

**AN ORDINANCE OF THE CITY OF TIPTON, MISSOURI, REPEALING ORDINANCE NO. 18-06 AND ENACTING A NEW ORDINANCE TO DEFINE ACTIONS AND CONDITIONS WHICH CONSTITUTE A NUISANCE, WHICH INCLUDES WEEDS, SPECIFIC AND GENERAL PUBLIC NUISANCES, AND TO PROVIDE FOR ABATEMENT PROCEDURES.**

**WHEREAS**, the Board wishes to repeal all previous ordinances which define actions and conditions which constitute a nuisance and enact a comprehensive nuisance ordinance which defines the actions and conditions which constitute a nuisance and provides for enforcement procedures to abate said nuisances.

**NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF ALDERMEN OF THE CITY OF TIPTON, MISSOURI, AS FOLLOWS:**

**Section 1. Nuisances Prohibited**

No person shall permit, cause, keep, maintain, suffer, or do any nuisance or contribute to the same as defined in this Ordinance or any other section of the City Code, or cause or permit to be caused, kept, maintained or done, or contribute to the committing, causing, keeping, suffering, or maintaining of any such nuisance within the City.

**Section 2. General Provisions**

**A. General Terms**

1. Enforcement Officer - the Mayor or the designated representative of the same.
2. Nuisance - when not otherwise defined, as an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:
  - a. Injures or endangers the comfort, repose, health or safety of others; or
  - b. Offends decency; or
  - c. Is offensive to the senses; or
  - d. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
  - e. In any way renders other persons insecure in life or the use of property; or
  - f. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others; or
  - g. Any property which is in violation of this Ordinance.
3. Occupant - any person claiming a legal right to possession of real property, by lease, contract, prescription, or any other genuine right.
4. Owner - each owner in the case of joint tenancy, tenancy by entireties or tenancy in common.
5. Properly surfaced - asphalt, concrete, other approved hard surface or gravel, where allowed. Gravel surfaced areas must remain weed free to the extent that it is clearly defined with visual observation.

**B. Specific Nuisances - The following items are hereby declared to be nuisances:**

1. Abandoned motor vehicle - a motor vehicle that is in such a state of disrepair that it is incapable of being moved under its own power as it exists or is partially disassembled.

2. Debris and junk - includes, but is not limited to, rubbish and trash; lumber not piled or stacked 12 inches off the ground, building materials not used within 90 days; rocks or bricks; tin, steel, or other scrap metal; parts of derelict motor vehicles and/or recreational vehicles such as, but not limited to all-terrain vehicles, utilities vehicles, scooters, boats, jet skis, gliders, or airplanes; broken furniture, appliances, and other household items; and/or any flammable, poisonous, or toxic material not safely secured and stored. Debris also includes any other material found on any lot or land in open areas that are visible from adjacent property or public roads that is unhealthy or unsafe.
  3. Structures in Disrepair - structures in a state of disrepair due to lack of affirmative upkeep by owners and occupants, but not in a state that constitutes a dangerous building pursuant to Ordinance 05-05.
  4. Unregistered, unlicensed, or uninspected operable motor vehicles - except as provided for in other regulations, no currently unregistered, unlicensed or uninspected operable motor vehicle shall be parked, kept or stored on any premises, other than car dealer lots, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled.
    - a. Exception - a vehicle of any type is permitted be stored and or to undergo major overhaul, including body work, provided that such work or storage is within an enclosed structure or similarly enclosed area designed and approved for such purposes by the City of Tipton.
    - b. All operable vehicles must be parked or stored on properly surfaced areas including gravel, blacktop, or concrete.
  5. Weeds and nuisance vegetation - any condition on any lot or land that has the presence of debris of any kind is hereby declared a public nuisance, subject to abatement:
    - a. Weed cuttings; cut and fallen trees and shrubs; overgrown vegetation and noxious weeds that are 10 inches or higher.
    - b. All vegetation, regardless of height, including thickets, which may conceal or invite deposits of filth or refuse; harbors
    - c. Exceptions - this definition shall not apply to:
      1. Vegetation cultivated for agricultural purposes such as production of grain, forage or commercial products; or
      2. Persons who cut or bale hay, must do so prior to the first day of July each year. If unable to cut or bale hay by the first day of July, the parties shall request and must receive approval for an extension of time from the Board of Aldermen; or
      3. Any property containing over 1.50 contiguous acres, except that those properties must be mowed 10 feet from any alley, street, roadway or sidewalk. However, such properties shall be brush hogged at least twice per year.
- C. Illustrative Examples of Nuisances in general include, but are not limited to, the following:
1. Any abandoned property, part thereof or junk located on any property, street or highway that represents a public safety hazard or harbors tall grass, weeds or other vegetation, or creates a fire hazard or affords a breeding place or meeting place for mosquitoes, flies, rodents, rats or other vermin; any inoperable or unlicensed vehicle; or any abandoned property, part thereof, or junk allowed to remain unmoved on any street or highway for 48 hours.

