

ORDINANCE NO. 182

AN ORDINANCE AMENDING CITY CODE, CHAPTER 93: NUISANCES

THE CITY COUNCIL OF THE CITY OF BAGLEY DOES ORDAIN THAT (new material is underlined; deleted material is lined out; sections which are not proposed to be amended are omitted; sections which are only proposed to be re-numbered are only set forth below as to their number and title):

SECTION 1. City of Bagley City Ordinance, Title IX: General Regulations, Chapter 93, Nuisances, Section 93.05, Nuisance Parking and Storage, Subsection (B), Unlawful parking and storage, Clause (2), is hereby amended to read as follows:

' 93.05 NUISANCE PARKING AND STORAGE.

(B) *Unlawful parking and storage.*

(2) A person must not place, store, or allow the placement or storage of construction, industrial, or freight material (including piles of dirt, rock or debris, landscaping materials, sod, pipe, lumber, forms, steel, scaffolding, dumpsters, portable toilets, shipping containers, construction trailers, equipment, machinery or similar materials, including all materials used in connection with a business), outside in the open on residential property, unless shielded from public view by an opaque cover or fence.

SECTION 2. City of Bagley City Ordinance, Title IX: General Regulations, Chapter 93, Nuisances, Section 93.09, Abatement, is hereby amended to read as follows:

' 93.09 ABATEMENT.

(A) ~~Notice. Written notice of violation; notice of the time, date, place and subject of any hearing before the City Council, notice of City Council order and notice of motion for summary enforcement hearing shall be given as set forth in this section.~~ Standard abatement. Unless a different procedure is specifically authorized by this code or other applicable law, and except as otherwise provided under paragraphs (B), (C) and (D) below, the following abatement procedure applies to all public nuisances in the City. See Minn. Stat. § 412.221, subd. 23 (authorizing the City power to define nuisances and provide for their prevention or abatement).

(1) ~~Notice of violation. Written notice of violation shall be served by a peace officer or designated person on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises. Whenever the City Council or the City Council's designee responsible for enforcement (the "enforcing officer"), including but not limited to the City Clerk, Police Chief, Fire Chief, Building Official, Utilities Superintendent, City Attorney, and Police Officers, determines that a public nuisance is being maintained or exists on property, the City Council or the enforcing officer must give written notification to the property owner and~~

occupant or other responsible party of that fact and order that the nuisance be terminated and abated. Notice must be served in person or by certified mail. Failure of the party to receive the certified mail does not invalidate the service of the notice. Notice to the owner will be satisfied by notice to the person listed as the taxpayer on the county's tax records. If the property is not occupied, the owner is unknown, or no other responsible party can be reasonably identified, notice may be served by posting it on the property for a period of at least 72 hours. The notice must state:

- a. the property location of the public nuisance;
- b. the nature of the public nuisance, with reference to the appropriate code provision(s);
- c. the corrective actions that must be taken to abate the nuisance and a reasonable amount of time within which the nuisance is to be abated;
- d. that if the owner, occupant, or other responsible party does not comply with the notice within the time specified, the City may provide for abating the nuisance itself by entering upon the property and taking the corrective actions identified in the notice following the appeal period;
- e. that the owner, occupant, or other responsible party has the right to appeal the designation as a public nuisance to the City Council by submitting a request in writing to the City Clerk before the earlier of (i) the date by which abatement of the identified nuisance must be completed, or (ii) seven calendar days after service of the notice; and
- f. that the City may assess its costs incurred in abating the nuisance against the property in accordance with this section and applicable law.

~~(2) *Notice of City Council hearing.* Written notice of any City Council hearing to determine or abate a nuisance shall be served on the owner of record and occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown or the owner of record or occupant refuses to accept notice of the City Council hearing, notice of City Council hearing shall be served by posting it on the premises. *Appeal.* The owner, occupant, or other responsible party served with a notice under paragraph A(1) may appeal the nuisance designation to the City Council within the time provided in the notice. If a timely appeal is submitted, the matter must be scheduled for a hearing before the City Council. A notice of the hearing must state the date, time, and location of the City Council hearing, must be served in the same manner as the abatement notice, and must be given at least ten days before the City Council hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance consistent with paragraph A(3). Failure to timely appeal constitutes waiver of such right to appeal and hearing upon the nuisance designation.~~

~~(3) *Notice of City Council order.* Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in~~

M.S. ' 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time. Abatement. If the City Council, after hearing an appeal under paragraph A(2) orders abatement of the nuisance, or if no timely appeal is submitted and the nuisance is not abated within the deadline given, then the City may enter onto the property on which the nuisance exists and cause the same to be abated or removed by the City in any other manner it deems appropriate. Abatement may include, but shall not be limited to, removal, cleaning, painting of exterior surfaces, extermination, cutting, mowing, grading, sewer repairs, draining, securing, boarding unoccupied structures, barricading or fencing, removing dangerous portions of structures and demolition of dangerous structures or abandoned buildings. If deemed necessary by the City Clerk or City Attorney, the City may seek summary enforcement of the City Council's abatement order in the district court by causing a copy of the abatement order and notice of motion for summary enforcement to be served on the owner and occupant in the manner provided for service of a summons in a civil action, or alternatively obtain an administrative search and seizure warrant and abate the nuisance.

