

CITY OF BELLEVILLE
Ordinance No. 987

AN ORDINANCE OF THE CITY OF BELLEVILLE, TO ESTABLISH A NUISANCE ABATEMENT CODE FOR THE ABATEMENT OF HEALTH NUISANCES, JUNK VEHICLE NUISANCES, AND WEED AND TREE NUISANCES AND PROVIDE FOR THE ABATEMENT AND ENFORCEMENT PROCEDURE.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BELLEVILLE THAT:

SECTION 1. REPEAL.

Sections 8.12, 8.16, 8.24 and 8.32 of Belleville Municipal Code is hereby repealed.

SECTION 2. NUISANCE ABATEMENT CODE.

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ARTICLE I. HEALTH NUISANCES

Section 1. NUISANCES UNLAWFUL; DEFINED.

(a) It shall be unlawful for any person to maintain or permit any nuisance within the city which consists in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing:

- 1) Injures or endangers the comfort, repose, health, or safety of others;
- 2) Offends decency;
- 3) Is offensive to the senses;
- 4) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the municipality;
- 5) In any way renders other person insecure in life or the use of property;
- 6) Essentially interferes with the comfortable enjoyment of life and property; or
- 7) Tends to depreciate the value of the property of others.

(b) Nuisance includes, but is not limited to, the maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions and things:

- 1) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure or lot whether vacant or occupied;
- 2) Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber, scrap iron, tin or other metal, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition in which flies or rats or other insects or rodents may breed or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity;
- 3) Storage, accumulation, keeping, placing, or allowing to remain trash, garbage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled property of any kind including tractors, trailers, machinery, and equipment;
- 4) Abandoned indoor furniture or appliances located outdoors;
- 5) All dead animals not removed within 24 hours after death;
- 6) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
- 7) All stagnant ponds or pools of water;
- 8) Animal manure in any quantity which is not securely protected from flies and the elements;
- 9) Emission of smoke, dust, fumes, gases, mists, odors, or polluted air from any source that is injurious or dangerous to human health and safety; or
- 10) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the city.

Section 2. PUBLIC OFFICER. The Governing Body shall designate a public officer to be charged with the administration and enforcement of this ordinance.

Section 3. COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings.

Section 4. RIGHT OF ENTRY. The public officer has the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

Section 5. 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 Section 1 of this Article 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 twenty-four 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. (K.S.A. 12-1617e)

Section 6. SAME; CONTENTS. The order shall state:

- (a) The common or legal description of the property, or both;
- (b) That the property is in violation of this Article;
- (c) A description of the violation that would reasonably allow the owner, occupant, or agent to determine the nature of the violation to allow for self-abatement;
- (d) He, she or they shall have 10 days from the receipt of the order to abate the condition(s) in violation of Section 1 of this Article; provided, however, that the governing body or its designee shall grant one or more extensions of the 10 day period if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions in violation of Section 1 of this Article; or,
- (e) He, she or they have 10 days from the receipt of the order, plus any additional time granted under subsection (d), to request a hearing before the governing body or its designated representative of the matter as provided by Section 9 of this Article; and
- (f) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 7 of this Article and/or abatement of the condition(s) by the city as provided by Section 8 of this Article.

Section 7. FAILURE TO COMPLY; PENALTY. Should the person, corporation, partnership or association fail to comply with the order to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any violation of provisions of Section 1 of this Article, be fined in an amount not to exceed \$100 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

Section 8. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 7 of this Article, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom an order has been served pursuant to Section 5 of this Article has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 6 of this Article, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in Section 10 of this Article. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation; or
- (b) Certified mail, return receipt requested; or
- (c) 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.

Section 9. HEARING. If a hearing is requested within the 10 day period as provided in Section 6 of this Article, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in Section 8 of this Article.

Section 10. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to Section 8 of this Article, 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.

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ARTICLE II. JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

Section 1. FINDINGS OF GOVERNING BODY. The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city because they:

- (a) Serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
- (b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
- (c) Are a ready source of fire and explosion;
- (d) Encourage pilfering and theft;
- (e) Constitute a blighting influence upon the area in which they are located;
- (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

Section 2. DEFINITIONS. As used in this ordinance, unless the context clearly indicates otherwise:

(a) Inoperable means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed;

(b) Vehicle means, without limitation, any automobile, truck, tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

Section 3. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

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

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

(b) The provisions of this ordinance shall not apply to:

- (1) Any motor vehicle which is enclosed in a garage or other building;
- (2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
- (3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.

