

CITY OF CHERRYVALE

ORDINANCE 18-4694

AN ORDINANCE AMENDING ARTICLE 1. HEALTH NUISANCES OF THE CITY CODE FOR  
THE CITY OF CHERRYVALE, KANSAS.

SECTION 8-101. DEFINITIONS.

- (a) **Abandoned Motor Vehicle** means any motor vehicle that is not currently registered or tagged, or incapable of moving under its own power, or in a junked or wrecked condition.
- (b) **Accessory Structure** means a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.
- (c) **Commercial or Industrial** means used or intended to be used primarily for other than residential purposes.
- (d) **Dilapidation, Deterioration, or Disrepair** means any condition characterized by, but not limited to, holes, breaks, rot, decay, crumbling, cracking, peeling, or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.
- (e) **Enclosed Porch** means a structure, adjoining an entrance to a building, that is fully enclosed by permanent walls, windows, screens, or other similar materials, and that cannot be accessed from the outside except through a door that is capable of being locked; provided, an enclosed porch shall not be constructed of or maintained with; unfinished plywood, wafer board, or other sheathing materials normally covered by finished materials in the manufacturing process; particle board; paper; visqueen plastic; plastic tarp, or other similar construction or non-permanent materials; used construction or commercial objects, such as storage pallets; or cast-off or used building materials and items not originally intended to be used for constructing or maintaining an enclosed porch.
- (f) **Exterior** means those parts of a structure which are exposed to the weather or subject to contact with the elements, including, but not limited to, sidings, facings, veneers, masonry, roofs, foundations, porches, decks, balconies, screens, shutters, windows, doors, or signs.
- (g) **Garbage** means, without limitation, any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.
- (h) **Outdoor furniture** means weather-resistant furniture designed and manufactured for outdoor use.
- (i) **Person** means any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control, or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant, or lessee, whether or not in possession.
- (j) **Porch** means a structure, adjoining an entrance to a building that is not fully enclosed by permanent walls, windows, screens, or other similar material.
- (k) **Premises** means any lot, plot, or parcel of land, including the structures thereon; or any lot, plot or parcel of land without any structures thereon.
- (l) **Refuse** means garbage and trash.
- (m) **Residential** means used or intended to be used primarily for human habitation.

- (n) **Structure** means anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, including any appurtenances belonging thereto.
- (o) **Trash or debris** means combustible waste consisting of, but not limited to, papers, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, or tree branches and non-combustible waste consisting of, but not limited to, metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, or street rubbish and sweepings.
- (p) **Weathered** means deterioration caused by exposure to the elements.
- (q) **Yard** means the area of the premises not occupied by any structure.

#### **SECTION 8-102. HEALTH AND WELFARE NUISANCES UNLAWFUL AND PROHIBITED ACTS.**

It is unlawful for any person to permit or allow conditions on any residential, commercial, or industrial premises, which are injurious to the health, safety, or general welfare of the residents of the community or conditions which have a blighting effect or are detrimental to adjoining property, the neighborhood, or the city. Without limiting the generality of the conditions prohibited by this section, such unlawful conditions shall include but not limited to the following:

- (a) Refuse. All ashes, cinders, slops, filth, excrement, sawdust, stones, rocks, dirt, straw, soot, sticks, shavings, cans, dust, paper, trash, rubbish, manure, refuse, wastewater, decaying fish or meat, entrails, decaying fruits or vegetables, broken wares, rags, scrap metal, old wearing apparel, dead animals or any other offensive or disagreeable thing or substance thrown, left or deposited by anyone in or upon any street, sidewalk, park, public or private enclosure, lot, vacant or occupied, or any pond or pool of water, cesspool, drains or sewers in the city.
- (b) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure or lot whether vacant or occupied;
- (c) All dead animals not removed within 24 hours after death;
- (d) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
- (e) All stagnant ponds or pools of water;
- (f) All grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;
- (g) Abandoned iceboxes or refrigerators kept on the premises under the control of any person, or deposited on the sanitary landfill, or any icebox or refrigerator not in actual use unless the door, opening or lid thereof is unhinged, or unfastened and removed therefrom;
- (h) All articles or things whatsoever caused, kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public or of any neighborhood;

- (i) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the city.
- (j) Nauseous substances. Foul substances or substances that emit or cause any foul, nauseous, unhealthful or disagreeable odors or effluvia in the neighborhood where they exist.
- (k) Clogged sewers; use of system in disrepair. Any sewer connection laid on any premises or into any privately owned building in the city, and connected with the sewer system of the city, which is permitted to become choked or clogged so as to prevent the free passage through such sewer connection of all water and such substances as may be emptied into the sewer; or any water closet or sewer connection used by the owner thereof when the same is not in proper working order; or any such sewer connection which is permitted to remain in such clogged or choked condition so as to become offensive to any persons residing in the vicinity thereof or annoying to the public or injurious to the health of persons residing in the vicinity thereof.

