

Chapter 8.46

WEED ABATEMENT

Sections:

8.46.005	Definitions.
8.46.010	Owner of Real Estate to Remove Weeds.
8.46.015	Authorization to Conduct Weed Control Program.
8.46.022	Notice of Weed Control Activities; Procedure.
8.46.024	Collection of Costs; Notice of Potential Lien.
8.46.026	Service of Notice.
8.46.028	Liens and Collections; Releases; Procedures.
8.46.030	Assessment of Cost; Report to Council.
8.46.040	Collection of Assessment.
8.46.045	Appeal.
8.46.050	Weeds and Rubbish; Fire Hazard.
8.46.060	Penalty.

8.46.005 Definitions.

The following words as used in this chapter shall have the following meanings:

Control, with respect to real estate, shall mean the authority to operate, manage, supervise, or exercise jurisdiction over or any similar power. No federal, state, or local political subdivision shall be deemed to control land on which it has an easement unless it actually operates, manages, supervises or actively exercises jurisdiction over said real estate.

Control activity shall mean the prevention, suppression, or limitation of the growth, spread, propagation, or development or the eradication of weeds, noxious weeds, and worthless vegetation.

Controlled shall mean to have control activity conducted.

Noxious weeds shall mean those weeds designated as noxious in the rules and regulations adopted by the Nebraska Department of Agriculture.

Owner shall mean any owner in fee simple, lessee, occupant, or any agent, servant, representative or employee of any such owner, lessee, or occupant in control of real estate in the city.

Property shall mean land or real estate, and may be used interchangeably therewith, that is subject to control activity herein.

Weed Control Authority shall mean the Lancaster County Weed Control Authority.

Weeds and **worthless vegetation** shall mean those weeds and other vegetation deemed undesirable or having no useful purpose or value as determined by the Weed Control Authority in its rules, regulations, and policies. (Ord. 19629 §1; October 3, 2011).

8.46.010 Owner of Real Estate to Remove Weeds.

It shall be the duty of every owner of real estate in the city to cut and clear, or clear, such real estate, together with one-half of the streets and alleys abutting thereon, of all weeds or worthless vegetation whenever such weeds or worthless vegetation shall extend more than six inches above the ground. Such weeds or worthless vegetation shall be cut so as not to extend more than six inches

above the ground. After cutting, all such weeds or worthless vegetation shall be immediately removed from such real estate, or be burned upon the premises; provided, however, that if burned upon the premises, a permit so to do shall first be obtained from the Air Pollution Control Officer pursuant to Chapter 8.06 of this title. (Ord. 15569 §1; May 14, 1990: P.C. §8.80.010: Ord. 14936 §1; July 25, 1988: prior Ord. 11433 §1; August 18, 1975: Ord. 10926 §1; October 15, 1973: Ord. 3780 §1; November 18, 1940).

ANNOT.: The State has granted the cities of the primary class the right to require the owners of real estate to destroy weeds and undesirable vegetation and has made it the duty of the City to do so if the owner does not.

Greenwood v. City of Lincoln, 156 Neb. 142, 55 N.W.2d 343 (1952). Such activity is a governmental or public function. Id. Municipal employees in the performance of such a governmental function cannot subject the City of Lincoln to liability for the destruction of plaintiff's raspberry bushes. Id.

8.46.015 Authorization to Conduct Weed Control Program.

The Weed Control Authority is hereby designated as the agency to provide, execute, and operate a weed control program for and on behalf of the City, within the limits of the city, pursuant to applicable state statutes, City ordinances, and interlocal cooperative agreements. In the event the Weed Control Authority withdraws as the agency to conduct a weed control program for the City, the Department of Public Works and Utilities shall serve as the Weed Control Authority for the purposes of this chapter. (Ord. 19629 §2; October 3, 2011).

8.46.020 City May Cause Removal of Weeds.

(Repealed by Ord. 19629 §3; October 3, 2011: prior Ord. 16951 §49; March 11, 1996: Ord. 15569 §2; May 14, 1990: P.C. §8.80.020: Ord. 14936 §2; July 25, 1988: Ord. 13911 §1; August 6, 1984: Ord. 12409 §1; October 23, 1978: Ord. 3780 §2; November 18, 1940).

