

CHAPTER VIII: HEALTH AND WELFARE

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ARTICLE 2: HEALTH NUISANCES

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§ 8-201 FINDINGS, PURPOSE AND INTENT.

(a) The Council of the city finds that certain conditions as hereinafter defined cause annoyance, inconvenience or damage to the public with respect to the public's comfort, health, safety, welfare and enjoyment of property. Pursuant to the authority found in K.S.A. 12-1617e and K.S.A. 12-1617g, it is the purpose and intent of the said City Council to define and proscribe those conditions which are and property, or tends to depreciate the value of the property of another.

(b) Maintaining a nuisance is, by act or by failure to perform a legal duty, intentionally causing or permitting a nuisance to exist.

(c) Permitting a nuisance to exist is knowingly permitting lots, parcels or pieces of real property under the control of the offender, including the streets and alleys in front of and abutting such lots and pieces of land to be used or allowed to remain in such condition as to allow a nuisance condition to exist.

(d) The Inspection Officer shall be the City Superintendent or, in the event there is no City Superintendent, the Inspection Officer shall be any person or persons designated by the City Council, to inspect properties and report violations of this article as set forth herein to the City Police.
(Ord. 960, passed 12-14-2006)

§ 8-202 VIOLATIONS.

The maintaining or permitting to be or remain on any public or private property of any of the following conditions is hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

(a) Weeds and obnoxious vegetation when such growths reach 12 inches in height;

(b) Placement, storage or accumulation of garbage, rubbish, trash, refuse, junk and other materials, metals, plumbing fixtures, appliances, auto parts, junked, wrecked or inoperable vehicles, lumber or other litter and furniture, stuffed furniture, clothing or other household items which creates an unsightly appearance. This section applies without limitation to homeowners, renters, landlords, tenants, antique dealers, contractors, pawnbrokers, plumbers, precious metal dealers, secondhand goods dealers or any other business, whether or not outside storage of items and materials is authorized by the zoning ordinances of the city and whether or not the building, land or property is occupied by human beings;

(c) Any condition which provides harborage for rats, mice, snakes and other vermin;

(d) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes, which give, rise to the emission or generation of such odors and stenches;

(e) The carcasses of animals or fowl not disposed of within a reasonable time after death;

(f) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, industrial wastes or other substances which are injurious to overland flow or ground water;

(g) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;

(h) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground. Any open basement or dangerous holes or excavations, which might pose a threat to human life or might possibly cause injury;

(i) Any building where exterior surfaces, other than decay resistant surfaces, are not protected from the weather, elements and decay by paint or other protective covering or treatment; and

(j) Any vacant or unoccupied structure, which is not secured or is in a condition that, allows access by any person.

(Ord. 960, passed 12-14-2006)

§ 8-203 NUISANCE PROHIBITED.

No person, firm, corporation, partnership or other business entity shall, knowingly or unknowingly, maintain or permit a nuisance to exist.

(Ord. 960, passed 12-14-2006)

§ 8-204 INSPECTIONS AND NOTICE.

(a) The designated Inspection Officer, who shall be named and empowered by the City Council, shall have the authority and it shall be the officer's duty to inspect and examine at any and all times all buildings, lots, parcels or pieces of real property within the city for the purpose of determining the conditions which may affect the public health, safety, welfare as a nuisance. If the inspecting officer finds a violation of this article, the officer shall cause the City Clerk to send a notice of violation to the person owning the premises, or inhabiting the premises, or causing the violation. Said violation notice may be served:

(1) By delivery of the same to the owner and/or inhabitant by a law enforcement officer by the same methods and in the same manner as summons are served under K.S.A. 60-303(d), and amendments thereto;

(2) By the City Clerk using return receipt delivery by the same methods and in the same manner as summons are served under K.S.A. 60-303(c), and amendments thereto; or

(3) In the event service cannot be effected by personal service or return receipt delivery, by publication once in the official city newspaper.

(b) The violation notice shall contain:

(1) An order to abate the nuisance within ten calendar days (unless notice is by publication, in which event the period shall be 20 days) of the date of the violation notice or date of publication, as the case may be, unless a hearing before the City Council is requested, within ten calendar days of the date of the violation notice or within 20 calendar days of the date of publication, as the case may be. This request for hearing must be filed in writing in the office of the City Clerk. A hearing shall be held on such request at the convenience of the City Council and in no event, more than 30 days following the receipt of the request for hearing;

(2) The location of the nuisance, if such nuisance is stationary;

(3) A description of what constitutes the nuisance; and

(4) A statement of acts necessary to abate the nuisance.

(Ord. 960, passed 12-14-2006)

§ 8-205 FINAL ACTIONS.

(a) If no hearing as aforesaid is requested or if the City Council, after a hearing held as requested, finds that a violation has occurred, the City Council shall order that the violator have up to ten days to

abate the nuisance and if not abated in that period of time, the city may enter the property and abate the nuisance. The city shall give notice to the owner or agent of the total cost of such abatement or removal incurred by the city. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice.

(b) Such notice of costs shall be given:

(1) By delivery of the same to the owner or agent by a law enforcement officer by the same methods and in the same manner as summons are served under K.S.A. 60-303(d), and amendments thereto;

(2) By the City Clerk using return receipt delivery by the same methods and in the same manner as summons are served under K.S.A. 60-303(c) and amendments thereto; or

(3) In the event service cannot be effected by personal service or return receipt delivery, by publication once in the official city newspaper.

(c) The city also may recover the cost of providing notice, including any postage, required by this section. If the cost of such removal or abatement and notice is not paid within the 30-day period, the cost shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed and charged against the lot or parcel of ground on which the nuisance was located. If the cost is to be assessed, the City Clerk, at the time of certifying other city taxes to the County Clerk, shall certify such costs, and the County Clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the County Treasurer and paid to the city as other city taxes are collected and paid.

(d) 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 any applicable interest have been paid in full.

(Ord. 960, passed 12-14-2006)

ARTICLE 2A: ENVIRONMENTAL CODE

Section

8-2A01	Title
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8-2A14	Costs assessed
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§ 8-2A01 TITLE.

This article shall be known as the “Environmental Code”.

§ 8-2A02 LEGISLATIVE FINDING OF FACT.

The governing body has found that there exists within the city unsightly and hazardous conditions due to: dilapidation, deterioration or disrepair of walls, siding, fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment, supplies, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on the adjoining properties, the neighborhood and the city, or are injurious to the health and safety of the residents of the city. The governing body desires to promote the public health,

safety and welfare by the repair, removal, abatement and regulation of such conditions in the manner hereafter provided.

§ 8-2A03 PURPOSE.