Section 4. PUBLIC OFFICER. The Governing Body shall designate a public officer to be charged with the administration and enforcement of this ordinance.

Section 5. COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings.

Section 6. RIGHT OF ENTRY. The public officer has the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

Section 7. 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 Section 3 of this Article 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 twenty-four 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. (K.S.A. 12-1617e)

Section 8. SAME; CONTENTS. The order shall state:

- (a) The common or legal description of the property, or both;
- (b) That the property is in violation of this Article;
- (c) A description of the violation that would reasonably allow the owner, occupant, or agent to determine the nature of the violation to allow for self-abatement;
- (d) He, she or they shall have 10 days from the receipt of the order to abate the condition(s) in violation of Section 3 of this Article; provided, however, that the governing body or its designee shall grant one or more extensions of the 10 day period if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions in violation of Section 3 of this Article; or,
- (e) He, she or they have 10 days from the receipt of the order, plus any additional time granted under subsection (a), to request a hearing before the governing body or its designated representative of the matter as provided by Section 12 of this Article; and
- (f) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 9 of this Article and/or abatement of the condition(s) by the city as provided by Section 10 of this Article.

Section 9. FAILURE TO COMPLY; PENALTY. Should the person fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against such person and upon conviction of any violation of provisions of Section 3 of this Article, be fined in an amount not to exceed \$100 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

Section 10. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 9 of this Article, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom an order has been sent pursuant to Section 7 of this Article has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in Section 8 of this Article, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in Section 13 of this Article. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Service by certified mail, return receipt requested; or
- (c) 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.

Section 11. DISPOSITION OF VEHICLE; RECOVERY OF VEHICLE.

(a) Disposition of any motor vehicle removed and abated from private property pursuant to this ordinance shall be as provided by K.S.A. Supp. 8-1102, as amended.

(b) Any person attempting to recover a motor vehicle impounded as provided in this ordinance, shall show proof of valid registration and ownership of the motor vehicle before the motor vehicle shall be released. In addition, the person desiring the release of the motor vehicle shall pay all reasonable costs associated with the impoundment of the motor vehicle, including transportation and storage fees, prior to the release of the motor vehicle.

Section 12. HEARING. If a hearing is requested within the 10 day period as provided in Section 8 of this Article, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served

upon the person in the matter provided in Section 10 of this Article.

Section 13. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to Section 10 of this Article, 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.

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ARTICLE III. WEEDS

Section 1. 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. All weeds as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided.

Section 2. DEFINITIONS. Weeds as used herein, means any of the following:

- (a) Brush and woody vines shall be classified as weeds;
- (b) Weeds and 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 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.

Section 3. PUBLIC OFFICER; ORDER OF VIOLATION AND NOTICE TO REMOVE.

(a) The Governing Body shall designate a public officer to be charged with the administration and enforcement of this article. The public officer or authorized assistant shall give written Order of Violation to the owner, occupant or agent of such property by certified mail, return receipt requested, or by personal service to cut or destroy weeds; provided, however, that if the property is unoccupied and the owner is a nonresident, such order shall be sent by certified, return receipt requested, to the last known address of the owner. Such notice shall only be given once per calendar year.

(b) The order to be given hereunder shall state:

(1) that the owner, occupant or agent in charge of the property is in violation of the city weed control law;

(2) that the owner, occupant or agent in control of the property is ordered to cut or destroy the weeds within 10 days of the receipt of the order;

(3) that the owner, occupant or agent in control of the property may request a hearing before the governing body or its designated representative within five (5) days of the receipt of the order;

(4) that if the owner, occupant or agent in control of the property does not cut or destroy the weeds or fails to request a hearing within the allowed time the city or its authorized agent will cut or destroy the weeds and assess the cost of the cutting or destroying the weeds, including an administrative fee of \$25.00, against the owner, occupant or agent in charge of the property;

(5) that the owner, occupant or agent in control of the property will be given an opportunity to pay the assessment, and if it is not paid within 30 days of such notice, it will be added to the property tax as a special assessment;

(6) that no further notice will be given during the current calendar year prior to the removal of weeds from the property; and,

(7) that the public officer should be contacted if there are 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 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 ordinance.

Section 4. ABATEMENT; ASSESSMENT OF COSTS.

(a) If the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the time periods specified in Section 3 of this Article, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

(b) If the city abates or removes the nuisance pursuant to this section, 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.

