

CHAPTER VI. ENVIRONMENTAL CONTROL

ARTICLE 1. NUISANCE REGULATION

6-101. CITY HEALTH BOARD. A board of health for the city is created, consisting of the mayor and Council. The mayor shall be the president and the city clerk shall be the secretary to the board. The majority of the members of such board shall always constitute a quorum for the transaction of all business that may come before it. No compensation shall be paid to any of the members of the board of health as such, but all necessary expenses incurred by them shall be paid by the city. The board of health, under the directions of its officers, shall exercise general supervision over the health and welfare of the city, with full power to take all steps and use all means necessary to prevent and abate all public nuisances within the limits of the city.

Cross References: K.S.A. 12-1617e, abatement of nuisance conditions through city health board. K.S.A. 12-1617g, city authorized to enact ordinances regulating nuisance conditions and creating penalties for violating ordinances. K.S.A. 65-159, state and county authority to abate nuisance conditions.

6-102. ABATEMENT OF NUISANCES.

(a) The City health board, or its designated agent, shall have the power and authority to examine into all nuisance conditions which, in its opinion, may be injurious or dangerous to the health, safety, and welfare of the inhabitants within the City. The board shall have the power to have removed or abated from any lot or parcel of ground within the City any and all nuisance conditions.

(b) The board or its designated agent shall initiate action by filing with the City Clerk a statement in writing that such nuisance condition is dangerous or injurious to the health, safety, welfare of the inhabitants of the City, or to any neighborhood, family, or resident of the City.

(c) The City Clerk shall send a copy of the board's findings with notice to the owner, or agent of the owner of the premises concerned to remove and abate from the premises the thing or things described in the notice as a nuisance. The nuisance condition shall be removed within the stated time of not to exceed ten (10) days from receipt of notice, unless a hearing is requested, in which case no action to physically abate the nuisance shall be commenced by the City until the hearing is concluded.

6-103; 6-104; and 6-105 should be repealed as they are covered in the Uniform Public Offense Code Sections 9.5 & 9.6

6-106. WEEDS.

(a) WEEDS TO BE REMOVED. It shall be unlawful for any owner, agent, lessee, tenant, or other person occupying or having charge or control of any premises to permit weeds to remain upon said premises or any area between the property lines of said premises and the centerline of any adjacent street or alley, including but not specifically limited to sidewalks, streets, alleys, easements rights-of-way and all other areas, public or private except that no adjoining private landowner shall have the duty to mow all weeds or grass on public property where the bottom of the drainage ditch is eighteen inches or more below the surface of the roadway or alley. All weeds as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided.

(b) DEFINITIONS.

(1) *Calendar Year* as used herein, means that period of time beginning January 1 and ending December 31 of the same year.

(2) *Weeds* as used herein, means any of the following:

- (a) Brush and woody vines shall be classified as weeds;
- (b) Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- (c) Weeds which bear or may bear seeds of a downy or wingy nature;
- (d) Weeds which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare;
- (e) Weeds and indigenous grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 12 inches in height.

(c) PUBLIC OFFICER; NOTICE TO REMOVE.

(1) The Mayor shall designate a public officer to be charged with the administration and enforcement of this ordinance. The public officer or an authorized assistant shall notify in writing the owner, occupant or agent in charge of any premises in the city upon which weeds exist in violation of this ordinance, by certified mail or by personal service, once per calendar year.

(2) Such notice shall include the following:

- (a) That the owner, occupant or agent in charge of the property is in violation of the city weed control law.
- (b) That the owner, occupant, or agent in charge of the property is ordered to cut the weeds within ten days of the receipt of notice.
- (c) That the owner, occupant or agent in charge of the property may request a hearing before the governing body or its designated representative within five days of the receipt of notice.
- (d) That if the owner, occupant or agent in charge of the property does not cut the weeds, the city or its authorized agent will cut the weeds and assess the cost of the cutting, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property.

- (e) That the owner, occupant or agent in charge of the property will be given an opportunity to pay the assessment, and if it is not paid, it will be added to the property tax as a special assessment.
- (f) That no further notice shall be given prior to removal of weeds during the current calendar year.
- (g) That the public officer should be contacted if there are any questions regarding the order.

