

**ORDINANCE NO. 2010 - 47**

**BILL NO. 2010-47**

**AN ORDINANCE AMENDING AND RESTATING THE PUBLIC NUISANCE CODE OF THE CITY OF CHILLICOTHE.**

**WHEREAS**, the City Council has been given authority to set the rules and regulations in regard to public nuisance on private property; and

**WHEREAS**, Missouri Revised Statutes authorizes municipalities to abate public nuisances, and

**WHEREAS**, the community needs to take advantage of the provisions of the law for the stated purposes in the resolution, and to provide for a simplified and easy way to deal with nuisances,

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CHILLICOTHE, MISSOURI, AS FOLLOWS:**

**Section 1: Article I of Chapter 17 of the Code of Ordinances of the City of Chillicothe, Missouri is hereby amended by repealing in full said Article I and in lieu thereof, enacting a new Article I to read as follows:**

**NUISANCES**

**SECTION 17-1. GENERAL PROVISIONS**

**(1) PURPOSE AND FINDINGS**

The City Council of the City of Chillicothe, Missouri finds that unkempt, unsafe, unsanitary and otherwise improperly maintained premises and structures, sidewalks and easements within the City of Chillicothe, in addition to the obvious hazards which these conditions pose to the public health, safety and welfare, adversely effect the value, utility and habitability of property within the City as a whole and specifically cause substantial damage to adjoining and nearby property. A property which is merely unkempt may reduce the value of adjoining property by more than 30%, and if there are sufficient properties which are unkempt, unsightly and dangerous, that the habitability and economic well-being of the City are materially and adversely affected. This Ordinance conveys to the City administration, in accordance with the procedures set out below, all necessary and proper powers to abate nuisances and other improperly maintained structures and properties as they are described or found to exist, and to charge the costs of their abatement to those responsible, the owners and occupants of the property upon which nuisances exists, and those properties themselves. This Ordinance is an exercise of the City's police power, and it shall be liberally construed to effect this purpose.

**(2) SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of the Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction,

such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

### (3) ENACTMENT CLAUSE AND SHORT TITLE

(a) Enactment Clause – The City Council of Chillicothe, Missouri, pursuant to the authority vested by law, hereby adopts and enacts this City ordinance known as The Nuisance Ordinance of the City of Chillicothe, Missouri.

(b) Short Title – This City ordinance may be known and cited as the Nuisance Ordinance of Chillicothe, Missouri.

## **SECTION 17-2 DEFINITIONS**

(1) GENERAL PROVISIONS – For the purposes of this Ordinance certain terms used herein are defined as set forth in this and the following sections. All words in the present tense include the future tense; the plural number includes the singular, and all words in the singular include the plural unless the natural construction of the sentence indicates otherwise. The word “shall” is mandatory, not directory.

(2) ABANDONED – Any property, real or personal, which is unattended and either open or unsecured so that admittance may be gained without damaging any portion of the property, or which evidences indicia that no person is presently in possession, e.g. disconnected utilities, accumulated debris, uncleanliness, disrepair and, in the case of chattels, location.

(3) ABATEMENT – The removal, stoppage, prostration, or destruction of that which causes or constitutes a nuisance, whether by breaking or pulling it down or otherwise destroying, or effacing it.

(4) BOARDED-UP BUILDING – Any building the exterior openings of which are closed by extrinsic devices or some other manner designed or calculated to be permanent, giving to the building, the appearance of non-occupancy or non-use for an indefinite period of time.

(5) BUILDING INSPECTOR – The City Building Inspector, City Code Enforcement Officer, the City Engineer or any other employee or contractor designated by the City Council with the duty and authority to enforce these provisions.

(6) BUILDING – Any dwelling, structure, mobile home, factory built house, or part thereof, built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

(7) NUISANCE – Includes:

- A. A nuisance defined by statute or ordinance;
- B. A nuisance at common law either public or private;

C. An attractive nuisance, whether in or on a building, a building premises or an unoccupied lot and whether real, fixture or chattel, which might reasonably be expected to attract children and constitute a danger to them; including, but not limited to, abandoned wells, ice boxes or refrigerators with doors and latches, shafts, basements or other excavations, abandoned or inoperative vehicles or other equipment, structurally unsound fences or other fixtures, lumber, fencing, vegetation or other debris.

D. Uncleanliness;

E. Overcrowding; or

F. Abandonment or vacancy.

A listing of conditions found to constitute public nuisances is found in Section 17-4 of this Ordinance.

(8) OWNER – Any person having any interest in the real estate in question as shown upon the records of the office of the County Assessor, or any person with legal, financial or equitable interest in the property who establishes his or her interest before the Building Inspector and/or City Council. For the purpose of giving notice, the term “owner” also includes any person in physical possession (including but not limited to lessees, renters, boarders, etc.).

