

Committee Members:

Chairperson

Damian Huettl, Citizen
Term: 2013-2016

Vice Chairperson

Laurie Leingang, Citizen
Term: 2013-2016

Tammy Lapp-Harris, Citizen
Term: 2015-2018

Amy Schmidt, Citizen
Term: 2015-2018

Dale Schwindt, Citizen
Term: 2013-2015

Brian Dehnert, Citizen
Term: 2015-2015

Jim Neubauer,
Administration

Doug Lalim, Building
Inspection

Ellen Huber, Business
Development &
Communications

Keith Johnson, Custer
Health

Steve Nardello, Fire

Justin Froseth, Planning &
Engineering

Dennis Bullinger, Police

Jeff Wright, Public Works

Liaisons:

Robert Decker, City
Planner

Joe Camisa, Code
Enforcement Officer

Krista Harju, Program
Coordinator

Mandan Community Beautification Committee

Thursday, June 11, 2015

7:30 a.m.

Mandan City Hall

205 Second Avenue NW

A. Roll Call:

1. Roll call of committee members and liaisons
Chairperson Damian Huettl called the meeting to order. Members present are indicated with a . City Commissioner Dennis Rohr was also in attendance.

B. Consider minutes from meeting on May 14, 2015
Dennis Bullinger moved to approve the minutes from the May 14, 2015 meeting. Amy Schmidt seconded. The motion passed unanimously.

C. Present final draft of graffiti ordinance. (Jim)
Jim presented the final draft of the graffiti ordinance, as drafted by City Attorney Malcolm Brown based on the opinions and recommendations of the committee.

The committee agreed to the following changes (a detailed description follows):

Section 16-7-1. ~~Removal~~ Abatement of graffiti by property owner or city.

Property or owner responsibility. It is unlawful for any person who is the owner or responsible party of property to permit property that is defaced with graffiti to remain defaced for a period of ten days from the date of written notice of the defacement. Notice under this article is sufficient if served upon the owner or responsible person personally or mailed regular mail to the last known address of the owner or responsible person or the last address of the owner shown on the tax rolls of the county. The notice shall contain the following information:

- (1) The street address and legal description of the property sufficient for identification of the property;**
- (2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding; and**
- (3) A statement that the graffiti must be ~~removed~~ abated within ten days after written notice and that if the graffiti is not abated within that time the city shall cause the graffiti to be ~~removed~~ abated and the cost thereof shall be assessed against the non-complying real property. In addition, an administrative cost equal to twenty-five percent (25%) of the cost of ~~removal~~ abatement and a twenty-five dollar (\$25.00) penalty or \$100, whichever is greater, shall be assessed against the non-complying real property.**

Section 16-7-2. Failure to comply.

Upon failure, neglect or refusal to ~~remove~~ **abate** the graffiti during the prescribed period:

- (1) The city may, by its own work forces or by contract, cause the graffiti to be ~~removed~~ **abated** and the cost thereof shall be assessed against the non-complying real property. An administrative cost equal to twenty-five percent (25%) of the cost of ~~removal~~ **abatement** and a twenty-five dollar (\$25.00) penalty or \$100, whichever is greater;
- (2) ~~If the owner or agent of the property continues to neglect to maintain the property free from graffiti, the city may, at its sole discretion, remove-abate the graffiti again as needed without additional notice of any kind. Charges as in subsection (2), including penalty, will be assessed for each time the city removes-abate the graffiti;~~
- (3) That the assessed amount together with costs and penalties shall constitute a lien on the non-complying real property and will be taxed as a special assessment against the real property.
- (4) Appeal. The owner or agent may appeal **within ten days of written notice** any determination that they have failed to comply with the requirements of any order to the City Commission.
- ~~(5)~~ (5) Any person who willfully fails to comply with the provisions of this article is guilty of an offense.

Section ~~17~~ 16-7-3. Abatement and cost recovery proceedings.

- ~~(a)~~ (1) Annually the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which the graffiti was ~~removed~~ **abated** by the city and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following:
 - ~~(1)~~ (a) Name as shown by the tax rolls, common address if known;
 - ~~(2)~~ (b) Tax code of the property;
 - ~~(3)~~ (c) Legal description of the lot, tract or parcel;
 - ~~(4)~~ (d) Cost of the graffiti ~~removal~~ **abatement** for that property;
 - ~~(5)~~ (e) Administrative costs; and
 - ~~(6)~~ (f) Penalty assessed.
- ~~(b)~~ (2) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented to the city council for consideration. From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special assessment, as provided in NDCC §40-05-01.1, and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the city taxes and assessments.

Section 16-7-4. Prevention provisions.

Retro-fit existing graffiti-attracting surfaces; non-residential structures. The following provisions may be incorporated in a graffiti eradication order:

- (1) **At owner's expense.** Any surface of a structure on a parcel of land used for non-residential purposes that has been defaced with graffiti more than five times in twelve months shall be declared a public nuisance and may be required to be retro-fitted, at the cost of the property owner, with features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient ~~removal~~ **abatement** of graffiti. ~~In exercising the authority hereunder, the city may not impose a cost on the property owner of greater than three thousand dollars (\$3,000.00).~~
- (2) Appeal. The owner or agent may appeal **within ten days of written notice** any determination that they are required to retro-fit the property with features or qualities necessary to reduce the attractiveness of the surface for graffiti or to permit more convenient or efficient ~~removal~~ **abatement** of graffiti to the City Commission.

