

## **Chapter 138**

### **PROPERTY MAINTENANCE**

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**[HISTORY: Adopted by the City Council of the City of Fitchburg as indicated in article histories. Amendments noted where applicable.]**

## ARTICLE I

**Public Nuisances and Problem Properties****[Adopted 6-4-2013 by Ord. No. 160-2013<sup>1</sup>]****§ 138-1. Purpose and intent; statutory authority; conflict with other laws.**

- A. The purpose and intent of this article is to eliminate nuisances affecting buildings and real property in the City. Nuisances, such as dilapidated buildings, buildings or real estate covered with graffiti, buildings open to the weather or vagrants, real estate with overgrowth of vegetation, debris, trash, and stagnant pools of water, and vacant or abandoned buildings, cause and contribute to blight within neighborhoods and commercial areas of the City and adversely affect the property values for adjacent and surrounding property. Such nuisances on property also impair the public health and safety. This article is intended to supplement and augment existing authority found in state laws and local ordinances.
- B. These nuisances on public or private property are blighting factors which depreciate the value of the property, target it for vandalism, depreciate the value of the adjacent and surrounding properties, and, in so doing, have a negative impact upon the entire community.
- C. These nuisances encourage other acts of malicious vandalism and may be ancillary to and/or breed other forms of criminal activity. The Council finds that dilapidated buildings, graffiti, buildings open to the weather or vagrants, real estate with an overgrowth of vegetation, strewn with debris or trash, and having stagnant pools of water, and vacant or abandoned buildings are public nuisances and destructive of property values, affecting not only the property owners but the entire community. Unless the City acts to remove these nuisances from public and private property, the real property will deteriorate further. Other properties then become affected, and entire neighborhoods may deteriorate and become less desirable places in which to be, all to the detriment of the City.
- D. The City enacts this article using its Home Rule authority and its police powers under MGL c. 40, § 21, to eliminate and prevent the spread of public nuisances.
- E. The Council does not intend for this article to conflict with any existing state laws or the Constitution of either the United States or the Commonwealth of Massachusetts.

**§ 138-2. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**GRAFFITI** — Any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to or on any surface of public or private property to the extent that the graffiti was not authorized in advance by the owner or occupant of the property or, despite advance authorization, is otherwise a public nuisance.

**OCCUPANT** — A person lawfully occupying real property.

**OWNER** —

- A. Every person who alone or severally with others:

- (1) Has legal title to any building or parcel of land, vacant or otherwise; or

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1. Editor's Note: This ordinance also repealed former Ch. 138, Property Maintenance, Art. I, Nuisances Affecting Real Property, adopted 4-6-2010 by Ord. No. 038-10.

- (2) Has care, charge or control of any building or parcel of land, vacant or otherwise, in any capacity, including but not limited to as agent, executor, executrix, administrator, administratrix, personal representative, trustee, or guardian of the estate of the holder of legal title; or
  - (3) Is a mortgagee in possession or otherwise in control of any property; or
  - (4) Is an agent, trustee or other person appointed by the courts and vested with possession or control of any property; or
  - (5) Is an officer or trustee of the association of unit owners of a condominium.
- B. Each person within this definition as owner is bound to comply with the provisions of this article as if he or she were the owner in fee. **[Amended 6-3-2014 by Ord. No. 100-2014]**

PERSON — Every individual, partnership, corporation, trust or other entity.

PROBLEM PROPERTY —

- A. A problem property meets the following criteria: The Police Department has been called to the property not fewer than four times within the preceding twelve-month period for any incident involving any criminal offense, including but not limited to disturbing the peace, trespassing, underage drinking or assault and battery; or the property has been reported to the Police Department, Board of Health, or Building Inspectional Services Department for not fewer than four sustained complaints for noise within the preceding twelve-month period; or the Board of Health or Building Inspectional Services Department have received not fewer than four sustained and upheld complaints within the preceding twelve-month period for noxious, noisome or unsanitary conditions; the Fire Department has received four incidences of false alarms within the preceding twelve-month period; an owner receiving four notices concerning violations of public nuisances within the preceding twelve-month period; or any combination of any above four incidences within the preceding twelve-month period.
- B. The Mayor shall name a designee to make the determination whether a property is identified as a "problem property" pursuant to the above definition. The designee shall take into consideration the nature of the complaints, the number of dwelling units at the property, and the nature of the use of said property in the decision to designate a property as a "problem property."

PUBLIC NUISANCE — An unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or that otherwise threatens the general welfare of a neighborhood or the City in general through documented pervasive criminal activity, code violations, or other causes precipitating the deployment of any City resource.

REVIEW BOARD — The Mayor shall appoint individuals to review issues concerning designated problem properties.

