

ORDINANCES OF THE CITY OF SEVERY, KANSAS

Ordinance No.431

AN ORDINANCE DECLARING NUISANCES WITHIN THE CITY OF SEVERY, KANSAS, TO BE UNLAWFUL; PROVIDING FOR THE ABATEMENT OR REMOVAL OF NUISANCES; AUTHORIZING THE ASSESSMENT OF COSTS, PROVIDING FOR PENALTIES, AND REPEALING ORDINANCE 349 AND ARTICLE 1 OF ORDINANCE NO. 294.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SEVERY, KANSAS, THAT:

Section One
UNLAWFUL NUISANCES 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, left, or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure, or lot, whether vacant or occupied.
- b. Dead animals not removed within 24 hours after death.
- c. Any place or structure or substance which emits or causes offensive, disagreeable or nauseous odors.
- d. Stagnant ponds or pools of water.
- e. Iceboxes, freezers, or refrigerators, whether abandoned or under the control of any person, kept for more than 48 hours on porches, patios, decks, or other unenclosed areas on a lot; or in streets, alleys, right-of-ways or other public areas.
- f. All articles or things whatsoever caused, kept, maintained, or permitted by any person to the injury annoyance, or inconvenience to the public or of any neighborhood.
- g. 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.
- h. All things representing fire hazards, including, but not limited to:
 - (1) Accumulation of combustible rubbish, trash, packing materials, waste paper, excelsior, or empty boxes in any building or outside of and adjacent to any building, or in any alley, sidewalk, or premises within thirty (30) feet of any building, unless stored in metal or wooden metal-lined bins with self-closing or automatic covers. Such items, if not

Ordinance No. 431 (Page 2 of 6)

stored, will not be subject to this Ordinance during the time elapsed between two regularly scheduled days of City refuse collection.

(2) Deposits, stacks, or stores of hay or straw, whether baled or not baled, and whether in a building or shed, or out-of-doors, except for small amounts, baled or not baled, of no more than a total of 200 pounds, for personal or commercial use.

(3) Failure to comply with any law concerning storage, handling, or use of inflammable oils, explosives, liquefied petroleum gases, fertilizers, welding or soldering materials, or other substances conducive to the outbreak or spreading of fire.

Section Two

PUBLIC OFFICER; COMPLAINTS; INQUIRY AND INSPECTION

The Governing Body shall designate a Public Officer, who shall be charged with administration and enforcement of this Ordinance, and shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating their information or belief that a nuisance exists and describing the same and where located; or after being informed that a nuisance may exist by a board of health, county health officer, chief of police, or fire chief. The Public Officer also may make such inquiry and inspection when he or she observes a condition which appears to constitute a nuisance. Upon making any inquiry and inspection the Public Officer shall make a written report of findings.

Section Three

RIGHT OF ENTRY

It shall be a violation of this Ordinance to deny the Public Officer 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. The Public Officer shall enter upon premises at reasonable hours for the purpose of making such inspections. Entry shall be made so as to cause the least possible inconvenience to any person in possession of the structure. Notwithstanding the foregoing, if entry is denied by such person, the Public Officer will then seek an order or warrant from an administrative body or a court of competent jurisdiction before entry.

Section Four

ORDER OF VIOLATION

(a) Upon review of the written report of the Public Officer, the Governing Body shall decide whether to issue an Order of Violation to the owner of any property in violation of

Ordinance No. 431 (Page 3 of 6)

this Ordinance; or to any person, corporation, company, partnership, association or organization in violation of this Ordinance.

(b) The Public Officer is hereby designated by the Governing Body for the purposes of issuing all such orders, upon the written resolution of the Governing Body stating a finding of a violation of this Ordinance. Such orders shall be issued in the name of the Governing Body, be served as required in this Section Four, and contain all notices and any other information required by this Ordinance and K.S.A. 12-1617e, as amended. The Governing Body shall direct the Public Officer to serve such orders on the owner(s) or the agent of the owner(s) of such property; or on the person, corporation, company, partnership, association, or organization in violation of this Ordinance. Service shall be made by certified mail, return receipt requested, or by personal service.

(c) If the owner(s), agent, person, corporation, company, partnership, association, or organization failed to accept delivery or otherwise failed to effectuate receipt of an Order of Violation sent pursuant to this Section Four during the preceding twenty-four month period, the Governing Body may provide notice of the issuance of any further orders to abate or remove a nuisance by other methods, including, but not limited to, door hangers, conspicuous posting on the property of such orders, personal notification, telephone communication, or first class mail.