8.46.022 Notice of Weed Control Activities; Procedure.

Upon notice to the Weed Control Authority through a complaint or any other method of notice of the failure of any owner having control of any real estate within the limits of the City to conduct control activity of all weeds, noxious weeds, or worthless vegetation to no more than six inches in height from the ground, then and in that event, the Weed Control Authority may give notice to the owner that the property must be controlled within five days of the date of the notice or the Weed Control Authority may conduct control activity on the property and assess the costs thereof to the property. Notice may be given by publishing once in a daily newspaper of general circulation in the city or notice may be given by certified mail, return receipt requested, or United States Postal Service tracking confirmation. The Weed Control Authority also may post the notice in a conspicuous location on the property. Publication, posting, or mailing of the notice shall be deemed proper service of the notice for purposes of this section. Upon failure of the owner to conduct control activity on the property within the notice period, the Weed Control Authority may enter the property and conduct control activity necessary to comply with the provisions of this

chapter. The Weed Control Authority shall send an invoice for the control activity to the owner withing five business days of the control activity. (Ord. 19629 §4; October 3, 2011).

8.46.024 Collection of Costs; Notice of Potential Lien.

Within five business days of any control activity, the Weed Control Authority shall record with the Lancaster County Register of Deeds, a notice of potential lien on the property controlled. The notice shall contain the following information:

- (a) Address for the property.
- (b) Legal description.
- (c) Date of the control activity, along with a general description of the action taken.
- (d) Cost of the control activity.
- (e) Notification language in large, conspicuous lettering, stating that the owner of the property is responsible for paying for the control activity and that the cost for the control activity shall be considered for assessment as a lien against the property at a meeting of the Lincoln City Council unless the cost of the control activity is paid in full. Notice of the date and time of the Lincoln City Council meeting when the assessment will be considered shall be sent at a later date, but not less than 30 days before such City Council meeting.
- (f) Interest shall begin to accrue at the rate set for delinquent real estate taxes thirty (30) days after the control activity.
- (g) In the event the City assesses the cost of control activity against the property as a lien, the lien shall become effective as of the date of the control activity.
- (h) Contact information, including telephone number and mailing address, for the Weed Control Authority.

A copy of the notice shall also be placed on any website used by the Weed Control Authority for purposes of providing information regarding potential liens. (Ord. 19629 §5; October 3, 2011).

8.46.026 Service of Notice.

The notice described in Section 8.46.024 shall be served by the Weed Control Authority on the owner of the property by sending a copy of the notice by certified mail, return receipt requested, or United States Postal Service tracking confirmation, to the last known address of the owner as shown in the records of the Lancaster County Assessor. The Weed Control Authority may also post a copy of the notice in a conspicuous place on the property. The sending of a notice by certified mail, with or without a signed receipt, shall be deemed good and sufficient service of the notice. (Ord. 19629 §6; October 3, 2011).

8.46.028 Liens and Collections; Releases; Procedures.

All liens assessed and imposed by the City shall remain in effect until fully paid, released by the City, foreclosed by the City or removed by effect of state law or court order. The Weed Control Authority shall be responsible for collecting monies paid for control activities. All such collections shall be deposited in the noxious weed control fund of the County. The County shall release weed liens imposed on real estate within the limits of the City when the amount due for the control activity has been fully paid or when the County is presented a certified copy of a resolution of the City Council authorizing the release of such a lien or as may be ordered by a court of competent jurisdiction. Any remedy provided in this chapter shall be in addition to the penalty hereinafter provided and cumulative therewith. (Ord. 19629 §7; October 3, 2011).

