

CITY OF CHERRYVALE

ORDINANCE NO. 18-4637

AN ORDINANCE AMENDING CHAPTER VIII, ARTICLE 2, JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY, OF THE MUNICIPAL CODE OF THE CITY OF CHERRYVALE, KANSAS.

WHEREAS, the Governing Body of the City of Cherryvale, Kansas, desires to modify and replace Chapter VIII, Article 2, Junked Motor Vehicles on Private Property, in the Municipal Code of the City of Cherryvale, Kansas; and,

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHERRYVALE, KANSAS:

ARTICLE 2. JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

8-201. FINDINGS OF GOVERNING BODY. The governing body finds that junked, wrecked, dismantled, inoperative, discarded and abandoned vehicles, building materials and equipment, and automotive parts in and upon real property within the city is a matter affecting the health, safety, and general welfare of citizens of the city for the following reasons:

- (a) Such vehicles, materials, and equipment serve as breeding ground for flies, mosquitos, rats, and other insects and rodents;
- (b) They are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or supports, and because they are a ready source of fire and explosion;
- (c) They encourage pilfering and theft and constitute a blighting influence upon the area in which they are located, thereby causing a loss in property value to surrounding property; and
- (d) They constitute a fire hazard in that they block access for fire equipment to adjacent buildings and structures.

8-202. DEFINITIONS. As used in this ordinance, unless the context clearly indicates otherwise:

- (a) **Inoperable** means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned, or unable to perform the functions or purposes for which it was originally constructed or intend.
- (b) **Vehicle** means and all other terms used herein shall have the same meaning or definition as contained in the Standard Traffic Ordinance for Kansas Cities published by the League of Kansas Municipalities, as amended.

8-203. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain or permit any vehicle nuisance within the city.

a) A vehicle nuisance is any vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of city ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable:

1. Absence of a current registration plate upon the vehicle;
2. Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
3. Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.

b) The provision of this section shall not apply to:

1. Any vehicle which is enclosed in a garage or other enclosed building;
2. To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less;
3. Property owners who may have up to two tarped vehicles on property. The tarped vehicle(s) must be highway tagged, insured, and legally parked on the owner's private property; or
4. To any person conducting a business enterprise in compliance with existing zoning regulations and who places such vehicles off of public streets and sidewalks; behind screening of sufficient size, strength, and density to screen such vehicles from the view of the public as to prohibit ready access to stored vehicles by children. The business enterprise may not park or store an inoperable vehicle(s) for a period of more than 60 consecutive days. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.

8-204. PUBLIC OFFICER. The City of Cherryvale shall designate a public officer to be charged with the administration and enforcement of this article.

8-205. COMPLAINTS; INQUIRY AND INSPECTION. The public officer, or his or her designee, shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings.

8-206. RIGHT OF ENTRY. It shall be a violation of this ordinance to deny the public officer, or his or her designee, the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

8-207. NOTICE. Any person found by the public officer to be in violation of Section 8-203 shall be served a notice of such violation. The notice shall be served by certified mail, postage prepaid, return receipt requested and/or the notice shall be personally served by the public officer or law enforcement officer.

8-208. SAME; CONTENTS. The notice shall state the condition(s) which is (are) in violation of Section 8-203. The notice shall also inform the person that:

- a) He, she, or they shall have 10 days from the date of serving the notice to abate the condition(s) in violation of Section 8-203; or
- b) He, she, or they have 10 days from the date of serving the notice to request a hearing before the governing body of the matter as provided by Section 8-212;
- c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution in municipal court, as provided by Section 8-209 and/or abatement of the condition(s) by the city as provided by Section 8-210.

8-209. FAILURE TO COMPLY; PENALTY. Should the person fail to comply with the notice to abate the nuisance, the public officer may file a complaint in the municipal court of the city against such person and upon conviction of any violation of provisions of Section 8-203, be fined in an amount not to exceed \$500 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

8-210. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 8-209, the public officer may seek to remedy violations of this article in the following manner:

- a) If a person to whom a notice has been sent pursuant to Section 8-207 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time period specified in Section 8-208, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate -the conditions causing the violation at the end of 10 days after passage of the resolution.
- b) The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in Section 8-213.

c) A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (1) Personal service upon the person in violation;
- (2) Service by certified mail, postage prepaid, return receipt requested; or

d) Alternatively, if a person is convicted in municipal court, the court may order agents of the city to abate the conditions at the expense of said person. Should the abatement be ordered in municipal court then the associated costs may be recovered through municipal court of the same methods as described above.

8-211. DISPOSITION OF VEHICLE. Disposition of any vehicle removed and abated from private property pursuant to this ordinance shall be as provided by K.S.A. Supp. 8-1102, as amended.

8-212. HEARING. If a hearing is requested within the 10 day period as provided in Section 8-208, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer before the governing body. The hearing shall be held by the governing body as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof at any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the matter provided in Section 8-210.


8-213. COSTS ASSESSED. If the city abates the nuisance pursuant to Section 8-210, the cost of abatement shall be charged against the lot or parcel of ground on which the nuisance was located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this section. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

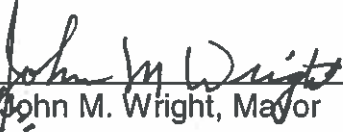
REPEALED. All ordinances in conflict herewith are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effect upon its publication in the official city newspaper.

PASSED AND APPROVED By the Governing Body of the City of Cherryvale, Kansas, this 16th day of July, 2018.

ATTEST:


Karen Davis, City Clerk


John M. Wright, Mayor