The purpose of this article is to protect, preserve, upgrade and regulate the environmental quality of industrial, commercial and residential neighborhoods in this city, by outlawing conditions which are injurious to the health, safety, welfare or aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof.

§ 8-2A04 RULES OF CONSTRUCTION.

For the purpose of this article, the following rules of construction shall apply.

(a) *Any part thereof.* Whenever the words premises, structure, building or yard are used, they shall be construed as though they were followed by the words “or any part thereof”.

(b) *Gender.* Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.

(c) *Number.* Words of number shall be construed to mean singular or plural, as may be applicable.

(d) *Tense.* Words of tense shall be construed to mean present or future, as may be applicable.

(e) *Shall.* The word shall is mandatory and not permissive.

§ 8-2A05 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED MOTOR VEHICLE. Any motor vehicle that is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of the ordinance; or incapable of moving under its own power; or in a junked or wrecked condition.

ACCESSORY STRUCTURE. A secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns or outbuildings.

COMMERCIAL or **INDUSTRIAL.** Used or intended to be used primarily for other than residential purposes.

DILAPIDATION, DETERIORATION or **DISREPAIR.** 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.

EXTERIOR. Those parts of a structure that are exposed to the weather or subject to contact with the elements; including, but not limited to, sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.

GARBAGE. 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.

PERSON. 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.

PREMISES. Any lot, plot or parcel of land including the structures thereon. **PREMISES** shall also mean any lot, plot or parcel of land without any structures thereon.

REFUSE. Garbage and trash.

RESIDENTIAL. Used or intended to be used primarily for human habitation.

STRUCTURE. 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.

TRASH. 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, clinkers, or street rubbish and sweepings.

WEATHERED. Deterioration caused by exposure to the elements.

YARD. The area of the premises not occupied by any structure.

§ 8-2A06 PUBLIC OFFICER.

The City Council shall designate a public officer to be charged with the administration and enforcement of this article.

§ 8-2A07 ENFORCEMENT STANDARDS.

No person shall be found in violation of this article unless the public officer, after a reasonable inquiry and inspection of the premises, believes that conditions exist of a quality and appearance not

commensurate with the character of the neighborhood. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood. Such evidence shall include conditions declared unlawful under § 8-2A08, but shall not include conditions that are not readily visible from any public place or from any surrounding private property.

§ 8-2A08 UNLAWFUL ACTS.

(a) It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions that are injurious to the health, safety or general welfare of the residents of the community or conditions that are detrimental to adjoining property, the neighborhood or the city.

(b) For the purpose of fair and efficient enforcement and administration, such unlawful conditions shall be classified as follows:

(1) Exterior conditions (yard) shall include, but not be limited to, the scattering over or the parking, leaving, depositing or accumulation on the yard of any of the following:

(A) Lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk or refuse;

(B) Abandoned motor vehicles;

(C) Furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers or other such items of personal property; or

(D) Nauseous substances, carcasses of dead animals or places where animals are kept in an offensive manner.

(2) Exterior conditions (structure) shall include, but not be limited to, deteriorated, dilapidated or unsightly:

(A) Exteriors of any structure;

(B) Exteriors of any accessory structure; or

(C) Fences, walls or retaining walls.

§ 8-2A09 ORDER OF VIOLATION.

(a) 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 § 8-2A08 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.

(b) 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. The order shall state:

(1) The condition that has caused the violation of this article; and

(2) That the person in violation shall have:

(A) Ten days from the receipt of the order to alleviate the exterior conditions (yard) violation; and/or

(B) Forty-five days from the receipt of the order to alleviate the exterior conditions (structure) violation; or

(C) Ten days from the receipt of the order, plus any additional time granted under subsection (c) of this section, to request, as provided in § 8-2A12 a hearing before the governing body or its designated representative on the matter.

(c) Provided, however, that the governing body (or its designee named herein) shall grant one or more extensions to the time periods stated in subsections (b)(2)(A) and (b)(2)(B) above, if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions that have caused the violation of this article; and

(d) That failure to alleviate the condition or to request a hearing may result in prosecution under § 8-2A10 and/or abatement of the condition by the city according to § 8-2A11 with the costs assessed against the property under § 8-2A14.

(K.S.A. 12-1617e)

§ 8-2A10 PENALTY.

The public officer may file a complaint in the Municipal Court against any person found to be in violation of § 8-2A08, provided however, that such person shall first have been sent an order of violation as provided in § 8-2A09 and that the person has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in § 8-2A09. Upon such complaint in the Municipal Court, any person found to be in violation of § 8-2A08 shall upon conviction be punished by a fine of not less than \$50 nor more than \$100, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment, for each offense. For the purposes of this article, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

§ 8-2A11 ABATEMENT.

(a) In addition to, or as an alternative to prosecution as provided in § 8-2A10, 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 § 8-2A09 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in § 8-2A09, 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 ten days after passage of the resolution. 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 § 8-2A14.

(b) 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) Certified mail, return receipt requested; or

(3) 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.

(c) 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.

§ 8-2A12 HEARING.

If a hearing is requested within the ten-day period as provided in § 8-2A09, 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 therefor, 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 § 8-2A11.

§ 8-2A13 APPEALS.

Any person affected by any determination of the governing body under §§ 8-2A11 and 8-2A12 may appeal such determination in the manner provided by K.S.A. 60-2101.

§ 8-2A14 COSTS ASSESSED.

If the city abates or removes the nuisance pursuant to § 8-2A11, 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 receipt 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.

§ 8-2A15 CONSTRUCTION.

Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its laws nor to prevent or punish violations thereof. The powers conferred by this article shall be in addition to and supplemental to the powers conferred by the State Constitution, by any other law or by ordinance.

ARTICLE 3: JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

Section

- 8-301 Unlawful placement, storage or deposit
- 8-302 Definitions
- 8-303 Presumption of inoperability or abandonment
- 8-304 Declaration of nuisance
- 8-305 Penalty

§ 8-301 UNLAWFUL PLACEMENT, STORAGE OR DEPOSIT.

It shall be unlawful for any person, or such person's agent, either as owner, lessee, tenant or occupant of any real property within the city to park, store or deposit or permit to be parked, stored or deposited thereon for longer than 30 days an inoperable and/or abandoned vehicle or piece of equipment unless the inoperable vehicle and/or equipment is enclosed in a garage or other building, or is completely screened from view by an appropriate fence of not less than six feet in height, which fence shall be neat, of solid neutral color, well maintained, and compatible to the area in which it is located and is constructed in compliance with the zoning ordinances for the city. Unless said vehicle or equipment is enclosed in a garage or other building, the grass and weeds surrounding said vehicle or equipment shall be mowed to a height of not more than six inches. Nothing contained in this provision shall permit a use of premises inconsistent with the zoning ordinance of the city; provided, however, that, nothing in this section shall be applied or construed to authorize the maintenance of a public nuisance.
(Ord. 978, passed 8-13-2009)

§ 8-302 DEFINITIONS.