2. Any growth of weeds, grass, ragweed or poisonous vegetation or accumulation of dead weeds, grass or brush to a greater height than eight inches; any accumulation of dead weeds, grass, brush or debris that has been on the property for more than ten (10) days; any weeds or debris in ditches abutting private property.
3. Uncontained trash, garbage, and rubbish of the type normally bagged and disposed of by way of solid waste removal service visible from the public right of way, including but not limited to used paper and plastic products, discarded consumer product containers, food waste, and scrap material such as paper, plastic, wood, and metals.
4. Any slaughterhouse, stockyard or stable, cattle yard, hog, sheep, cow or dog pen that is offensive, injurious, obnoxious, unsafe or annoying to the public.
5. Any pond or pool of stagnant water or any foul or dirty water, or liquid discharged through any drain pipe or spout or thrown into or upon the street, alley, thoroughfare or lot that is injurious, dangerous, offensive, unhealthy or unsafe to the public.
6. Any obstruction caused or permitted on any street, sidewalk, public or private alley that is injurious, dangerous, offensive, unsafe or unhealthy to the public.
7. Any stone, dirt, filth, slops, vegetable matter, animal matter or other articles thrown or placed in or upon any street, alley, sidewalk or other public place that is injurious, dangerous, obnoxious, unsafe or offensive to the public.
8. The placing or storage of any green or salted hides or exposed animal carcasses, which cause an odor, that is injurious, dangerous, obnoxious, offensive, unhealthy or unsafe to the public.
9. Any animal or vegetable matter or other substance liable to become putrid, offensive or unhealthy that is injurious, dangerous, unhealthy, unsafe or offensive to the public.
10. Any cellar, vault, private drain, pool, privy, sewer, cistern, well, sink or container that may be sufficiently tightly closed to cause suffocation or is not covered or protected so as to prevent humans and animals from falling into the same that is injurious, dangerous, unsafe or offensive to the public health.
11. Any tenement, boardinghouse or lodging house in the City leased, let, rented or occupied by any person for dwelling that is not sufficiently lighted, ventilated, heated or provided with water, or kept in a clean and sanitary condition that is dangerous, injurious, obnoxious, offensive or unsafe to the public.
12. Any house, building or tank within the City used for the special or exclusive storage of explosive, poisonous, or toxic substance, detrimental to the public health, or endangering human life; or any house, building or store, wherein small quantities of such explosives, poisons, or toxic substances are kept, exposed or insecure, or kept in any manner so as to endanger the public.
13. Any radio, television set or musical instrument or device operated in such manner or at such hours that are injurious, inconvenient, obnoxious, offensive or annoying to the public or persons living or doing business nearby.
14. The maintaining, using, placing, depositing, leaving or permitting to be or remaining on any public or private property of furniture, bedding, refrigerators, freezers, heating stoves, kitchen ranges, laundry and dish washing equipment, air conditioning units, or any other appliances, articles or equipment designed for use inside a dwelling unit, if stored, placed or set upon the ground on any open porch, in any attached carport, in any free standing carport, or in any garage or shed that is without doors to conceal such articles. The following items are permitted and shall not be deemed a nuisance: barbecue grills, lawn

and patio furniture mid chairs, porch swings and other items specifically designed by the manufacturer for outdoor use.

15. Growth of trees, shrubs, brush or foliage that appears to be dead, diseased or insect infested, damaged, decayed or dangerous or likely to fall onto, into, around, upon or above public property when the main source of growth is from or upon the owner's property that is unsecured, exposed or kept in any manner so as to endanger the public.
16. Any tree located on private property with branches that extend over a street or sidewalk and whose branches are not pruned to a height of at least 16 feet above the street and 10 feet above a sidewalk.
17. Trash, debris or junk shall not exceed the top level of the dumpster or trash container and its contents shall not be visible to the public.