**Section Five
CONTENT OF ORDER**

In addition to stating the condition(s) in violation of this Ordinance, the Order of Violation shall inform the owner(s), agent, person, corporation, company, partnership, association, or organization ("the Requestor") that:

(a) The Requestor shall have 10 days from the date of service of the Order of Violation, in which to abate or remove the condition(s) in violation of this Ordinance.

(b) In the alternative, the Requestor shall have 10 days from the date of service of the Order of Violation to request a hearing before the Governing Body as provided in Section Six.

(c) Failure either to abate or remove the condition(s), or to request a hearing within the time allowed, may result in prosecution as provided in Section Seven and/or abatement or removal of the condition(s) by the City, as provided in Section Eight.

**Section Six
HEARING**

If a hearing is requested as provided in Section Five, the request shall be made in writing to the Governing Body and timely presented, either by personal service on a City official

Ordinance No. 431 (Page 4 of 6)

or employee at City Hall, on or before the end of the ten (10)-day period, or by first-class mail, postmarked on or before the end of the ten (10)-day period. Failure to make a timely request for a hearing shall constitute a waiver of the Requestor's right to contest the findings of the Governing Body as to the existence of a violation of this Ordinance. The hearing shall be held by the Governing Body as soon as possible after the filing of the request therefore, and the Requestor shall be advised in writing by the City Clerk, by hand-delivery or first class mail, of the time and place of the hearing delivered at least five (5) working days in advance thereof. At any such hearing, the Requestor may be represented by another individual, and the Requestor 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 adopting a resolution and serving the resolution upon the Requestor as provided by Section Eight.

Section Seven

FAILURE TO COMPLY; PENALTY

Should the owner(s), person, corporation, company, partnership, association, or organization fail to comply with the Order of Violation by either abating or removing the nuisance, or timely requesting a hearing, the Governing Body may direct the Public Officer to file a complaint in the Municipal Court of the City against such owner(s), person, corporation, company, partnership, association, or organization. Upon conviction of any violation of this Ordinance, he, she, they, or it may be fined in an amount not to exceed one hundred dollars (\$100.00) or be imprisoned not to exceed thirty (30) days, or be both fined and imprisoned. Each day during or on which a violation occurs or continues after an Order of Violation has been served shall constitute an additional or separate offense.

Section Eight

ABATEMENT AND REMOVAL BY THE CITY

In addition to, or as an alternative to, prosecution as provided in Section Seven, the Governing Body may seek to remedy violations of this Ordinance in the following manner:

If an owner, person, corporation, company, association, or organization on whom an Order of Violation has been served as specified in Section Four has neither abated nor removed the condition causing the alleged violation nor requested a hearing before the Governing Body within the time periods specified in Section Five, the Governing Body may adopt a resolution authorizing the Public Officer or other agents of the City to abate or remove the condition causing the violation at the end of ten (10) days after passage of the resolution. The resolution shall further provide that the costs incurred by the City shall be collected as provided by K.S.A. 12-1,115, as amended, and charged against the lot or parcel of ground on which the nuisance was located, as provided in Section Nine. A copy

Ordinance No. 431 (Page 5 of 6)

of the resolution shall be served upon the owner(s), agent, person, corporation, company, association, or organization in violation, in one of the following ways:

(a) Personal service upon the person(s), agent, or entity in violation; or

(b) Service by certified mail, return receipt requested; or

(c) In the event the whereabouts of such person or entity 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 service of the resolution shall be made by publishing the resolution 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 Nine
COSTS ASSESSED**

If the City abates or removes the nuisance pursuant to Section Eight, the City shall give notice to the owner or the owner's agent by certified mail, return receipt requested, of the total costs of the abatement or removal incurred by the City. The notice shall also state that payment is due within 30 days following receipt of the notice. The City may recover the costs of providing notice, including any postage required by this Section Nine. The notice shall also state that, if the costs of the removal or abatement are not paid within the 30-day period, the costs of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, as amended, and shall be assessed as special assessments and charged against the lot or parcel of ground on which the nuisance occurred. The City Clerk shall, at the time of certifying other taxes to the County Clerk, certify the unpaid portion of 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. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, as amended, but only until the full costs and applicable interest have been paid in full.

Section Ten

This Ordinance shall be in full force and effect from and after its adoption and publication in the official city newspaper. Article 1 of Ordinance No. 294 and Ordinance No. 349 are hereby repealed, and any other Ordinances, or parts of Ordinances, are repealed to the extent they are in conflict with this Ordinance.

Ordinance No. 431 (Page 6 of 6)

Adopted by the City Council on the 16th day of January, 2020.

Thomas E. Eulank
Mayor

Attest: Candice L. Myers
City Clerk