For the purpose of this article, the following definitions apply unless the context clearly indicates or requires a different meaning.

EQUIPMENT. Any item of tangible personal property intended to be operated in conjunction with a motorized vehicle, including, but not being limited to, agricultural equipment, construction equipment, dirt-moving equipment and trailers.

INOPERABLE. A condition of being junked, wrecked, wholly or partially dismantled, discarded or unable to perform the functions or purposes for which it was originally constructed, or for which it was originally constructed, or for which it may have been subsequently modified.

VEHICLE. Any automobile, truck, tractor, aircraft or motorcycle, or motorized wheeled vehicle which as originally built, contained an engine, or was designed to contain an engine, regardless of whether it contains an engine at any other time.
(Ord. 978, passed 8-13-2009)

§ 8-303 PRESUMPTION OF INOPERABILITY OR ABANDONMENT.

Any one of the following conditions shall raise a presumption that such vehicle and/or equipment is inoperable and/or abandoned:

- (a) For all vehicles and equipment originally designed for operation on streets and highways, the absence of an effective and current registration plate upon such vehicle or piece of equipment;

(b) Placement of the vehicle and/or equipment or parts thereof, upon jacks, blocks, chains or other supports;

(c) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways; and

(d) The inability of the equipment to immediately perform the functions for which it was designed and for the capability of the equipment to be moved from the premises within five minutes' time at any given time by the same means in which the equipment was intended to be operated.

(Ord. 978, passed 8-13-2009)

§ 8-304 DECLARATION OF NUISANCE.

Any inoperable vehicle or piece of equipment parked, stored or deposited in a manner other than that permitted under this article is hereby declared a nuisance and may be abated under the same authority and procedure for the abatement of nuisances as set forth by state statutes.

(Ord. 978, passed 8-13-2009)

§ 8-305 PENALTY.

(a) A law enforcement officer of the city shall initially determine whether a vehicle or item of equipment is parked, stored or deposited in violation of this article, and upon making such determination, the law officer may issue a citation for such violation to the owner of said vehicle or equipment, or to such other person(s) as are responsible for parking, storing or depositing the same, directing them to appear in Municipal Court to answer for such violation. The guilt or innocence of the accused shall be determined in the same manner and under the same procedure as any other alleged violation of the ordinances of the city.

(b) (1) Any person(s) found guilty of violating the provisions of this article shall be guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500.

(2) Upon a conviction for violation of the article, the Court shall order the defendant(s) to either remove said vehicle or equipment from the city, or to cause the same to be stored in compliance with the requirements of this article, within a specified time from the date of conviction, but not to exceed ten days unless the Court finds there are extraordinary circumstances requiring a longer period. Failure of the defendant(s) to timely comply with such order shall constitute a new and separate violation of this ordinance for every day following the date set for such removal or proper storage, subjecting defendant(s) to separate fines for each such violation. Upon such conviction and failure to comply with such order, the Court may further enter an order permitting the city to remove said vehicle or equipment from the city. The defendant(s) shall be responsible for all of the expenses of such removal by the city, which may be collected by the city as any other debt.

(Ord. 978, passed 8-13-2009)

ARTICLE 4: WEEDS

Section

- 8-401 Weeds to be removed
- 8-402 Definitions
- 8-403 Public officer; notice to remove
- 8-404 Abatement; assessment of costs required
- 8-405 Right of entry
- 8-406 Unlawful interference
- 8-407 Noxious weeds

(1) Brush and woody vines shall be classified as weeds;

(2) Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;

(3) Weeds shall bear or may bear seeds of a down or winged nature;

(4) Weeds which are located in an area which harbors rats, insects, reptiles or any other creature which either may or does constitute a menace to health, public safety or welfare; and

(5) Weeds and/or grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and/or grasses shall be presumed to be blighting if they exceed 20 inches in height. (Ord. 956, passed 6-8-2006)

§ 8-401 WEEDS TO BE REMOVED.

It shall be unlawful for any owner, agent, lessee, tenant or other persons occupying or having charge or control of any premises to permit weeds or grass in excess of 12 inches in height 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. The vegetation hereinafter described is hereby declared a nuisance and is subject to abatement as hereinafter provided. (Ord. 956, passed 6-8-2006)

§ 8-403 PUBLIC OFFICER; NOTICE TO REMOVE.

(a) (1) The City Clerk shall be the public officer charged with the administration and enforcement of this article.

(2) The City Clerk shall notify in writing, by restricted mail or personal service, the owner, occupant or agent in charge of any premises in the city upon which vegetation exists in violation of this article, once per calendar year.

(3) If the owner is unknown, a non-resident of the city and there is no resident agent, notice may be published once in the official city newspaper.

§ 8-402 DEFINITIONS.

For the purpose of this article, the following definitions apply unless the context clearly indicates or requires a different meaning.

CALENDAR YEAR. The period of time beginning January 1 and ending December 31, of the same year.

WEEDS AND PROHIBITED VEGETATION. Any of the following:

(b) Such notice shall include the following:

(1) The owner, occupant or agent in charge of the property is in violation of the city's weed and vegetation control law;

(2) The owner, occupant or agent in charge of the property is ordered to cut such vegetation within five days of the receipt of notice, or within ten days if notice is given by publication;

(3) The owner, occupant or agent in charge of the property may request a hearing before the governing body or its designated representatives within five days of the receipt of notice;

(4) If the owner, occupant or agent in charge of the property does not cut such vegetation within five days following receipt of notice or within ten days of publication, the city or its authorized agent will cut the vegetation and assess the cost of the cutting, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property;

(5) 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;

(6) No further notice shall be given prior to removal of vegetation during the current calendar year; and

(7) The public officer shall be contacted if there are any questions regarding the order.

(c) If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this division (c), the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of vegetation on such property unless the new record owner of title to such property is provided notice as required by this section. (Ord. 956, passed 6-8-2006)

§ 8-404 ABATEMENT; ASSESSMENT OF COSTS REQUIRED.

(a) Upon the expiration of five days after the receipt of the notice or ten days following publication, if publication notice is given, and in the event that the owner, occupant or agent in charge of the premises shall neglect or fail to comply with the requirements of § 8-401, the City Clerk or an authorized assistant shall cause to be cut, destroyed and/or removed all such vegetation, and abate the nuisance created thereby at any time or times during the current calendar year.

(b) The public officer or an authorized assistant shall give notice to the owner, occupant or agent in charge of the premises by restricted mail 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 of payment due.

