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ORDINANCE NO. 1397

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF COLUMBUS, KANSAS, REPEALING CHAPTER VIII, ARTICLE 2 AND ARTICLE 2A, OF THE CODE OF THE CITY OF COLUMBUS TO ESTABLISH NEW CHAPTER VIII, ARTICLE 2, HEALTH NUISANCES AND ENVIRONMENTAL CODE VIOLATIONS.

WHEREAS, procedures to provide notice, penalty and abatement of violations regarding unlawful health nuisances and environmental codes are set out in the Columbus City Code, Chapter VIII, Section 2 and Section 2A.

WHEREAS, Chapter VIII, Section 2 and Section 2A, are duplicitous and subject to revision and clarification in order to effectively enforce the substantive provisions.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COLUMBUS, KANSAS.

SECTION 1: That Code 1999, Code 2005, Ordinance No. 1297, and Ordinance No. 1343 shall be amended to redefine and consolidate regulations governing unlawful health nuisances and environmental codes in Chapter VIII Article 2.

SECTION 2: That Chapter VIII, Article 2 of the Columbus City Code 1999 be amended as follows:

New Section 8-201. DEFINITIONS; UNLAWFUL NUISANCES; ENVIRONMENTAL CODE.

1. The Governing Body seeks to protect, preserve, upgrade and regulate the health and environmental quality of industrial, commercial and residential neighborhoods in this City and adopts the following definitions and conditions that create unsightly and hazardous conditions due to dilapidation, deterioration or disrepair of walls, siding, fences or structure exteriors; accumulations that increase the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment, supplies; machinery; vehicles or parts thereof.

It shall be unlawful for any person to maintain or permit any nuisance within the City 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 is unhinged or unfastened and removed therefrom;
- (g) All articles or things whatsoever caused, kept, maintained or permitted to 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.
- (i) Abandoned Motor Vehicle: 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 the ordinance or incapable of moving under its own power; or in a junked or wrecked condition, subject to the procedures set out in the Code for the City of Columbus, Kansas, Chapter VIII, Article 3;
- (j) 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;
- (k) Commercial or Industrial: used or intended to be used primarily for other than residential purposes;
- (l) 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;
- (m) Exterior: those parts of a structure which are exposed to the weather or subject to contact with the elements, including, but not limited to: siding, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs;
- (n) 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;
- (o) 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 or any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession;
- (p) Premises: any lot, plot or parcel of land including the structures thereon. 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.
- (q) Refuse: garbage and trash;
- (r) Residential: used or intended to be used primarily for human habitation;
- (s) 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;
- (t) 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, plastic, mineral matter, ashes, clinkers, or street rubbish and sweepings;

- (u) Weathered: deterioration caused by exposure to the elements;
- (v) Yard: the area of the premises not occupied by any structure.

New Section 8-202. PUBLIC OFFICER. The Mayor, with the consent of the Council, shall designate a public officer to be charged with the administration and enforcement of this Article.

New Section 8-203. 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 and community. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood and the community. Such evidence shall include conditions declared unlawful under section 8-205, but shall not include conditions which are not readily visible from any public place or from any surrounding private property.

New Section 8-204. RIGHT OF ENTRY. The public officer has the right of access and entry upon private property at any reasonable time to the extent allowed by law for the purpose of making inquiry and inspection to determine if a nuisance or environmental violation exists.

New Section 8-205. UNLAWFUL ACTS. It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions which are injurious to the health, safety or general welfare of the residents of the community or conditions which are detrimental to adjoining property, the neighborhood or the City. 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, or;
- (c) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property;
- (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.

New Section 8-206. NOTICE. Any person found by the public officer to be in violation of Section 8-205, as defined in Section 8-201, shall be sent a notice of such violation by the public officer. This notice is the administrative remedy and is not required prior to the filing of a complaint in Municipal Court. The notice shall be sent by restricted mail, postage prepaid, return receipt requested. The notice shall state:

1. The condition which has caused the violation of this article, and
2. That the person in violation shall have:
 - (a) 5 business days from the date of the mailing of the notice to alleviate the exterior conditions (yard) violation, and/or
 - (b) 5 business days from the date of the mailing of the notice to alleviate the exterior conditions (structure) violation.

New Section 8-207. PENALTY. Notwithstanding any provision herein, the public officer may file a complaint in the Municipal Court against any person found to be in violation of Sections 8-201 and 8-205. Upon such complaint in the Municipal Court, any person found to be in violation of Sections 8-201 and 8-205 shall, upon conviction, be punished by a fine of not less than \$75.00 nor more than \$500.00, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment for each offense. For the purpose of this Article a separate violation shall be deemed committed on each day during or on which such violation is permitted to exist. The public officer is not required to pursue the administrative remedy prior to filing of a Municipal Court complaint.

New Section 8-208. ABATEMENT. In addition to prosecution as provided in Section 8-207, the public officer may seek to remedy violations of this Article in the following manner. If a person whom the Municipal Court has found in violation of Sections 8-201 and 8-205 has not alleviated the conditions causing the violation(s), the public officer may present a resolution to the Governing Body for adoption. Said resolution shall notify the person of a public hearing on the issue of abatement to consider authorizing the public officer or other agents of the City to abate the conditions causing the violation. The resolution shall further provide that the costs incurred by the City shall be charged against the lot or parcel on which the nuisance was located, as provided in Section 8-211.

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.
4. 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.

New Section 8-209. HEARING. The hearing shall be held by the Governing Body as soon as possible after the filing of the request, 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 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 8-208.

New Section 8-210. APPEALS. Any person affected by any determination of the Governing Body under Sections 8-208 and 8-209 may appeal such determination in the manner provided by K.S.A. 60-2101.

New Section 8-211. COSTS ASSESSED. If the City abates or removes the nuisance pursuant to Section 8-208, 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. 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.

New Section 8-212. 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 Kansas Constitution, by any other law or by ordinance.

SECTION 3: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall take effect and be in force upon passage and shall be published in the official City newspaper.

PASSED and APPROVED by the Governing Body this 17th day of October, 2016.

William E. Schaiff
William E. Schaiff, Mayor

ATTEST:

Cherri Chancellor
Cherri Chancellor, City Clerk

(SEAL)