

CITY OF DERBY

**ORDINANCE REVIEW ADVISORY BOARD
REGULAR MEETING
September 18, 2012
6:00 P.M.**

APPROVED MINUTES

ROLL CALL

Herman Hicks
Bob Bean
Al Davy
Paul Shaver

ABSENT

Thane Rockhill

Also Present: Stephanie Knebel, Assistant City Manager
Janae' Prunier, Secretary
Brent Lichti, Code Enforcement

Agenda Item #1 – Public Forum

No one present to speak, public forum was closed.

Agenda Item #2 – Review Dandelion Height Code

Background:

- The City of Derby prides itself as a well-kept attractive city.
- Proper lawn and maintenance is necessary to maintain property values.
- The extremely wet weather this past spring resulted in a large number of nuisance violations.
- On April 10, 2012, the City Council requested the Ordinance Review Advisory Board to review current City Code to provide feedback concerning whether or not dandelion tops should be excluded from the height requirement of 10 inches.
- A review of other cities shows:

| CITY | HEIGHT BEFORE MOWING | |
|---------------|-----------------------------|-----------------|
| Andover | 18" | |
| Derby | 10" | |
| El Dorado | 6" | |
| Lawrence | 12" | |
| McPherson | 12" | |
| Newton | 12" | |
| Olathe | 8" developed | 12" undeveloped |
| Overland Park | 8" | |
| Valley Center | 18" | |
| Wellington | 12" | |
| Wichita | 12" | |
| Winfield | 12" | |

- None of these cities make exceptions for dandelion tops when measuring.
- Code Enforcement measures the entire dandelion plant (including the puffed tops) when evaluating a tall weed complaint when the yard is nothing but dandelions. In instances where a parcel has a combination of grass and weeds, Code Enforcement evaluates the height of the grass.
- If a majority of the vegetation is taller than 10 inches, Code Enforcement concludes that the parcel is in violation of City Code.

Financial/Sustainability Considerations:

- None.

Legal Considerations:

- The city council may amend the City Code as it deems appropriate.

Policy Considerations:

- City Code provides exemptions for vegetative growth in excess of 10 inches for:
 - Parcels actively utilized for agriculture;
 - Golf courses regularly open and in use for play;
 - Riparian buffers; and
 - Wildlife refuges.
- City Code provides a timeframe for a three-step abatement process allowing for an initial five days to correct the violation followed by a second five days. Finally, the city is authorized to abate the violation and charge the cost, including a reasonable administrative fee, to the owner.

Recommend a Motion to:

1. Keep the 10" height requirement for tall grass and weeds,

OR,

2. Change the height requirement by creating one height for developed property and another for undeveloped.

DISCUSSION:

Stephanie explained that the city council has asked ORAB to provide feedback concerning whether or not dandelion tops should be excluded from the height requirement of 10 inches. We provide some exceptions of the 10 inch rule in town, those include areas that are used for agriculture, golf courses, riparian buffers and wildlife refuges.

Stephanie reviewed meeting minutes from the September 9, 2007 council meeting discussing weed height as well as a copy of the ordinance that was approved during that meeting. She also reviewed minutes from the April 10, 2012 meeting where this topic was discussed.

Discussion was held on how tall grass and weeds is handled by code enforcement. When a violation is found, the property owner is sent a notice of violation and has 5 days to mow the grass. If the grass is not mowed, a final notice will be mailed giving the owner 5 additional days. If the property is still not mowed, the city will abate it and the homeowner will be billed. If the bill is not paid the cost of mowing, with an additional administrative fee, will be assessed to the property.

Brent advised there is close to 95% compliance after a homeowner receives notice of violation.

Stephanie asked Brent if a residence would receive a violation notice if there are only a few clumps of tall grass.

Brent advised if there are only a few they would not receive a notice. If there are several and code enforcement has received a complaint or it is that the only house on the block that is not being maintained they may receive a violation. A lot of times the addresses that receive violations are rental properties or homes in foreclosure. Code enforcement tries to get those dealt with because we know they typically won't be maintained as well.

Herman asked if the grass on the outside of the sidewalk towards the street is city property or is that the property of the owner. He was told the city owned the area in front of his house by the street and if they wanted to run a sidewalk through there they could.

Stephanie explained that generally speaking, in Derby, it is the property owner's responsibility to maintain that grassy area between the street and the sidewalk. That's not true in all cases, but generally in residential areas where there is a public sidewalk it is the homeowner's responsibility to keep that area maintained.

Paul asked about Johnson grass.

Brent advised that it is considered a noxious weed.

Paul asked how thick it has to be before it is a violation.

Bob stated it is his understanding that according to the ordinance anything over 10 inches, whether it's the seed head or not it is a violation. He advised this fall he has been in violation because he couldn't always get to it.