(c) 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 vegetation was 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, as provided in K.S.A. 12-1617f and amendments thereto. 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.

(d) In addition to, or as an alternative to, assessment of such costs of removal or abatement against the property, the city may collect such costs and interest thereon from the owner as provided in K.S.A. 12-1,115 and amendments thereto.

(Ord. 956, passed 6-8-2006)

§ 8-405 RIGHT OF ENTRY.

The City Clerk and the City Clerk'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 vegetation in a manner not inconsistent with this article.

(Ord. 956, passed 6-8-2006)

§ 8-406 UNLAWFUL INTERFERENCE.

It shall be unlawful for any person to interfere with or attempt to prevent the City Clerk or the City Clerk'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.

(Ord. 956, passed 6-8-2006)

§ 8-407 NOXIOUS WEEDS.

(a) Nothing in this article shall affect or impair the rights of the city under the provision of K.S.A. Ch. 2, Art. 13, relating to the control and eradication of certain noxious weeds.

(b) 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 (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L), and Johnson grass (*Sorghum halepense*).

(Ord. 956, passed 6-8-2006)

ARTICLE 5: MINIMUM HOUSING CODE

Section

8-501	Title
8-502	General
8-503	Declaration of policy
8-504	Definitions
8-505	Duty of occupant or owner of occupied or unoccupied building and its premises or vacant premises
8-506	Regulations for the use and occupancy of dwellings
8-507	Maintenance and repair; dwellings
8-508	Designation of unfit dwellings
8-509	Designation of blighted premises (residential and nonresidential)
8-510	Designation of blighted buildings and premises (nonresidential)
8-511	Inspection of buildings, structures and premises
8-512	Notice of violations; procedures
8-513	Public officer; authority
8-514	Governing body; authority
8-515	Order to correct and/or repair, remove or demolish
8-516	Demolition by public officer; procedure and costs
8-517	Conflict of laws; effect or partial invalidity
8-518	Governing body; appeals
8-519	Right of petition

§ 8-502 GENERAL.

Buildings used in whole or in part as a home or residence of a single family or person and every building used in whole or in part as a home or residence of two or more persons or families living in separate apartments and all premises, either residential or nonresidential, shall conform to the requirements of this code.

§ 8-503 DECLARATION OF POLICY.

The governing body declares the purpose of this code is to protect, preserve and promote the physical and mental health of the people; investigate and control communicable diseases; regulate privately- and publicly-owned structures or dwellings and all premises for the purpose of sanitation, public health and general appearance; protect the safety of the people; and promote the general welfare by legislation that shall be applicable to all dwellings, structures and premises now in existence or hereafter constructed or developed and which legislation:

(a) Establishes minimum standards for basic equipment and facilities for light, ventilation and heating, for safety from fire, for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance;

(b) Establishes standards concerning unsightly and blighted buildings and premises, both residential and nonresidential structures;

(c) Determines the responsibilities of owners, operators and occupants; and

§ 8-501 TITLE.

This article shall be known as the “Minimum Standard for Housing and Premises Code”, and will be referred to herein as “this code”.

(d) Provides for the administration and enforcement thereof.

§ 8-504 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning. The following definitions shall apply to the enforcement of this code.

BASEMENT. A portion of a building located partly underground, but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground.

CELLAR. A portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

DWELLING. Any building that is wholly or partly used or intended to be used for living or sleeping by human occupants; provided, that temporary housing hereinafter defined shall not be regarded as a **DWELLING**.

DWELLING UNIT. Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities that are used, or intended to be used for living, sleeping, cooking and eating.

HABITABLE DWELLING. Any structure or part thereof that shall be used as a home or place of abode by one or more persons.

HABITABLE ROOM. A room designed to be used for living, sleeping, eating or cooking purposes, excluding bathrooms, toilet rooms, closets, halls and storage places, or other similar places, not used by persons for extended periods.

INFESTATION. The presence, within or around a dwelling, of insects, rodents or other pests.

MULTIPLE DWELLING. Any dwelling containing more than two dwelling units.

OCCUPANT. Any person, over one year of age, living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

OPERATOR. Any person who has charge, care, owns or has control of a premises or of a building or structure or part thereof, in which dwelling units or rooming units are let.

OWNER. Any person, firm or corporation, who jointly or severally along with others, shall be in actual possession of, or have charge, care and control of any structure or dwelling unit or premises within the city as owner, employee or agent of the owner, or as trustee or guardian of the estate or person of the title holder, and such person shall be deemed and taken to be the owner or owner of such property within the true intent and meaning of this code and shall be bound to comply with the provisions of this article to the same extent as the record owner and notice to any such person shall be deemed and taken to be a good and sufficient notice as if such person or persons were actually the record owner or owner of such property.

PERSON. Includes any individual, firm, corporation, association or partnership.

PLUMBING. Includes all of the following supplied facilities and equipment: gas or fuel pipes; gas or fuel burning equipment; water pipes; garbage disposal units; waste pipes; water closets; sinks; installed dishwashers; lavatories; bathtubs; shower baths; installed clothes-washing machines; catch basins; drains; vents; and any other similar supplied fixtures, together with all connections to water, sewer, gas or fuel lines.

PREMISES. Any lot or land area, either residential or nonresidential, not covered by a structure and which is subject to a city tax in part or in whole.

PUBLIC OFFICER. The person designated by the City Council.

ROOMING HOUSE. Any dwelling, or that part of a dwelling containing one or more rooming units in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father, or sister or brother of the owner or operator.

ROOMING UNIT. Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

REFUSE. For the purpose of this article, **REFUSE** shall include garbage and trash.

(1) **GARBAGE.** Any accumulation of animal, fruit or vegetable waste matter that attends the preparation of, use of, cooking of, delivering of, or storage of meats, fish, fowl, fruit or vegetable.

(2) **TRASH (COMBUSTIBLE).** For the purpose of this article, **COMBUSTIBLE TRASH** shall mean waste consisting of papers, cartons, boxes, barrels, wood and excelsior, tree branches, yard trimmings, wood furniture, bedding and leaves, or any other combustible materials.

(3) **TRASH (NON-COMBUSTIBLE).** For the purpose of this article, **NON-COMBUSTIBLE TRASH** shall mean waste consisting of metals, tin cans, glass, crockery, other mineral refuse and ashes and street rubbish and sweepings, dirt, sand, concrete scrap or any other non-combustible material.

STRUCTURE. Anything constructed or erected on the ground or attached to something having a location on the ground.

SUPPLIED. Paid for, furnished or provided by or under the control of, the owner or operator.

TEMPORARY HOUSING. Any tent, trailer or other structure used for human shelter that is designed to be transportable and that is not attached to the ground, house or building or another structure, or to any utilities system on the same premises for more

than 30 consecutive days, except when located in a mobile home court duly licensed under laws of the city.