(c) 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. (K.S.A. 12-1617f)

Section 5. 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.

Section 6. 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.

Section 7. NOXIOUS WEEDS.

(a) 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.

(b) For the purpose of this ordinance, the term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea repens*), hoary cress (*Cardaria draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy

spurge (*Euphorbia esula*), bur ragweed (*Ambrosia grayii*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L.), Johnson grass (*Sorghum halepense*) and sericea lespedeza (*Lespedeza cuneata*).

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ARTICLE IV. TREES

Section 1. DEFINITIONS. For purposes of this article the following definitions shall apply:

(a) Diseased Tree - means a tree or shrub that has been determined by any competent city, state, or federal authority based upon a laboratory test or other supporting evidence to be infected or infested with or harbor any tree or plant disease or insect or larvae, the uncontrolled presence of which may constitute a hazard to or result in damage or extinction of other trees or shrubs in the community.

(b) Maintenance - means, without limitation, the protecting, spraying, fertilizing, treating, pruning, abatement of infestation and trimming of trees or shrubs.

(c) Nuisance - means the doing of an act, failure to perform a legal duty, or the allowance or creation of a condition which injures, endangers, hinders or unreasonably interferes with the public health, safety or welfare in the use and enjoyment of right-of-way or other public property by the general public. Examples include, but are not limited to, brush and limbs, trees and shrubs which are dead, diseased or infested which present a harmful or dangerous condition to the public, and encroachments of trees and shrubs in the right-of-way or other public property which create a safety hazard.

(d) Owner - means any person, agent, operator, firm or corporation having a legal or equitable interest in the (real) property; or recorded in the official records of the Republic County Register of Deeds office as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

(1) Abutting Owner - means an Owner of property that directly abuts the right-of-way where the tree or shrub requiring maintenance or removal is located.

(e) Right-of-way - means the area on, below or above the present and future city streets, alleys, bridges, bikeways, parkways and sidewalks dedicated or acquired as right-of-way.

(f) Shrub - means a low, usually several-stemmed, woody plant. For the purposes of this Chapter, it shall also include ornamental and native grasses used in place of shrubs.

(g) Tree - means a woody plant having a well-defined stem or trunk, a more or less definite crown, a height at maturity of at least eight feet, and the trunk diameter exceeds two inches.

Section 2. PUBLIC OFFICER. The Governing Body shall designate a public officer to be charged with the administration and enforcement of this ordinance.

Section 3. TREES AND SHRUBS ON PRIVATE PROPERTY.

(a) Maintenance or Removal. Whenever the public officer determines that any tree or shrub on private property endangers, hinders or obstructs the use of public or private property, is a nuisance, is diseased, or in any other way endangers the public health, safety and welfare, the Code Enforcement Officer shall issue an order of violation to order the maintenance or removal of the tree or shrub by the Owner as set forth in Section 5 of this Article.

(b) Emergency Action. In the event the public officer, with assistance of a forester, determines that the existing condition of any tree or shrub on private property constitutes an immediate hazard to the public health, safety and welfare or otherwise endangers persons or property, then the city shall proceed, without delay, to take steps to abate the situation and without prior notice to or hearing of the Owner, occupant or agent. The cost of such action shall be assessed as set forth in Section 10 of this Article.

(c) Right to Inspect. The public officer, or other designee, is hereby authorized to enter on private property for the purpose of inspecting trees or shrubs where there appears to be a nuisance or a threat to public or private property or to the public, health, safety and welfare. This entry and inspection may be done without the prior permission of the Owner, occupant or agent if the threat is imminent and if such notification is not feasible under the circumstances.

Section 4. TREES AND SHRUBS IN RIGHT OF WAY.

(a) Maintenance. Abutting Owners are responsible for maintaining the trees and shrubs within or encroaching within the abutting right-of-way in a manner which promotes safe and healthy trees and shrubs and which protects the health, safety, and welfare of the public with respect to the same. The Abutting Property Owners shall not allow such trees and shrubs to hinder or obstruct the right-of-way, create a nuisance, be diseased, or threaten life or property within the right-of-way. Any tree overhanging any right-of-way shall be pruned and trimmed so as not to obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of at least fifteen (15) feet above the surface of the right-of-way. Notwithstanding, the city shall always maintain the right to perform any necessary maintenance of any tree or shrub in right-of-way and the city staff or the city's contractor may perform the maintenance.