(9) PROPERTY – Any real property, premises, structure or location on which a public nuisance is alleged to exist.

(10) PUBLIC NUISANCE – Defined in SECTION 17-4 of this Ordinance.

(11) SUMMARY ABATEMENT – Abatement of the nuisance by the City, or a contractor employed by the City, by removal, repair, or other acts without notice to the owner, agent or occupant of the property except for the notice required by this Ordinance.

(12) YARD DEBRIS – Yard debris includes grass and weed cuttings, cut and fallen trees and shrubs, overgrown vegetation and noxious weeds which are seven inches or more in height, rubbish and trash, lumber not piled or stacked twelve inches off the ground, rocks or bricks, tin, steel, parts of derelict vehicles, broken furniture, and/or any flammable material. The word “debris” also includes any other material which is found on any lot or land that is unhealthy or safe, provided (1) that it is described in detail in the notice that is required in Section 17-4.(3)(d)(i) below, and (2) that the definition is not challenged by requesting a formal hearing as provided in Section 17-4(3)(d)(ii) below.

### **SECTION 17-3 – BUILDINGS**

(1) BUILDING INSPECTOR – The City Building Inspector or City Engineer shall supervise all building inspections and shall follow the hearing and appeal procedures promulgated in this Section and Section 6 of this Ordinance.

(2) PROCEDURE – Whenever a complaint is made to the Building Inspector of the existence of an unfit or substandard building, the Building Inspector shall promptly cause said building to be inspected. Upon the discovery of an unfit or substandard building, the inspecting officer shall submit a written report of the building to the Building Inspector and a hearing will be scheduled

for a determination of the building fitness. Photographs and findings shall be included in said report. If the building inspector determines that there exists a condition which poses an immediate threat to health, safety or welfare of the public, the Building Inspector or City Engineer shall immediately order the property vacated and the structure closed until hearing.

(3) NOTICE – The Building Inspector shall follow the notice procedures promulgated in Section 5 of this Ordinance.

#### (4) UNFIT BUILDINGS

(a) DETERMINATION OF BUILDING FITNESS – In reaching a judgment that a building is unfit for human habitation, the Building Inspector shall consider:

- A. Dilapidation
- B. Disrepair
- C. Structural Defects
- D. Defects increasing the hazards of fire, accidents or other calamities, such as parts standing or attached in such a manner as to be likely to fall and cause damage or injury.
- E. Inadequate ventilation
- F. Uncleanliness
- G. Inadequate light
- H. Inadequate sanitary facilities
- I. Inadequate drainage
- J. Substandard conditions

If these or other conditions are found to exist to an extent dangerous or injurious to the health or safety of the building's occupants, or the occupants of neighboring buildings or of other residents of the City of Chillicothe, OR if (a) structural deterioration is of such a degree that (i) vertical members list, lean or buckle to the extent that a plumb line passing through the center of gravity falls outside the middle third of its base, or (ii) thirty-three percent (33%) of the supporting members shows damage or deterioration, or (b) the cost of restoration exceeds sixty-six percent (66%) of the value of the building or (c) the building has been damaged by fire or other calamity, the cost of restoration exceeds thirty-three percent (33%) of the value of the building and it has remained vacant for six months or more. (Value shall be determined by reference to a current edition of "Building Valuation Data" published by the International Conference of Building Officials or if not published, as determined by the City Council. Cost of restoration is the actual estimated cost, which may be determined in the same manner as "value") The Building Inspector shall declare the building a public nuisance and order the abatement of the nuisance in compliance with Section 17-4 of this Ordinance.

(b) RESTORATION OR REPAIR – An undertaking by a party in interest to restore or repair an unfit building, entered into at or prior to the determination of building fitness by the Building Inspector, creates a presumption that the building or premises can be reasonably repaired. The Building Inspector may then grant additional time in accordance with section 17-6(5) of this ordinance. The failure to accomplish such an undertaking is grounds for the Building Inspector to order demolition. If by reason of any of the above conditions a building is unfit, but no public necessity is found for its immediate demolition, the Building Inspector may take other action,

such as causing the property to be cleaned, cleared, vacated, secured or otherwise repaired, which will promote the public health, safety or general welfare.