WORDS, MEANINGS. Whenever the words “dwelling”, “dwelling unit”, “rooming house”, “rooming unit”, “premises” are used in this article, they shall be construed as though they were followed by the words “or any part thereof”.

§ 8-505 DUTY OF OCCUPANT OR OWNER OF OCCUPIED OR UNOCCUPIED BUILDING AND ITS PREMISES OR VACANT PREMISES.

(a) It shall be the duty of the owner of every occupied or unoccupied dwelling, building and premises, or vacant premises, including all yards, lawns and courts to keep such property clean and free from any accumulation of filth, rubbish, garbage or any similar matter as covered by §§ 8-508 and 8-509.

(b) It shall be the duty of each occupant of a dwelling unit to keep in clean condition the portion of the property that he or she occupies and of which he or she has exclusive control, to comply with the rules and regulations, and to place all garbage and refuse in proper containers. Where care of the premises is not the responsibility of the occupant, then the owner is responsible for violations of this code applicable to the premises.

(c) If receptacles are not provided by the owner, then the occupant shall provide receptacles as may be necessary to contain all garbage and trash.

(d) Every occupant of a dwelling containing a single-dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his or her dwelling unit is the unit primarily infested.

(e) Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure

of the owner to maintain a dwelling in a vermin-proof or reasonable insect-proof condition, extermination shall be the responsibility of the owner and operator.

(f) Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

§ 8-506 REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS.

(a) No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit for the purpose of living, sleeping, cooking or eating therein, that does not comply with the following requirements.

(b) The following requirements are hereby declared essential to the health and safety of the occupants of such dwelling or dwelling unit.

(1) *Attached garages or non-dwelling areas.* All non-dwelling occupancies shall be separated from the dwelling unit by a fire-resistant wall and if the dwelling and garage are covered by a common or connecting roof, then the ceiling also must have a fire resistance rating of not less than one hour as defined in the Building Code.

(2) *Basement or cellar.* The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation.

(3) *Basement dwelling units.* The use of basements or cellars for dwelling units is prohibited unless they comply with division (b)(18) below governing ventilation, provided however, if occupied at the time of the passage of this code and if it complies with all other provisions of this code, the public officer may approve less than the required windows, if in his or her opinion, the window area is not detrimental to the occupants.

(4) *Bathing facilities.* Every dwelling unit shall contain within a room which affords privacy to a person in the room, a bathtub or shower in good working condition and properly connected to an approved water and sewer system.

(5) *Boarding and rooming houses.* No room shall be used for sleeping purposes unless the ceiling height is at least seven feet and there are at least 400 cubic feet of air space for each occupant over six years of age. For sleeping rooms with sloping ceilings, the ceiling height shall be at least seven feet over at least 50% of the floor area.

(A) Bathing facilities shall be provided in the form of a tub or shower for each eight occupants. Separate facilities shall be provided for each sex and plainly marked.

(B) A flush water closet shall be provided for each six occupants and shall be separated with the separate access from bathing facilities if more than four occupants are served by each. Separate facilities shall be provided for each sex and shall be plainly marked.

(6) *Drainage.* All courts, yards or other areas on the premises of any dwelling shall be so graded and drained that there is no pooling of the water thereon. Properly constructed wading and swimming pools and fish ponds are excepted from this section.

(7) *Entrances.*

(A) There shall be for each dwelling unit a normally used separate access either to a hallway, stairway or street that is safe and in good repair.

(B) A secondary exit to the ground shall be available in case of fire through windows, porch roofs, ladders or any combination that is free of hazard or egress.

(8) *Floor area.* Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area, inside measurements. No floor space shall be included in determining habitable room area over which the ceiling is less than seven feet above the floor for the purpose of this division (b)(8).

(9) *Garbage and trash receptacles.* Every dwelling and every dwelling unit shall be provided with such receptacles, not exceeding 32-gallon capacity, as may be necessary to contain all garbage and trash and such receptacles shall at all times be maintained in good repair.

(10) *Heating.* Every dwelling and every dwelling unit shall be so constructed, insulated and maintained and be provided by owner or occupant with heating units so that it is capable of reaching an air temperature of 70°F under ordinary winter conditions. The chimney of the dwelling or dwelling unit shall be maintained in good order and the owner of the approved heating equipment shall maintain it in good order and repair.

(11) *Kitchen sink.* In every dwelling unit containing two or more rooms, there shall be at least one kitchen sink with public water under pressure and connected to the public sewer, or if that sewer system is not available, to a sewage disposal system approved by the City Health Department.

(12) *Lavatory facilities.* Every dwelling unit shall contain within its walls a lavatory basin in good working condition and properly connected to an approved water and sewer system and located in the same room as the required flush water closet or as near to the room as practicable.

(13) *Lighting.* Every habitable room shall have a ceiling electric outlet and a duplex outlet in wall or floor, or at least two wall or floor outlets.

(14) *Lighting of toilets and bathrooms.* Every toilet and every bathroom in every dwelling shall have at least one electric light in either the ceiling or on the wall.

(15) *Plumbing.* All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good working order.

(16) *Privies.* All pit privies, privy vaults, “dry hopper” sewer-connected privies and frost-proof closets are hereby declared to be a public nuisance.

(17) *Toilet facilities.* There shall be at least one flush water closet in good working condition for each dwelling unit, which flush water closet shall be located within the dwelling and in a room that affords privacy.

(18) *Ventilation.* Every habitable room in a dwelling or dwelling unit shall contain a window or windows openable directly to the outside air and the total area of such window or windows shall be not less than 5% of the floor area of such room. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall be capable of providing not less than four air changes per hour, except that in toilet compartments such system shall provide a complete air change every five minutes and be automatically put in operation when the toilet compartment light is in the “on” position.

(19) *Water heating facilities.* Every dwelling shall have supplied water heating facilities that are installed in an approved manner and are maintained and operated in a safe and good working condition and are properly connected with the hot water lines to the kitchen sink, lavatory and bathtub or shower.

(20) *Windows and doors.* Every window and exterior door shall be reasonably weather-tight, lockable and rodent-proof and shall be kept in good working condition and good repair.

**§ 8-507 MAINTENANCE AND REPAIR;
DWELLINGS.**

Every dwelling and every part thereof shall be maintained in good repair by the owner or agent and be fit for human habitation. The roof shall be maintained so as not to leak and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, porches, windows, skylights, chimneys, toilets, sinks, walls and ceilings shall be kept in good repair and usable condition.

**§ 8-508 DESIGNATION OF UNFIT
DWELLINGS.**

The designation of dwellings or dwelling units as unfit for human habitation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the following requirements.

