

**AN ORDINANCE OF THE
CITY OF WHEATON
COUNTY OF BARRY
STATE OF MISSOURI**

NUISANCES

Article I – IN GENERAL

- Sec. 1 – Nuisances prohibited.
- Sec. 2 – Penalties for violation of section 1,
- Sec. 3 – Illustrative nuisances enumeration.
- Sec. 4 – Construction sites.
- Sec. 5 – Right of entry for purposes of inspection and enforcement.
- Sec. 6 – Notice to owner, occupant or person in charge to abate or remove nuisance.
- Secs. 7 – 9 – Reserved.

Sec. 1 – Nuisances prohibited.

No person shall cause, maintain or permit on public property or on premises owned or controlled by such person a nuisance as defined by the laws of this state or this chapter. For purposes of this section a "person" shall include individuals, private corporations, firms, partnerships, associations, executors, administrators, trustees, receivers, or other representative appointed according to law.

Sec. 2 – Penalties for violation of section 1.

Notwithstanding any other provision of the Wheaton City Code to the contrary, any person who has been found guilty of violating section 1 shall be required to pay a minimum fine of ten dollars (\$10.00) for the first offense. Any person who has been found guilty of violation section 1 a second time during a twelve-month period shall pay a minimum fine of one hundred dollars (\$100.00). Any person who is found guilty of violation section 1 of the Wheaton City Code a third time within a twelve-month period shall be fined a minimum of two hundred (\$200.00) Any person who is found guilty of violation section 1 of the Wheaton City Code four (4) times or more within a twelve-month period shall be fined a minimum of five hundred (\$500.00) for the fourth offense and each subsequent offense within a twelve-month period. If a person is charged and found guilty of more than one (1) offense on the same day, then all such offenses on that day for purposes of this section shall be counted as one (1) violation.

Sec. 3 – Illustrative nuisances enumeration.

The following things are hereby declared to be nuisances, provided, that such listing shall not be deemed exclusive:

- (1) Trash, debris, waste, filth, cinders, sawdust, old lumber, stones, rocks, refuse, ashes, slops, filth, excrement, stones, straw, soot, rubbish, manure, offal, stagnant water, all sorts of decaying animal matter, animal waste, decaying fruit or vegetables or other vegetable matter, broken kitchenware, wrecks or parts of worn-out automobiles or other machines, scrap iron or other metals, cans, old bottles, broken glass, discarded wearing apparel, dead animals, scrap lumber, tires, or any other offensive or disagreeable substance or thing left, deposited or caused or permitted to remain in such quantity or in such condition as to be offensive to the sight or smell or a menace to health, safety, peace or comfort, or of such a nature as to be or become harborers or breeding places for mosquitoes, ants, flies, rats, mice or other insects, animals, reptiles, vermin, or birds or so as to provide shelter, food or protection for rodents, thus favoring rodent multiplication and continued existence, whether left or deposited upon private premises owned, occupied or controlled by persons causing or permitting the same or upon any public street, sidewalk, alley, parkway, public enclosure or vacant lot; and all water, steam and condensation drained from, emitted from or thrown upon any sidewalk, parkway, alley or street from any place occupied as a residence or by a commercial or business structure or any appurtenances belonging thereto.
- (2) Accumulating, storing, piling, stacking or placing of paper, magazines, rags, sawdust, boxes, cans, straw, or other similar substances on residential or business property by the owner or the person in charge of said property, whether through their agent, servants, employees or otherwise, when such substances are accumulated, stored, piled, stacked or placed so that they may, by nature causes such as wind or storm, escape from the property where so stored, accumulated, piled, stacked or placed onto the property of others, the streets, sidewalks or alleys.
- (3) The accumulation upon any premises or the discharge thereof upon any public way or public place or private property of any dirty or stagnant water, foul or dirty liquid, sewage, liquid waste, wash water, waste water, or filthy water or liquid of any type.
- (4) Factories, slaughterhouses or the exercise of any activity, business, manufacture or trade which shall cause any offensive odor or noxious exhalations which are discomfoting, offensive or detrimental to the health of individuals or of the public.
- (5) Any open, uncovered or unprotected hole, well or cistern on any premises, or any hold, well, cistern or pool of water which is impure or unwholesome in nature.
- (6) The maintenance upon any premises in this city of a building, structure or other condition apt to cause injury to the traveling public, or apt to obstruct, injure or destroy the public ways of the city.
- (7) The existence of any tree or shrub, or limb or branch thereof which shall overhang any street, sidewalk, alley or other public place in such a way as to impede or interfere with traffic or travel on such street, sidewalk, alley or public way, or which has become likely to fall on or across any public street, sidewalk, alley or public way.

