

ORDINANCE NO. 2017-8

**AN ORDINANCE
AMENDING CHAPTER 521, HEALTH, SAFETY AND SANITATION, OF
THE CODIFIED ORDINANCES TO PROVIDE FOR THE ENACTMENT
OF A NEW SECTION 521.10, NUISANCES IN CONNECTION WITH
TREES, AND DECLARING AN EMERGENCY.**

WHEREAS, this Council desires to amend Chapter 521, Health, Safety and Sanitation, of the Codified Ordinances of the Village of Waite Hill to provide for the enactment of a new Section 521.10, Nuisances in Connection with Trees, to require property owners to abate certain nuisances related to trees.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF WAITE HILL, LAKE COUNTY, STATE OF OHIO:

SECTION 1. That existing Chapter 521, Health, Safety and Sanitation, be and the same hereby is amended to provide for the enactment of new Section 521.10, Nuisances in Connection with Trees, which shall read as follows:

“521.10 NUISANCES IN CONNECTION WITH TREES.

(a) The following acts, things and conditions done or existing within the Village are hereby declared to be nuisances:

(1) Any tree upon any street or public place or so near thereto as to permit the roots of the tree to penetrate through or under the surface thereof.

(2) Any tree, plant or shrub, wherever located within the Village, infected with any parasite, insect, fungus or pest which may be communicated to any other tree, plant or shrub.

(3) Any tree which has fallen, or is in such condition that it is likely to fall, on any public or private property, including the property upon which it is situated.

(4) Any tree, plant or shrub whose branches or trunk obstruct or impede traffic on any street or public place. Branches overhanging any pavement or roadway within nine feet of the surface thereof shall be deemed prima facie to obstruct or impede traffic thereon.

(b) No person shall maintain any of the nuisances described in subsection (a) hereof.

(c) Whenever, in the opinion of the Chief of Police, any of the nuisances described in subsection (a) hereof exists, he or she shall cause its abatement and cause the cost of the abatement to be charged and collected in the manner provided herein.

(d) When a nuisance is located on or originates from real estate not owned by the Village, the Chief of Police, on finding that the nuisance exists, may cause written notice to be served on the owner of the real estate. The notice shall set forth:

1. the nature of the nuisance;
2. the Chief of Police's estimate of the cost of abating the same if done by the Village;
3. a reasonable time determined by the Chief of Police, not to exceed thirty (30) days, within which the owner may abate the nuisance or file an appeal as set forth below;
4. a statement that unless the nuisance is abated within the stated time or an appeal is filed, it may be abated by the Village and the cost of abatement assessed on the real estate; and
5. that the owner has the right to appeal the notice, in writing, to the Planning and Zoning Commission within ten (10) days of the issuance of the notice from the Chief of Police and request a hearing before the Planning and Zoning Commission; upon receipt of a timely filed request for a hearing, the Clerk-Treasurer/Secretary of the Planning and Zoning Commission shall set the matter for hearing at the next regularly scheduled Planning and Zoning Commission meeting. The owner may attend the hearing to show cause why he or she should not be made to comply with the notice. The Chief of Police shall also attend the meeting to present evidence to the Planning and Zoning Commission that served as the basis for the abatement order.

(e) Any notice served by the Chief of Police shall automatically become a final order if a written notice of appeal has not been filed with the Clerk-Treasurer/Secretary of the Planning and Zoning Commission within ten (10) days of the delivery of the notice. In the absence of an appeal, all actions taken shall constitute a valid exercise of the police powers of the Village of Waite Hill.

(f) The notice may be served by delivering it personally to the owner, by leaving it at the owner's usual place of business or residence, by posting it in a conspicuous place on the real estate above mentioned, by mailing it to the owner, or, if it cannot be served in any of such ways, by publishing it once in a newspaper of general circulation in the Village.

(g) If the nuisance is not abated within the required time, the Chief of Police shall cause its abatement and shall report the cost thereof to Council which may assess the same on the real estate on which the nuisance existed or the cause or source thereof was located.

(h) When the cause or source of a nuisance exists on property owned by the Village, the Chief of Police shall, and in any other case he or she may, abate the nuisance at the expense of the Village and no notice shall be required preliminary to the abatement.

(i) Whoever violates this section is guilty of a misdemeanor of the fourth degree for a first offense and a misdemeanor of the third degree for subsequent offenses. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. The penalties shall be as provided in Section 501.99."

SECTION 2. That any ordinance in conflict herewith be and is hereby repealed.

SECTION 3. That actions of this Council concerning and relating to the passage of this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were held in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the Village of Waite Hill.

SECTION 4. That this Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village of Waite Hill and, further, provides for the usual daily operation of a municipal department by allowing for the abatement of nuisance conditions for which the Village may be held liable; wherefore, this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED: _____, 2017

Council President

Submitted to the Mayor
for his approval on this
_____ day of _____, 2017

Approved by the Mayor

ATTEST:

_____, 2017

Clerk-Treasurer

Mayor