Bob Decker asked for clarification on the definition of “remove.” Huettl recommended using “abate” in place of the word “remove” throughout the ordinance. The committee agreed. The committee also agreed to correct the numbering of Sections and Subsections throughout the document for consistency.

16-7-2

The committee discussed Subsection 2:

If the owner or agent of the property continues to neglect to maintain the property free from graffiti, the city may, at its sole discretion, remove abate the graffiti again as needed without additional notice of any kind. Charges as in subsection (2), including penalty, will be assessed for each time the city removes the graffiti;

Many committee members felt separate notice should be given for every incident. Leingang recommended striking the language, “without notice of any kind.” Neubauer suggested striking the entire subsection. The committee agreed to strike 16-7-2 Subsection 2.

16-7-4

The committee discussed the maximum cost the City can impose on a property owner for the retro-fitting of a commercial property, as outlined in 16-7-4 Subsection 1. Huettl expressed concern that the maximum cost would have to be adjusted in the future if using a fixed number. Commissioner Rohr suggested striking the maximum cost and replacing it with language similar to, “a cost that is reasonable.” A meeting could be held to determine the reasonableness of the cost. Steve Nardello recommended striking the last sentence. The committee agreed.

Bullinger noted that the ordinance allows a property owner to appeal to the City Commission during a specified period. If the property owner does not appeal or abate the property, the issue would be taken to court. The court can then set a daily fee for noncompliance. Neubauer will ask Brown to include language that would result in the charge of an offense on any person failing to comply.

Huettl noted the deadline for a property owner to appeal is not included in the ordinance. Decker recommended requiring the property owner to appeal within 10 to 15 days. Since property owners are expected to abate the property within 10 days, Huettl recommended requiring they appeal within the same time frame. Tammy Lapp-Harris suggested including the language, “within ten days of written notice.” The committee agreed. The language will also be updated in 16-7-2 Subsection 4 to read, “within ten days of written notice.”

The committee’s recommendations will be forwarded to Brown to be incorporated into the draft ordinance. Neubauer will e-mail the final draft ordinance to committee members for review before it appears before the City Commission.

D. Report on proposed garbage container ordinance (Jim)

The proposed garbage container ordinance is still a work in progress. Neubauer will bring it to the July 9 meeting.

E. Outdoor storage for industrial, commercial and potentially residential properties. Present 1st Draft of Mandan Ordinance (Doug, Steve, Bob, Dennis, review Bismarck/Grand Forks)
Decker drafted an outdoor storage ordinance based on examples from Bismarck and Billings. Decker noted the only difference between Subsections 10a and 10b are that residential property

owners must store items in an enclosed building, whereas commercial property owners can store items behind a fence or in an enclosed building.

Doug Lalim suggested adding the language, "listed above," to Subsection 11a to read:

Within a residential district, storage of anything **listed above** other than a wheeled vehicle or trailer must be within an enclosed building or structure.

Leingang noted the committee had recommended to strike the language regarding outdoor storage from the current ordinance and the Overland Park, KS example, as the committee planned to draft a separate ordinance. She suggested the committee review the proposed ordinance alongside the current ordinance and the Overland Park, KS example at the July 9 meeting. The committee agreed.

F. Review and discuss memo to City Commission related to changes proposed to property maintenance code, including penalty provisions (Discuss % of exterior property areas in disrepair)

The committee discussed the memo to City Commission related to changes proposed to the property maintenance code. Lalim said he didn't like the use of percentages, as it is hard to prove. Joe Camisa agreed, noting that it could be difficult to enforce. Decker suggested keeping the percentage low to make it more enforceable.

Decker noted that damaged paint is the only thing mentioned in the memo. He recommended including a broader definition that would include other things, such as broken bricks or damaged siding.

Camisa will contact someone in Overland Park, KS for more information on the selection of a percentage and how it has worked for the community.

G. Other Business

Schmidt recommended that Camisa review current codes and report back to the committee on what he feels can or should be changed.

H. Future Meetings

1. Thursday, July 9, 2015 7:30 a.m.
2. Thursday, August 13, 2015 7:30 a.m.

I. Adjourn

Bullinger moved to adjourn. Leingang seconded. The motion passed unanimously.

FUTURE 2014-15 AGENDA ITEMS:

1. *Consider signage to discourage littering*

ITEMS FOR FOLLOW-UP:

- *Camisa will contact Overland Park regarding the percentages included in the property maintenance code.*

- *Camisa will review current codes and bring recommendations back to the committee on what can or should be updated.*
- *Jim will forward to Brown the committee's recommended changes to the graffiti ordinance. He will e-mail the final draft to committee members to review before it appears before the City Commission.*
- *Harju will work with Decker to provide a comparison of the proposed outdoor storage ordinance, the current ordinance and the Overland Park, KS example.*