- (8) The existence of any tree or shrub which by reason of disease, injury, age or any other condition has become likely to fall on some person, automobile, structure or improvement.
- (9) Rodent harborage: Any condition providing shelter, food or protection for rodents, thus favoring rodent multiplication and continued existence.

Sec. 4 – Construction sites.

Each contractor, owner and/or the person in whose name a building permit is issued, shall all be responsible for the job site in such a manner that litter will be prevented from being carried or deposited by the elements upon any public place or private premises. Litter or any other debris, including dirt, mud, paper, cardboard or other scrap materials, deposited as a result of the normal construction process upon any public place or private premises shall be removed by the said contractor, owner or permittee.

Sec. 5 – Right of entry for purposes of inspection and enforcement.

- (a) All complaints alleging the existence of a public nuisance shall be filed with the Chief of Police who shall promptly inspect the premises and with the consent of the owner, occupant or person in possession thereof. In the event consent cannot be obtained, the code enforcement official shall have the right to seek the appropriate warrant as outlined in section 41(a).
- (b) The code enforcement official of the city is hereby authorized and required to go in and upon any house, building, lot or premises, whether public or private, for the purpose of removing or abating any nuisance, when abatement of a nuisance is ordered under the provisions of this chapter.
- (c) The term “code enforcement official” shall include any police officer of the City of Wheaton or any other person designated by the city council to assume the duties and responsibilities of this chapter.

Sec. 6 – Notice to owner, occupant or person in charge to abate or remove nuisance.

Whenever the code enforcement official received a complaint or is otherwise informed and believes that a nuisance exists, the notice and abatement procedure outlined in section 40 may be used in lieu of or in addition to any other procedures available under this chapter. Such notice shall not be required as a prerequisite for a violation of section 1.

Secs. 7 – 9 – Reserved.

Article II – WEEDS AND OTHER RANK VEGETATION

- Sec. 20 – High weeds, etc., declared menace to public health, safety and welfare.
- Sec. 21 – Code enforcement official to determine when weeds, etc., constitute public nuisance.
- Sec. 22 – Weeds, etc., over twelve inches in height declared nuisance per se.
- Sec. 23 – Permitting growth of high weeds, etc., prohibited.
- Sec. 24 – Permitting growth of high weeds, etc., in sight triangle, prohibited.
- Secs. 25 – 29 – Reserved.

Sec. 20 – High weeds, etc., declared menace to public health, safety and welfare.

The presence of weeds, grass, brush and other rank vegetation, of an excessive height, hereinafter referred to as weeds, excluding shade trees, ornamental shrubs, fruit trees, domesticated berry bushes and vines regularly maintained, cover crops and domestic grains and plantings on lots and pieces of land within the city, except as prohibited in section 24, constitute a menace to the public safety, health and welfare by reason that such conditions may:

- (1) Cause a fire hazard;
- (2) Furnish cover for prowlers;
- (3) Create a nuisance with potential danger of injury on rocks, debris, holes, etc., covered by excess growth;
- (4) Obstruct visibility at street intersections;
- (5) Result in the aggravation of allergies;
- (6) Furnish a potential harborage or breeding place for disease-carrying insects, arthropods, animals and poisonous snakes.

Sec. 21 - Code enforcement official to determine when weeds, etc., constitute public nuisance.

The growth of weeds shall constitute a public nuisance when, in the opinion of the code enforcement official, any such growth on a lot or piece of land may substantially endanger the health, safety or welfare of the public, having considered those hazards enumerated in section 20.

Sec. 22 – Weeds, etc., over twelve inches in height declared nuisance per se.

The growth of weeds in excess of nine (9) inches in heights except on land used for agricultural purposes, as defined in section 12-23(b), is declared to be a public nuisance, per se, detrimental to the health, safety and welfare of the public.