**(5) SUBSTANDARD BUILDINGS**

**(a) SUBSTANDARD CRITERIA** – In reaching a judgment that a building or premises is substandard, the Building Inspector shall be guided by such factors as:

- A. Structural soundness.
- B. Improper sanitation.
- C. Improper safety.
- D. Improper weatherproofing.
- E. Defective or hazardous wiring, including wiring which:
  - 1. Did not conform with law applicable at the time of installation, or
  - 2. Has not been maintained in good condition, or
  - 3. Is not being used in a safe manner.
- F. Defective or hazardous plumbing, including plumbing which:
  - 1. Did not conform with law applicable at the time of installation, or
  - 2. Has not been maintained in good condition, or
  - 3. Is not being used in a safe manner.
- G. Defective or hazardous heating or ventilating equipment, including equipment, vents and piping which:
  - 1. Did not conform with law applicable at the time of installation, or
  - 2. Has not been maintained in a good and safe condition.
  - 3. Is not being used in a safe manner.
- H. Fire hazard, including any building, device, apparatus, equipment, combustible waste or debris, or vegetation which may cause fire or explosion or provide fuel to augment the spread or intensity thereof.
- I. Nuisance.

**(b) REMEDIAL ACTION** – If these or similar conditions are found to exist, the Building Inspector shall declare the building a public nuisance and order the building or premises repaired, cleaned, cleared, demolished or otherwise brought into compliance with current City Codes or Ordinances, and may order the property vacated and secured as completely as possible pending such repair or other action.

**(6) INSURANCE PAYMENT** – If there are proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure caused by or arising out of any fire, explosion, or other casualty loss, and the covered claim payment is in excess of fifty percent (50%) of the face value of the policy covering the building or structure, then the insurer shall withhold twenty-five percent (25%) of the claim payment, and shall pay such moneys to the City to deposit into an interest-bearing account. Any named mortgagee on the insurance policy shall maintain priority over any obligation under the order or ordinance.

**(a) MANAGEMENT OF ACCOUNT** – The City Auditor shall release the proceeds and any interest which has accrued on such proceeds received under Section (6) of this Ordinance to the insured or as the terms of the policy and endorsements thereto provide within thirty (30) days

after receipt of such insurance moneys, unless the City has instituted abatement proceedings under the provisions of this Ordinance.

#### (7) HOUSING STANDARDS

(a) Any person wishing to report a housing deficiency may do so by filing a report maintained by the City Building Inspector. All substantiated claims will result in a twenty dollar (\$20.00) fee to the owner of the property for the cost of a City inspection. All unsubstantiated claims will result in a twenty dollar (\$20.00) fee to the complaining party for the cost of a City inspection.

(i) As a result of any City inspection under this section, the City may order a housing deficiency to be remedied before permitting a person to reside in an inspected house or unit by utilizing the procedures set forth in this Chapter 17, Section 17-3 and other referenced sections therein.

(b) Failure to comply with any of the terms set forth in this section, or the filing of any false complaint under this section, may be punishable by the penalties set forth under 17-9 if this Code of Ordinances.

(c) The report forms and minimum acceptable standards adopted by City Ordinance 2007-46 shall remain in full effect.

#### **SECTION 17-4 – PUBLIC NUISANCES**

(1) PUBLIC NUISANCE DEFINED – Any fence, wall, shed, deck, house, porch, garage, building, structure or any part of any of the aforesaid; or any tree, pole, smokestack; or any excavation, hole, pit, basement, cellar, sidewalk subspace, dock, wharf or landing dock; or any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of its condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the City, in any one or more of the following particulars:

A. By reason of being a menace, threat and/or hazard to the general health and safety of the community.

B. By reason of being a fire hazard.

C. By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property.

D. By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.

(2) The following acts, in addition to any others in violation of subsection 17-4(1) of this Ordinance, are determined by the City Council as noisome, offensive, unwholesome, or dangerous to the public's health, welfare and/or safety and shall constitute a public nuisance:

A. Allowing stagnant pools of water to accumulate;

B. Accumulations or disposal of trash, lumber which is not piled or stacked more than twelve (12) inches off the ground, earth, ashes, mortar, papers, stone, brick, rock, tin, steel, dirt, manure, filth, excrement, chips or rubbish of any description, cesspools, drains, garbage or any other animal or vegetable substances, unless the accumulations or disposal of such items in such place is specifically authorized by law;

