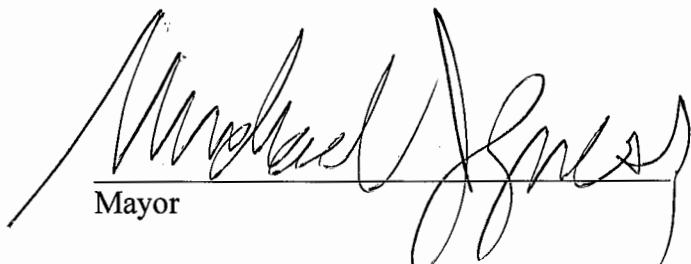
(Code 1968, § 14-24; Code 1996, § 78-94)

Sec. 78-97. – State Ban on Exotic Weeds.

Nothing contained in this Article shall preempt the State of Illinois from seeking prosecution of any person, corporation, political subdivision, agency or department of the State that buys, sells, offers for sale, distributes or plants seeds, plants or plant parts of exotic weeds within the City without a permit issued by the Department of Natural Resources, as authorized by the Illinois Exotic Weed Act, 525 ILCS 10/1 et seq.”

SECTION 5: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 6: This ordinance shall be effective from and after its passage, approval and publication in pamphlet form in a manner prescribed by law.



Michael Jones
Mayor

ATTEST:



Alison Bennett Thompson
City Clerk

Roll Call Vote:

Ayes: Councilman Rutledge
Councilman Scalzo
Councilman Suess
Councilman Barbier
Councilwoman Fitch
Councilman Prendiville
Mayor Gresk

Nays: None

Absent: None

Motion Carried Unanimously

Passed: January 16, 2018

Published: January 17, 2018