

Chapter 215

NUISANCES

Cross References — As to dangerous buildings as a nuisance, Ch. 515; as to prostitution houses deemed a nuisance, §210.1390.

ARTICLE I Generally

Section 215.010. Definitions. [Ord. No. 138.13 §1, 3-19-2013]

The following words, terms and phrases, when used in this Chapter, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

ENCLOSED STRUCTURE — An enclosed structure built according to City Code (i.e., garage or shed) in which the contents are not visible to neighbors, passersby, those on public sidewalks, streets or alleyways, or from any adjacent public or private property.

HABITABILITY — Capable of being lived in; suitable for habitation.

JUNK — Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or non-ferrous material.

OCCUPANT — Any person who has a legal or equitable interest in a parcel of real property, other than a fee interest, including a life tenant, lessee, tenant at will, tenant at sufferance or adverse possessor, as well as a person in possession or a person who has charge, care or control of the parcel of real property as the agent or personal representative of the person holding legal title of a fee interest. Possession, charge, care or control may include living, sleeping, cooking or eating in the parcel of real property.

OWNER — Any person who, alone or jointly or severally with others:

1. Has legal title to any parcel of real property, building or structure, or part thereof, with or without accompanying actual possession thereof; or
2. Has charge, care or control of any parcel of real property, building or structure, or part thereof, as agent or personal representative of the person having legal title to the building or structure, or part thereof; or
3. Has possession or right to possession under a contract for deed; or
4. Has legal title to a vehicle.

PERSON — Any individual, partnership, corporation, association, institution, City, County, other political subdivision, authority, State agency or institution, or Federal agency or institution.

PROHIBITED VEHICLE — Any vehicle described as an abandoned vehicle, elevated vehicle, junk vehicle or unlicensed vehicle.

RANK GROWTH OF VEGETATION — Thickets or any vegetation which may emit noxious odors or any vegetation which is twelve (12) inches or more in height. Rank growth of vegetation shall not include trees in excess of six (6) feet in height, cultivated or attended trees less than six (6) feet in height or cultivated or attended plants, bushes or shrubbery.

REASONABLE RESIDENTIAL STORAGE — The open, outdoor storage of usable building materials in small amounts will not be considered a nuisance if the open storage is temporary (temporary being not beyond thirty (30) days after the building/construction permit expires) and the building materials are to be used for the benefit of the property on which they are located.

SOLID WASTE — Garbage, refuse and other discarded materials including, but not limited to, solid and semi-solid waste materials resulting from industrial, commercial, agricultural, governmental and domestic activities, but does not include hazardous waste as defined in Sections 260.360 to 260.432, RSMo., recovered materials, overburden, rock, tailings, matte, slag or other waste material resulting from mining, milling or smelting.

TARPAULIN — A piece of opaque material (durable plastic) used for protecting exposed objects or areas, which must be in good repair (no holes or rips), of adequate size (in relationship to what is tarped) and secured.

TRAFFIC HAZARD — Any vegetation, plant, bush, shrubbery, tree or any part thereof growing upon any private or public property so as to obstruct reasonable and safe view of oncoming and intersecting traffic by motor vehicle drivers on any street, alley or public drive.

UNSAFE — A state or condition of danger, harm or risk; unsecured from threat of danger, harm or loss.

UNSANITARY — A state or condition that endangers personal or public health.

WASTE TIRE — A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

WEEDS — Grasses and unattended growths of other plants, bushes and shrubbery which are twelve (12) inches or more in height.

WOODLAND — A large, dense growth of trees, plants and underbrush.

YARD WASTE — Leaves, grass clippings, yard and garden vegetation and Christmas trees. The term does not include stumps, roots or shrubs with intact root balls.