**D. Power and Duty to Investigate Nuisances**

It shall be the duty of the Mayor or designated Enforcement Officer to investigate reports that a nuisance may exist and to carry out the procedures provided herein in the following provisions for removal or abatement of nuisances that are found to exist.

**E. Entry onto Private Property**

1. The Mayor or designated Enforcement Officer may enter upon private property for inspection, investigation or for the purpose of abating any nuisance in accordance with the provisions of this Ordinance.
2. Whenever the Mayor or designated Enforcement Officer has reasonable cause to believe that there exists upon any premises any condition that makes the premises unsafe, dangerous or hazardous, the Mayor or designated Enforcement Officer may enter the premises at all reasonable times to inspect the same or to perform any duty imposed; however, if the premises is occupied, he shall first present proper credentials and request entry; if the premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and request entry. If entry is refused, the Mayor or designated Enforcement Officer shall obtain an administrative search warrant as well as any recourse to every remedy provided by law to secure entry.

**F. Penalties**

1. The provisions contained herein under this Chapter shall not be exclusive, and the City may pursue any additional remedies it may have as provided by law.
2. Any person responsible for a property on which a nuisance is alleged to exist that is found guilty of violating this Ordinance upon conviction within a 12-month period beginning with the first violation shall be assessed a fine not to exceed the following amounts:
  - a. First violation: \$200 including court costs;
  - b. Second violation: \$250 including court costs;
  - c. Third violation: \$350 including court costs
  - d. Fourth and subsequent violations: \$450 including costs
3. Violations of this Code are continuous with respect to time, and each day the violation continues may be charged as a separate offense.

**G. Abatement Enforcement Notice**

1. Enforcement shall be the responsibility of the Mayor or designated Enforcement Officer and his authorized representatives and enforcement shall commence by providing a written notice of the nuisance existing on the property to the Owner, Occupants, Person creating or maintaining the nuisance if other than the Owner and/or Occupant, and Owner non-occupants of the property where the nuisance condition exists.
2. In matters pertaining to dangerous buildings, the Mayor or designated Enforcement Officer shall send written notice to owner, occupant, lessee, mortgagee, agent and all other persons having an interest in the building or structure as shown by the land records of the office of the recorder of deeds of the county.
3. The notice shall state specifically:
  - a. What act or thing is deemed to constitute a nuisance pursuant to the provisions set forth in Section 2 (A, B & C);
  - b. The location of the property (using the mailing or popular address rather than a legal description when reasonably possible to do so);
  - c. Advise the owner, the person in custody of the property, the person creating or maintaining the nuisance and the owner non-occupant to abate the nuisance within a reasonable period of time, not less than ten (10) days from the receipt of notice for other nuisances.
  - d. The notice shall identify what action will remedy the nuisance.
  - e. That if the person receiving such notice disagrees with the determination that a nuisance exists, such person may request a determination hearing to be conducted by the Mayor or designated Enforcement Officer at Tipton City Hall within ten (10) days of receipt of said notice. The appropriate information needed to request such a hearing shall be included in the notice.
  - f. That failure to abate the nuisance within the time specified in the notice may result in abatement of the nuisance by the City, the costs of which shall be assessed as a lien upon the property on which the nuisance exists and shall be deemed a personal debt of the person receiving the notice to the City.
  - g. Nothing in this Section shall be construed to modify the rights and obligations of the City pursuant to §§304.157-304.159 RSMo, which are herein adopted to their utmost and fullest extent and incorporated by reference as though fully set forth herein.

**H. Service of Notice**

1. The notice shall be served to both the occupant of the property at the property address and the owner of the property at his or her last known address by personal service or in the alternative by certified mail and ordinary mail and/or by posting upon the property, except posting on vacant property or mailing to an address of vacant property shall not be sufficient notice of the nuisance condition to the property owner. When notice is sent by ordinary mail for which a receipt is received from the post office, there is a rebuttable presumption that the letter was delivered five (5) days after the date it was sent.
2. The Mayor or designated Enforcement Officer is authorized, but not required, to post notice of the existence of a nuisance and/or notice to abate a nuisance in a conspicuous place on the nuisance itself or on the property upon which the nuisance is located. Removal, destruction or defacing any such posted notice is deemed to be destruction of City property for which violators shall be prosecuted.