Sec. 23 – Permitting growth of high weeds, etc., prohibited.

- (a) It shall be unlawful for the owner, occupant, lessee, agent or corporation in control of any lot or piece of land within the city, except on land two (2) acres or more in size regularly used for agricultural purposes, to allow weeds to attain a height greater than twelve (12) inches on such land.

- (b) For the purpose of this subsection and section 22 above, land regularly used for agricultural purposes shall not include a lot or piece of land of any size located in a platted subdivision.
- (c) On lots or pieces of land two (2) acres or more in size used for agricultural purposes, no weeds in excess of twelve (12) inches in height shall be permitted within fifty (50) feet of any residence or any other structure or within twenty-five (25) feet of any public street, alley or sidewalk.

Sec. 24 – Permitting growth of high weeds, etc., in sight triangle, prohibited.

- (a) It shall be unlawful for the owner, occupant, lessee, agent or corporation in control of any lot of piece of land within the city to allow or plant any weeds, vegetation, trees or bushes or to construct, park or otherwise position any obstacle that obstructs the view of the operator of a vehicle which is defined to include non-motorized cycles and any other motor vehicle; in no event shall any weeds, brush or other rank vegetation equal to or in excess of twelve (12) inches be permitted within a sight triangle which is defined below. In the event any of the other aforesaid plants, vehicles, structures or other obstructions which are otherwise permitted in this chapter equal or exceed eighteen (18) inches or more in height, then it shall be presumed that the same obstructs the view to the operator of the aforesaid vehicles in which case the city shall determine on a case-by-case basis whether or not the said obstruction shall be permitted in the sight triangle. This determinate shall be based upon the geometry of the land taking safety factors into account; the purpose of this section is to prohibit objects in the sight triangle that obstruct the view of the operators of vehicles. It is intended that the sight triangles will serve to provide a viewing distance of one hundred fifty (150) feet from the intersecting street, alley, drive and/or other entrance.
- (b) A “sight triangle” is defined as a triangle formed by the intersection of public streets, alleys, drives and/or other entrances to through streets where the triangle area is that area encompassed within two intersecting lines formed by the edge of the pavement, curb, roadway, or projection thereof, and extending sixty (60) feet down the through street from the right edge of the intersecting street, drive and/or entrance, when standing in the street, alley, drive, and/or other entrance facing the through street and extending fifteen (15) feet from the edge of the pavement, curb, roadway or projection thereof of the intersecting street, alley, drive and/or other entrance and the third imaginary line connecting the extremities of the other two (2).
- (c) On the left side of the intersecting street, alley, drive, and/or other entrance, the triangle shall be calculated by measuring one hundred (100) feet down the through street from the edge of the intersecting street, alley, drive, and/or other entrance and measuring fifteen (15) feet down the intersecting street, alley, drive, and/or other entrance from the edge of the through street, and a third imaginary line connecting the extremities of the other two.
- (d) Illustration of sight triangle. See Exhibit A [as attached to Ordinance No. 3786, which has not been included herein but may be found on file in the office of the city clerk/finance director.]

Secs. 25 – 29 – Reserved.

Article III – ABANDONED, WRECKED AND DISMANTLED VEHICLES

Sec. 30 – Nuisance declared.

Secs. 31 – 35 – Reserved.

Sec. 30 – Nuisance declared.