(3) If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection: the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this section.

(d) ABATEMENT; ASSESSMENT OF COSTS.

(1) Upon the expiration of ten days after receipt of the notice required by Section (c), and in the event that the owner, or occupant or agent in charge of the premises shall neglect or fail to comply with the requirements of Section (a), the public officer or an authorized assistant shall cause to be cut, destroyed and/or removed all such weeds and abate the nuisance created thereby at any time during the current calendar year.

(2) The public officer or an authorized assistant shall give notice to the owner, occupant or agent in charge of the premises by certified mail, return receipt requested, of the costs of abatement of the nuisance. The notice shall state that payment of the costs is due and payable within 30 days following receipt of the notice.

(3) If the costs of removal or abatement remain unpaid after 30 days following receipt of notice, a record of the costs of cutting and destruction and/or removal shall be certified to the city clerk who shall cause such costs to be assessed against the particular lot or piece of land on which such weeds were so removed, and against such lots or pieces of land in front of or abutting on such street or alley on which such weeds were so removed. The city clerk shall certify the assessment to the county clerk at the time other special assessments are certified for spreading on the tax rolls of the county.

(e) RIGHT OF ENTRY. The public officer, and the public officer's authorized assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds in a manner not inconsistent with this ordinance.

(f) UNLAWFUL INTERFERENCE. It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute an ordinance violation.

(g) NOXIOUS WEEDS

- (1) Nothing in this ordinance shall affect or impair the rights of the city under the provisions of Chapter 2, Article 13 of the Kansas Statutes Annotated, relating to the control and eradication of certain noxious weeds.
- (2) For the purpose of this section, the term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmann.seggia densiflora*), musk (nodding) thistle (*Carduus nutans L.*), and Johnson grass (*Sorghum halepense*).

(h) PUBLICATION OF NOTICE TO PROPERTY OWNERS.

- (1) The City Clerk shall, at least once each year during the normal growing season, cause to be published in the official City paper a notice in substantially the following form:

Notice to Property Owners and persons in charge of property:

All property owners and persons in charge of property or possession of any tract, lot or piece of land in the City of Cherryvale, are hereby notified that all weeds, rank grass, and obnoxious vegetation now growing on private property in the City of Cherryvale, Kansas, Montgomery County, must be cut and removed in ten (10) days.

- (i) If the owner or person in charge of any property shall fail or neglect to cut and remove any weeds, rank grass, or obnoxious vegetation growing thereon as herein directed, the City may proceed to cut such weeds, rank grass, and obnoxious vegetation and may assess the costs and charges therefore against the respective property. If the costs and charges are not paid they will be certified to the county clerk for collection with other special assessments as provided by law.

(j) ALTERNATE OR SUPPLEMENTAL METHOD OF COLLECTING COSTS AND CHARGES.

- (1) After determining the costs and charges for the City's cutting and removing weeds, rank grass, or obnoxious vegetable growth from each specific lot or piece of land, and the parkways in front thereof the City Clerk shall, within ten (10) days thereafter, mail by certified mail, return receipt requested, a statement of costs to the last known address of the occupant or persons in charge of such property. If such costs are not paid within thirty (30) days from the date of mailing such notice City may file a civil action to enforce collection thereof.
- (2) This section is supplemental to any other ordinance prescribing the methods or procedure whereby the City may collect the costs and charges for cutting and removing

weeds, rank grass, and obnoxious vegetable growth only until the full cost and any applicable interest has been paid in full. (K.S.A.12-1817f).

ARTICLE 2. SOLID WASTE REGULATION

6-201. DEFINITIONS. For the purposes of this article, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the past tense or future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

(a) "*City*" is the City of Cherryvale.

(b) "*Garbage*" is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food.

(c) "*Sanitation Officer*" is the building inspector of Cherryvale, or his authorized representative.

(d) "*Person*" is any person, firm, partnership, association, corporation, company, or organization of any kind.

(e) "*Refuse*" is all putrescible and non-putrescible solid wastes, except body wastes and other wastes ordinarily disposed of through a sewer system, and includes garbage, rubbish, ashes, street cleanings, dead animals, solid market and industrial wastes, paper, cardboard, tin cans, yard clippings, tree limbs, appliances, wood, glass, and similar materials.

