

## **ORDINANCE NO. 414**

### **AN ORDINANCE ESTABLISHING COMPREHENSIVE HEALTH AND WELFARE PROVISIONS FOR THE CITY OF KENSINGTON, KANSAS,**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF KENSINGTON, KANSAS, THAT EXISTING ORDINANCES 355 AND 356 BE REPEALED AND REPLACED WITH THE FOLLOWING COMPREHENSIVE HEALTH AND WELFARE PROVISIONS:**

#### **HEALTH AND WELFARE**

<b>SECTION 1.</b>	<b>HEALTH NUISANCES</b>
<b>SECTION 2.</b>	<b>ENVIRONMENTAL NUISANCES</b>
<b>SECTION 3.</b>	<b>JUNKED, ABANDONED VEHICLES</b>
<b>SECTION 4.</b>	<b>WEEDS</b>
<b>SECTION 5.</b>	<b>MINIMUM HOUSING</b>
<b>SECTION 6.</b>	<b>RODENT CONTROL</b>
<b>SECTION 7.</b>	<b>MISCELLANEOUS PROVISIONS</b>

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#### **SECTION 1 – HEALTH NUISANCES**

**1-101 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)

1-102 **PUBLIC OFFICER.** The Mayor shall designate a public officer to be charged with the administration and enforcement of this Section.

1-103 **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 any official of a county or state health department, 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.

1-104 **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.

1-105 **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 1-101 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)

1-106 **SAME; CONTENTS.** The order shall state the condition(s) which is (are) in violation of Section 1-101. The order shall also inform the person, corporation, partnership or association that:

- (a) He, she or they shall have 10 days from the receipt of the order to abate the condition(s) in violation of Section 8-101; provided, however, that the governing body 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 1-101; or,
- (b) 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 1-109;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 1-107 and/or abatement of the condition(s) by the City as provided by Section 1-108.

1-107 **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 1-101, 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.

1-108 **ABATEMENT.** In addition to, or as an alternative to prosecution as provided in Section 1-107, 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 1-105 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 1-106, 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 1-110. 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.

- (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 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.

1-109 **HEARING.** If a hearing is requested within the 10 day period as provided in Section 1-106, 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 1-108.

1-110 **COSTS ASSESSED.** If the City abates or removes the nuisance pursuant to Section 1-108, 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.

## SECTION 2 – ENVIRONMENTAL NUISANCES

2-201 **TITLE.** This Section shall be known as "Environmental Nuisances."

2-202 **LEGISLATIVE FINDING OF FACT.** The governing body has found that there exist within the City unsightly and hazardous conditions due to: dilapidation, deterioration or disrepair of walls, siding, fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment, supplies, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on the adjoining properties, the neighborhood and the City, or are injurious to the health and safety of the residents of the City. The governing body desires to promote the public health, safety and welfare by the repair, removal, abatement, and regulation of such conditions in the manner hereafter provided.

2-203 **PURPOSE.** The purpose of this ordinance is to protect, preserve, upgrade, and regulate the environmental quality of industrial, commercial and residential neighborhoods in this City, by outlawing conditions which are injurious to the health, safety, welfare or aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof.

2-204 **RULES OF CONSTRUCTION.** For the purpose of this Article, the following rules of construction shall apply:

- (1) Any part thereof - Whenever the words premises, structure, building or yard are used they shall be construed as though they were followed by the words "or any part thereof."
- (2) Gender - Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.
- (3) Number - Words of number shall be construed to mean singular or plural, as may be applicable.
- (4) Tense - Words of tense shall be construed to mean present or future, as may be applicable.
- (5) Shall - The word shall is mandatory and not permissive.

2-205 **DEFINITIONS.** The words and phrases listed below when used in this Article shall have the following meanings:

- (1) **Abandoned Motor Vehicle** - any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 1-126 to 1-149 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.

- (2) 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.
- (3) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.
- (4) Dilapidation, Deterioration or Disrepair - shall mean 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.
- (5) Exterior - those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to: sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.
- (6) 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.
- (7) 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 of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.
- (8) 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.
- (9) Refuse - garbage and trash.
- (10) Residential - used or intended to be used primarily for human habitation.
- (11) 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.
- (12) 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, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings.
- (13) Weathered - deterioration caused by exposure to the elements.
- (14) Yard - the area of the premises not occupied by any structure.

2-206 **PUBLIC OFFICER.** The Mayor shall designate a public officer to be charged with the administration and enforcement of this Section of the Ordinance.

2-207 **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. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood. Such evidence shall include conditions declared unlawful under Section 1-208 but shall not include conditions which are not readily visible from any public place or from any surrounding private property.

