



City of North Port
Neighborhood Development Services
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MEMORANDUM

TO: Peter D. Lear, Interim City Manager

FROM: Scott Williams, Director, Neighborhood Development Services 

SUBJECT: Staff comments regarding proposed amendment to Part II, Chapter 42, Article II of the City Code.

DATE: April 5, 2017

At their regularly scheduled meeting of March 7, 2017, Commission reviewed Ordinance No. 2017-09, regarding amending Part II, Chapter 42, Article II of the City Code to repeal Article II in its entirety and enacting a new Article II Lot Clearing. The section(s) for discussion on the proposed Article pertains to excessive growths and dead trees.

As a result of the discussion concerning the amendments to Part II, Chapter 42, Article II of the City Code, Commission had directed staff to provide comments concerning several questions made by Commission. These responses as well as staff concerns are listed below:

1. Sec. 42-19 (a) The word impinging added prior to on developed lots and take out developed.
 - a. Response: Yes on impinging, No on removing developed.
2. Sec. 42-21. Definitions and word usage. Proposed definition of "Excessive Growth" states, "Excessive growth. Growth of grass and nuisance weeds in excess of 12 inches in height".
 - a. The words shrubs, trees and bushes were removed. Staff believes that shrubs, trees and bushes should remain.
3. Sec. 42-21. Definitions and word usage. Proposed definition of "Improved" states, "Land that its natural state has been altered".
 - a. The word "altered" is open to interpretation.
4. Sec. 42-21. Definitions and word usage. Definition of "Nuisance Weeds" states, "Uncultivated vegetation that is useless, unintended and invasive to cultivated grasses and landscaped areas".
 - a. Need policy decision on definition of "useless" and "unintended".
5. Major concern of overall ordinance is a violation of Fifth Amendment rights.
 - a. Staff has concerns as well regarding possible violation of the Fifth Amendment rights, and suggest legal determination.

6. Sec. 42-22(c)2) which states, "Owners of any lot adjacent to an improved or developed lot may be exempt from this provision providing an affidavit is submitted to the city from an applicable adjacent improved or developed lot owner indicating that said lot owner does not object to the encroachment of shrubs, trees, branches, bushes or any natural vegetation from the abutting lot."
 - a. Does not make sense to have an exemption if the violation is only if called in by the adjacent property owner as stated in (c)1).
7. Definition of Undeveloped.
 - a. Staff has no position.
8. Sec. 42-22(e). Question arose on whether staff has ability to regulate.
 - a. Staff response- This is covered by State Regulations.
9. Sec. 42-23. Accumulation of debris. Regarding added language "...equipment which have no further value".
 - a. Staff response – This is an open statement; how do you define "no further value".
10. Sec. 42-22(d) "A hazardous tree on any lot that poses an actual hazard or damage to the public, rights-of-way or utilities as determined by the City or to an adjacent lot upon a complaint by the adjacent lot owner, tenants, lessees, or occupants, are hereby declared to be a public nuisance. **"Upon notice it shall be the responsibility of the owner of any lot to remove or cause to be removed any such hazardous tree on their lot, however the City is empowered at the owner's expense to immediately abate a hazardous tree if it is determined by the city to be an emergency hazardous situation"**.
 - a. Staff response – The language beginning from "Upon notice" to the end of paragraph, bolded above is not needed. It is covered in Sec. 42-27.
11. Sec. 42-22(f) Proposed language. "In the event the lot owner and or responsible party fails to properly maintain their lot in accordance with the standards herein, the City may abate the violation in whole or in part as may be necessary in accordance with sections 42-26 and 42-27 to bring the lot into compliance with this section. The City shall not be responsible for any damage to other vegetation that is in the vicinity of such abatement activity."
 - a. Staff response – Not needed. It is covered in Sec. 42-27.
 - b. A determination from legal should be made on whether abating private property is legal and not a violation of the fifth Amendment to the Constitution.
 - c. If a determination is made that abating private property is legal, all abatement issues should go to the hearing officer for ruling.
 - d. Abatement section for procedures should be drafted by legal.

SW/sawg