(4) Notice of motion for summary enforcement. Written notice of any motion for summary enforcement shall be made as provided for in M.S. ' 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.

(B) Procedure. Whenever a peace officer or designated person determines that a public nuisance is being maintained or exists on the premises in the city, the officer or person designated shall notify, in writing, the owner of record or occupant of the premises of the fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the officer or designated person shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement or obtain an administrative search and seizure warrant and abate the nuisance. Summary abatement. The City Council or the enforcing officer may provide for abating a public nuisance pursuant to paragraph A(3) without following the standard abatement procedure required in paragraphs A(1) – (2) above when:

- (1) there is an immediate threat to the public health or safety;
- (2) there is an immediate threat of serious property damage; or
- (3) a public nuisance has been caused by private parties on public property.

If the City summarily abates the nuisance under this paragraph B, the enforcing officer must reasonably attempt to notify the owner, occupant, or other responsible party of the intended summary abatement action in advance of such action, and thereafter must serve written notice of the owner's right to appeal the cost recovery for such summary abatement to the City Council in the manner required for service of the abatement notice required in paragraph A(1) above. An

appeal of a summary abatement under this paragraph shall be limited to the issue of cost recovery by the City.

~~(C) *Emergency procedure; summary enforcement.* In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) above will permit a continuing nuisance to unreasonably endanger public health, safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the officer or designated person shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The officer or designated person shall notify, in writing, the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) above, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance. *Major abatement.* When the City Council or the enforcing officer determines that the cost of abating a nuisance will exceed \$5,000 based on a reasonable, good faith estimate, the standard abatement procedure provided in paragraph A is altered in the following manner:~~

(1) The abatement notice must provide that if the party does not abate the nuisance within the time specified, the matter will be referred to the City Council for a hearing.

(2) The abatement notice must specify the date, time, and location of the hearing before the City Council.

(3) The City must cause notice of the date, time, and location of the hearing before the City Council to be published at least ten days before the hearing and allow any parties who wish to be heard an opportunity to address the City Council during the hearing.

~~(D) *Immediate abatement.* Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.~~

Penalty, see '93.99 *Cost recovery.* The owner of property on which a nuisance has been abated by the City, or a person who has caused a public nuisance on property not owned by that person, is personally liable to the City for the cost of the abatement, including, without limitation, administrative costs and court fees and costs and attorneys' fees, if applicable. Unpaid charges constitute a lien against the premises where the abatement occurred on and after the date they were incurred. As soon as the work has been completed and the cost determined, an appropriate official will prepare a bill for the cost and mail it to the owner or other responsible party. The amount is immediately due and payable to the City.

(E) *Assessment.* If the cost of abatement, or any portion of it, has not been paid under paragraph D within 30 days after the date of the bill, the City Council may certify the unpaid cost

against the property to which the cost is attributable. Before certification against the property, reasonable notice of the impending certification and an opportunity to be heard by the City Council must be given to the taxpayer of record. Failure of the taxpayer to receive the notice will not invalidate the certification. The City Council may certify the unpaid cost to the county auditor for collection along with current taxes in the following year or in annual installments, not exceeding ten, as the City Council may determine in each case. See Minn. Stat. § 429.101.

(F) Disposal of impounded motor vehicles. In the event the City enters property on which a nuisance exists and removes, tows and impounds an abandoned, junk, or unauthorized vehicle, as defined by Minn. Stat. § 168B.011, to abate the nuisance pursuant to this Section, the removed and impounded vehicle shall be handled and disposed of in the manner provided in Minn. Stat. §§ 168B.01 through 168B.101.

In the event the City enters property on which a nuisance exists and removes, tows and impounds a motor vehicle that does not clearly meet the definition of an abandoned, junk, or unauthorized vehicle, as defined by Minn. Stat. § 168B.011, to abate the nuisance pursuant to this Section, the removed and impounded vehicle shall be handled and disposed of in the manner prescribed for unauthorized vehicles as provided in Minn. Stat. §§ 168B.01 through 168B.101.

(G) Remedy not exclusive. Abatement action under this section does not preclude any other civil or criminal enforcement procedure.

SECTION 3. This ordinance shall take effect following its passage and publication.

Passed by the City Council of the City of Bagley, Minnesota, this 22 day of July, 2020.

  
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Sidney Michel, Mayor

ATTEST:

  
Faye Jacobs, City Clerk

Publication 7/29 & 8/5, 2020

VOTE:     Yea MICHEL   Yea SUTHERLAND   Yea BONIK  
          Yea BROVOLD        MERSCHMAN