2-208 **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:

- (a) **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:
  - (1) lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk or refuse;
  - (2) abandoned motor vehicles; or
  - (3) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property.
  - (4) nauseous substances, carcasses of dead animals or places where animals are kept in an offensive manner.
- (b) **EXTERIOR CONDITIONS** (structure) shall include, but not be limited to, deteriorated, dilapidated, or unsightly:
  - (1) exteriors of any structure;
  - (2) exteriors of any accessory structure; or
  - (3) fences, walls, or retaining walls.

2-209 **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 8-208 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. The order shall state:
  - (c) The condition which has caused the violation of this Article; and
  - (d) That the person in violation shall have:
    - (1) 10 days from the receipt of the order to alleviate the exterior conditions (yard) violation; and/or;
    - (2) 45 days from the receipt of the order to alleviate the exterior conditions (structure) violation; or in the alternative to subsections (1) and (2) above,
    - (3) 10 days from the receipt of the order, plus any additional time granted under subsection (c), to request, as provided in Section 8-212 a hearing before the governing body or its designated representative on the matter; and;
  - (e) Provided, however, that the governing body shall grant one or more extensions to the time periods stated in subsections (2) and (3), above, if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions which have caused the violation of this Article; and,
  - (f) That failure to alleviate the condition or to request a hearing may result in prosecution under Section 2-210 and/or abatement of the condition by the City according to Section 2-211 with the costs assessed against the property under Section 2-214. (K.S.A. 12-1617e)

2-210 **PENALTY.** The public officer may file a complaint in the municipal court against any person found to be in violation of Section 2-208, provided however, that such person shall first have been sent a notice as provided in Section 2-209 and that the person has



neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 2-209. Upon such complaint in the municipal court, any person found to be in violation of Section 2-208 shall upon conviction be punished by a fine of not less than \$50 nor more than \$100, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment, for each offense. For the purposes of this Article, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

2-211 **ABATEMENT.** In addition to, or as an alternative to prosecution as provided in Section 2-210, the public officer may seek to remedy violations of this Article in the following manner. If a person to whom an order has been served pursuant to Section 2-209 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 2-209, 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 2-214.

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.
- (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 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

2-212 **HEARING.** If a hearing is requested within the 10 day period as provided in Section 2-209 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 2-211.

2-213 **APPEALS.** Any person affected by any determination of the governing body under Sections 2-211 or 2-212 may appeal such determination in the manner provided by K.S.A. 60-2101.

2-214 **COSTS ASSESSED.** If the City abates or removes the nuisance pursuant to Section 2-211, 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.

2-215 **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 – JUNK, ABANDONED VEHICLES**

3-301 **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) Serves 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.

3-302 **DEFINITIONS.** As used in this Article, 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.

3-303 **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 Article 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.

3-304 **PUBLIC OFFICER.** The Mayor shall designate a public officer to be charged with the administration and enforcement of this Section of the Ordinance.

3-305 **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 any official of a county or state health department, 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.

3-306 **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.

3-307 **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 3-303 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)

3-308 **SAME; CONTENTS.** The order shall state the condition(s) which is (are) in violation of Section 3-303. The notice shall also inform the person, corporation, partnership or association that:

- (a) He, she or they shall have 10 days from receipt of the order to abate the condition(s) in violation of Section 3-303; or
- (b) He, she or they have 10 days from receipt of the order to request a hearing before the governing body or its designated representative of the matter as provided by Section 3-312;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 3-309 and/or abatement of the condition(s) by the City as provided by Section 3-310.

3-309 **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 3-303, 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.

3-310 **ABATEMENT.** In addition to, or as an alternative to prosecution as provided in Section 3-309, the public officer may seek to remedy violations of this Article in the following manner. If a person to whom an order has been sent pursuant to Section 3-307 has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in Section 3-308, 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 3-313. 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.

- (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 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.

**3-311 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.

**3-312 HEARING.** If a hearing is requested within the 10 day period as provided in Section 3-308, 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 3-310.

**3-313 COSTS ASSESSED.** If the City abates or removes the nuisance pursuant to Section 3-310, 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.

#### **ARTICLE 4 – WEEDS**

4-401 **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.

4-402 **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.

4-403 **PUBLIC OFFICER; NOTICE TO REMOVE.**

- (a) The Mayor 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 notice 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 notice shall be sent by certified, return receipt requested, to the last know address of the owner. Such notice shall only be given once per calendar year.
- (b) The notice 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 notice;
  - (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 days of the receipt of the notice or, if the owner is unknown or a nonresident, and there is no resident agent, 10 days after notice has been published by the City clerk in the official City newspaper;
  - (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 a reasonable administrative fee, 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.

**4-404 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 section 4-403, 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)

4-405 **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 Article.

4-406 **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 a violation of this Article.

