

1st Reading: June 23, 2016
2nd Reading: June 23, 2016

SPONSOR: BORGARD

ORDINANCE NO. 3605

BILL NO. 16-41

AN ORDINANCE AMENDING SECTION 215.010, "NUISANCES AFFECTING HEALTH", SECTION 215.020, "WEEDS AND OTHER VEGETATION – EXCESSIVE GROWTH", OF THE MUNICIPAL CODE OF THE CITY OF FENTON, MISSOURI AND ENACTING A NEW SECTION 215.030, "DEAD, DYING AND DECAYING TREES".

WHEREAS, discussion was held at the June 9, 2016 Committee Meeting relating to proposed amendments to Section 215.010, "Nuisances Affecting Health", and Section 215.020, "Weeds and Other Vegetation – Excessive Growth", and enacting a new code section relating to dead, dying and decaying trees; and

WHEREAS, the Board of Aldermen desires and finds it in the best interest of the City to amend Chapter 215 as discussed at the Committee Meeting.

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

Section 1. Section 215.010, "Nuisances Affecting Health" of Chapter 215 of the Municipal Code of the City of Fenton, Missouri is hereby amended by repealing Section 215.010 in its entirety and adding a new Section 215.010 to read as follows:

Section 215.010 Nuisances Affecting Health

A. Nuisances, Generally. In addition to any other act declared to any other act declared to be a nuisance by Missouri law, this Code or other ordinances by the City of Fenton, nuisances are hereby defined and declared to be as follows: The following are declared to be nuisances affecting health:

1. All decayed or unwholesome food offered for sale to the public, or offered to the public at no charge.
2. All diseased animals running at large.

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3. All ponds or pools of stagnant water and all foul water or liquid when discharged through any drainpipe, spout or otherwise upon any street, alley, thoroughfare or private lot.
4. Carcasses of dead animals not buried or destroyed within twenty-four (24) hours after death.
5. Accumulations, wheresoever they may occur, of debris including but not limited to, weed cuttings; cut and fallen trees, tree limbs, or shrubs; lumber not piled or stacked twelve (12) inches of the ground; rocks; bricks; parts of derelict vehicles; furniture; appliances; manure; rubbish; garbage; refuse; any flammable or toxic material which may endanger public safety; and human and industrial, noxious or offensive waste, except the normal storage on a farm of manure for agricultural purposes.
6. Privy vaults or garbage cans which are not fly-tight, that is, privy vaults or garbage cans which do not prevent the entry of flies, insects and rodents.
7. The pollution of any well, cistern, spring, underground water stream, lake, canal, or body of water by sewage or industrial wastes, or other substances harmful to human beings.
8. Dense smoke, noxious fumes, gas and soot, or cinders in unreasonable quantities, or the presence of any gas, vapor, fume, smoke, dust or any other toxic substance on, in or emitted from the equipment of any premises in quantities sufficient to be toxic, harmful or injurious to the health of any employee or to any premises, occupant, or to any other person.
9. Common drinking cups, roller towels, combs, brushes or eating utensils in public or semi-public places where not properly sanitized after use.
10. Any vehicle used for septic tank cleaning which does not meet the requirements of this Chapter of the Code of Ordinances of the City of Fenton.
11. Any vehicle used for garbage or rubbish disposal which is not equipped with a watertight metal body and provided with a tight metal cover or covers and so constructed as to prevent any of the contents from leaking, spilling, falling or blowing out of such vehicle at any time, except while being loaded or not completely secured and covered so as to prevent offensive odors from escaping therefrom or exposing any part of the contents at any time.
12. Any and all infestations of flies, fleas, roaches, lice, ticks, rats, mice, fly maggots, mosquito larvae and hookworm larvae.
13. The keeping of animals and fowl in any area within the City not zoned for such purpose, except as permitted in Chapter 210.
14. Unlicensed dumps, and licensed dumps not operated or maintained in compliance with the ordinances of the City of Fenton and the Statutes of the State of Missouri.

