

ARTICLE 2. HEALTH NUISANCES

8-201. Nuisances unlawful; defined.

It shall be unlawful for any person to maintain or permit any nuisance within the city as defined, without limitation, as follows:

(a) 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;

(b) All dead animals not removed within 24 hours after death;

(c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;

(d) All stagnant ponds or pools of water;

(e) All grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;

(f) Abandoned iceboxes or refrigerators kept on the premises under the control of any person, or deposited on the sanitary landfill, or any icebox or refrigerator not in actual use unless the door, opening or lid thereof is unhinged, or unfastened and removed therefrom;

(g) All articles or things whatsoever caused, kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public or of any neighborhood;

(h) 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.

(K.S.A. 21-4106:4107; Code 1996)

8-202. Public officer.

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

(Code 1996)

8-203. Complaints; inquiry and inspection.

The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by five 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.

(Code 1996)

8-204. Right of entry.

(a) Whenever necessary to make an inspection of any building, structure or premises to determine if a nuisance exists, or whenever the public officer has cause to believe that there exists therein any condition which endangers the public health, the public officer is authorized to enter such building, structure or premises at all reasonable times to inspect the same and to exercise any power or authority or to perform any duty imposed upon the public officer under this code.

(b) The authority granted to the public officer by subsection (a) of this section is subject to the following:

- (1) If the building, structure or premises is occupied, the public officer shall first present proper credentials, explain the purpose for which admittance is desired and demand entry.
- (2) If such property is unoccupied, the public officer shall first make a reasonable effort to locate the owner or other person having charge or control of the property, present proper credentials, explain the purpose for which admittance is desired and demand entry.
- (3) If the public officer is refused admission or cannot locate the owner or occupant, the public officer shall refrain from entering until authorized to do so by proper judicial authority.

(Code 1996; Code 2015)

8-205. Notice.

Any person, corporation, partnership or association found by the public officer to be in violation of section 8-201 shall be served a notice of such violation. The notice shall be served by certified mail, postage prepaid, return receipt requested; provided, that if the owner or his or her agent in charge of the property is a resident of Barton County, Kansas, the notice shall be personally served by the public officer or a law enforcement officer.

(K.S.A. 12-1617e; Code 1996; Code 2015)

8-206. Same; contents.

The notice shall state the condition(s) which is (are) in violation of section 8-201. The notice shall also inform the person, corporation, partnership or association 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 8-201; or

(b) He, she or they have 10 days from the date of serving the notice to request a hearing before the governing body of the matter as provided by section 8-209;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-207 and/or abatement of the condition(s) by the city as provided by section 8-208.

(Code 1996)

8-207. Failure to comply; penalty.

Should the person, corporation, partnership or association 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, corporation, partnership or association and upon conviction of any violation of provisions of section 8-201, 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.

(Code 1975, 7-103; Code 1996)

8-208. Abatement.

In addition to, or as an alternative to prosecution as provided in section 8-207, the public officer may seek to remedy violations of this section in the following manner. If a person to whom a notice has been sent pursuant to section 8-205 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-206, 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 8-210. 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, postage prepaid, 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.

(d) 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.

(Code 1996)

8-209. Hearing.

If a hearing is requested within the 10 day period as provided in section 8-206, 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 before the governing body. The hearing shall be held by the governing body 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. 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 in the manner provided in section 8-208.

(Code 1996)

8-210. Costs assessed

If the city abates the nuisance pursuant to section 8-208, the cost of abatement shall be charged against the lot or parcel of ground on which the nuisance was located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this section. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

(Code 1996)