4-407 **NOXIOUS WEEDS.**

- (a) Nothing in this Section 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 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*). (K.S.A. 2-1314)

## **ARTICLE 5 – MINIMUM HOUSING**

5-501 **PURPOSE.** The governing body has found that there exist within the corporate limits of the City structures which are unfit for human use or habitation because of dilapidation, defects increasing the hazards of fire or accidents, structural defects or other conditions

which render such structures unsafe, unsanitary or otherwise inimical to the general welfare of the City, or conditions which provide a general blight upon the neighborhood or surrounding properties. It is hereby deemed necessary by the governing body to require or cause the repair, closing or demolition or removal of such structures as provided in this Article. (K.S.A. 12-1751)

5-502 **DEFINITIONS.** For the purpose of this Article, the following words and terms shall have the following meanings:

- (a) **ENFORCING OFFICER** means the public officer designated by the Mayor to enforce this Section of the Ordinance or his or her authorized representative.
- (b) **STRUCTURE** shall include any building, wall, superstructure or other structure which requires location on the ground, or is attached to something having a location on the ground. (K.S.A. 12-1750)

5-503 **ENFORCING OFFICER; DUTIES.** The enforcing officer is hereby authorized to exercise such powers as may be necessary to carry out the purposes of this Article, including the following:

- (a) Inspect any structure which appears to be unsafe, dangerous or unfit for human habitation;
- (b) Have authority to 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. If entry is denied, the enforcing officer may seek an order for this purpose from a court of competent jurisdiction;
- (c) Report all structures which he or she believes to be dangerous, unsafe or unfit for human habitation to the governing body;
- (d) Receive petitions as provided in this Article.

5-504 **PROCEDURE; PETITION.** Whenever a petition is filed with the enforcing officer by at least five residents charging that any structure is dangerous, unsafe or unfit for human habitation, or whenever it appears to the enforcing officer on his or her own motion that any structure is dangerous, unsafe or unfit for human habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, report such findings to the governing body.

5-505 **SAME; NOTICE.** The governing body upon receiving a report as provided in Section 5-504 shall by resolution fix a time and place at which the owner, the owner's agent, any lien holder of records and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished. (K.S.A. 12-1752)

**5-506 SAME; PUBLICATION.**

- (a) The resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing.
- (b) A copy of the resolution shall be mailed by certified mail within three days after its first publication to each owner, agent, lien holder and occupant at the last known place of residence and shall be marked "deliver to addressee only." (K.S.A. 12-1752)

**5-507 SAME; HEARING; ORDER.** If, after notice and hearing, the governing body determines that the structure under consideration is dangerous, unsafe or unfit for human use or habitation, it shall state in writing its findings of fact in support of such determination and shall cause the resolution to be published once in the official City newspaper and a copy mailed to the owners, agents, lien holders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be razed and removed.

**5-508 DUTY OF OWNER.** Whenever any structure within the City shall be found to be dangerous, unsafe or unfit for human use or habitation, it shall be the duty and obligation of the owner of the property to render the same secure and safe or to remove the same.

**5-509 SAME; FAILURE TO COMPLY.**

- (a) If, within the time specified in the order, the owner fails to comply with the order to repair, alter, improve or vacate the structure, the enforcing officer may cause the structure to be repaired, altered, improved, or to be vacated and closed.
- (b) If, within the time specified in the order, the owner fails to comply with the order to remove or demolish the structure, the enforcing officer may cause the structure to be removed and demolished.

**5-510 SAME; MAKE SITE SAFE.** Upon removal of any structure, the owner shall fill any basement or other excavation located upon the premises and take any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the enforcing officer may proceed to make the site safe.

**5-511 ASSESSMENT OF COSTS.**

- (a) The cost to the City of any repairs, alterations, improvements, vacating, removal or demolition by the enforcing officer, including making the site safe, shall be reported to the City Clerk.

- (b) The City shall give notice to the owner of the structure by restricted mail of the cost of removing the structure and making the premises safe and secure. The notice shall also state that payment of the cost is due and payable within 30 days following receipt of the notice.
- (c) If the costs remain unpaid after 30 days following receipt of notice, the City clerk may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the site safe. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the premises upon which the structure was located.
- (d) If the proceeds of the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901, *et seq.*, and amendments thereto, are insufficient to recover the above stated costs, or if there is no salvage, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments against the lot or parcel of land on which the structure was located and the City clerk, at the time of certifying other City taxes, shall certify the unpaid portion of the costs to the county clerk and who 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.
- (e) If there is no salvage material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901, *et seq.*, and amendments thereto, are insufficient to pay the costs of the work and the costs of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. (K.S.A. 12-1755)

5-512 **IMMEDIATE HAZARD.** When in the opinion of the governing body any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, the governing body may direct the enforcing officer to erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay. Such action may be taken without prior notice to or hearing of the owners, agents, lien holders and occupants. The cost of any action under this section shall be assessed against the property as provided in Section 5-511. (K.S.A. 12-1756)

5-513 **APPEALS FROM ORDER.** Any person affected by an order issued by the governing body under this ordinance may, within 30 days following service of the order, petition the district court of the county in which the structure is located for an injunction restraining

the enforcing officer from carrying out the provisions of the order pending final disposition of the case.