Other Prohibited Acts include but are not limited to:

- (a) **Exterior Conditions** No person shall allow on any yard, porch, deck, balcony, or other exterior area of a premise, the accumulation of any of the following items: lumber, wire, metal, concrete, masonry products, plastic products, supplies, building materials, equipment, machinery, auto parts, tires, stoves, refrigerators, televisions, indoor furniture, sinks, bathtubs, toilets, carpet, garbage, rubbish, refuse, junk, abandoned motor vehicles, inoperable lawnmowers, brush piles (except those intended to be burned with permission of the fire department within seven days from the date created), or the like.
- (b) **Furniture** It shall be unlawful for any person to allow on any yard, or other exterior area of any premises, furniture, other than outdoor furniture, as that term is defined in this chapter.
- (c) **Upholstered Furniture** It shall be unlawful for any person to allow on any yard, enclosed porch, deck, balcony, or other exterior area of any premises, upholstered furniture, including, but not limited to, upholstered chairs, upholstered couches, mattresses, or other similar items. This subsection does not apply to outdoor furniture or to enclosed porches, as those terms are defined in this chapter.
- (d) **Dilapidated Structure** It shall be unlawful for any person to allow any structure to fall into a state or condition of dilapidation, deterioration or disrepair, as those terms are defined in this chapter.

#### **SECTION 8-103. PUBLIC OFFICER.**

The mayor or city administrator shall designate a public officer to be charged with the administration and enforcement of this article.

#### **SECTION 8-104. COMPLAINTS; INQUIRY AND INSPECTION.**

The public officer shall make inquiry and inspection of premises upon receipt of a complaint 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 finding.

#### **SECTION 8-105. SAME; RIGHT OF ENTRY.**

1. Whenever necessary to make an inspection of any building, structure or premises to determine if a nuisance exists, or whenever the public officer has cause to believe that there exists therein any condition which endangers the public health, the public officer is authorized to enter such building, structure or premises at all reasonable times to inspect the same and to exercise any power or authority or to perform any duty imposed upon the public officer under this code.
2. The authority granted to the public officer by subsection 1. of this section is subject to the following:
  - (a) If the building, structure or premises is occupied, the public officer shall first present proper credentials, explain the purpose for which admittance is desired and demand entry.
  - (b) If such property is unoccupied, the public officer shall first make a reasonable effort to locate the owner or other person having charge or control of the property, present proper credentials, explain the purpose for which admittance is desired and demand entry.
  - (c) If the public officer is refused admission or cannot locate the owner or occupant, the public officer shall refrain from entering until authorized to do so by proper judicial authority.

#### **SECTION 8-106. ORDER OF VIOLATION.**

1. The governing body shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-102 or section 8-104 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.
2. If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24 month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

### **SECTION 8-107. SAME; CONTENTS.**

The order shall state the condition(s) which is (are) in violation of section 8-102. The order shall also inform the person, corporation, partnership or association that:

1. He, she or they shall have 10 days from the date of mailing the order to abate the condition(s) in violation of section 8-102; provided, however, that the governing body (or its designee named in section 8-106) shall grant one or more extensions of the 10 day period if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions in violation of section 8-102; or,
2. He, she or they have 10 days from the date of mailing the order, plus any additional time granted under subsection (a), to request a hearing before the governing body or its designated representative of the matter as provided by section 8-110;
3. Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-108 and/or abatement of the condition(s) by the city as provided by section 8-109.

### **SECTION 8-108. FAILURE TO COMPLY; PENALTY.**

Should the person, corporation, partnership or association fail to comply with the order to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership, or association and upon conviction of any violation of provisions of section 8-102, 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.

### **SECTION 8-109. ABATEMENT.**

In addition to, or as an alternative to prosecution as provided in section 8-108, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been served pursuant to section 8-106 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-107, the public officer may abate the nuisance and access all of the costs associated to the parcel of land for which the nuisance exists.

In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24 month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication, or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

#### **SECTION 8-110. HEARING.**

If a hearing is requested within the 10 day period as provided in section 8-107, 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. The hearing shall be held by the governing body or its designated representative 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 or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in section 8-109.

#### **SECTION 8-111. COSTS ASSESSED.**

If the city abates or removes the nuisance pursuant to section 8-109, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following mailing of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

**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 6<sup>th</sup> Day of August, 2018.

  
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John M. Wright, Mayor

ATTEST:

  
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Karen Davis, City Clerk