Section 215.020. Purpose. [Ord. No. 138.13 §2, 3-19-2013]

Unkempt, unsafe, unsanitary and otherwise improperly maintained properties, structures, sidewalks and easements within the City materially and adversely affect the use and habitability of nearby property and of property within the City as a whole. Additionally, such conditions pose hazards to the public health, safety and welfare. Properties that are unkempt, unsafe, unsanitary and/or dangerous may materially and adversely affect the economic well-being of the City. This Chapter, in accordance with the procedures set out herein, establishes necessary and proper

procedures to prosecute owners and occupants for nuisances, to provide for the abatement of such nuisances and other improperly maintained structures and properties as they are described or found to exist, to charge the costs of the abatement to the owners and/or occupants of the property upon which the nuisance and/or improper maintenance exists, as well as the property itself, and to provide for procedures for permanent prevention of nuisances. This Chapter is an exercise of the City's police power and shall be liberally construed.

Section 215.030. Penalty. [Ord. No. 138.13 §3, 3-19-2013]

- A. Any person, including any owner, occupant or other entity, who violates any provision of this Chapter shall be subject to the following:
1. *Prosecution.* Upon conviction of violation of any provision or requirement of this Chapter, the person shall be subject to punishment by a fine not to exceed five hundred dollars (\$500.00) or be imprisoned in jail for not more than ninety (90) days, or both such fine and imprisonment. It shall be a separate offense for each day the nuisance is allowed or continues to exist.
 2. *Abatement.* Upon determination that a nuisance exists, the City may abate the nuisance and assess the costs thereof in accordance with the provisions of this Chapter.
 3. *Injunction.* In order to eliminate, remove or prevent a nuisance or other violation of this Chapter, the City Attorney may obtain such civil redress as may be appropriate under the circumstances, including restraining orders and injunctions.

Section 215.040. Maintaining a Nuisance. [Ord. No. 138.13 §4, 3-19-2013]

- A. *Responsibility.* No owner, occupant or other person in possession, charge or control within the City limits shall cause, maintain or permit a nuisance as defined by the laws of the State or this Chapter. It shall be the duty of each owner, occupant or person in possession, charge or control of any property to maintain that property, together with one-half (½) of the platted City right-of-way abutting thereon, or street or alley abutting thereon, as not to allow the accumulation of debris, refuse, rubbish, trash or nuisances as defined in or described by this Chapter. Every owner, occupant or person in possession of any property within the City shall be responsible for maintaining all property under his/her control in accordance with the requirements of this Chapter. Every owner, occupant or person in possession of any property within the City shall be responsible for maintaining all property under his/her control in accordance with the requirements of this Chapter.
- B. *Prima Facie Evidence Of Nuisance.* If the nuisance is on private property, proof that a person occupies the property or that a person has possession or the right to possession of the property shall constitute prima facie evidence that such person has caused, maintained or permitted the nuisance and such person shall be responsible for its existence and for its abatement.
- C. *Entry Upon Property.* The Chief of Police, Police Officer or his/her designee may enter upon private property for inspection or abatement purposes in accordance with this Chapter. If any person refuses to allow entry onto his/her private property, City staff may

obtain a warrant from the proper official and proceed in accordance therewith.

Section 215.050. Placing Items on Public Property. [Ord. No. 138.13 §5, 3-19-2013]

It shall be unlawful for any person or entity to deposit, place, dump, pour or drain onto any street, highway or any public property within the City limits any filth, refuse, rubbish, sewage, trash or nuisance, or any substance that emits any foul, noxious or disagreeable odor or that attracts insects, vermin or other pests.

Section 215.060. Nuisance Defined and Exemptions. [Ord. No. 138.13 §6, 3-19-2013]

A. Any condition or item which causes a threat to the health, safety or welfare of the public, or which prohibits routine maintenance of the premises, or which meets any of the definitions of a nuisance in this Chapter shall be declared a nuisance. The term "*nuisance*" shall include, but is not limited to:

