

ORDINANCE NO. 425

**AN ORDINANCE PROVIDING FOR THE ABATEMENT OF NUISANCES,
DANGEROUS STRUCTURES, INOPERABLE VEHICLES AND WEEDS WITHIN THE
CITY OF CARLTON, KANSAS.**

Be it Ordained by the Governing Body of the City of Carlton, Kansas, that:

Section 1. NUISANCES

(1) **DEFINITION.** Nuisances include, but are not limited to, conditions which:

- (a) Increase the hazard of fire or accident
- (b) Cause or permit emissions into water or air that will tend to be significantly injurious to human health or welfare, animal or plant life, or property, or is or will be unreasonably interfering with the enjoyment of life and property of any inhabitant of the City of Carlton, Kansas.
- (c) Contribute to blight by reason of uncleanliness or lack of maintenance
- (d) Result in unsightliness, particularly with respect to the storage of material, supplies, equipment, machinery, motor vehicles and parts thereof
- (e) Endanger health or safety by reason of dilapidation, disrepair, or Structural defect
- (f) Promote vermin and insect infestation
- (g) Violate any of the fire, building, or zoning regulations, or other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements

(2) **RIGHT OF ENTRY.** It shall be a violation of this article to deny the City Health Officer or an authorized representative 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.

(3) **NOTICE.** Any person found by the Public Officer to be in violation of Section 1 of this ordinance shall be served a notice of such violation. The notice shall be served by certified mail, return receipt requested; or by personal service.

The notice shall state the condition(s) which is (are) in violation of Section 1. The notice shall also inform the person that:

- (a) He, she or they shall have 10 days from the date of serving the notice to

abate the condition(s) in violation of Section 1; or

(b) He, she or they have 10 days from the date of serving the notice to request in writing a hearing before the Mayor or his designee of the matter;

(c) Failure to abate the condition(s) or to request in writing a hearing within the time allowed may result in prosecution as provided herein or abatement of the condition(s) by the city.

(4) 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 1, be fined in an amount not to exceed \$500.00. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

(5) HEARING. If a hearing is requested within the 10 day period as provided above, such request shall be made in writing to the Mayor. Failure to make a timely request shall constitute a waiver of the person's right to contest the findings of Mayor. The hearing shall be held by the Mayor 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 Mayor. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the Mayor shall record his or her determination of the matter in writing and serve a copy upon the person requesting the hearing. Such person shall have the right to appeal the Mayor's decision to the Governing Body by filing a request for hearing with the City Clerk within 5 days of receipt of the Mayor's decision. The hearing shall take place at the next regularly scheduled meeting of the Governing Body. The City Clerk shall provide the person requesting the hearing a notice stating the date, time and place of the hearing. At such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing Body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the Governing Body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person.

(6) ABATEMENT. The provisions of K.S.A. 12-1617e are incorporated by reference, with relation to the abatement of nuisances, unless specific provision is made otherwise in this article.

(7) PROCEDURE. The following procedure shall be followed in the abatement of nuisances:

(a) Whenever the City Health Officer files with the Governing Body a statement in writing that a nuisance exists describing the same and where located, the Governing Body shall by resolution fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such property may appear and show cause why such nuisance should not be ordered abated. Such resolution shall be published once each week for two (2) consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three (3) days after its first publication to each such owner, agent, lienholder and occupant, at the last known place of residence, and shall be marked "deliver to addressee only."

(b) On the date fixed for hearing or any adjournment thereof, the Governing Body shall hear all evidence submitted by the owner, an agent of the owner, lienholders of record and occupants having an interest in such property, as well as evidence submitted by the City Health Officer filing the statement, and shall make findings by resolution. If the Governing Body shall find that such nuisance exists, such resolution shall direct the nuisance to be abated. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the nuisance shall be abated, and a statement that if the owner of such property fails to commence the abatement of such nuisance within the time stated or fails to diligently prosecute the same until the work is completed, the Governing Body will cause the nuisance to be abated.

(c) If the owner of any structure has failed to commence the abatement of such nuisance within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the city may proceed to abate such nuisance, or let the same to contract. The city shall keep an account of the cost of such work and may sell the salvage from such abatement and apply the proceeds or any necessary portion thereof to pay the cost of abating such nuisance. All moneys in excess of that necessary to pay such costs and the cost of publications of notice and any postage for mailing of notice, after the payment of all costs, shall be paid to the owner.