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15. The discharge into a stormwater system of any waste materials, liquids, vapor, fat, gasoline, benzene, naphtha, oil or petroleum product, mud, straw, lawn clippings, tree limbs or branches, metal or plastic objects, rags, garbage or any other substance which is capable of causing an obstruction to the flow of the storm system or interfere with the proper operation of the system, or which will pollute the natural creeks or waterways.
 16. Perforated, punctured, ruptured, broken, cracked or leaking sanitary sewer lateral lines.
 17. The removal or destruction of vegetation or the failure to establish or maintain such vegetation of property within the City of Fenton so as to cause or be likely to cause damage to, or otherwise adversely affect adjoining public or private streets, storm sewers or public or private properties due to soil erosion or siltation.
 18. Discharge of a swimming pool, spa or hot tub onto adjoining properties.
 19. Discharge of water from a swimming pool into the storm sewer system (drainage channel, storm drain inlet, or along the curb line gutter of a paved street) with elevated chlorine levels, with pH levels not within a range of 5.5 to 11.5, that causes erosion of the drainage channel, or otherwise violates MSD standards.
 20. The drainage of water from downspouts, sump pumps, etc., not discharged to daylight (i.e., to the surface) at a minimum of ten (10) feet inside the property line of the subject lot.
 21. Any tree on any property which, by reason of its dying, decay or other reason, is a menace to the safety of persons using any street, alley or sidewalk or persons occupying any premises or parcel of ground.
 22. Any trees, shrubs, bushes or vegetation upon private property which are permitted to grow to the extent that such material constitutes a hazard to public safety in that it obstructs the view and movement of vehicular or pedestrian traffic.
 23. All other acts, practices, conduct, business, occupation callings, trades, uses of property and all other things detrimental or certain to be detrimental to the health of the inhabitants of the City of Fenton.
- B. *Unlawful To Cause, Maintain Within One-Half Mile Of City.* It is unlawful for any owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant, having control of any occupied lot or land or any part thereof in the City of Fenton, or within one-half (½) mile of the corporate limits of the City of Fenton, Missouri, to cause, permit or maintain a nuisance on any such lot or land. Additionally, it is unlawful for any person or his or her agent, servant, representative or employee to cause, or maintain a nuisance on the land or property of another, with or without permission. Each day that a nuisance shall be maintained is a separate offense.

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C. *Authority To Abate Emergency Cases.* In cases where it reasonably appears that there is an immediate danger to the health, safety or welfare of the public, due to the existence of a nuisance the Mayor or his/her designate shall have the authority to order the immediate abatement of the nuisance in an appropriate manner.

D. *Abatement — Procedure Generally.*

1. *Notice.*

- a. If the Director of Community Development or her designee (the “Director”) has reason to believe that a nuisance is being maintained within the City, the Director shall send written notice to the person causing, maintaining or permitting the same to forthwith remove, terminate or abate such nuisance within a reasonable time as determined by the Director after consideration of the nature of the nuisance and the actions necessary to remedy the situation. Such notice shall also state that upon failure to abate the condition causing the nuisance within said time period, the City shall have a hearing where all parties may be heard and present evidence as to whether the condition constitutes a nuisance.
- b. All notices hereunder shall be given by first class United States mail or by posting a copy thereof on the property involved and shall include a statement of the condition constituting such nuisance and those actions necessary to remove, terminate or abate the same.
- c. The notice shall include a date, time, and place of the scheduled hearing no sooner than ten (10) days after such notice and include a statement that the hearing shall be deemed automatically canceled if the property owner abates the conditions described in the notice within the time specified in such notice and notifies the Director of such abatement prior to the hearing date.