1. *Burning.* Except as provided in Section 203.090, the burning, causing to burn or authorizing the burning of any item including twigs, branches, shrubbery, rubbish or refuse upon any street, sidewalk or public alleyway.
2. *Debris, refuse, rubbish, trash.* Accumulations of unused boards, bricks, concrete or rocks, animal or vegetable products or matter, appliances, ashes, barrels, bones, bottles, boxes, broken glass, brush, cans, cartons, cinders, coal, crates, decayed fruits or vegetables, dirt, dust, excrement, fence wire, filth, firewood not piled or stacked neatly and systematically (must be in rear yard), flammable materials, foliage and shrub clippings or cuttings, garbage, gasoline, grass, household furniture, iron or other metals, junk, kegs, leaves, logs, lumber not piled or stacked neatly and systematically (must have nails removed and be in rear yard; untreated lumber must be stacked), lumber scraps, manure, nails, offal, oil, old wearing apparel, paint, paper, piled brush and fallen tree limbs or debris, plaster, plastic (discarded containers or wrappers), plumbing fixtures, putrid fish or meat entrails, rags, rank growth of vegetation, roof shingles, rubber, sawdust, slag, slop, soot, straw, sweepings, tacks, tarpaulin not in good repair, tire(s) (mounted or unmounted), toilets, tubs, vehicle parts, weeds, wire, wood or metal shavings, any type of solid or yard waste (bagged or unbagged), or any condition or item that would prohibit the routine maintenance of the property.
2. *Exemption.* The term "*nuisance*" shall not include composting which is a controlled biological reduction of organic waste to humus, as follows:
 - a. All compost piles shall be maintained using approved composting procedures in compliance upon the following terms:
 - (1) All compost shall be enclosed in a freestanding compost bin. Each compost bin shall be no larger in volume than seventy-five (75) cubic feet for properties ten thousand (10,000) square feet and less in size, with an additional seventy-five (75) cubic feet permitted for each additional ten thousand (10,000) square feet. Compost bins shall be no higher than five (5) feet.

- (2) All compost piles shall be maintained so as to prevent the attraction or harborage of rodents and pests. The presence of rodents or other pests in or near a compost pile shall be cause for the City to issue a complaint.
 - (3) All compost piles shall be maintained so as to prevent unpleasant, rotten, egg-like, putrefactive, sweet, sour or pungent odors.
 - (4) All compost piles shall be located in the rear yard of the property. No compost pile shall be located less than two (2) feet from the rear or side property line, or within twenty (20) feet of any home, patio, pool or similar structure, or on any adjacent property.
 - (5) No compost pile shall be located where it will impede the natural free flow of storm water drainage.
- b. No compost pile shall contain any of the following:
- (1) Animal carcasses;
 - (2) Fish, fowl, meat or other animal products;
 - (3) Food scraps;
 - (4) Fruits, vegetables or nuts;
 - (5) Items not normally composted;
 - (6) Lake weeds; and
 - (7) Manure.
- c. Permitted ingredients in a compost pile may include:
- (1) Commercial compost additives;
 - (2) Wood chips; and
 - (3) Yard waste.
- d. Compost piles established in accordance with this Chapter shall be for private use only and there shall be no commercial delivery or providing of material that has been composted in a residential area.
3. *Disease or breeding of insects or vermin.* Any existing condition or item which harbors or fosters the spread of disease or the breeding of insects or vermin.
 4. *Excessive exterior lighting.* Directing, arranging or using exterior lighting from any property or areas so that the light shines or glares on another property, thereby adversely affecting the use and enjoyment of those persons who own or use the property.
 5. *Furniture — outdoor.* Any furniture, including sofas, divans, recliners and similar objects, which are not designed for outdoor use but which are maintained or located on any porch, lawn, parking lot, driveway or public right-of-way.

6. *Noxious or offensive odors.* Any condition or item causing a noxious or offensive odor that is discomforting and interferes with the free use of residential property.
7. *Pools of water.* Unmaintained water pools and ponds that become stagnate and may cause a location for breeding of insects.
8. *Prohibited vehicles.* All vehicles declared a nuisance by this Chapter, including junk vehicles, elevated vehicles, unlicensed vehicles and abandoned vehicles.
9. *Waterway pollution.* Placing, throwing or causing tree limbs, brush or any trash (including bottles and cans) to enter into or be in any natural waterway located in or owned by the City.
10. *Weeds and rank growth of vegetation.* Any weeds or rank growth of vegetation or noxious weeds prohibited as a nuisance by this Chapter.
11. *Miscellaneous.* Any act done or committed or suffered to be done or committed by any person or any substance or thing kept, maintained, placed or found in or on any public or private place which is annoying or damaging or injurious or dangerous to the public health or welfare or safety and every act or thing done, permitted, maintained, allowed or continued on any property public or private, by any person, which is liable to or does endanger, annoy, damage or injure any person or any inhabitant of the City or property of said person or inhabitant.