8.46.030 Assessment of Cost; Report to Council.

The Weed Control Authority shall, at least annually, report to the City Council on the weeds or worthless vegetation which have been cut, removed, cleared, or otherwise controlled by the Weed Control Authority from all real estate, together with one-half of the streets and alleys abutting thereon within the City of Lincoln as well as the costs thereof. The City Council may, at a regular council meeting, by resolution, assess such costs against the real estate controlled; provided, that notice of the time of such meeting of the City Council for making such assessment and for the purpose of such meeting shall be published once in a newspaper of general circulation in the city at least 30 days before said meeting of the council is held, and shall be mailed to such owner or owners by first class mail, postage prepaid at least 30 days before such meeting. Upon assessment by the City Council, the lien shall become effective as of the date of the control activity. Nothing herein shall prevent the city from accepting payment or collecting for the related costs by any other means permitted by law. The report of the Weed Control Authority shall include a plan for a combined weed control program that complies with all applicable state laws and ordinances. The report shall be submitted for approval by the City Council. (Ord. 19629 §8; October 3, 2011; prior Ord. 16951 §50; March 11, 1996: Ord. 15569 §3; May 14, 1990: P.C. §8.80.030: Ord. 14936 §3; July 25, 1988: Ord. 3780 §3; November 18, 1940).

8.46.040 Collection of Assessment.

Such assessment, when assessed as provided in Section 8.46.030, shall be certified by the City Clerk and delivered to the City Treasurer and shall be collected in the manner provided by law for the collection of general real estate taxes. Such assessment shall be a lien upon such real estate from the date of the control activity, and shall become delinquent thirty days after the date of assessment, and shall draw interest at the rate set for delinquent taxes until paid in full. It shall be the duty of the City Treasurer to collect said assessment in the same manner and at the same time as general taxes, and the items of said assessments shall be receipted for on the same receipt blanks as general real estate taxes. Nothing herein shall prevent the city from accepting payment or collecting for the related costs by any other means permitted by law. The Weed Control Authority is authorized to collect assessments on behalf of the City and shall report all collections to the City Treasurer. (Ord. 19629 §9; October 3, 2011: prior Ord. 15569 §4; May 14, 1990: P.C. §8.80.040: Ord. 14936 §4; July 25, 1988: Ord. 3780 §4; November 18, 1940).

8.46.045 Appeal.

The owner of property subjected to control activity shall have the right to appeal the decision to control and the cost of the control by filing a written appeal with the Department of Public Works and Utilities within 30 days of the date of the control activity. If good cause is shown, the deadline for filing an appeal may be extended by the Director of the Department. A hearing on the appeal shall be held within 14 days of the filing of the appeal and shall be conducted by the Director or his or her designee. The owner, or his or her attorney, may present evidence in support of the appeal. The hearing may be continued from time to time as may be appropriate. Following the submission of evidence by the owner, the Director or his or her designee shall render a decision on the appeal in five business days or less. The decision on the appeal shall be final. (Ord. 19629 §10; October 3, 2011).

8.46.050 Weeds and Rubbish; Fire Hazard.

If there be a lumber yard, oil tank or tanks, or wooden building or any other inflammable material upon any lot or parcel of land within the limits of the city, and near which there exists weeds and other worthless vegetation, between the dates of November 15 and May 1 of the following year, the Chief of the Fire and Rescue Department or the Fire Inspector shall notify, by publication or personal service, the owner or occupant or agent, representative or employee of such owner or occupant having control of such real estate to within twenty-four hours after notice not only cut and remove the weeds and worthless vegetation from such real estate, but also to scrape the surface of the ground within fifteen feet of such structure and to denude the ground within such area of any inflammable material. Upon the failure of such owner or occupant or agent, representative or employee of such owner or occupant to comply with said notice, then it shall be the duty of the Chief of the Fire and Rescue Department or the Fire Inspector to refer said failure to so comply to the Director of Public Works and Utilities who shall proceed as provided in Section 8.46.020 hereof to enforce the provisions of this section, except that the twenty-four hour notice herein provided shall be in lieu of the five days notice required in said Section 8.46.020, and the cost thereof shall be assessed as provided in Sections 8.46.030 and 8.46.040 hereof. (Ord. 18170 §25; April 28, 2003: prior Ord. 16951 §51; March 11, 1996: Ord. 15569 §5; May 14, 1990: P.C. §8.80.050: Ord. 3780 §5; November 18, 1940).

8.46.060 Penalty.

Any person upon whom a duty is placed by the provisions of this chapter who shall fail, neglect, or refuse to perform such duty, or who shall violate any order authorized by this chapter, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed \$100.00. Each day that a violation of this chapter continues shall constitute a separate and distinct offense and shall be punishable as such. (Ord. 15569 §6; May 14, 1990: P.C. §8.80.060: Ord. 3780 §6; November 18, 1940).