- C. The keeping of any horse, cattle, sheep, swine, goats, mules or other livestock or fowl within the corporate limits (except those provided for in Section 5-8 of the Code of Ordinances);
- D. The pollution of any river or stream;
- E. Burning of materials or methods which are prohibited by the City's adopted fire code;
- F. The distribution of samples of medicine or drugs to minors;
- G. The keeping of doves or pigeons which deposit excreta on buildings and sidewalks;
- H. Maintaining a privy or outdoor closet where connections to a sanitary sewer are available;
- I. Garbage trucks that are not covered and leak proof;
- J. Dead animals not disposed of within 24 hours;
- K. Any building, house, room, or other structure or vehicle, maintained or used for the purposes of lewdness, assignation, or prostitution;
- L. Any pit, basin, hole, or other excavation which is unguarded and dangerous to life, or has been abandoned, or is no longer used for the purpose for which it was constructed, or is maintained contrary to law;
- M. All obstructions to streets, right-of-way, or other public ways in the City, and all excavations in or under the same, which are by ordinance prohibited, or which may be made without lawful permission, or which, having been made by lawful permission, are kept and maintained after the purpose thereof has been accomplished, or for an unreasonable length of time;
- N. Erecting, maintaining, using, placing, depositing, leaving, or permitting to be or remain in or upon any street, alley, sidewalk, park, parkway, or other public or private place in the City, any one or more of, but not limited to, the following conditions or things:
1. Any bone, meat, hides, skin, or the whole or parts of any dead animal or fish;
  2. Any chemicals or other materials commonly known to be noxious, offensive, dangerous or otherwise injurious including, but not limited to, grease, oil, antifreeze, explosives, radioactive materials, and poisons.
- O. All premises and vehicles whereon or wherein intoxicating liquor is manufactured, sold, bartered, exchanged, given away, furnished, disposed of, consumed, or permitted to be consumed, in violation of the laws of the State and the ordinances of the City;
- P. All vacant, unused, or unoccupied buildings and structures within the City, which are allowed to become or remain open to entrance by unauthorized persons or the general public, because of broken, missing, or open doors, windows, or other openings, so that the same may be used by vagrants or other persons in a manner detrimental to the health and welfare of the inhabitants of the City;
- Q. Any refrigerator, icebox or deep freeze locker having a capacity of one and one-half cubic feet or more or any other container manufactured, custom-made or homemade designed for storage which is stored, discarded, abandoned or left in any place accessible to children and which has not had the door or latching mechanism removed to prevent the latching or locking of the door;
- R. Leaving, or permitting to be or remain in or upon any sidewalk, steps, or other public or private walkway in the City, any one or more of, but not limited to, the following conditions or things:
1. Holes or protruding edges on public sidewalks and steps.

2. Accumulation of snow and ice not removed within 24 hours.
  3. Mud, debris, garbage, or other items or substances upon the surface which might cause a pedestrian to lose footing.
  4. Overhanging trees, shrubs, or other obstructions to pedestrian travel.
- S. Electric fence or fence constructed wholly or partly of barbed wire except in areas within the city zoned agricultural;
- T. Weeds or plant growth in excess of seven (7) inches in height. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or decorative shrubs, cultivated flowers, ornamentals and garden plants. Vegetation harmful or irritating to the human touch shall be removed including poison ivy, poison oak, and poison sumac;
- EXCEPTION: Any lot or tract of land in excess of sixty thousand (60,000) square feet which is not being used for an industrial, commercial or residential purpose shall have a border within which weeds shall be cut. Said border shall be measured along its perimeter twenty-five (25) feet deep from the public right-of-way and/or from any adjoining lot or tract of land used for an industrial, commercial or residential purpose.
- U. A swimming pool or any other pool of water that is more than 18 inches deep that is not enclosed by a permanent fence at least 60 inches in height with a lockable gate. Said gate which is left unlocked when pool is not in use will constitute a public nuisance;
- V. Non-licensed vehicles, including, but not limited to, cars, trucks, recreational vehicles, boats, trailers and construction equipment, which are not stored in an accessory building or garage so that they may not be seen;
- W. Any outdoor storage of items including, but not limited to, tools, equipment, machinery, non-working automobiles, parts of derelict cars or trucks, household appliances and broken furniture that is not enclosed by a fence at least 72 inches in height with a lockable gate. Said gate which is left unlocked when back yard is not occupied will constitute a public nuisance.
- X. Unacceptable fill material placed after January 1, 2009.
- a. Unacceptable fill material shall include any material used for fill which is larger than six inches in size in any direction.
  - b. Acceptable fill material shall include acceptable organic and/or earth material as defined herein which is free from cinders, ashes, refuse, soft or plastic clays, vegetable or other similar organic matter such as food waste, trees, branches, or stumps. Acceptable fill material shall be capable of being compacted.
    - i. Organic Materials are wood chips, shredded or chopped bark, sawdust or similar material.
    - ii. Earth Materials are soil, topsoil, clay sand, gravel, rock stone, or other similar material.
- Y. Any dead, diseased, or dangerous trees or other woody vegetation on private property; trees or other woody vegetation on private property which constitute a potential threat to other trees within the City; any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with the visibility of any traffic control device or sign or traffic sight distance from an intersection.