- (a) No person shall park, store, leave or permit the parking, storing or leaving of any motor vehicle or trailer (hereinafter referred to as vehicle) of any kind which is in an abandoned, wrecked, dismantled, unlicensed, junked or partially dismantled condition or which has the appearance of not being roadworthy whether attended or not, upon any public or private property within the city, and the same is hereby declared to be a nuisance. For the purposes of this section, race cars shall be required to comply and a vehicle which is located on a trailer shall be considered “parked” or “stored”.
- (b) No person shall permit weeds as defined in this chapter to grow around or under any vehicle nor shall any person allow any animal to be kept in or under any vehicle, and the same is hereby declared to be a nuisance.
- (c) Exceptions:
 - (1) This section shall not apply to any vehicle which is totally enclosed within a building on private property within any district.
 - (2) This section shall not prohibit the temporary parking or storage of an inoperative, wrecked, or damaged vehicle at a location within a business, commercial, or industrial district at a place of business engaged in the servicing, repairing, or rebuilding of vehicles if the vehicle is there for the purpose of being serviced, repaired, or rebuilt. For the purposes of this subsection (c)(2), a new or used dealership shall not be permitted to temporarily park or store inoperative, wrecked, or damaged vehicles at the dealership unless the said vehicle is located there to be serviced, repaired, or rebuilt and the dealership is also engaged in the business of servicing, repairing or rebuilding vehicles.
 - (3) This section shall not prohibit the storage of wrecked, dismantled, partially dismantled, or junked vehicles at a vehicle salvage yard in any business, commercial, or industrial district if the presence of the vehicle does not otherwise violate the use restrictions of the district or any other city ordinance or any statute, law, or regulation of the federal or state government.
- (d) Any abandoned, wrecked, dismantled, unlicensed, junked, or partially dismantled vehicle not covered by the exceptions contained in subsection (c)(1), (2) or (3) shall not be left, parked or stored in any business, commercial, or industrial district unless the presence of the vehicle is necessary due to the use being made of the premises and the vehicle is located to the rear of the premises behind any improvements erected and maintained thereon, inside an enclosure six (6) feet high which renders it not visible from anywhere off the premises. This subsection shall not be deemed to permit the operation of a salvage yard business on the premises and the sale or exchange of salvage vehicles or salvage vehicle parts is prohibited.

Article IV – DEFAACEMENT OF PUBLIC OR PRIVATE PROPERTY

Sec. 36 – Graffiti.

Secs. 37 – 39 – Reserved.

Sec. 36 – Graffiti.

- (a) *Intent and purpose.* Graffiti on public and private property is a blighting factor which not only depreciates the value of the property which has been the target of such malicious vandalism, but also depreciates the value of the adjacent and surrounding properties, and in so doing, negatively impacts upon the entire community. The city has in the past undertaken to remove graffiti from public property but has been unable to mount a successful program for encouraging the owners of private property to undertake to remove graffiti and other inscribed materials from walls, structures, etc. The legislation of the State of Missouri has authorized the city to define, regulate, suppress and prevent nuisance and to declare what shall constitute a nuisance and to abate and remove the same.
- (b) *Legislative determination.* The city council finds and determines that graffiti is a nuisance and unless it and other inscribed material is removed from public and private properties, it tends to remain; and other properties are then in the target of the graffiti with the result that entire neighborhoods and indeed the community is depreciated in value and made a less desirable place to be. The city council therefore determines that it is appropriate that the city develop procedures to implement an ordinance and to provide for the removal of graffiti and other inscribed material from both public and private property under the circumstances set forth hereinafter.

The city council hereby declares as a matter of legislative determination that:

- (1) The increasing incidents of the defacement of public and private property through the application of graffiti upon walls, rocks, bridges, buildings, fences, gates other structures, trees and other real and personal property within the corporate boundaries of the city constitutes a blight on this community, and, in the interest of the health, safety and general welfare of the residents and taxpayers of the city, immediate steps must be taken to remove this blight.
 - (2) When appropriate, the courts should require those who commit acts of defacement of public or private property through the application of graffiti to restore the property so defaced, damaged or destroyed.
 - (3) Obtaining convictions for the application of graffiti is difficult to the fact that the offense can be committed so very quickly and secretly that witnesses to the act are frequently nonexistent.
- (c) *Definitions.* Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