5-514 **SCOPE OF ARTICLE.** 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 charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this ordinance shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this ordinance shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise or to exercise those powers granted specifically by K.S.A. 12-1750:1756.

## **ARTICLE 6 – RODENT CONTROL**

6-601 **DEFINITIONS.** For the purposes of this Article, the following words and phrases shall have the following meanings:

- (a) **BUILDING.** Any structure, whether public or private, that is adapted for occupancy as a residence, the transaction of business, the rendering of professional services, amusement, the display, sale or storage of goods, wares or merchandise or the performance of work or labor, including office buildings, public buildings, stores, theaters, markets, restaurants, workshops and all other houses, sheds and other structures on the premises used for business purposes.
- (b) **OCCUPANT.** The person that has the use of, controls or occupies any business building or any portion thereof, whether owner or tenant. In the case of vacant business buildings or any vacant portion of a business building, the owner, agent or other person having custody of the building shall have the responsibilities of an occupant of a building.
- (c) **OWNER.** The owner of any building or structure, whether individual, firm, partnership or corporation.
- (d) **RAT HARBORAGE.** Any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside a structure of any kind.
- (e) **RAT-STOPPAGE.** A form of rat-proofing to prevent the ingress of rats into buildings from the exterior or from one building to another, consisting essentially of the closing of all openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat-gnawing.

6-602 **BUILDING MAINTENANCE.** All buildings and structures located within the present or future boundaries of the City shall be rat-stopped, freed of rats and maintained in a rat-stopped and rat-free condition.

- 6-603 **NOTICE TO RAT-STOP; WHEN CITY TO DO WORK.** Upon receipt of written notice from the governing body, the owner of any building or structure specified therein shall take immediate measures for the rat-stoppage of such building or structure. The work shall be completed in the time specified in the written notice, which shall be within 15 days, or within the time of any written extension thereof that may have been granted by the governing body.
- 6-604 **FAILURE TO COMPLY.** If the owner fails to comply with such written notice or extension, then the governing body is authorized to take such action as may be necessary to completely rat-stop the building or structure at the expense of the owner, and the City clerk shall submit bills for the expense thereof to the owner of the building or structure. If the bills are not paid within 60 days, the City clerk shall certify the amount due to the City treasurer and the charge shall be a lien against the property where the work has been done, and the owner shall be promptly billed therefore. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for rat-stoppage.
- 6-605 **REPLACE RAT-STOPPAGE.** It shall be unlawful for any occupant, owner, contractor, Public Utility Company, plumber or any other person to remove the rat-stoppage from any building or structure for any purpose and fail to restore the same in a satisfactory condition or to make any new openings that are not closed or sealed against the entrance of rats.
- 6-606 **NOTICE TO ERADICATE RATS.** Whenever the governing body notifies in writing the owner of any building or structure theretofore rat-stopped as hereinabove defined, that there is evidence of rat infestation of the building or structure, the owner shall immediately institute appropriate measures for freeing the premises so occupied of all rats. Unless suitable measures for freeing the building or structure of rats are instituted within five days after the receipt of notice, and unless continually maintained in a satisfactory manner, the City is hereby authorized to free the building or structure of rats at the expense of the owner thereof and the City clerk shall submit bills for the expense thereof to the owner of the building or structure and if the same are not paid, the City clerk shall certify the amount due from the owner to the City treasurer, and the owner shall be promptly billed therefore. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for the eradication measures.
- 6-607 **CONDITIONS CONDUCIVE TO HARBORAGE OF RATS.**
- (a) All food and feed kept within the City for feeding animals shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-stopped building.
  - (b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.

- (c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and which are rat harborage, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.
- (d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication.

6-608 **INSPECTIONS.** The public officer appointed in Section 2-206 is empowered to make such inspections and re-inspections of the interior and exterior of any building or structure as in his or her opinion may be necessary to determine full compliance with this Section of the Ordinance.

### **SECTION 7 – MISCELLANEOUS PROVISIONS**

All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this Ordinance. This Ordinance specifically supercedes all previously adopted ordinances pertaining to these subject matters, to include but not limited to, Ordinance Nos. 355 and 356.

This Ordinance shall take effect and be in full force from and after its publication in the official city newspaper.

PASSED and ADOPTED by the Governing Body of the City of Kensington, Kansas, on this the 13th day of July, 2015.

**CITY OF KENSINGTON, KANSAS**

\_\_\_\_\_  
**GEORGE POWELL, Mayor**

ATTEST:

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**AMBER HARDACRE, City Clerk**