(a) *Existence of conditions.* The public officer may determine, or five citizens may petition in writing, that any dwelling unit is unfit for human use or habitation if he, she or they find that conditions exist in such structure that are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the neighborhood, or which shall have a blighting influence on properties in the area.

(b) *Conditions generally.* Such conditions may include the following without limitation:

(1) Defects therein increasing the hazards of fire, accident or other calamities.

(2) Lack of:

(A) Adequate ventilation;

(B) Light;

(C) Cleanliness; and

(D) Sanitary facilities.

(3) Dilapidation;

(4) Disrepair;

(5) Structural defects;

(6) Overcrowding;

(7) Inadequate ingress and egress;

(8) Unsightly appearance that constitute a blight to the adjoining property, the neighborhood or the city; and

(9) Air pollution.

(c) *Placarding; order to vacate.* Any dwelling or dwelling unit condemned as unfit for human habitation, and so designated and placarded by the public officer, shall be vacated within a reasonable time as so ordered.

(d) *Notice of violation.* Procedures as outlined in § 8-512 are applicable hereto.

(e) *Compliance required before re-occupancy.* No dwelling or dwelling unit that has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by the public officer.

(1) The public officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.

(2) It shall be unlawful for anyone to let, lease, occupy or permit the occupancy, whether for a consideration or not, of any dwelling so posted and any violation of this provision shall constitute a public offense within the meaning of this code.

(3) It shall be unlawful for any person to deface or remove the placard from any dwelling or dwelling unit that has been condemned as unfit for

human habitation and placarded as such, except the public officer as herein provided, and any violation of this provision shall constitute a public offense within the meaning of this code.

§ 8-509 DESIGNATION OF BLIGHTED PREMISES (RESIDENTIAL AND NONRESIDENTIAL).

The designation of unsightly and blighted premises and elimination thereof shall be carried out in compliance with the following requirements.

(a) *Public officer determinations.* The public officer may determine, or five citizens may petition in writing, that if the appearance of a premises is not commensurate with the character of the properties in the neighborhood or otherwise constitutes a blight to the adjoining property or the neighborhood or the city for such reasons as, but not limited to:

- (1) Dead trees or other unsightly natural growth;
- (2) Unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation, inadequate drainage; and
- (3) Violation of any other law or regulations relating to the use of land and the use and occupancy of the buildings and improvements.

(b) *Notice of violation.* Procedures as outlined in § 8-512 are applicable hereto.

§ 8-510 DESIGNATION OF BLIGHTED BUILDINGS AND PREMISES (NONRESIDENTIAL).

(a) *Certain blighted conditions.* Certain blighted conditions covered in §§ 8-508 and 8-509 concerning buildings and premises that are on the tax roll of the city are applicable to all nonresidential buildings and premises.

(b) *Notice of violation.* Procedures of notification shall follow those prescribed in § 8-512.

§ 8-511 INSPECTION OF BUILDINGS, STRUCTURES AND PREMISES.

(a) For the purpose of determining compliance with the provisions of this code, the public officer or his or her authorized representative is hereby authorized to make inspections to determine the condition, use and occupancy of dwellings, dwelling units, rooming units and the premises upon which the same are located. This requirement is applicable to existing dwellings or buildings.

(b) The public officer is not limited by the conditions in division (a) above where new construction or vacant premises are involved and may make such inspections at any appropriate time.

(c) The owner, operator and occupant of every dwelling, dwelling unit and rooming unit shall give the public officer, or his or her authorized representative, during reasonable hours, free access to such dwelling, dwelling unit and rooming unit, and its premises, for the purpose of such inspection, examination and survey after identification by proper credentials.

(d) Every occupant of a dwelling shall give the owner thereof, or his or her authorized agent or employee, access to any part of such dwelling, or its premises, at all reasonable times, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this code or with any rule or regulation adopted and promulgated, or any order issued pursuant to the provisions of this code.

§ 8-512 NOTICE OF VIOLATIONS; PROCEDURES.

(a) *Informal discussion.* Whenever the public officer or his or her authorized representative determines that there has been a violation of any provision of this code, the public officer will arrange

with the alleged violator for an informal discussion of violations, and whether repair and correction is justified.

(b) *Formal hearing.* If a satisfactory solution to the violations either by correction, demolition or removal is not forthcoming, then a legal notice of a formal hearing will be issued according to the following procedures:

- (1) Shall be in writing;
- (2) Shall list the violations alleged to exist or to have been committed;
- (3) Shall provide a reasonable time, but not less than 30 days in any event for the correction of the violations particularized;
- (4) Shall be addressed to and served upon the owner of the property, the operator of the dwelling and the occupant of the dwelling unit or the rooming unit concerned, if the occupant is or may be responsible for violation;
- (5) If one or more persons whom the notice is addressed cannot be found or served after diligent effort to do so, service may be made upon such person or persons by posting a notice in a conspicuous place in or about the dwelling affected by the notice, in which event the public officer or his or her authorized representative shall include in the record a statement as to why such posting was necessary; and
- (6) Delivery shall be by certified mail, return receipt requested, or by personal service. If service is made by certified mail, the public officer or his or her authorized representative shall include in the record a verified statement giving details regarding the mailing.

§ 8-513 PUBLIC OFFICER; AUTHORITY.

For the purpose of protecting the city against unsightly or blighted premises, also the health,

welfare and safety of the inhabitants of dwellings or dwelling units, the public officer referred heretofore is hereby authorized, with the consent and prior knowledge of the governing body, to enforce provisions of this code and of other laws that regulate or set standards affecting buildings and premises.

§ 8-514 GOVERNING BODY; AUTHORITY.

The governing body is hereby authorized:

- (a) To informally review all alleged violations as provided in § 8-512(a) prior to notification prescribed in § 8-512(b);
- (b) To take action as prescribed in § 8-512(b);
- (c) To hear appeals if there is opposition to any order, requirement, decision or determination by the public officer in enforcement of this code as outlined in § 8-518; and
- (d) Discretionary authority may be exercised in specific cases where variance from the terms of the code as:
 - (1) Will not adversely affect the public health, safety or welfare of inhabitants of the city;
 - (2) Is in harmony with the spirit of this code; and
 - (3) Where literal enforcement of the code will result in unnecessary hardship.

§ 8-515 ORDER TO CORRECT AND/OR REPAIR, REMOVE OR DEMOLISH.

At the time of the placarding and order to vacate specified by § 8-508(c) hereof, the public officer shall also issue and cause to be served upon the owner a notice advising of the option of removal or demolition in lieu of correction and/or repair following the procedures as outlined in § 8-512.

§ 8-516 DEMOLITION BY PUBLIC OFFICER; PROCEDURE AND COSTS.