- (1) "Graffiti" means the defacing, damaging, or destroying by spraying of paint or marking of ink, chalk, dye or other similar substances on public and private buildings, structures, and places.
 - (2) "Graffiti abatement procedure" means an abatement procedure which identifies graffiti, issues notice to the landowner to abate the graffiti, and cures in absence of response.
 - (3) "Private contractor" means any person with whom the City shall have duly contracted to remove graffiti.
- (d) *Graffiti – Prohibited.* It shall be unlawful for any person to write, paint or draw upon any wall, rock, bridge, building, fence, gate, other structure, tree or other real or personal property, either publicly or privately owned, any drawing, inscription, figure or mark of the type which is commonly known and referred to as "graffiti" within the city.
- (e) *Same – Violation; penalty.* Any person who is convicted of violating subsection (d) above shall be punished by a fine of not exceeding five hundred dollars (\$500.00) or by imprisonment not to exceed there (3) months or both such fine and imprisonment. In addition to such punishment, the court may, in imposing sentence, order the defendant to restore the property so defaced, damages or destroyed.
- (f) *Same – Notice of removal.* Whenever the code enforcement official or his/her designated representative determines that graffiti exists on any public and private buildings, structures and places which are visible to any person utilizing any public right of way in this city, be this road, parkway, alley, or otherwise, the code enforcement official or his/her designated representative shall cause a notice to be issued to abate such nuisance. In the event painting of exterior surfaces is the only means by which abatement can be accomplished, additional time may be granted by the code enforcement official if seasonal temperatures would preclude abatement within the usual time frame outlined in section 40. Notice and abatement procedure outlined in section 40 may be used in lieu of or in addition to any other procedure available under this chapter. Such notice shall not be required as prerequisite to a violation of section 1.

Secs. 37 – 39 – Reserved.

Article V – ABATEMENT AND PENALTY PROCEDURES

- Sec. 40 – Abatement procedure
- Sec. 41 – Additional remedies for abatement of nuisances
- Sec. 42 – Assessment of court costs upon finding of violation
- Sec. 43 – Minimum charges to abate nuisance
- Sec. 44 – Penalties and procedures cumulative, not exclusive
- Sec. 45 - Office of hearing officer

Sec. 40 – Abatement procedure.

- (a) *Notice to owner, occupant or person in possession to abate.* Whenever the code enforcement official received a complaint or is otherwise informed and believes that a nuisance exists under this chapter, he shall notify the owner, occupant and person in possession, (if the same is a person different than the owner), of the property that a hearing before the hearing officer shall be held in the council chambers at the city hall ten (10) days after notice of the same is personally delivered, mailed or posted as provided below at which hearing, the hearing officer may declare that a nuisance exists and order the same to be abated within five (5) days after the hearing. If the nuisance is on private property, proof that a person occupies the property or that a person has possession or right of possession of the property shall constitute prima facie evidence for purposes of this chapter that such person has caused, maintained or permitted the nuisance; and such person and the owner, if difference from the occupant or person in possession, shall be responsible for its abatement.

Such notification may be made by any one (1) of the following methods:

- (1) Delivery of the notice to the owner and the person occupying or having possession of the property if different than the owner; or
- (2) Depositing in the United States mail, postage prepaid, the notice addressed to the owner and the person occupying or having possession or the right to possession of the property if difference than the owner; or
- (3) If such property is not occupied, the code enforcement official shall notify the owners by posting a notice of his request to abate or remove such nuisance within a time to be specified in such notice upon such property and shall send a copy of such notice by registered mail to the last known address of the owners; or
- (4) If such property is not occupied and the owner is unknown or cannot be located, then the code enforcement official shall post a notice containing an order to abate the nuisance on the property where such nuisance exists; or
- (5) By delivery of a notice or by depositing in the United States mail, postage prepaid, a notice to the person causing, maintaining or permitting a nuisance.

- (b) *Order to abate.* If, upon a hearing for the violation of this article, the hearing officer finds that a violation exists and that proper notice has been given as provided for in this article, and that there has been a failure to abate the nuisance, the hearing officer shall make an order directing the code enforcement official to abate such nuisance forthwith.
- (c) *Abatement by city upon failure of owner, occupant or person in possession to comply.* If an order to abate is issued as provided above in the previous subsection and the abatement has not occurred within five (5) days from the date of the order, then the code enforcement official shall effect the abatement of such nuisance by whatever reasonable means are necessary.
- (d) *Liability for costs; lien.* The cost for abating the said nuisance shall be computed by the code enforcement official, who shall certify all costs of the same to the city clerk who shall cause a special tax bill therefore to be prepared and issued against the real estate involved and to cause the same to be collected by the collector of the County of Barry, together with other taxes assessed against the said property; each special tax bill shall be issued by the city clerk and delivered to the collector on or before the first day of June of each year and such tax bill shall bear interest at the rate of eight (8) percent per annum pursuant to the provisions of Section 71.285 R.S.Mo. Said tax bill shall be a first lien on the said real estate until paid and shall be prima facie evidence of the recitals therein and of its validity and no mere clerical error or informality in the same or in the proceedings leading up the issuance shall be a defense thereto.