Section 215.070. Prohibited Vehicles Defined as a Nuisance. [Ord. No. 138.13 §7, 3-19-2013]

A. The following vehicles shall be prohibited and are declared a nuisance:

1. *Abandoned vehicle.* Any unattended motor vehicle, trailer, all-terrain vehicle or outdoor motor or any vessel removed or subject to removal from a public or private property as provided in this Chapter, whether or not operational, or any motor vehicle on the right-of-way of any public road or State highway or on any private property owned by another without the consent of the owner or occupant.
2. *Elevated vehicle.* Any vehicle, licensed or unlicensed, which is raised, but not supported under the axles, or is raised to a height where the tires are more than two (2) inches off of the ground.
3. *Junk vehicle.* Any type of self-propelled device or part thereof designed to be self-propelled, that is moved by power, other than human power, is designed to travel along the ground, is located on private property and is damaged, stripped or wrecked or has missing wheels or tires, or flat tires, or broken or missing window glass and located outside of an enclosed structure. Junk vehicles shall include, but not be limited to, all-terrain vehicles, automobiles, motorcycles, snowmobiles, tractors, trailers, trucks and wagons.
4. *Unlicensed vehicle.* Any type of self-propelled device, or part thereof, that is moved by power, other than human power, is designed to travel along the ground, is located on private property, located outside of an enclosed structure and does not have showing a current State license plate, or is improperly registered or licensed pursuant to any State or local laws or regulations. Unlicensed vehicles shall include, but not be

limited to, automobiles, motorcycles, trailers and trucks. An unlicensed vehicle shall not be allowed to exist on private property outside of an enclosed structure.

5. *Open storage of inoperable vehicles or public safety hazards prohibited.* The open storage of inoperable or unlicensed vehicles or other vehicles deemed by the City to constitute a public safety hazard is prohibited. Nothing in this Subsection shall apply to a vehicle which is completely enclosed within a locked building or locked fenced area and not visible from adjacent public or private property, nor to any vehicle upon the property of a business licensed as salvage, swap, junk dealer, towing or storage facility so long as the business is operated in compliance with its business license and the property is in compliance with applicable zoning ordinances.
6. The following shall be exempt from this Section:
 - a. Vehicle(s) or parts thereof that are in disrepair and are located on the premises of a duly licensed automobile repair or sales business for a period not to exceed three (3) months.
 - b. Vehicle(s) located on the premises of a duly licensed motor vehicle junk business or junk yard maintained in accordance with City Code and holding a valid Missouri license.
 - c. Vehicle(s) or parts thereof which are used as part of rescue training exercises conducted by law enforcement, fire departments or ambulance districts.

Section 215.080. Weeds, Rank Growth of Vegetation and Noxious Weeds Prohibited as Nuisance.
[Ord. No. 138.13 §8, 3-19-2013]

- A. No owner, occupant or person in possession, charge or control of any property shall allow or permit weeds contrary to the provisions of this Section, rank growth or noxious weeds as defined in this Chapter to exist or be maintained on that property or on one-half (½) of the platted right-of-way abutting thereon or on the street or alley abutting thereon.
- B. All weeds, grasses and non-agricultural plants which are seven (7) inches or more in height or any other rank growth of vegetation that may be injurious to health by releasing particulate matter into the atmosphere or other means, or which are considered noxious by the State of Missouri, obstructs vehicular or foot traffic, infringes upon the enjoyment or use of adjacent properties or may be conducive to fires or combustion are declared to be a nuisance.
- C. The owner or occupant of any property of three (3) acres or more that is either agricultural in character or a woodland shall ensure that all weeds and rank growth of vegetation on said property are cut and/or maintained so as not to obstruct or interfere with vehicular or foot traffic upon any public roadway or sidewalk and so as not to interfere with the line of sight of operators of motor vehicles upon any adjoining street, alley or roadway.
- D. Noxious weeds, as defined by this Chapter and by State law, are declared a nuisance and shall be entirely removed from agricultural, commercial and residential lots.