(f) "*Bulky waste*" means any waste whose large size or shape, or for any other reason, precludes or complicates the handling by normal collection, processing, or disposal methods, and shall include, but not be limited to, refrigerators or other large household' appliances, hot water tanks, building stones, large pieces of concrete, construction or demolition refuse, motor vehicles, and trees or limbs exceeding four feet in length and not tied in bundles of sixty-five pounds or less.

(g) "*Hazardous waste*" shall include, but not be limited to, waste containing liquids of any kind in excess of fifty percent by weight; volatile waste, paint or paint waste, dry cleaning fluids, oil sludge, acids, caustics, poisons, drugs and like materials, pathological wastes, biological wastes, explosive material or waste, radioactive waste, pesticides, and septic tank cleanings or waste.

Cross References: K.S.A. 65-3402, definitions to the Kansas Solid and Hazardous Waste Act. K.S.A. 12-2101, et seq., refuse collection and disposal.

6-202. COLLECTION AND TRANSPORTATION OF WASTE.

(a) All refuse accumulated in the city shall be collected, conveyed, and disposed of by the city, its agents or employees. No person shall collect or convey over any of the streets or alleys of the city, or dispose of any refuse accumulated in the city, except that bulky wastes and hazardous wastes may be collected, transported, and disposed of by the producers or owners thereof, or by private contractors.

(b) All refuse accumulated in the city, including hazardous wastes and bulky wastes, shall be stored, collected, transported, and disposed of under the supervision of the sanitation officer. Said officer shall have the authority to make regulations concerning the days of collection, type and location of waste containers, and such other matters

pertaining to the storage, collection, transportation, and disposal of refuse and solid wastes as he shall find necessary, and to change and modify the same from time to time. The sanitation officer may classify certain wastes as hazardous wastes or bulky wastes which will require special handling, and which should be disposed of only in a manner acceptable to the sanitation officer.

Cross References: K.S.A. 12-2106, authorizes city to control disposal of solid wastes. K.S.A. 65-3410, city given authority to provide for the collection and disposal of solid wastes.

6-203. STORING OF WASTES; CONTAINERS.

- (a) Containers for refuse, garbage, and all other solid wastes shall be:
- (1) provided by the owner, tenant, lessee or occupant of the premises;
 - (2) of a type and nature approved by the sanitation office;
 - (3) of a size capable of being lifted by one man;
 - (4) kept in a clean and sanitary condition at all times;
 - (5) equipped with tight-fitting covers, watertight, and
 - (6) not less than twenty gallons in size, nor more than thirty-two gallons in size.
 - (7) The sanitation officer shall have the authority to refuse collection service for failure to provide and maintain proper or adequate containers.

(b) No person shall place or store wastes in any street, alley, or other public place, or upon any private property, whether owned by such person or not, within the city, except it be in proper containers approved by the sanitation officer.

(c) Residential waste containers shall be stored upon the residential premises. Commercial waste containers shall be stored upon private property, unless the owner shall have been granted permission from the sanitation officer to use public property for such purposes.

(d) The storage site shall be well drained and fully accessible to collection equipment, public health personnel, and fire inspection personnel.

(e) All waste containers shall be placed for collection at ground level on the property, and not more than twenty feet from the side of the street or alley from which collection is made; provided, however, the sanitation officer may grant approval for other collection and storage sites or areas.

Cross References: K.S.A. 65-3410, authority of city to adopt regulations and standards concerning collection and disposal of solid wastes.

6-204. UNAUTHORIZED ACCUMULATION OR DISPOSAL OF WASTES.

(a) It shall be unlawful for any person to throw, place, deposit, or allow to accumulate, leave, or cause to be placed or deposited on any parking, sidewalk, gutter, street, alley, thoroughfare, park or public grounds, any refuse or solid wastes; provided, however, that nothing shall prevent persons, with the permission of the sanitation officer, from encumbering streets or alleys with building materials for purposes of construction, remodeling, or repairing any building, structure, or thing, which materials shall be removed within a reasonable time of completion of said work.