(d) The city shall give notice to the owner of such property by restricted mail of the total cost incurred by the city in abating such nuisance and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost is not paid within the thirty (30) day period and if there is no salvageable material or if moneys received from the sale of salvage are insufficient to pay the cost of such work, the balance shall be assessed as a special assessment against the lot or parcel of land in 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.

Section 2. DANGEROUS STRUCTURES

(1) **DANGEROUS STRUCTURES.** The provisions of K. S.A. 12-1750 to K.S.A. 12-1756 inclusive are incorporated by reference with relation to the abatement of unsafe or dangerous structures.

Section 3. ABANDONED AND INOPERABLE VEHICLES

(1) **REMOVAL OF ABANDONED MOTOR VEHICLES.** The provisions of K. S. A. 8-1101 and K. S. A. 8-1102 are incorporated by reference with relation to the removal of abandoned vehicles, providing for the removal thereof, notice, sale of property and disposition of funds.

(2) **DEFINITION OF INOPERABLE MOTOR VEHICLE.** For the purposes of this chapter the following words shall mean:

(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 any automobile, truck, tractor, aircraft, or motorcycle or other motorized vehicle, which, as originally built, contained an engine or designed to contain an engine, regardless of whether it contains an engine at any time.

(3) **UNLAWFUL POSSESSION OF INOPERABLE MOTOR VEHICLE.** Except as provided in subsections (5) and (6) of this section, it shall be unlawful for any person, partnership, corporation, or their agent either as owner, lessee, tenant or occupant of any lot or land within the city to possess, store or park, or permit to be possessed, stored, or parked thereon, an inoperable vehicle unless it is enclosed in a garage or other building.

(4) **RIGHT OF ENTRY.** It shall be a violation of this article to deny an enforcing officer or an authorized representative 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 violation of this article exists.

(5) **TEMPORARILY DISABLED VEHICLES.** The provisions of this section shall not apply to any person, partnership or corporation or their agent with one (1) inoperable vehicle for a period of thirty (30) consecutive days or less.

(6) **SCREENING.** The provisions of this section shall not apply to any person, firm corporation or their agent who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public using the streets and sidewalks and to prohibit ready access to such vehicles by children, provided that nothing in this section shall authorize the maintenance of a public nuisance.

(7) **PRESUMPTIONS.** Any one of the following conditions shall raise the presumption that a vehicle is inoperable:

- (a) Absence of an effective registration plate upon such vehicle
- (b) Placement of the vehicle or parts thereof, upon jacks, blocks, chains or other support
- (c) Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways

(8) **NOTICE.** Any person found by the Public Officer to be in violation of Subsection (3) of this section shall be served a notice of such violation. The notice shall be served by certified mail, return receipt requested; or by personal service.

The notice shall state the condition(s) which is (are) in violation of Subsection (3). The notice shall also inform the person that:

- (a) He, she or they shall have 10 days from the date of serving the notice to abate the condition(s) in violation of Subsection (3); or
- (b) He, she or they have 10 days from the date of serving the notice to request a hearing before the Mayor of the matter;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution and/or abatement of the condition(s) by the city.

(9) **FAILURE TO COMPLY; PENALTY.** Should the person fail to comply with the notice to remove the vehicle or vehicles 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 2 (3), be fined in an amount not to exceed \$500.00. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

(10) **HEARING.** If a hearing is requested within the 10 day period, such request shall be made in writing to the Mayor. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the Mayor. The hearing shall be held by the Mayor as soon as possible after the filing of the request therefore, and 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 Mayor. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the Mayor shall record his or her determination of the matter in writing and serve a copy upon the person requesting the hearing. Such person shall have the right to appeal the Mayor's decision to the Governing Body by filing a request for hearing with the City Clerk within 5 days of receipt of the Mayor's decision. The hearing shall take place at the

next regularly scheduled meeting of the Governing Body. The City Clerk shall provide the person requesting the hearing a notice stating the date, time and place of the hearing. At such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the Governing Body. The Governing Body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person.

(11) **ABATEMENT.** The provisions of K.S.A. 12-1617e are incorporated by reference, with relation to the abatement of nuisances, unless specific provisions is made otherwise.