### **§ 138-3. Property standards; removal of nuisance; notice of violation.**

- A. All property in the City of Fitchburg shall be maintained in accordance with the following property standards:
  - (1) General. All property, whether occupied or vacant, shall be maintained in good repair and in a safe and sanitary condition. The owner shall cut and maintain vegetation to prevent any rodent harborage or an unkempt appearance. It shall be so maintained as to not cause or contribute to the creation of a hazardous condition or blighted area or as to affect adversely the public health

and safety or property value of adjacent or surrounding property, the public at large or public safety officials entering the property in the course of their public duties.

- (2) **Overgrowth.** All property shall be maintained free of unkempt vegetation and any plant materials or anything else that is or may reasonably encourage, foster or enhance the possibility of infestation with rodents, vermin, other animals or insects such as ticks or that may attract or be used by feral dogs or cats; pools of stagnant water; or anything that creates or contributes to the creation of a fire safety hazard.
  - (3) **Structures.** All structures, including any buildings, fences, storage sheds, or any element thereof shall be maintained in a structurally sound condition, in good repair and free of broken windows and interior and exterior fire hazards. They shall be maintained in a condition so as to not cause or contribute to a risk of danger to persons on the property or passersby. Every owner shall maintain every building in a manner so that it is not open to the weather or, if vacant, so secured as to keep intruders, vagrants, and children from entering into the building, using it or occupying it. All property shall be maintained free of extensive peeling, flaking, or chipped paint. All property with siding shall be maintained in a weather-resistant and watertight condition.
  - (4) **Conditions of land.** All real estate shall be maintained free of unkempt vegetation; anything that is, or may reasonably become, infested with rodents, vermin, or other animals; pools of stagnant water; fire safety hazards; or other conditions which in the opinion of the Board of Health or the Public Health Director create a public nuisance. All real estate, whether occupied or not, shall be kept free of litter, refuse, garbage, and accumulations of debris, trash or junk of any kind.
  - (5) **Pools of stagnant water.** All property shall be maintained to prevent the formation of pools of water and shall be free of standing water or stagnant water which adversely affects the public health by attracting and harboring mosquitoes, ticks and other insects. No owner shall allow such pools of water to accumulate and shall drain them if they form.
  - (6) **Graffiti.** Graffiti is a nuisance. An owner shall remove graffiti from any building or structure within his or her possession or control. It is unlawful for any person to apply graffiti to any natural or man-made surface on any publicly owned property or, without the permission of the owner or authorized occupant, on any privately owned property. **[Amended 6-3-2014 by Ord. No. 100-2014]**
- B. **Removal of nuisance.** It is unlawful for the owner of any property in the City to violate the property standards contained in Subsection A. Any property with one or more violations is hereby declared to be a public nuisance. The Board of Health, the Director of Public Health, the Police Chief, the Chief of the Fire Department, the Building Commissioner, the Commissioner of the Department of Public Works, and the Director of Housing, or their designees, are hereby designated as the enforcing authorities of this article. If any enforcing authority determines that a violation of the standards described in Subsection A exists, he or she shall order the owner to remove or abate the nuisance within 10 days after service of notice of the violation. If the violation is such that the public health and safety will be jeopardized by that delay, the enforcing person may order the abatement or removal of the nuisance in a shorter time as public health and safety may in his or her judgment require. The order shall be in writing and may be served personally on the owner, occupant or his authorized agent by any person authorized by the enforcing authority.
- C. **The notice shall contain the following information:**
- (1) **The street address and description of the property sufficient for identification of the property.**

- (2) A statement that the property has been found to be in violation of this article and constitutes a public nuisance.
- (3) A description of the facts on which the violations were found and the public nuisance declared.
- (4) A statement that:
  - (a) The owner must remove the nuisance or abate it within 10 days from service of the notice, or within a shorter time if the public health or safety might be jeopardized by delay; and
  - (b) If the owner fails to remove or abate the nuisance within the time frame specified, the City may remove the nuisance, assess the costs thereof to the owner and impose the penalties described in this article.

**§ 138-4. Abatement of nuisance; violations and penalties.**

- A. If the owner fails to remove a nuisance within the specified time frame, the City may abate the nuisance or remove the nuisance. The cost of the removal or abatement will be billed to the owner, and the owner shall reimburse the City for the expense incurred for such removal. If the owner of a privately owned, owner-occupied dwelling is the victim of a person writing graffiti on his building, the Commissioner of Public Works may remove the graffiti at the cost of the City. The sum so expended may be recovered by the City as provided in MGL c. 111, §§ 122 to 125, in an action of contract by the City against the owner or by imposition of a lien against the property as permitted under MGL c. 139, § 3A. The fine for any violation of this article is \$300 per violation, and each day on which a violation exists shall be deemed to be a separate offense.
- B. This section may also be enforced by civil process or by noncriminal disposition as provided in MGL 40, § 21D. If enforced civilly, each day on which a violation exists shall be deemed to be a separate offense, and the violator shall be subject to the following fines:
  - (1) First violation: \$200.
  - (2) Second violation: \$250.
  - (3) Third violation: \$300.
  - (4) Fourth and each subsequent violation: \$300.
- C. In addition to the penalties set forth above, the enforcing authority may seek an injunction from an appropriate court to restrain any violation of this section.
- D. In lieu of any penalty specified in this section, any person who has violated the section of this article prohibiting graffiti shall, with the approval and consent of the enforcing authority, make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined necessary to clean up the graffiti.
- E. In lieu of, or as part of, the penalties specified in this section, the violator may, at the discretion of the enforcing authority, be required to perform community service based on the following minimum requirements:
  - (1) The violator shall perform hours of community service for up to 10 days.
  - (2) When the violator is a minor, the enforcing authority must consult with and obtain the written consent of the parent or lawful guardian and coordinate with appropriate school personnel when