Section 215.090. Determination, Responsibility and Notice. [Ord. No. 138.13 §9, 3-19-2013]

- A. Whenever the Chief of Police or other City Official determines that a nuisance exists as defined in this Chapter, in addition to any other remedies provided by law, the procedure for abatement shall be as follows:
1. *Notice.* Notice shall be required in order to abate the nuisance pursuant to the provisions of Section but shall not be a prerequisite for a violation of this Chapter. The Chief of Police or other City Official shall first notify the person causing, maintaining or permitting the nuisance that he/she must abate or remove such nuisance within seven (7) calendar days. Such notice shall include a description of the nuisance to be abated, the location of the nuisance and the alternatives described in this Chapter.
 1. Initial notification shall be made by delivering the notice or by depositing it in the United States mail, postage prepaid, addressed to the owner of the property and/or the person occupying the property. If notification is not made by delivery or by mail, then it may be provided by one (1) or more of the following methods:
 - a. Notification may be provided by posting upon such property a notice containing an order to abate or remove the nuisance within the time to be specified in this Chapter, or
 - b. If the above method of service of notice cannot be successfully completed, then notice may be given by a publication of said notice one (1) time in a daily newspaper published within the City.
 2. *Failure to give notice.* If the property has been posted with a notice to abate the nuisance, failure to give notice in any other manner as set forth in this Section shall not invalidate a lien against the land for the costs associated with abating the nuisance.
 3. *Emergency abatement.* The Chief of Police shall have the power to summarily abate, in any reasonable manner, any nuisance which constitutes an immediate danger to the health, safety and welfare of the inhabitants of the City.

Section 215.100. Alternatives in Response to Notice. [Ord. No. 138.13 §10, 3-19-2013]

- A. Any person notified under this Chapter to abate a nuisance shall exercise one (1) of the following alternatives within seven (7) days from service of notice.
1. Abate the nuisance at the expense of the person so notified;
 2. Furnish the Chief of Police with written consent for the City to abate the nuisance with the costs of such abatement to be assessed to the person consenting. In such circumstance, the person notified to post a bond or deposit in an amount equal to anticipated costs of the abatement as determined by the City; or
 3. File a written request with the Chief of Police requesting a reconsideration hearing before the Mayor or his/her designee challenging the allegation that a nuisance exists.

Section 215.110. Reconsideration Procedure. [Ord. No. 138.13 §11, 3-19-2013]

- A. *Procedure.* Whenever a reconsideration hearing is requested pursuant to this Chapter, the Mayor shall give notice to all interested parties, including the owner and occupant of the property, of the date, time and place of a public hearing to be held to determine whether a nuisance exists. All persons notified shall be given an opportunity to present evidence and make arguments to the Mayor and be represented by an attorney.
- B. *Findings.* If the Mayor determines that a nuisance does exist, the Mayor shall issue to the Chief of Police an order to abate nuisance in any reasonable manner and assess the costs against the property. The order shall contain written findings of fact and a copy of the order shall be provided to all interested parties.
- C. *Appeal.* When a reconsideration hearing is requested as provided herein and the Mayor finds that a nuisance exists, an appeal may be taken from that decision by filing for the appropriate relief in the Circuit Court of Atchison County, Missouri, pursuant to the procedure established in Chapter 536, RSMo.