Brent explained that a lot of times if it has been raining they will give people a few extra days because it will take time for the grass to dry and for people to get it taken care of.

Paul asked if this applies to aspects of a yard, the alley and backyard.

Brent advised that is correct.

Bob asked if it was his understanding that some of the council members want to cut the 10 days down to 5 days.

Brent stated he doesn't think they want to cut the time frame.

Stephanie added that in approximately 2007 one of the changes to the city code was to shrink the window of time for the notification and final notice. It used to be closer to 20-25 days. She doesn't believe council had concerns about that length of time now.

Paul asked what the reasoning is for wanting to increase the height requirement.

Stephanie stated it is so residents don't have to mow as often. There are some council members that believe that the height requirement should be shorter than 10 inches.

Bob doesn't see that as much of a concern. The solution for dandelions is weed killer. The main issue when it comes to height is that the ordinance does not address seed heads. The question is do we have a problem with 10 inch high dandelion heads or Johnson grass seed heads? If that's the case and that's the way the ordinance is written and the way it's going to be enforced you might be out there at certain times of the year mowing your yard every other day. He can't do that, he has ½ and acre and he's not as young as he used to be, it takes him 2 days to mow it. He would never get a break from mowing the yard if we are looking at 10 inches, dandelion heads included during the rainy time of the year. We have several possible recommendations we could make including; having a different height for the seed heads than the grass blades, increase the height to match what it is in most cities which is 12 inches and let the seed heads be included in that 12 inches.

Stephanie stated her recommendation to the board is to keep the 10 inch height or an option for one height for developed property and another height for undeveloped property. We don't want to make it too complicated to enforce the ordinance.

Bob commented that the current code enforcement staff might not always be here, right now we are using common sense but that might not be the case in a few years. However the ordinance is written is how you have to assume it could be enforced.

Stephanie pointed out that code enforcement officers work with people and will always work with people.

Al commented that he owns $\frac{3}{4}$ of an acre, part of which is supposed to be maintained by the city but is not, he hires someone to come take care of it.

Herman asked if the height restriction only applies to dandelions or to everything.

Stephanie advised it is for tall grass and weeds.

Herman asked what the reason for the 10 inches, because we wanted to maintain a certain decorum, we aren't trying to be like Wichita or Andover.

Stephanie stated she wasn't here in 2007 but she assumes it was similar to the discussion we are having now and that's what they came up. She guesses it was at one time the height limit was 12 taller than 10 inches and was changed in 2007.

Herman indicated he believes what council member Warren was saying was that the 10 inches was fine but to not count the dandelion head, is that what we are looking at now?

Bob said that's one possibility. Another possibility is having a separate height for seed heads versus the blades.

Paul stated that he feels 10 inches is right in the middle of all the cities and is a good rule of thumb. He doesn't agree with giving undeveloped property an exception because then they don't have to deal with it and keep it up. He wants it all the same.

Bob asked if repeat offenders are still a big problem.

Stephanie stated that once you have received an initial notice of violation and a final notice of violation we don't send anymore violations for that parcel, code enforcement has the authority to immediately abate those properties without additional notice.

Brent indicated there might be 10 properties we mow on a regular basis. They are the ones that we send two letters to at the beginning of the season and are usually abandoned or in foreclosure. We know that we are going to have to keep an eye on those. Commercial properties are difficult because a lot of times the property owners are out of town and don't keep an eye on their property.

Herman cited a recent Derby Informer article where Charlie Brown stated he had instructed his code enforcement staff to include the puff in their measurements. Does that mean at one time it was not included in measurement?

Stephanie stated that Mr. Brown made it clear, when he was supervising code enforcement that they were to measure the whole plant.

Herman clarified that the current code does not specify whether you do or you don't?

Stephanie advised it just says 10 inches in height.

Paul asked about scrub trees.

Bob indicated he does not see a problem with the way the ordinance is now, especially with the enforcement we have now. If the enforcement changes he would have a problem.

Stephanie stated that the current code supervisor understands using common sense. She assumes that whoever supervises code in the future would do the same.

Bob stated at as far as time frame goes, he is happy with the way it is now.

Herman advised in previous career part of his responsibility was base housing. It didn't matter if you were on leave or vacation; you are still responsible for your yard. The repercussions for failing to do so were much more severe in the military than they are here. He thinks the 10 inches is fine.

Motion: Herman moved to keep the ordinance as it is. Al seconded.

Vote: Motion carried 4-0, Thane absent.

Stephanie advised Chief Lee will be at a future meeting to discussion the STO updates. She also advised she will email the board when this item goes to the council.

Meeting adjourned at 6:45 p.m.