### (3) SUMMARY ABATEMENT OF NUISANCES

(a) PROCEDURE – Whenever a complaint is made to the Building Inspector of the existence of a public nuisance, as defined in Sections 17-4(1) and 17-4(2) of this Ordinance, the Building Inspector shall promptly cause to be inspected the property on which it is alleged that such public nuisance exists.

Upon the discovery of a public nuisance, the inspecting officer may order the owner or other person creating, keeping, maintaining or permitting the same to abate it. Should the inspecting officer find that a public nuisance exists, and that the public health, welfare or safety may be in immediate danger, then summary abatement procedures shall be implemented and the inspecting official or department may cause the nuisance to be removed or abated.

Summary abatement costs shall be certified by the City Clerk and assigned to the annual real estate tax bill for the property. If the public nuisance involves a building that appears structurally unsafe, the City shall follow those procedures promulgated in Section 17-(3) of this Ordinance.

(b) NOTICE – When summary abatement is authorized, notice to the owner, agent or occupant of the property is not required. Following summary abatement, the Building Inspector shall cause to be posted on the property liable for the abatement a notice describing the action taken to abate the nuisance.

(c) ABATEMENT OF YARD DEBRIS. Any condition on any lot or land that has the presence of yard debris of any kind is hereby declared to be a public nuisance, subject to abatement.

(d) PROCEDURE FOR YARD DEBRIS - Enforcement shall commence by providing notice to the owner of the property of the nuisance condition existing on his/her/its property. The notice may be delivered by personal service, by certified mail, or by ordinary mail. (If sent by ordinary mail, there will be a refutable presumption that the letter was delivered 5 days after the date it was sent.)

i. The notice shall generally describe the nature of the nuisance, the location of the property (using the mailing or popular address rather than a legal description, when reasonably possible to do so), and ordering the property owner to, within a period of seven days from the receipt of the notice, abate the nuisance.

ii. Any owner who wishes to challenge the order of abatement may do so, provided that within the seven day period he/she/it requests a hearing on the validity of the order under the state Administrative Procedure Act, RSMo. Chapter 536. If no such request is made within that time period, the order becomes final and is not subject to challenge elsewhere. If such request is made, the hearing shall be conducted by the City Administrator. The request for a hearing must be in writing, but otherwise no particular formality is required. Notice to the property owner of his right to request such hearing shall be given by providing a copy of this ordinance if requested with any notice sent under authority of this section. Once a request for a hearing is received, the hearing shall be conducted in accordance with the “contested case” provisions of the state Administrative Procedure Act. The city attorney shall represent the city at such a hearing.

iii. Abatement of Nuisance Yard Debris. If the nuisance is present on the property seven days after receipt of the notice by the property owner, the enforcement officer shall cause the same to be summarily abated. (The costs of abatement may include a fee for the city’s costs in administering this ordinance, which administrative fee shall be \$100.00.) The enforcement official shall verify the cost of such abatement to the city clerk or other officer in charge of

finance who 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.

(e) **PROCEDURE FOR GENERAL NUISANCE ABATEMENT** – Upon the discovery of a public nuisance that does not pose an immediate danger to the public health, welfare or safety, the inspecting officer shall submit a written report of the property on which the nuisance exists to the Building Inspector. Photographs and findings shall be included in said report. If the Building Inspector declares the existence of a public nuisance, but the nature thereof is not such as to require the summary abatement of such nuisance, then the Building Inspector may order the abatement of the nuisance by notice in compliance with Section 17(5) of this Ordinance.

(f) **ABATEMENT BY OWNER** – Within thirty (30) days after the posting and mailing of a notice to abate a general nuisance, the owner, or individual in possession of the affected property shall remove and abate such nuisance or show that actions for abating the nuisance have commenced. Such showing shall be made by filing a written statement or other proof of such actions with the Building Inspector.

(5) **ABATEMENT BY CITY** – If, after a hearing in compliance with this Ordinance finds that the nuisance or dangerous condition exists, the Building Inspector shall have the authority to enter upon the property and abate the public nuisance found thereon. In abating such nuisance, the Building Inspector may go to whatever extent may be necessary to complete the abatement of the public nuisance. If it is practicable to salvage any material derived in the aforesaid abatement, the Building Inspector may sell the salvaged material at private or public sale and shall keep an accounting of the proceeds thereof.

(6) **PROCEEDS FROM SALE OF PRIVATE PROPERTY** – The proceeds, if any, obtained from the sale of any material salvaged as a result of an abatement of public nuisance by the Building Inspector shall be deposited to the General Fund of the City and any deficit between the amount so received and the cost of the abatement shall be filed with the City Clerk. The City Clerk shall certify said costs as assess costs to the annual real estate tax bill for the property. Should the proceeds of the sale of the salvaged material exceed the cost of the abatement, the surplus, if any, shall be paid to the owner of the property from which the public nuisance was abated when a proper claim to the excess is established.