3. If personal service, service by certified mail and service by ordinary mail does not or cannot occur, the notice shall be published in a daily newspaper of general circulation that is published in Moniteau County, Missouri or an adjacent county for at least one week; or if there is no daily newspaper of general circulation published in Moniteau, County, Missouri or an adjacent county, once in a newspaper of general circulation. If such notice is published, no further action shall be taken until at least ten (10) days from the date of the final publication and all deadlines for abatement and hearing requests shall be altered accordingly.
4. For abatements arising from overgrown grass, weeds, and vegetation, if personal service, service by certified mail and service by ordinary mail does not or cannot occur, the notice may be conspicuously posted on the lot in violation. If such notice is posted, no further action shall be taken until at least ten (10) days from the date of such posting and all deadlines for abatement and hearing requests shall be altered accordingly.

**I. Compliance and/or Non-Compliance with Notice**

1. Any person receiving a notice as provided in Section 2 (G & H) for the abatement of a nuisance shall immediately comply with the provisions of the notice requiring abatement.
2. Upon failure of the owner to remove or abate the described nuisance within the time prescribed by the Abatement Notice, unless a determination hearing as provided in Section 2 (M), the Mayor or designated Enforcement Officer shall cause the nuisance condition to be removed or abated.
3. Upon removal or abatement of a nuisance by the Mayor or designated Enforcement Officer, the Mayor or designated Enforcement Officer shall certify the costs of the same to the City Clerk who shall cause a special tax bill against the property to be prepared and be collected by the tax collector with other taxes assessed against the property, all in accordance with this Ordinance and §71.285.1 RSMo.
4. When abating or removing nuisances, the Mayor or designated Enforcement Officer shall have the right to enter on to the property. If such entry is refused by the owner, occupant or other person with lawful possession of the premises in question, the City may request an administrative search warrant pursuant to Section 2 (E) of this Ordinance if such administrative search warrant is deemed necessary to enter onto the property and abate nuisances pursuant to the order.

**J. Emergency Powers**

Where it reasonably appears there is an immediate danger to the health, safety or welfare of any person due to the existence of a nuisance, the Mayor or designated Enforcement Officer shall take such emergency measures as he may reasonably determine are necessary to abate the nuisance or to render it temporarily safe. Any vehicle abandoned in a highway, street, alley, or public right of way for a period of twenty-four (24) hours shall automatically qualify for emergency removal under this Section, and the City shall comply with the provisions of §§304.157-304.159 RSMo. Notice as provided in Section 2 (G & H) shall still be served.

**K. Use of Independent Contractors**

The City shall be authorized to contract with one or more independent contractors who will perform the duties imposed herein for the abatement of nuisances, specifically including the cutting of weeds; removal of debris, dead weeds, accumulation of vegetation, brush, removal

of inoperable or unlicensed vehicles, any other nuisances and other matters as set forth in this Ordinance; provided, however, that the City shall not be relieved of its duty to provide required notices. The City shall contract with independent contractors with the best bid after advertising for and receiving bids. When the City enters into a contract, the City shall not be liable for the acts of the independent contractor or its agents.

