

## ***jalp's "Mark-Up"***

### **Notes and Comments Handwritten on the Re-Draft of the ~~Noxious-Weeds~~ Nuisance Ordinance 5/1/09**

#### **page 1**

- toward the top, next to the "Administrative Report" headings: marked up by *jalp*  
< comments will be put into a text-based file and posted separately >
- next to the word "slight" in line 4 of the "Background" paragraph: (. . .)
- at the top of the list of changes made from the previous draft to this one: changes marked by  $\Delta$  (and some comments. . .)
- next to note on change to definition of "Harborage" in § (Section) 92.01: (one definition improved, \_\_\_ to go)
- next to note on change to § 92.02 to put burden of proof on City/Enforcement Officer: (this could be very important)
- next to note on change to § 92.03 to add "as permitted by law": (useful only as a reminder – but maybe it will be useful as that)
- near note on change/rewrite to § 92.05(a) to say "The owner shall cure the violation within fifteen (15) days of the date notice is served": this change doesn't really say that – only Council's legislative intent would make it mean that . . .
- next to the note on extending § 92.12 to repealing § 92.99: (better – avoids duplication/confusion/ambiguity)

#### **page 2**

- next to note on "possible additional language for a conciliation conference": (a first effort – but not yet adequate)
- near end of "RECOMMENDATION" paragraph: **NO!** if #08-07 had passed, it would not have touched Sections 92.25 through 92.99 – it only included 92.01 through 92.11 (not even the repealer section 92.12)

#### **page 3**

- $\Delta$  (**new section** . . . though I'm not sure why it's its own section . . . if they were worried about not disturbing the order and "numbering" of other parts, they could still make it § 92.05(d) and put it in with the rest of the initial abatement process . . . but if it has to come first, why not offer two versions with different numberings? or explain that numbering would change?)
- near intro paragraph, line 1, "in the opinion of the Enforcement Officer": (**NO** – not at EO's discretion)
- near intro paragraph, line 2, "may": (conciliation should **always** be the first step – whether by semi-formal conference or just talking with owners and reporting results/explanations)
- near paragraph (a), line 3, "apparent": (could we make this "alleged"?)
- near paragraph (a), line 3, "all parties" & line 4, "each other": ("all parties" suggests maybe more than 2 [EO & Owner]; will/should/must allegator[s] be included too?)
- near paragraph (b), line 4, "promptly": (NO – set a timeline/schedule as for other steps)
- near paragraph (b), line 4, "promptly": (note that a documented conciliation step can provide notice to the owner of a potential problem – could justify issuance of written notice as in § 92.05(a) if no agreement reached at conference, or shorter timeline if written notice issued at end of conciliation step)
- near paragraph (c), line 1, "agreement": (\* will it "run with the land" and bind future owners [and EOs]?)  
\* if allegators/neighbors/etc. involved, any effect on them?)
- near paragraph (c), line 1, "agreement": (will copies of agreements go to ZBA as persuasive precedents or just good ideas for resolution?)

below paragraph (d): (how can this be reconciled with the last sentence of (b) above?  
I think I understand the motivation for (d) – especially if Council were to accept discretionary instead of mandatory conciliation [though I hope it doesn't do that] – but I'm going to need some considerable and persuasive explanation before I can accept that this language will work)

at bottom of page: (general comment: I approve of the idea of trying to resolve complaints/allegations about noxious weeds and other nuisances without quasi-criminal enforcement . . . but this language is not enough of a realization of that idea)

#### **page 4**

on either side of "THE CITY OF MARSHALL ORDAINS" above ordinance #: Δ (an enacting clause . . . in a slightly odd place, perhaps, and no punctuation at the end – but it's there. . . .)

in between §§ 92.04 and 92.05: (as the staff's proposal has it, the Table of Contents would have to be changed anyway – to insert "92.04.01 Conciliation Conference" here . . . so there really wasn't much point in that inelegant effort to insert without changing otherwise. . . .)

next to § 92.01 DEFINITIONS: (still not alphabetized . . .)

#### **\*\*\* a note I forgot to write \*\*\***

for the mentions of "Director of Public Safety" in the definition of ENFORCEMENT OFFICER: (do we even **have** this position any more?)

next to the words "managed compost" (does firewood count as managed compost? or corn for corn heaters?  
at the end of the definition of GARBAGE: how about raw material for biodiesel?)

below "(additional language deleted re: potential harborages)" Δ (yes . . . better . . . though, for the sake of readability, I'd at least delete  
in the definition of HARBORAGE: the first comma – and probably the first "which" before it, too)

#### **page 5**

next to the definition of BUILDING MATERIAL: (holiday decorations [including Scarecrow Festival displays] could fall afoul of this. . . .)

near the words "Having four adjoining walls and a roof" (any sheds designed like silos in town? or shaped like four sides of a hexagon?)  
at the start of the definition of WHOLLY ENCLOSED: (the second sentence may offer a reasonable basis for a re-write . . . or delete)

near the words "poisonous or injurious" (still no answer to my questions of how much/to whom/etc. –  
in the definition of PROHIBITED VEGETATION: roses & raspberries)

near the words "including but not limited to" in item (a) (and still the magic words of broadening. . . .)  
of the definition of PROHIBITED VEGETATION:

near the word "weeds" in item (b) of the definition of PROHIBITED VEGETATION: (who says what's a weed and what isn't?)

next to (b)(1) in the definition of PROHIBITED VEGETATION: (still nothing on how you can show you're managing your landscape)

next to (b)(2) in the definition of (still bad syntax – maybe "Natural woods or perennial grasses, or a combination of both,  
PROHIBITED VEGETATION: on undeveloped parcels," or something like that)

near the words "consistent with the general character of the plant (still bad syntax mightily compounded by an ill-defined [and  
growth and landscaping in the surrounding neighborhood" ill-advised] attempt to legislate conformity . . . to me, this  
in (b)(3) of the definition of PROHIBITED VEGETATION: clause is an argument against needing this ordinance)

next to the definition of NUISANCE (in which several words/phrases are highlighted – (no change here, alas –  
"Any"; "threatens" [2x]; and "health, safety, comfort or repose": still a very broad brush. . . .)