2. *Hearing.* Should the person so notified fail to remove, terminate or abate such nuisance within the time specified, the scheduled hearing shall take place. Such hearing shall be before the City Clerk/Manager, be under oath, which shall be administered by the City Clerk/Manager, recorded, and all such parties shall have an opportunity to be heard and present evidence as to whether the procedures of this Article were substantially complied with, whether the condition maintained on the property constitutes a nuisance and whether an order should be entered directing the owner and/or occupant to abate the nuisance. After hearing all evidence, if the City Clerk/Manager finds a nuisance is being maintained in violation of this Article, he/she may order the nuisance abated within a reasonable time. The order shall be in writing specifying the grounds for the order and the time that the nuisance must be abated and either provided at the hearing or shall be served to the affected persons in the manner set forth in Section 215.010(D)(1)(b).

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3. *Abatement.* Upon failure of the person to comply with the City Clerk/Manager's order, the Director may cause the same to be promptly removed, terminated or abated and thereafter certify the cost of such corrective action to the City Clerk/Manager, who shall cause a special tax bill to be issued in that amount against the property from which the nuisance was removed, terminated or abated, the same to be collected with other taxes assessed against the property. The special tax bill from the date of its issuance shall be deemed a personal debt against the owner and shall be a first (1st) lien against the property until paid and shall be prima facie evidence of the recitals thereof and of its validity. No mere clerical error or informality in such lien or in the proceedings leading to its issuance shall be a defense thereto. The certified costs associated with the removal, termination or abatement of such nuisance shall include all expenses incurred by the City in the removal of the nuisance including, but not limited to, the actual cost of inspecting the land or lot, the actual cost of service of notice as provided herein, the actual cost of abatement, attorneys' fees pursuant to Section 100.065, and the actual cost of issuing and recording the tax bill. Such tax bill shall bear interest at the rate of six percent (6%) per annum if not paid within thirty (30) days after issuance.
 4. *Other Remedies.* Nothing in this Section shall limit the right of the City to seek any other remedy allowed by law in addition to or in lieu of the remedy specified herein including prosecution pursuant to Section 100.060; provided that no owner who does not also occupy the property shall be charged with causing or permitting any violation of this Chapter for which specific notice was not given, unless such person had knowledge of the existence of the violation. Such person shall not be prosecuted for a violation abated within ten (10) days of the written notice.
- E. *Third-Party Complaints.* Any person interested in the removal or abatement of any nuisance may make a complaint before the Municipal Judge. Following such a complaint the Municipal Judge shall summon the owner or occupant of the property to answer the complaint. The Municipal Judge shall have jurisdiction of the case and proceed in all respects as in other cases of ordinance violations.
- F. *Civil Action to Abate Nuisance.* In addition to any other remedies or penalties established by law, the City Attorney may, on behalf of the City and after approval by the Board of Aldermen, apply to a court of competent jurisdiction for such legal or equitable relief as may be necessary to require the abatement of any nuisance defined by this Article. In such action the court may grant such legal or equitable relief, including, but not limited to, mandatory or prohibitory injunctive relief, as the facts may warrant. Upon the successful prosecution of any such action, the City shall be awarded by the court reasonable attorney's fees in accordance with Section 79.383, RSMo.

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Section 2. Section 215.020, "Weeds and Other Vegetation" of Chapter 215 of the Municipal Code of the City of Fenton, Missouri is hereby amended by repealing Section 215.020 in its entirety and adding a new Section 215.020 to read as follows:

Section 215.020. Weeds and Other Vegetation — Excessive Growth.

A. Pursuant to the authority granted the City by Section 71.285 RSMo., no person shall cause or permit any weeds or rank vegetation growth to attain a height in excess of nine (9) inches upon any property within the City, except as provided in Subsection (B) of this Section. "Weeds" shall be defined as grasses, annual plants and vegetation other than trees or shrubs, provided however, this term shall not include cultivated flowers and gardens, agricultural acreage and natural growth areas of common grounds within parks and subdivisions.

Any owner of any lot, parcel of land or land of any other description in the City who shall cause or permit any weeds or rank vegetation growth to attain a height in excess of nine (9) inches upon any property in the City, who does not fall within the exception in Subsection (B) of this Section, shall be deemed to have committed a public nuisance.