considering community service as an alternative to criminal prosecution or the imposition of civil fines.

**§ 138-5. Problem property procedures.**

- A. Designation of problem property. Problem properties are those properties which have been identified by the Mayor's designee under the definition in § 138-2.
- B. Enforcement.
  - (1) After declaring the problem property a public nuisance, the members of the review board shall, by affixing a notice of the violation to the front door, issue a notice to any or all of the tenants and the owner of the property immediately for perpetuating the public nuisance(s) at the time of any incident requiring the deployment of any City resources or personnel following the property being placed on the problem properties list.
  - (2) The owner shall be noticed to appear before the review board, and that board shall present the list of violations and conditions to correct in order for the property to be removed from the problem properties list. Any owner of a property determined by the review board to be a problem property shall file a management plan with the review board, within 30 days of having a hearing before the review board, that outlines and verifies the owner's strategy and steps devised to bring the property up to code.
- C. Verifiable and certified inspection. In order for a property to be removed from the problem properties list by the review board, an owner must present to the board a sworn statement following an inspection certifying that the property is in compliance with the minimum standards of human habitability for a residential dwelling as set forth in the Massachusetts State Sanitary Code, as it may be adopted or amended from time to time. The inspection shall be performed and the sworn statement shall be signed by an authorized inspector, which shall be defined as the Director of Public Health or his or her designee and/or the Building Commissioner or his or her designee. If the origination of the complaints that led to the designation of the property as a problem property were from the Police or Fire Department, then a sworn statement from that Department, attesting to corrective actions taken by the owner to address the complaints, shall be required in addition to the sworn statement by an inspector. **[Amended 6-3-2014 by Ord. No. 100-2014]**
- D. Receivership. Should the owner of a property placed on the problem properties list not respond to the review board notification within 60 days, the review board may authorize the appropriate City Department to petition the Housing Court for the appointment of a receiver to rehabilitate that property.

**§ 138-6. Collection of charges, fees and fines.**

- A. All invoices for the payment of municipal charges and bills, fines or violations are due under any provision of this article or arising in connection with enforcing this article within 30 days after they are mailed, unless a different due date is otherwise provided by law or ordinance. Any invoice remaining unpaid after its due date will accrue interest from the due date at the rate of interest charged on tax bills under the provisions of MGL c. 59, § 57, as the same may from time to time be amended.
- B. The fees and charges assessed under this article, together with interest thereon and costs relative thereto, shall be a lien upon the real estate as described in MGL c. 40, § 58. The lien shall take effect upon the recording of a list of unpaid municipal charges and fees, by parcel of land and by the name of the person assessed for the charge or fee in the registry of deeds, and a charge or fee which is

secured by a municipal charges lien remains unpaid. When the assessors are preparing a real estate tax list and warrant to be committed under MGL c. 59, § 53, the enforcing authority in charge of collecting the charge or fee, or the Collector of Taxes, shall certify the charge or fee to the assessors, who shall forthwith add the charge or fee to the tax on the property to which it relates and commit it with their warrant to the Collector of Taxes as part of such tax.

- C. If the property to which such charge or fee relates is tax exempt, the charge or fee shall be committed as the tax. A lien under this section may be discharged by filing a certificate from the Tax Collector that all municipal charges or fees constituting the lien, together with any interest and costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.
- D. Upon the neglect or violation of any duty imposed by this article, that duty may be performed by the enforcing authority at the expense of the person charged with the duty. The City may recover its expenses, not exceeding the penalty, in a legal action of contract.

**§ 138-7. Separability; interpretation of provisions.**

- A. Each section, each provision or requirement of any section of this article shall be considered separable. If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.
- B. Nothing in this article is intended to, nor shall it be construed to, diminish or limit the powers, authorities and duties of the Board of Health or its designees and any other municipal board, department or commission.
- C. It is the intent of the City of Fitchburg, acting by and through its legislative and executive branches, to prohibit certain behaviors and conduct as set forth in this article consistent with the Constitutions of the United States and the Commonwealth of Massachusetts and the statutory provisions of the Commonwealth of Massachusetts. Any ambiguity or doubt in interpreting or construing any section, word or provision of this article shall be resolved in a manner so as to further the expressed intent of this article.