(7) **AUTHORIZED ACTION** – In abating a public nuisance, the Building Inspector may call upon any of the City departments with the approval of the City Administrator for whatever assistance shall be deemed necessary or may by private contract cause the abatement of the public nuisance.

(8) **STATEMENT OF COSTS** – The Building Inspector shall, after completing the removal and abatement, file a statement of costs with the City Clerk. The City Clerk shall certify costs and assign costs to the annual real estate tax bill for the property.

(9) **PRIOR RECOVERY** – The City may seek to recover the cost of demolition prior to the occurrence of demolition. Upon issuance of an order by the Building Inspector whereby the

building or structure is ordered to be demolished, secured or repaired, then the building inspector may solicit no less than two independent bids for such demolition work. The amount of the lowest bid, including offset for salvage value, if any, plus reasonable anticipated costs of collection, including attorney's fees, shall be certified to the City Clerk who shall cause a special tax bill to be issued against the property owner to be prepared and collected by the City collector. The City Clerk shall discharge the special tax bill upon documentation by the property owner of the completion of the ordered repair or demolition work. Upon determination by the City Clerk that a public benefit is secured prior to payment of the special tax bill, the City Clerk may discharge the special tax bill upon the transfer of the property. The payment of the special tax bill shall be held in an interest-bearing account. Upon full payment of the special tax bill, the Building Inspector shall, within one hundred twenty (120) days thereafter, cause the ordered work to be completed, and certify the actual cost thereof, including the cost of tax bill collection and attorneys' fees, to the City Clerk who shall, if the actual cost differs from the paid amount by greater than two percent of the paid amount, refund the excess payment, if any, to the payor, or if the actual amount is greater, cause a special tax bill or assessment for the difference against the property to be prepared and collected by the City Collector. If the Building Inspector shall not, within one hundred twenty days after full payment, cause the ordered work to be completed, then the full amount of the payment, plus interest, shall be repaid to the payor. At the request of the taxpayer the tax bill for the difference may be paid in installments over a period of not more than ten years. The tax bill for the difference from the date of issuance shall be deemed a personal debt against the property owner and shall also be a lien on the property until paid.

#### **SECTION 17-5 – NOTICE**

(1) NOTICE – The Building Inspector shall determine all individuals, firms or corporations who, from the records in the Recorder of Deeds' office, appear to be the titled owners of the aforesaid property and immediately cause a written notice to be served on each such individual, firm or corporation by personal service or by one of the following methods:

A. Leaving a copy of the notice at the usual place or residence or business of such owner, or address of such owner shown in the Recorder's records, or

B. Mailing a copy to such owner at such place or address by United States certified mail return receipt.

If service of such written notice is unable to be perfected by any of the methods described above, the Building Inspector shall direct the City Clerk to cause a copy of the aforesaid notice to be published in a newspaper of general circulation in the City, once a week for two consecutive weeks, and shall further cause a copy of the aforesaid notice to be left with the individual, if any, in possession of such property on which it is alleged such public nuisance exists, or if there is no individual in possession thereof, the Building Inspector shall cause a copy of the notice to be posted at such structure, location or premises. The Building Inspector shall also determine from the Recorder of Deeds' office who the lien holder of the property, if any, as documented therein, is and cause a written notice to be served on such lien holder by United States certified mail return receipt.

(2) NOTICE CONTENTS – The aforesaid notice to the owners, and lien holder, if any, of the property shall state clearly and concisely:

A. The street address or legal description of the property;

- B. A description of the condition or conditions alleged to constitute a public nuisance;
- C. That a hearing is scheduled with the Building Inspector on a date not sooner than thirty (30) days after the date of the notice letter; and
- D. That proof of the commencement of such abatement actions must be submitted to the Building Inspector not later than three (3) working days before the date scheduled for the hearing or such hearing to determine whether the nuisance or dangerous condition will be held;
- E. That the hearing may be held without the presence of any owner, lien holder, occupant or representative.

(3) ADEQUACY OF PROOF – The Building Inspector shall have discretion over what actions are sufficient to constitute the commencement of nuisance abatement. However, the Building Inspector shall be guided by such factors as:

- A. Expedient and continuous work;
- B. Abatement costs; and
- C. Impact on environment or public.

(4) RESPONSIBLE PARTIES – Any person who is the record owner of the premises, location or structure at the time an order pursuant to this Ordinance is issued and served upon him, shall be responsible for complying with that order, and liable for any costs incurred by the City therewith, notwithstanding the fact that he conveys his interests in the property to another after such order was issued and served.