- B. With respect to any undeveloped property in excess of three (3) acres, this Section shall apply only to the portions of such property which are located within one hundred (100) feet of any street right-of-way or within one hundred (100) feet of any adjoining property.
- C. All weeds or rank vegetation growth, when cut down, shall be removed and disposed of in such a manner as not to create a nuisance.
- D. Whenever weeds or rank vegetation growth is allowed to grow on any portion of any property in violation of this Section, the Director of Community Development or his or her designated agent shall:
1. Give a hearing after four (4) days' written notice either personally served on or sent by United States mail to the owner(s) or his/her/their agent(s), or by posting such notice on the property; and
 2. If the evidence at such hearing supports such a finding, the Director shall declare the weeds or rank vegetation growth to be a nuisance and order the owner to cut down and remove the weeds or rank vegetation growth within five (5) business days of such hearing; and
 3. If such weeds or rank vegetation growth is not cut down and removed within five (5) business days, have such weeds or rank vegetation growth cut down and removed immediately thereafter and certify the costs of such cutting and removal to the City Clerk, who shall cause a special tax bill to be issued for such costs against the property.

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- E. Any person aggrieved by a determination of the Director pursuant to Subsection (D)(2) above may appeal pursuant to Chapter 160 (Administrative Procedure for Review of Certain Actions).
- F. No appeal to the Board of Aldermen or to the Circuit Court shall stay the cutting of the lot by the City and the issuance of a special tax bill hereunder, absent a court order staying such actions and the posting of an appropriate bond by the property owner(s).
- G. As part of the costs of removing such weeds or rank vegetative growth, each special tax bill issued pursuant to this Section shall include a charge of twenty-five dollars (\$25.00) to cover the costs of inspection, notice, hearing and the issuance of the tax bill.
- H. The special tax bill provided for in this Section shall be collected by the City Clerk or other designated City Official with other taxes assessed against the property. The tax bill, from the date of its issuance, shall be a first (1st) lien on the property until paid and shall be prima facie evidence of the recitals therein and of its validity, and no mere clerical error or informality in such tax bill or in the proceedings leading to its issuance shall be a defense thereto. Each special tax bill shall be issued by the City Clerk on or before the first (1st) day of June each year. Such tax bills, if not paid within thirty (30) days after issuance, shall bear interest at the rate of eight percent (8%) per annum. In the event a lawsuit is required to enforce such a tax bill, the City may be awarded its costs of collection, including attorneys' fees, by the court in accordance with Section 71.285, RSMo.
- I. It shall be the duty of the Director of Community Development, whenever notified of the existence of weeds or rank vegetation growth in excess of nine (9) inches in height on any street or public place in the City, to have such weeds or rank vegetation growth cut down and removed.
- J. If weeds or rank vegetation growth is allowed to grow on the same property in violation of Subsection (A) more than once during the same growing season, the Director of Community Development or other designated official may, without further notification to the property owner(s), have the weeds or rank vegetation growth removed and the costs of such removal be billed as a special tax bill against the property to be taxed and enforced as otherwise provided in this Section.

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- K. It shall be unlawful for any person or any officer, agent, or employee of any corporation within the City to cause or maintain weeds or rank vegetation growth in violation of Subsection (A), and it shall be unlawful for any person to fail or refuse to cut down and remove such weeds or rank vegetation growth within the time required and specified in the decision of the Director as provided in Subsection (D). Upon conviction, any person in violation of this Section shall be punished as provided in Section 100.060 of this Municipal Code, and every day such nuisance is maintained after the Director's decision shall constitute a separate and distinct offense.

Section 3. Chapter 215 of the Municipal Code of the City of Fenton, Missouri is hereby amended by enacting a new Section 215.030 to read as follows:

Section 215.030. Dead, Dying and Decaying Trees.