(b) Every person, including the owner and occupant of any premises within the city limits of the City of Cherryvale, Kansas, shall maintain his premises in a clean and sanitary manner, free from all refuse and solid waste.

(c) Every owner or occupant of any premises within the City of Cherryvale, Kansas, shall dispose of all refuse in a clean and sanitary manner, placing the same in approved containers for collection and disposal by the city's agents or employees.

(d) It shall be unlawful to accumulate refuse, solid waste, or garbage in any manner not approved by the sanitation officer, and any such unauthorized accumulation is hereby declared to be a nuisance, and is prohibited.

Cross References: K.S.A. 65-3410, city standards concerning accumulation and disposal of solid wastes.

6-205. Not in Active Use.

6-206. COLLECTION; LEAVES AND GRASS. All leaves, grass clippings, and trimmings from bushes, trees, or shrubs shall be bagged, sacked, or placed in waste containers; provided, however, in the event a storm causes extensive or unusual damage to growing trees or shrubs, the city may by resolution grant a moratorium on the enforcement of this provision and may permit, for a reasonable length of time, all persons to store, collect and dispose of trees, tree limbs, shrubs, and brush in some other manner not inconsistent with the public health, safety and welfare.

Cross References: K.S.A. 65-3410, city has authority to regulate manner in which wastes are disposed of.

6-207. BURNING. The burning of any waste, rubbish or refuse of any kind shall be prohibited except in the manner following:

(a) Hours for burning: The hours for burning shall be from sunrise to sunset, unless extended by the Cherryvale Fire Department. For purposes of this section, the hours stated for completion of burning on any given date shall be that time by which all fire shall be extinguished.

(b) Prior to initiating any burning, the party initiating each burn shall notify the sanitation officer or the Cherryvale Fire Department Dispatcher of the location of the burning site, the proposed time of burn, and the nature of the materials to be burned. Initiating a burn prior to notification of the Fire Department shall be deemed a violation of this Article.

(c) Nothing in this ordinance shall be construed to allow the burning of materials otherwise prohibited either by City, County, State or Federal law. Such prohibitions shall apply but not limited to "hazardous waste" or "garbage" as defined by this Article.

(d) That upon such times and conditions as may be deemed appropriate by local, county or state officials, a total moratorium on all burning may be declared for such times and under such conditions as may be deemed necessary.

Cross References: K.S.A. 65-3410, city has authority to regulate manner in which wastes are disposed.

6-208. Not in active use.

6-209. CONTRACT FOR COLLECTION. The city, by and through its governing body, is authorized to enter into contractual commitments with any qualified person for collection of garbage and rubbish in conformity with this article. This article shall specifically enable the mayor to execute any such contract, subject to the approval of the governing body.

Cross References: K.S.A. 65-3410(c), city may contract with any person or entity to collect, transport, process, and dispose of solid wastes.

6-210. ENFORCEMENT. The sanitation officer is hereby authorized to exercise such powers as may be necessary to carry out and effectuate the purposes and provisions of this article. Included in said powers is the right to inspect all phases of waste management within the city. The sanitation officer has the right to enter upon the premises for the purpose of making examinations and inspections, provided that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession. In all instances where inspections by the sanitation officer reveal violations of this article, the sanitation officer shall issue notice to the violating person for each such violation, stating the violation or violations found, the time and date of said violations, and corrective measure to be taken, together with the time in which said correction shall be made. When corrective measures have not been taken within the time specified in the notice, the sanitation officer shall execute a complaint in the municipal court of the city of Cherryvale, charging said person or persons with a violation or violations of this article. In those cases where an extension of time will permit correction, and there is no public health hazard created by the delay, one extension of time, not to exceed the original time period, may be granted by the sanitation officer before he executes the' complaint.

Cross References: K.S.A. 12-2111, city retains authority to prohibit and abate nuisances.

6-211. PENALTY. Violation of any provision contained in this article is a class C misdemeanor. Each day such violation exists and continues shall constitute a separate offense.

6-212. SAVINGS CLAUSE. The invalidity of any section, clause, or provision of this article shall not affect the validity of any other part of this article, which can be given effect without such invalid part or parts.