## **SECTION 17-6 – HEARING AND APPEAL**

(1) PROCEDURE – The owners, lien holder and occupants of the property who have been served with a notice pursuant to Section 5 of this Ordinance, and who do not submit sufficient proof of the commencement of such abatement actions to the Building Inspector not later than three (3) working days before the date scheduled for the hearing, may appear in person or by representative at a hearing with the City Administrator scheduled on a date not sooner than thirty (30) days after the date of the notice letter.

(2) HEARING – The City Administrator shall conduct a full and adequate hearing upon the question of whether a public nuisance in fact exists. The City Administrator may amend or modify the notice, or extend the time for compliance with the notice by the owner by such date as the City Administrator may determine.

(3) EVIDENCE – The owners, lien holder and occupants of the property, or their representative or agents, of the subject property shall be given the opportunity to present evidence to the City Administrator in the course of the hearing.

(4) ORDER – Should the evidence support a finding that the building, structure or condition constitutes a public nuisance, the City Administrator shall issue an order making specific findings of fact, based upon competent and substantial evidence, which shows the building, structure or condition to be a public nuisance and ordering the building, structure or condition demolished, removed, repaired or otherwise abated by the City.

(5) **ADDITIONAL TIME** – The City Administrator, upon written application by the owner at any time within the period after the notice has been served, may grant additional time for the owner to effect the abatement of the public nuisance, provided that such extension is limited to a specific time period.

(6) **COSTS TO BE CERTIFIED** – The costs of performance of the abatement order shall be certified to the City Clerk who shall cause a special tax bill or assessment therefor against the property to be prepared and collected by the City Collector. If the building or structure is demolished, secured or repaired by a contractor pursuant to the order issued by the Building Inspector, such contractor may file a mechanic's lien against the property where the dangerous building is located. The contractor may enforce this lien as provided by Missouri State Law. Except as otherwise provided in this Ordinance, at the request of the taxpayer, the tax bill may be paid in installments over a period of not more than ten years, upon approval of the City Council. The tax bill from date of its issuance shall be deemed a personal debt against the property owners and shall also be a lien on the property until paid.

(7) **APPEAL PROCEDURES** – The City Council shall be vested with appeal authority. Orders of abatement by the City Administrator may be appealed to the City Council. Appeals must be filed with the City Clerk not later than 10 days after the issuance of the order described in Section 17-6(4) of this Ordinance.

(8) **CITY COUNCIL MAY WAIVE COSTS** – In those instances where the nuisance has been abated by the City, the City Council shall have discretion to waive the cost of abating a nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the City Council finds that any of the following did not conform to the provisions of this Ordinance.

- A. The notice to remove the nuisance;
- B. The work performed in abating the nuisance; or
- C. The computation of charges.

(9) **FINALITY OF JUDGMENT** – If the judgment of the City Council is not appealed to the Circuit Court within thirty (30) days from the date of delivery or mailing of notice, the judgment will be declared final per Missouri Revised Statutes Chapter 536.

## **SECTION 17-7 – NOTICE AND APPEAL OF ASSESSMENTS**

(1) **PROCEDURE** – Upon receipt of the statement of costs from the Building Inspector, the City Clerk shall mail to the owners of the property upon which the public nuisance has been abated notice of the amounts set forth in the statement plus an additional amount sufficient to defray the costs of the notice and stating that the City proposes to assess against the property the amount set forth in the notice and that objections to the proposed assessment must be made in writing and received by the City Clerk within twenty (20) days from the date of mailing such notice. Upon the expiration of the twenty (20) day period, if no objections have been received by the City Clerk, the City Clerk shall enter that amount in the City liens docket which shall therefore constitute a lien against the property.

(2) **OBJECTIONS** – If objections of either the property owner or their representative are received by the City Clerk prior to the expiration of the twenty (20) day period, the City Clerk shall refer the matter to the City Building Inspector for administrative review.

(3) **ADMINISTRATIVE REVIEW** – Upon conclusion of administrative review, the Building Inspector shall make a written determination that the amount of the charges shall be cancelled, reduced, or remain the same. A copy of this determination shall be furnished to the person making the objections together with a notice of such person’s right to appeal to the City Council within thirty (30) days.

(4) **ABSENCE OF APPEAL** – If no appeal of a determination by the Building Inspector is filed within the time period allowed, a copy of the determination will be furnished to the City Clerk who shall then enter a lien in the amount determined by the Building Inspector in the city liens docket as provided in Section 17-7(1).

(5) **FILING OF APPEAL** – If a timely appeal is received by the City Council, a hearing shall be scheduled and held on the matter. If, after the hearing, the City Council determines that the proposed assessment does not comply with Section 17-7(7) herein, the City Council shall so certify to the City Clerk and the proposed assessment shall be canceled. If, after the hearing, it is determined that the proposed assessment or any part of it is proper and authorized, the City Council shall so certify to the City Clerk who shall enter a lien in such amount as determined appropriate by the City Council, in the lien docket as provided in Section 17-7(7).