(a) Failure to comply with the order under § 8-515 for the alteration or improvement of such structure, the public officer, with the consent and prior knowledge of the governing body, may cause such condemned structure to be removed or demolished and the premises improved to eliminate the conditions outlined in § 8-509.

(b) The cost of demolition by a public officer shall be a lien upon the property upon which the cost was incurred and such lien, including as a part thereof an allowance of his or her costs and necessary attorney's fees, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property or shall be assessed as a special assessment upon the lot or parcel of land on which the structure was located and the City Clerk at the time of certifying other city taxes, shall certify the unpaid portion of the aforesaid costs and the County Clerk shall extend the same on the tax rolls against the lot or parcel of land.

(c) If the structure is removed or demolished by the public officer, he or she shall offer for bids and sell the structure or the materials of such structure. The proceeds of such sale shall be credited against the cost of the removal or demolition and, if there is any balance remaining, it shall be paid to the parties entitled thereto after deduction of costs or judicial proceedings, if any, including the necessary attorney's fees incurred therein, as determined by the court, if involved.

§ 8-517 CONFLICT OF LAWS; EFFECT OR PARTIAL INVALIDITY.

(a) Conflicts between the provisions of this code and with a provision of any zoning, building, fire, safety or health ordinance or code of the city, existing on the effective date of this article, the provision shall prevail that establishes the higher standard.

(b) Conflicts between this article with a provision of any other ordinance or code of the city existing on the effective date of this article that establishes a lower standard, the provisions of this article shall be deemed to prevail and such other laws or codes are hereby declared to be repealed to the extent that they may be found in conflict with this code.

§ 8-518 GOVERNING BODY; APPEALS.

(a) Any person, firm or corporation considering themselves aggrieved by the decision of the public officer and who desires to present a formal protest to the governing body shall in writing, request a hearing before the governing body within ten days after receiving notice of the decision from the public officer, as provided in § 8-512(b). Such protest and request for a hearing shall be filed with the office of the City Clerk.

(b) Upon receipt of a protest and request for a hearing, the City Clerk shall notify in writing the governing body of such appeal.

(c) The governing body shall, within 30 days of receipt of protest and request for a hearing, determine a date for the hearing.

(d) Notice of the date for the hearing shall be sent to the appellant at least ten days before the hearing.

(e) Except where an immediate hazard exists as described in § 4-612 of this code, the filing of a protest and request for a hearing before the governing body as specified in division (a) above shall operate as a stay of the enforcement of the public officer's order until such time as the governing body has reached a decision on the matter.

§ 8-519 RIGHT OF PETITION.

After exhausting the remedy provided in § 8-518, any person aggrieved by an order issued by the public officer and approved by the governing body after a hearing on the matter may, within 30 days from the

date that the order became final, petition the District Court of the county in which the property is located to restrain the public officer from carrying out the provisions of the order.

ARTICLE 6: RODENT CONTROL

Section

- 8-601 Definitions
- 8-602 Building maintenance
- 8-603 Notice to rat-stop; when city to do work
- 8-604 Failure to comply
- 8-605 Replace rat-stoppage
- 8-606 Notice to eradicate rats
- 8-607 Conditions conducive to harborage of rats
- 8-608 Inspections

OWNER. The owner of any building or structure, whether individual, firm, partnership or corporation.

RAT HARBORAGE. Any condition that provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside a structure of any kind.

RAT-STOPPAGE. A form of rat-proofing to prevent the ingress of rats into buildings from the exterior or from one building to another, consisting essentially of the closing of all openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat-gnawing.

§ 8-601 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING. Any structure, whether public or private, that is adapted for occupancy as a residence; the transaction of business; the rendering of professional services; amusement; the display, sale or storage of goods, wares or merchandise; or the performance of work or labor, including office buildings, public buildings, stores, theaters, markets, restaurants, workshops and all other houses, sheds and other structures on the premises used for business purposes.

OCCUPANT. The person that has the use of, controls or occupies any business building or any portion thereof, whether owner or tenant. In the case of vacant business buildings or any vacant portion of a business building, the owner, agent or other person having custody of the building shall have the responsibilities of an **OCCUPANT** of a building.

§ 8-602 BUILDING MAINTENANCE.

All buildings and structures located within the present or future boundaries of the city shall be rat-stopped, freed of rats and maintained in a rat-stopped and rat-free condition.

§ 8-603 NOTICE TO RAT-STOP; WHEN CITY TO DO WORK.

Upon receipt of written notice from the governing body, the owner of any building or structure specified therein shall take immediate measures for the rat-stoppage of such building or structure. The work shall be completed in the time specified in the written notice, which shall be within 15 days, or within the time of any written extension thereof that may have been granted by the governing body.

§ 8-604 FAILURE TO COMPLY.

If the owner fails to comply with such written notice or extension, then the governing body is authorized to take such action as may be necessary to completely rat-stop the building or structure at the expense of the owner, and the City Clerk shall submit bills for the expense thereof to the owner of the building or structure. If the bills are not paid within 60 days, the City Clerk shall certify the amount due to the City Treasurer and the charge shall be a lien against the property where the work has been done, and the owner shall be promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for rat-stoppage.

§ 8-605 REPLACE RAT-STOPPAGE.

It shall be unlawful for any occupant, owner, contractor, public utility company, plumber or any other person to remove the rat-stoppage from any building or structure for any purpose and fail to restore the same in a satisfactory condition or to make any new openings that are not closed or sealed against the entrance of rats.

§ 8-606 NOTICE TO ERADICATE RATS.

Whenever the governing body notifies in writing the owner of any building or structure theretofore rat-stopped as hereinabove defined, that there is evidence of rat infestation of the building or structure, the owner shall immediately institute appropriate measures for freeing the premises so occupied of all rats. Unless suitable measures for freeing the building or structure of rats are instituted within five days after the receipt of notice, and unless continually maintained in a satisfactory manner, the city is hereby authorized to free the building or structure of rats at the expense of the owner thereof and the City Clerk shall submit bills for the expense thereof to the owner of the building or structure and if the same are not paid, the City Clerk shall certify the amount due from the owner to the City Treasurer, and the owner shall be promptly billed therefor. The expense thereof shall

include the cost of labor, materials, equipment and any other actual expense necessary for the eradication measures.

§ 8-607 CONDITIONS CONDUCTIVE TO HARBORAGE OF RATS.

(a) All food and feed kept within the city for feeding animals shall be kept and stored in rat-free and rat-proof containers, compartments or rooms unless kept in a rat-stopped building.

(b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.

(c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and that are rat harborages, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.

(d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the Health Department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication.

§ 8-608 INSPECTIONS.