(b) Removal. When applicable, this duty of the Abutting Owner shall also include the responsibility to remove trees and/or shrubs within the abutting right-of-way when any tree or shrub endangers, hinders or obstructs the use of the right-of-way, is a nuisance, is diseased or in any other way endangers the public health, safety and welfare, and such Abutting Owner has received a notice in accordance with Section 5 of this Article.

(c) Notice to Owner. Whenever the public officer determines that any such tree or shrub endangers, hinders or obstructs the use of the right-of-way, is a nuisance, is diseased, or in any other way endangers the public health, safety and welfare, the public officer shall issue a notice of violation to order the maintenance or removal of the tree or shrub by the Owner in accordance with Sections 5 and 6 of this Article.

(d) City Assistance. An Abutting Owner may contact the city to request the city's assistance with the removal of a diseased, hazardous, or dead tree in the right-of-way. An Abutting Owner may also request the city's assistance with the removal of storm damage from right-of-way trees to ensure that the right-of-way is kept clear for vehicular and pedestrian traffic and that public safety, health and welfare is maintained. The city may assess the costs of such work against the Abutting Owner in accordance with Section 10 of this Article.

Section 5. 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 Section 3 or 4 of this Article 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

twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

Section 6. SAME; CONTENTS. The order of violation shall state:

- (a) The common or legal description of the property, or both;
- (b) That the property is in violation of this Article;
- (c) A description of the violation that would reasonably allow the Owner, occupant or agent to determine the nature of the violation to allow for self-abatement;
- (d) That the violation must be abated by the Owner, occupant or agent within 30 days from the date of the notice of violation, provided that extensions of the time period shall be granted if the Owner, occupant or agent demonstrates that due diligence is being exercised in abating the violation;
- (e) That within ten (10) days of the date of service of the notice, the Owner, occupant or agent may request in writing a hearing before the governing body;
- (f) That failure to comply with the order of violation shall result in the city abating the violation, with the assessment of costs (including the cost of all notices) made against the property and the Owner, occupant or agent;
- (g) That failure to pay such assessments within thirty (30) days of the notice of costs shall result in the filing of a special assessment against the property; and
- (h) That separate and independent of any abatement of the violation by the city, such violation is subject to prosecution in Municipal Court.

Section 7. FAILURE TO COMPLY; PENALTY. Should the person, corporation, partnership or association fail to comply with the order to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any violation of provisions of Section 1 of this Article, be fined in an amount not to exceed \$100 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

Section 8. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 7 of this Article, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom an order has been served pursuant to Section 5 of this Article has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 6 of this Article, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in Section 10 of this Article. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;

(b) Certified mail, return receipt requested; or

(c) 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.

Section 9. HEARING. If a hearing is requested within the 10 day period as provided in Section 6 of this Article, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in Section 8 of this Article.

Section 10. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to Section 8 of this Article, 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.

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SECTION 3. EFFECTIVE DATE. This Ordinance shall take effect and be in full force from and after its passage and one publication in the official city newspaper.

PASSED and ADOPTED by the Governing Body and signed by the Mayor this 12th day of March, 2018.

Kim Lapo, Mayor

ATTEST:

Russ Piroutek, City Clerk

Date

**
**
**

RE: Health Nuisance at _____(address) _____, Kansas

ORDER OF VIOLATION
HEALTH NUISANCE

Dear **:

Pursuant to Ordinance No. _____, it is unlawful for any person to maintain or permit any nuisance within the city. Such unlawful conditions are specifically defined in Ordinance No. ____.

I have witnessed, or have received at least one verbal complaint of one or more conditions which are health nuisances on your property at **, **, _____, Kansas, which are in violation of the Ordinance No. _____. Specifically, those conditions observed include _____

_____.

Pursuant to Ordinance No. _____, you have ten (10) days from the date and time of service of this Order of Violation to abate the condition or you may request a hearing before the Governing Body. Your request must be in writing and submitted to and received by the City Clerk within ten (10) days of receipt of this Order of Violation. You will be notified of the date and time of the hearing as soon as possible after filing the request for hearing.

Should you fail to comply with this Order of Violation and abate the nuisance or request a hearing, the City may abate the nuisance and assess the costs against your property and/or the Public Officer or City Attorney may file a complaint in _____ Municipal Court. Each day during or on which a violation occurs or continues after this Order of Violation has been served shall constitute an additional or separate offense.

In the spirit of cooperation, please feel free to contact me should you have any questions about what needs to be done to your property. I am willing to meet with you personally to answer any questions you may have.