< in the definition of NUISANCE, after "threatens to endanger": comma deleted >

below § 92.02 JURISDICTION, to which the sentence “The burden of proof is on the Enforcement Officer to establish a violation of this Chapter” was added:

Δ (and potentially quite an important change, to the extent that it means ambiguities in the ordinance are resolved in favor of the Owner . . . and there are still a lot of ambiguities. . . .)

**page 6**

near the word “inspection” in § 92.03: (≈ search)

near the word “collect” in § 92.03: (≈ seizure)

near the words “as permitted by law” in § 92.03: Δ (not a big change in legal effect – the ordinance couldn’t let EOs do more than [state/Federal] law permits – but it’s a reminder)

next to § 92.04 NUISANCES PROHIBITED: (same oh-so-broad language as in the definition; who needs both that and this second sentence? [or either of them, I’d say])

< at the end of line 3 of § 92.04: delete “or” . . . or delete the comma before it >

at the end of the first sentence in § 92.05(a): Δ (no longer says the notice will specify the time limit for abatement)

next to the second sentence in § 92.05(a): Δ (a fairly big change in wording; in meaning . . . not so much. . . . this says what the Owner shall do, not what the City shall, or may, or may not do – it should . . . e.g., “The City shall not abate an alleged nuisance, nor have it abated by anyone else, until the Owner has had the full opportunity to file an appeal.”) (this could be here or with § 92.06 or § 92.07(a). . . .)

between “the” and “opinion” in the phrase “in the opinion of the Enforcement Officer” at the end of § 92.05(c)(2): (would anyone care to add the word “reasonable” here? as a reminder parallel to “as permitted by law” in 92.03?)

next to “provided notice has been given under § 92.05.” at the end of § 92.06: (does this mean that can be done even in the “emergency” situation covered by § 92.05(c)(2)’s last sentence?)

< after “herein” in line 2 of the introductory paragraph of § 92.07 APPEALS; HEARING: comma added >

near the words “person” in line 2, and “denial” in line 3, of § 92.07: (if the result is denial, the “person” only means the Owner[s] appealing, right? . . . but if we conceive of the possibility that the City fails to comply with these process provisions, should we consider changing “denial” to “denial or granting” [or the other way around]? or “grounds for deciding the appeal against that person”? [or “party”?])

**page 7**

at top of page, near the phrases “claim of appeal form” in line 2, and “shall be available” in line 3, of § 92.07(a): (I don’t know if a form should be required as long as a would-be appellant [≈ “appealer”] provides the City with all the necessary information . . . but if a form is going to be required, why isn’t there one in this packet? can’t enforce until form exists if it’s going to be required)

next to “appeal board” in last line of § 92.07(a): (why not say “ZBA”, or define “appeal board” as ZBA?)

next to § 92.07(b): (what fee, set/updated on what basis? City would have costs, but so would Owner)

next to the end of § 92.07(c), three lines below the words “within two weeks”: (what if ZBA doesn’t have a quorum? or can’t get a quorum within those two weeks? can Appellant ask for date/time?)

< near the start of line 4 of § 92.07(d): the word “any” is a typo; should be “and” >

near the phrase “may, upon good cause,” in line 4 of § 92.07(d): (so fee might be refunded even if Appellant loses – but might not be refunded even if Appellant wins)

near the phrase “or by an alternate date if the Board directs” in lines 7 & 8 of § 92.07(d): (could be before or after standard ten-days-on date)

at the end of § 92.07(e): (will an appeal to the Circuit Court stay abatement, too? must Owner/Appellant notify City of intent to appeal?)

**page 8**

< after the phrase “, including representatives of firms or corporations” at the top of the page – near the start of the text of § 92.09 VACATED PROPERTY: (without this comma – or something else to set off the phrase between it and the previous comma – another syntax problem) >

< before the phrase “within 48 hours after vacating the property,” in the second line from the top of the page: comma added – with note: (both or neither) >

next to the top of § 92.10 BUILDING MATERIALS: (I still think people could run up against this with holiday decorations, Scarecrow Festival displays, even bricks/stones/etc. used in walks and gardens below building-permit “level”)

< after list-item #s (2) and (3) in § 92.10: (insert “the materials” [or “such materials” if you insist] at both these places) >

near the words “municipal civil infraction” in § 92.11 PENALTIES: (maybe a cross-reference to Chapter 35, or at least the definition at § 10.02?)

below § 92.12: Δ (previous draft did not include old penalty section § 92.99 among those to be repealed . . . better/clearer to do so)

near the words (and blank) “declared effective \_\_\_\_\_, 2009” between the end of the body text of the ordinance and the space for the Mayor and Clerk-Treasurer to sign: (Charter Subsection 4.02(e) says ordinances take effect “upon publication or at any **later** date specified therein” [emphasis added] . . . so it would appear that the only reason for this line is to specify a later date – is that the Council’s will/intent? and if so, how much later? [until there’s an appeal form and a set appeal fee, for example?])