**L. Cost of City Abatement and Right to Collect**

1. The charges for abatement include, but are not limited to, the following:
  - a. The Mayor or designated Enforcement Officer shall give an accurate account of the costs of the removal or abatement together with any administrative costs associated with the abatement determined by the City to be included. If the full amount due to the City is not paid within twenty (20) days thereafter, the City Clerk shall certify the cost, administrative costs including administrative costs by reason of the necessity of the certification of the assessment, as a special tax bill against the property to be collected as other realty taxes;
  - b. Removal and abatement cost, if done by independent contractor(s), shall be charged at the rate of the contractor who performs the abatement;
  - c. Items hauled to the landfill, exclusive of any labor costs, are charged at a minimum cost per ton at the current landfill rate at the time the items are hauled;
  - d. Labor for City employees shall be charged at the rate paid to such employee per hour per employee as provided by the City for their hourly rate;
  - e. Use of City equipment shall be charged at the reasonable rate for rental of equipment;
  - f. Cost of any purchases of materials required to abate such nuisance;
2. If the Mayor or designated Enforcement Officer cause the condition described in the notice to be removed or abated, the cost of the removal or abatement, along with the proof of notice to the owner of the property shall be certified to the City Clerk.
3. The City Clerk shall cause the certified cost to be included in a special tax bill or added to the annual real estate tax bill, at the collecting official's option, and shall be collected in the same manner and procedure as for collecting real estate taxes. The tax bill from the date of its issuance shall be deemed a personal debt against the owner and shall also be a lien on the property from the date the tax bill is delinquent until paid. As a personal debt, in the case of joint tenancy, tenancy by entireties or tenancy in common, each owner thereof, shall be liable jointly and severally. A tax bill is delinquent if costs are not paid by December 31 of the year assessed.
4. The special tax bill from the date of its issuance, as well as the abatement fee, if any, shall be a first lien upon the property until paid and shall be prima facie evidence of the recitals therein and of its validity, and no mere clerical error of informality in the same or in the proceedings leading up to the issuance shall be a defense.
5. The City may discharge all or any portion of the unrecovered abatement costs added to the tax bill upon a determination by the City that a public benefit will be gained by such discharge and the discharge shall include any costs of tax collection, accrued interest or attorney fees related to the tax bill.

**M. Determination Hearing - Request and Hearing Process**

1. Hearing Request - If a property owner or occupant subject to a notice to remove or abate a nuisance under Section 2 (G & H) disagrees with the determination that a nuisance exists

upon the property or the land, such person may file in writing with the City Clerk a request for a determination hearing within the period of time specified on the notice, not less than ten (10) days of receipt of the notice. Such request shall include the name and preferred contact information of the person filing the request, a brief statement of facts, an explanation as to why the nuisance determination is incorrect, and any other information or documentation that the person filing the request believes would support his or her position.

2. Upon receipt of a hearing request under this Section, the City Clerk shall set a hearing within five (5) business days. The City Clerk shall confer with the person filing the request and city staff and make reasonable efforts to accommodate the schedules of the persons necessary to conduct the hearing.
3. The Mayor or their designee shall preside over the hearing as the Hearing Officer and shall consider all probative and relevant evidence as to whether or not the conditions alleged in the notice exist and if the conditions constitute a nuisance. Evidence heard by the Hearing Officer shall consist of exhibits submitted on the record and the testimony of the parties and witnesses appearing on behalf of the parties. No formal rules or procedure shall be required, but all testimony shall be heard under oath.
4. The Hearing Officer may continue the hearing for good cause.
5. Upon conclusion of the hearing, the Hearing Officer shall, within a reasonable time, issue a decision, including findings of fact and conclusions of law, which shall: 1) uphold the determination contained within the notice to abate, 2) modify the determination contained within the notice to abate, or 3) dismiss the notice to abate. The decision shall also include an order either directing the parties to remove or abate the nuisance in accordance with the decision or dismissing the notice to abate.
6. Failure of a person subject to a decision of the Hearing Officer to comply with the terms of an order contained within the decision shall be subject to the abatement proceedings and collection methods contained in Section 2 (I & L).
7. The City shall not take actions to abate a nuisance subject to a pending determination hearing, and shall only take action to abate nuisances subject to a determination hearing in a manner consistent with the final decision and accompanying orders of the Hearing Officer.
8. Failure of the person requesting the hearing to appear at the hearing shall result in a default decision in favor of the City's initial determination contained within the notice to abate.

**N. Appeal**

Any owner, occupant, or party aggrieved by a decision of the Hearing Officer may, within thirty (30) days from the receipt of the decision and order of the Hearing Officer appeal such decision and order to the Circuit Court of the County where the lot or land is located, pursuant to the procedure established in Chapter 536, RSMo.

**Section 2.** All ordinances conflicting in whole or in part with provisions of this Ordinance are hereby repealed to the extent that they conflict.

**Section 3.** The provisions of this Ordinance are severable. If any section, subsection, sentence or provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other sections, subsections, sentences, provisions or applications of



this Ordinance which can be given effect without the invalid section, subsection, sentence, provision or application.

**Section 4.** This ordinance shall be in force and affect from and after its passage and approval as provided by law.

Read two times and passed and adopted this 5<sup>th</sup> day of August 2019 by the following roll call vote:  
Yeas: Kelley, Basinger, Wolf  
Neas: Clifford

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Joe Lutz, Mayor

ATTEST:

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Jennifer Schmidt, City Clerk