Respectfully,

**

Appointed Public Code Enforcement Officer
_____, Kansas

Date

**
**
**

RE: Junk Vehicle at _____(address), _____ (city), Kansas

ORDER OF VIOLATION
JUNK VEHICLE

Dear **:

The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city.

As used in Ordinance No. _____:

- (a) Inoperable means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed;
- (b) Vehicle means, without limitation, any automobile, truck, tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city. A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of city ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition.

I have witnessed, or have received at least one verbal complaint of one or more unregistered, wrecked, junked, dismantled, inoperative or abandoned vehicles on your property at **, **, **, Kansas which are in violation of Ordinance No. ____ of the City of _____. Pursuant to that ordinance, you have ten (10) days from the date and time of service of this Order of Violation to abate the condition, or, you may request a hearing before the Governing Body. Your request must be in writing and submitted to and received by the City Clerk within ten (10) days of receipt of this Order of Violation. You will be notified of the date and time of the hearing as soon as possible after filing the request for hearing.

Should you fail to comply with this Order of Violation and abate the nuisance or request a hearing, the City may abate the nuisance and assess the costs against your property and/or the Public Officer or City Attorney may file a complaint in _____ Municipal Court. Each day during or on which

a violation occurs or continues after this Order of Violation has been served shall constitute an additional or separate offense.

In the spirit of cooperation, please feel free to contact me should you have any questions about what needs to be done to your property. I am willing to meet with you personally to answer any questions you may have.

Respectfully,

Appointed Public Code Enforcement Officer
_____, Kansas

Date

**
**
**

RE: Weed Nuisance at _____(address), _____ (city), Kansas

ORDER OF VIOLATION
WEED NUISANCE

Dear **:

Pursuant to Ordinance No. _____, it shall be unlawful to permit weeds and grass nuisance to remain upon property within the city limits. Such unlawful conditions are specifically defined in Ordinance No. _____.

I have witnessed, or have received at least one verbal complaint of weed nuisances on your property at **, **, **, Kansas which are in violation of Ordinance No. _____ of the City of _____. Pursuant to that ordinance, you have ten (10) days from the date and time of service of this Order of Violation to abate the condition, or, you may request a hearing before the Governing Body. Your request must be in writing and submitted to and received by the City Clerk within five (5) days of receipt of this Order of Violation. You will be notified of the date and time of the hearing as soon as possible after filing the request for hearing.

Should you fail to comply with this Order of Violation and abate the nuisance or request a hearing, the City may abate the nuisance and assess the costs against your property including an administrative fee of \$25.00. You will be given an opportunity to paid said assessment within 30 days of receipt of the notice of assessment. If not paid, it will be added to the property tax as a special assessment.

No further notice will be given during the current calendar year prior to the City removing weeds from your property.

In the spirit of cooperation, please feel free to contact me should you have any questions about what needs to be done to your property. I am willing to meet with you personally to answer any questions you may have.

Respectfully,

Appointed Public Code Enforcement Officer
_____, Kansas

Date

**
**
**

RE: Tree Nuisance at _____(address), _____ (city), Kansas

ORDER OF VIOLATION
TREE NUISANCE

Dear **:

Pursuant to Ordinance No. _____, it shall be unlawful to permit a tree or shrub nuisance to remain upon property within the city limits. Such unlawful conditions are specifically defined in Ordinance No. _____.

I have witnessed, or have received at least one verbal complaint of tree nuisances on your property at **, **, **, Kansas which are in violation of Ordinance No. ____ of the City of _____. Pursuant to that ordinance, you have thirty (30) days from the date and time of service of this Order of Violation to abate the condition, or, you may request a hearing before the Governing Body. Your request must be in writing and submitted to and received by the City Clerk within ten (10) days of receipt of this Order of Violation. You will be notified of the date and time of the hearing as soon as possible after filing the request for hearing.

Should you fail to comply with this Order of Violation and abate the nuisance or request a hearing, the City may abate the nuisance and assess the costs against your property. You will be given an opportunity to paid said assessment within 30 days of receipt of the notice of assessment. If not paid, it will be added to the property tax as a special assessment. Each day during or on which a violation occurs or continues after this Order of Violation has been served shall constitute an additional or separate offense.

In the spirit of cooperation, please feel free to contact me should you have any questions about what needs to be done to your property. I am willing to meet with you personally to answer any questions you may have.

Respectfully,

Appointed Public Code Enforcement Officer
_____, Kansas