(6) **FINALITY OF CITY COUNCIL** – If the judgment of the City Council is not appealed to the Circuit Court within thirty (30) days from the date of the City council’s determination of the assessment, the judgment will be declared final per Missouri Revised Statues Chapter 536.

#### (7) **REDUCING COSTS**

(a) **ASSESSMENTS** – The Building Inspector, in administrative review, or the City Council, on appeal, may reduce or cancel a proposed assessment if it is determined that:

1. Any of the following did not conform to the provisions of this Ordinance:
  - a. The notice to remove the nuisance; or
  - b. The work performed in abating the nuisance; or
  - c. The computation of charges; or
2. The owner of the property was eligible for a waiver of costs under Section (11) of this Ordinance.

(b) The Building Inspector, in administrative review, or the City Council, on appeal, may reduce a proposed assessment by eliminating the civil penalty portion of the invoice if it is determined that:

1. The current owner was not in possession of the property at the time the notice required by Section 5 was posted; or
2. The owner did not receive the notice to remove the nuisance, did not have knowledge of the nuisance and could not, with the exercise of reasonable diligence, have had such knowledge.

(8) **CLAIM OF LACK OF NOTICE** – If, after a lien has been entered in the docket of City liens, there is a written request of the owner who alleges that the owner did not receive notice of the proposed assessment, the City Clerk shall refer the matter for review pursuant to Section 17-6(4) of this section. The lien may be canceled or reduced by the Building Inspector, in administrative review, or the City Council, on appeal, if it is determined that the owner did not receive notice of the proposed assessment, did not previously have knowledge of the lien or of the nuisance abatement work constituting the basis of the lien, could not, in the exercise of reasonable care or diligence, have had such knowledge, and in addition, that the circumstances are such that a reduction or cancellation of the charges would have been appropriate had the matter been reviewed pursuant to this Section prior to assessment. Upon receipt of a certification from the Building Inspector and/or City Council, pursuant to Section 17-6(4), the City Clerk shall cancel or reduce the lien if required by the determination of the Building Inspector and/or City Council. The individuals, firms or corporations who are the owners of the property at the time at which the notice required under Section 5 of this Ordinance is posted shall be personally liable for the amount of the assessment including all interest, civil penalties, and other charges.

#### (9) **CIVIL PENALTIES**

(1) Whenever a nuisance is abated by the City, the City Clerk shall keep an accurate account of all expenses incurred, and a civil penalty of a maximum of two hundred dollars (\$200) for each nuisance abated.

(2) When the City has abated a nuisance maintained by any owner of real property, for each subsequent nuisance that is abated by the City within five (5) consecutive calendar years concerning real property, owned by the same person, an additional civil penalty of twenty five dollars (\$25) per previous occurrence shall be assessed. The civil penalty shall be imposed without regard to whether the nuisances abated by the City involve the same real property or are of the same character.

#### **SECTION 17-8 – EFFECTIVE DATE**

(1) This ordinance shall be in full force and effect from and after the date of publication of this ordinance as provided in the City Charter of the City of Chillicothe, Article IX, Section 9-3 and the City Clerk is directed to so publish.

#### **SECTION 17-9 – VIOLATIONS AND PENALTIES**

(1) Any owner who fails to remove yard debris within 7 days of being notified to do so by the notice/abatement order described in Section 17-4(3)(d)(i) above shall be guilty of an ordinance violation and may (at the option of the city) be charged in municipal court with the offense of “failure to abate a nuisance.” Each day that a violation persists after the notice period shall be considered a new and separate violation hereunder.

(2) Any owner who fails to remove a public nuisance within 30 days of being notified to do so by the notice/abatement order described in Section 17(5) above shall be guilty of an ordinance violation and may (at the option of the city) be charged in municipal court with the offense of

“failure to abate a nuisance.” Each day that a violation persists after the notice period shall be considered a new and separate violation hereunder.

**Sec. 17-10 through 17-70 reserved.**

**Section 2:** All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

**Section 3:** If any clause, word, paragraph, section or other part or portion of this ordinance is held to be invalid, illegal, unlawful, or unconstitutional for any reason, the City Council hereby declares it would nevertheless have enacted the remaining portions thereof, and such remaining portions shall remain in full force and effect.

PASSED AND APPROVED THIS 10th DAY OF MAY, 2010.

CITY OF CHILLICOTHE, MISSOURI

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Charles E. Haney, Mayor

ATTEST:

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Rozanne Frampton, City Clerk