- A. *Standards.* It shall be unlawful for the owner of any lot or parcel of ground in the City to maintain or allow to stand upon such lot or parcel of ground any tree or tree limb which, due to a diseased, decayed or hazardous condition or for any other reason, endangers or is likely to injure any person or property in and upon a street or any adjacent property in the City or is likely to cause damage to any tree of other landowners by the spread of a contagious disease.
- B. *Lot Owner's Responsibility.* It shall be the duty of the owner of any lot or parcel of ground in the City to properly cause such trees or tree limbs as are described in Subsection (A) of this Section to be cut down and no tree or tree limb(s) in the City which has been cut down or which has fallen or been broken down shall be permitted to remain in or upon any sidewalk, street or adjacent property in the City or so near thereto as to endanger any person thereon and it shall be the duty of the owner of such lot or parcel of ground to cause the same to be promptly removed.
- C. *Nuisances.* Trees or tree limbs on private land that cause obstructions, present insect or disease problem or otherwise present a danger to public health or safety are hereby declared to be a nuisance by the Code Official, at which time the Director may order such to be pruned, removed or treated. This includes, but is not limited to, trees diagnosed with dutch elm disease or oak wilt.
- D. *Procedure.*
1. *Notice to prune, remove or treat.* Should any person owning real property bordering on any street fail to prune, remove or treat trees as herein above, the Director shall order such person, within ten (10) days after receipt of written notice, to so prune, remove or treat such trees.

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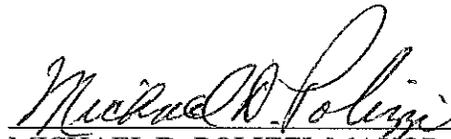
2. *Order required.* The order required herein shall be served by mailing a copy of the order to the last known address of the property owner by certified mail.
 3. *Appeal.* The property owner has the right to appeal the order to prune, remove or treat by appealing to the Board of Adjustment. The property owner may present any evidence or exhibits to support his/her position that the tree does not need to be pruned or removed or that the cost of the "order" is excessive. If the Board should uphold the order, the property owner has an additional ten (10) days from the Board's decision to complete the required pruning, removal or treatment.
 4. *Failure to comply.* When a person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the City to prune, remove or treat such trees and the exact cost thereof shall be assessed to the owner.
- E. It shall be unlawful for any person or any officer, agent, or employee of any corporation within the City to allow any dead, dying or decaying trees to remain in violation of Subsections (A) and (B), and it shall be unlawful for any person to fail or refuse to cut down and/or remove such dead, dying or decayed part of any tree within the time required and specified in the decision of the Director. Upon conviction, any person in violation of this Section shall be punished as provided in Section 100.060 of this Municipal Code, and every day such nuisance is maintained after the Director's decision shall constitute a separate and distinct offense.

Section 4. All other provisions within Chapter 215 shall remain in full force and effect.

Section 5. If any clause, word, paragraph, section or other part or portion of this ordinance is held to be invalid, illegal or unconstitutional for any reason, the Board of Aldermen hereby declares it would nevertheless have enacted the remaining portions thereof and such remaining portions shall remain in full force and effect.

Section 6. This Ordinance shall be in full force and effect after the date of its passage and approval.

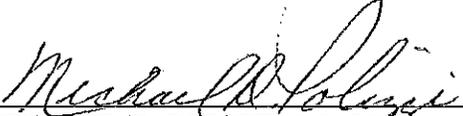
PASSED this 23rd day of June, 2016.


MICHAEL D. POLIZZI, MAYOR

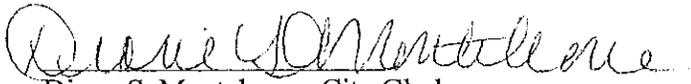
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APPROVED this 23rd day of June, 2016:


MICHAEL D. POLIZZI, MAYOR

ATTEST:


Diane S. Monteleone, City Clerk

Motion to approve. Roll Call vote:

Ayes: Bade, Sobey, Voyles, Maurath, Clauss, Borgard, Patton, Glick

Nays: 0

Absent: 0

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