Sec. 41 – Additional remedies for abatement of nuisances.

- (a) *Warrants issued by municipal court.* The judge of the municipal court, upon application of the city attorney or the code enforcement official and upon a showing that there is probable cause to believe that a violation of any provision of this chapter exists, and that said violation constitutes a threat to public health, welfare or safety and that there is probably cause to believe that evidence of such violation may be found at a specified location, may issue a warrant, which shall be served by the code enforcement official. If the code enforcement official is not a police officer, he shall serve the warrant in the company of a uniformed officer of the city police department. The warrant shall specify what, if anything, may be seized on the property.
- (b) *Injunctive powers.* In addition to the penalties set forth in this chapter, the code enforcement official is hereby authorized to file and obtain injunctions on behalf of the city against persons who are violating provisions of this chapter. In the event the city seeks injunctive relief from the circuit court for violations of this chapter, penalty provisions set forth in this chapter shall not apply. The city council finds and declares that the remedies set forth in this chapter may be inadequate to protect the public health, safety and welfare from violations which are continuous or violations that are repeated.

Sec. 42 – Assessment of court costs upon finding of violation.

Notwithstanding any other provision of this chapter, if, upon a trial for the violation of this article, the judge of the municipal court shall find that a violation exists and that the defendant has had proper notice, as provided in this chapter, and the defendant has failed to abate the nuisance, the judge of the municipal court shall have the right, in addition to the penalty for violating this chapter, to enter

an order directing the code enforcement official to abate such nuisance forthwith, and immediately report the expense thereof to the judge of the municipal court, who shall, as a part of the costs of such prosecution, render judgment against the defendant for the amount of such expense, which shall be collected as other fines and costs.

Sec. 43 – Minimum charges to abate nuisance.

Whenever the city is required to abate a nuisance under the provisions of this chapter, there shall be a minimum charge of one hundred dollars (\$100.00) for the expenses incurred by the city for the abatement of the nuisance. In addition to the minimum charge of one hundred dollars (\$100.00) the city shall charge the actual cost of abatement of the nuisance.

In the event abnormal abatement procedures are required to abate a nuisance under the provisions of this article, the actual expenses incurred by the city for the abatement of the nuisance shall be charged to the owner, occupant or person in possession of the parcel of land as set out in this article or assessed against the land as provided in section 40.

“Abnormal abatement procedures” shall be deemed to mean the required use of heavy construction equipment such as motor graders, crawler-tractors, wheel loaders, and/or track-type loaders. “Actual expenses” shall be deemed to include all administrative costs, including costs incurred in renting such equipment; the cost of fuel, oil, lubrication, filters, and repair or replacement of parts, including tires, when such repair or replacement is not a result of normal wear and tear; the per-mile cost of dump trucks used in hauling away the rank vegetation; and all labor costs.

Sec. 44 – Penalties and procedures cumulative, not exclusive.

No proceeding in municipal court for prosecution of a violation of any section of this chapter shall prohibit or be any bar to a proceeding by the city under any other of the proceedings available in this chapter. For example, the city may prosecute a violation of this chapter by seeking the sanctions provided for in section 1-12, may process an abatement proceeding or may seek injunctive relief or a combination of any one or more of the foregoing.

Sec. 45 – Office of hearing officer.


- (a) The office of the hearing officer for the city is hereby created and established.
- (b) The mayor shall, with approval of a majority of the city council, select and appoint a person as hearing officer.
- (c) The hearing officer shall serve at the pleasure of the appointing authority. The mayor, with the approval of a majority of the city council, remove the hearing officer from the office at will.
- (d) The hearing officer shall be compensated for his services in an amount to be determined by the mayor and the city council.

- (e) The hearing officer shall perform all the duties and responsibilities prescribed for the officer in this article and to conduct hearings and issue nuisance abatement orders for the violations of the provisions of this article.

This ordinance shall be in full force and effect from and after the date of its passage and approval. Read two times, passed and approved on the 14th day of October 2011, 2011.



Mayor

ATTEST: 

Marianne Witt, City Clerk