Section 215.120. Abatement Procedures. [Ord. No. 138.13 §12, 3-19-2013]

- A. *Confirmation Of Nuisance.* If the person notified fails to exercise one (1) of the alternatives provided in this Chapter, or if the reconsideration hearing does not result in a reversal of the finding of a nuisance and the person has exhausted or waived his/her appeal rights, then the Chief of Police shall proceed with the abatement of the nuisance in any reasonable manner. The costs of the abatement and the administrative processing of the nuisance against the property shall be assessed as provided in this Chapter.
- B. *Storage, Redemption, Sale.* After the determination that a nuisance exists, items having any apparent monetary value, beyond salvage value, removed during the nuisance abatement shall be transported to a storage area or lot at the expense of the owner or person in custody thereof. The property shall then be stored for a period of at least thirty (30) days and the person entitled to possession thereof may redeem the property by payment to the City the actual cost of removal and a reasonable storage and administrative processing fee. If any item is unredeemed after the expiration of the thirty (30) day period, the Mayor, or his/her designee, may sell it to the highest bidder or, if it has no sale value, may otherwise dispose of it. Any money received from the disposal of any item shall be applied to the costs charged to the owner or person in charge thereof.
- C. *Towing.* The City, including the Police Department, may tow any motor vehicle or other property as authorized by this Code.
- D. *Notice Of Sale.* Prior to the sale of any such property obtained in nuisance abatement, the City Clerk, or his/her designee, shall cause to be posted in City Hall, at the place of storage and in at least one (1) other public place in the City a notice of sale stating:
 - 1. The City is selling abandoned property;
 - 2. The color, make, year, motor number and serial number, if available, and any other information necessary for an accurate identification of the property;
 - 3. The terms of the sale;
 - 4. The date, time and place of the sale.

The notice shall be published at least once seven (7) days prior to the sale in a newspaper published in the City.

Section 215.130. Assessment of Abatement Costs. [Ord. No. 138.13 §13, 3-19-2013]

- A. If the abatement is performed by City employees, the cost of the abatement shall be calculated according to the schedule of costs promulgated by the Street Superintendent and kept on file in the office of the City Clerk. This schedule is to be determined after an analysis by the Street Superintendent to determine an accurate estimation of the costs incurred by the City to abate nuisances subject to this Section.
- B. If the abatement is performed by contractors hired by the City, the costs charged for the abatement will be the actual amount paid to the contractor for the abatement performed.
- C. Any and all direct fees and costs, including, but not limited to, landfill fees, shall be included in the abatement cost.

Section 215.140. Collection of Abatement Costs and Lien. [Ord. No. 138.13 §14, 3-19-2013]

- A. When the City expends any funds in the abatement of any nuisance, the City Clerk, or his/her designee, shall notify, by certified mail, the person against whose property the costs were incurred of said costs. The City Official responsible for the abatement shall certify the costs incurred in abating the nuisance and administratively processing the nuisance to the City Clerk, together with the description of the property.
- B. The cost of administratively processing the abatement to the City Clerk shall be seventy-five dollars (\$75.00) per regular abatement action, two hundred dollars (\$200.00) for large special bids.
- C. The person notified shall have thirty (30) days from the mailing of said notice within which to pay the costs of the abatement to the City Clerk. If the person so notified fails to pay the costs of the abatement within thirty (30) days, the City Clerk shall immediately, upon the receipt of this information, enter an assessment in the appropriate books of the City to be kept for that purpose; and upon the entry of this assessment a lien will attach to the property. The City Clerk shall cause a special tax bill therefor against the property to be prepared and collected by the Collector with other taxes assessed against the property. Such tax bills if not paid when due shall bear interest at the rate of eight percent (8%) per annum.
- D. *Disposition Of Abatement Costs.* If the City receives any revenue as a result of the abatement of any nuisance, that revenue shall be deposited in and credited to the fund account of the department that initially advanced the costs for the abatement or enforcement. If any revenue received by the City in the abatement of a nuisance cannot first be credited to such department's fund account, then the revenue received shall be deposited in and credited to the General Fund.

Section 215.150. through Section 215.200. (Reserved)

ARTICLE II
Other Nuisances

Section 215.210. Power Machinery. [R.O. 2013 §215.130; CC §74.140; CC 1991 §235.140]

No person or company, corporation, co-partnership or association shall set up and operate any power machinery used for the purpose of grinding hay, corn, fodder and other grains into feeds in any parkway, street or alley, or on any lot or place within the residential districts of Tarkio.