The Enforcing Officer or other employee or officer is empowered to make such inspections and re-inspections of the interior and exterior of any building or structure as in his or her opinion may be necessary to determine full compliance with this article.

ARTICLE 7: INSURANCE PROCEEDS FUND

Section

8-701	Scope and application	75% of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense, or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.
8-702	Lien created	
8-703	Same; encumbrances	
8-704	Same; pro rata basis	
8-705	Procedure	
8-706	Fund created; deposit of monies	
8-707	Building Inspector; investigation, removal of structure	
8-708	Removal of structure; excess monies	
8-709	Same; disposition of funds	
8-710	Effect upon insurance policies	
8-711	Insurers; liability	

§ 8-701 SCOPE AND APPLICATION.

The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75% of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this article.

§ 8-702 LIEN CREATED.

The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of

§ 8-703 SAME; ENCUMBRANCES.

Prior to final settlement on any claim covered by § 8-702, the insurer or insurers shall contact the County Treasurer to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the County Treasurer.

§ 8-704 SAME; PRO RATA BASIS.

Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

§ 8-705 PROCEDURE.

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75% of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and

endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the City Treasurer in an amount equal to the sum of 15% of the covered claim payment, unless the Chief Building Inspector of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by division (a) above, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the Chief Building Inspector shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article.

§ 8-706 FUND CREATED; DEPOSIT OF MONIES.

The City Treasurer is hereby authorized and shall create a fund to be known as the Insurance Proceeds Fund. All monies received by the City Treasurer as provided for by this article shall be placed in said fund and deposited in an interest-bearing account.

§ 8-707 BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of monies as provided for by this article, the City Treasurer shall immediately notify the Chief Building Inspector of said receipt, and

transmit all documentation received from the insurance company or companies to the Chief Building Inspector.

(b) Within 30 days of the receipt of said moneys, the Chief Building Inspector shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(c) Prior to the expiration of the 30 days established by division (b) above, the Chief Building Inspector shall notify the City Treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(d) If the Chief Building Inspector has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 45 days after receipt of the monies by the City Treasurer.

(e) Upon notification to the City Treasurer by the Chief Building Inspector that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the City Treasurer shall return all such monies received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 45 days of the receipt of the monies from the insurance company or companies.

§ 8-708 REMOVAL OF STRUCTURE; EXCESS MONIES.

If the Chief Building Inspector has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all monies in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

§ 8-709 SAME; DISPOSITION OF FUNDS.

If the Chief Building Inspector, with regard to a building or other structure damaged determines that it is necessary to act under K.S.A. 12-1756, any

proceeds received by the City Treasurer under the authority of § 8-705(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the Chief Building Inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the City Treasurer under § 8-705(a), the Chief Building Inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

§ 8-710 EFFECT UPON INSURANCE POLICIES.

This article shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

§ 8-711 INSURERS; LIABILITY.

Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article.

ARTICLE 8: RELEASES OR THREATENED RELEASES OF MATERIALS

Section

8-801	Definitions	(3) Rental or leasing of equipment used specifically to the emergency action (e.g., protective equipment or clothing, scientific and technical equipment);
8-802	Strict liability	
8-803	Recovery of expenses	
8-804	Conflict with state or federal law	

§ 8-801 DEFINITIONS.

For the purpose of this article, the following definitions apply unless the context clearly indicates or requires a different meaning.

EMERGENCY ACTION. All exigent activities conducted in order to prevent or mitigate harm to the public health and safety and the environment from a release or threatened release of any material into or upon land, water or air.

PERSON. Any individual, corporation, association, partnership, firm, trustee, legal representative or any combination thereof.

RECOVERABLE EXPENSES. Those expenses of the city that are reasonable, necessary and allocable to an emergency action. **RECOVERABLE EXPENSES** shall not include normal budgeted expenditures that are incurred in the course of providing what are traditionally city services and responsibilities, such as routine firefighting protection. **EXPENSES** allowable for recovery may include, but are not limited to:

(1) Disposable materials and supplies consumed and expended specifically for the purpose of the emergency action;

(2) Compensation of employees for the time and efforts devoted specifically to the emergency action;

(3) Rental or leasing of equipment used specifically to the emergency action (e.g., protective equipment or clothing, scientific and technical equipment);

(4) Replacement costs for equipment owned by the city that is contaminated beyond reuse or repair, if the equipment was a total loss and the loss occurred during the emergency action (e.g., self-contained breathing apparatus irretrievably contaminated during the response);

(5) Decontamination of equipment contaminated during the response;

(6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the city);

(7) Other special services specifically required for the emergency action;

(8) Laboratory costs of analyzing samples taken during the emergency action;

(9) Any costs of cleanup, storage or disposal of the release material;

(10) Costs associated with the services, supplies and equipment procured for a specific evacuation of persons or property;

(11) Medical expenses incurred as a result of response activities; and

(12) Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this article.

RELEASE. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon land, water or air, of any material which the city determines may be harmful to the public health and welfare or to the environment.

THREATENED RELEASE. Any imminent or impending event potentially causing, but not releasing in a release, but causing the city to undertake an emergency action.
(Ord. 825, passed 1-8-1990)

§ 8-802 STRICT LIABILITY.

Any person causing or responsible for a release or threatened release resulting in an emergency action shall be strictly liable to the city for the recoverable expenses resulting from the emergency action. There shall be a rebuttable presumption that any person owning or controlling property causing a release or threatened release is responsible for such release or threatened release.
(Ord. 825, passed 1-8-1990)

§ 8-803 RECOVERY OF EXPENSES.

(a) *Itemization of recoverable expenses.* City personnel and departments involved in an emergency action shall keep an itemized record of recoverable expenses resulting from an emergency action. Promptly after completion of an emergency action, the appropriate city departments shall certify those expenses to the City Clerk.

(b) *Submission of claim.* The city shall submit a written itemized claim for the total expenses incurred by the city for the emergency action to the responsible person and a written notice that unless the amounts are paid in full within 30 days after the date of the mailing of the claim and notice, the city will file a civil action seeking recovery for the stated amount.

(c) *Lien of property.* The city may cause a lien in the amount of the recoverable expenses to be placed

on any real property located within the city owned by the person causing or responsible for the emergency action.

(d) *Civil suit.* The city may bring a civil action for recovery of the recoverable expenses against any and all persons causing or responsible for the emergency action.
(Ord. 825, passed 1-8-1990)

§ 8-804 CONFLICT WITH STATE OR FEDERAL LAW.

Nothing in this article shall be constructed to conflict with state or federal laws requiring persons causing or responsible for releases or threatened releases from engaging in remediation activities and/or paying the costs thereof.
(Ord. 825, passed 1-8-1990)