Section 4. WEEDS

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

(2) **DEFINITIONS.** For the purposes of this chapter, the following words and phrases shall mean:

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

(b) *Weeds* means any of the following:

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

(2) Grasses and comparable vegetation which may attain such large growth as to become, when dry, a fire menace to adjacent improved property

(3) Grasses and comparable vegetation which are located in an area which harbors rats, insects, and animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare.

(4) Grasses and comparable vegetation on or about residential property which, because of its height, has a blighting influence on the neighborhood.

(3) **NOTICE TO REMOVE.** The Mayor shall designate a public officer to be charged with the administration and enforcement of the city weed control law. The public officer or an authorized assistant shall notify in writing the owner, occupant or agent in charge of any premises in the city upon which weeds exist in violation of the city weed control law, by mail of the following:

(a) The owner, occupant or agent in charge of the property is in violation of

the city weed control law.

(b) The owner, occupant, or agent in charge of the property is ordered to cut the weeds within ten (10) days of the receipt of notice.

(c) **HEARING.** The owner, occupant or agent in charge of the property may request a hearing before the Mayor within 10 days of the serving of notice. If a hearing is requested within the 10 day period as provided herein, such request for a hearing shall constitute a waiver of the person's right to contest the findings of the Mayor. The hearing shall be held by the Mayor 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 Mayor. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the Mayor shall record his or her determination of the matter in writing and serve a copy upon the person requesting the hearing. Such person shall have the right to appeal the Mayor's decision to the Governing Body by filing a request for hearing with the City Clerk within 5 days of receipt of the Mayor's decision. The hearing shall take place at the next regularly scheduled meeting of the Governing Body. The City Clerk shall provide the person requesting the hearing notice stating the date, time and place of the hearing. At such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the Governing Body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the Governing Body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person.

(d) If the owner, occupant or agent in charge of the property does not cut the weeds, the city or its authorized agent will cut the weeds and assess the cost of the cutting, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property.

(e) The owner, occupant or agent in charge of the property will be given an opportunity to pay the assessment, and, if it is not paid, it will be added to the property tax as a special assessment.

(f) No further notice shall be given prior to removal of weeds during the current calendar year.

(g) The public officer should be contacted, if there are any questions regarding the order.

(4) **ABATEMENT.** Upon the expiration of ten (10) days after receipt of the notice required by Section 2 (3), 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 Section 2(1), the public officer or an authorized assistant shall cause to be cut, destroyed, and/or removed all such weeds and abate the nuisance created thereby at any time during the current calendar year.

(5) **NOTICE OF COSTS.** The public officer or an authorized assistant shall give notice to the owner, occupant or agent in charge of the premises by registered mail of the costs of abatement of the nuisance. The notice shall state that payment of the costs is due and payable within thirty (30) days following receipt of the notice.

(6) **ASSESSMENT OF COSTS.** If the costs of removal or abatement remain unpaid after thirty (30) days following receipt of notice, a record of the costs of cutting and destruction and/or removal shall be certified to the City Clerk who shall cause such costs to be assessed against the particular lot or piece of land on which such weeds were so removed, and against such lots or pieces of land in front of or abutting on such street or alley on which such weeds were so removed. The City Clerk shall certify the assessment to the County Clerk at the time other special assessments are certified for spreading on the tax rolls of the county. If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this article, the city may not recover any costs or levy an assessment for the destruction of weeds on such property, unless the new record owner of title to such property is provided notice as required by this article.

(7) **RIGHT OF ENTRY.** The public officer, and 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 the city weed control law.

(8) **UNLAWFUL INTERFERENCE.** It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or authorized representatives from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute a violation of the city weed control law.

(9) **NOXIOUS WEEDS.** Nothing in the city weed control law 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.

(10) **DEFINITION OF NOXIOUS WEEDS.** For the purpose of this article, 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*).

(11) **FAILURE TO COMPLY; PENALTY.** Should the person fail to comply with the notice to abate the weeds 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 this section, be fined in an amount not to exceed \$500.00. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

Section 5. REPEAL. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. EFFECTIVE DATE. This ordinance shall be effective upon its publication in the official city newspaper.

PASSED on this 5th day of October, 2005.



BRANT E. RADER
MAYOR

COPY



PATTY SCHLESENER
CITY CLERK