

ORDINANCE NO. 1047

AN ORDINANCE REPEALING AND REPLACING THE CODE OF THE CITY OF EDWARDSVILLE, KANSAS, (“CODE”), CHAPTER 6; AND REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE.

WHEREAS, K.S.A. 12-1617g grants the governing body of any city to pass and adopt ordinances related to the abatement of nuisances; and

WHEREAS, the City Code of the City of Edwardsville, Kansas (the “Code”), Chapter 6, Health and Sanitation, regulates nuisances; and

WHEREAS, the Code regarding nuisances generally has not been updated in more than 15 years and is not consistent with Kansas statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDWARDSVILLE, KANSAS:

Section 1. The Code, Chapter 6, is hereby deleted in its entirety.

Section 2. The Code, Chapter 6, shall read as follows.

Section 1. Title

This Chapter shall be titled Health and Environmental Nuisances.

Section 2. Purpose

The purpose of this Chapter is to provide reasonable controls restricting nuisances including, but not limited to, excessive growth of weeds, grasses, and other uncultivated vegetation, trash and debris, abandoned and discarded items, stagnant ponds and pools of water, rodent control, and abandoned motor vehicles.

Section 3. Public Officer

The Police Chief or his designee shall be charged with the administration and enforcement of this article and known as the public officer.

Section 4. 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 evidence shall include conditions declared unlawful under **Section 7**.

Section 5. 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” and “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.

Section 6. Definitions

The words and phrases listed below, when used in this article, shall have the following meanings:

Abandoned or discarded item. Any item that appears to be abandoned or discarded.

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 code; or incapable of moving under its own power; or in a junked or wrecked condition.

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.

Commercial or industrial. Used or intended to be used primarily for other than residential purposes.

Debris. Things, such as broken pieces and old objects, that are lying where they fell or that have been left somewhere.

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.

Excessive Growth. Vegetation which is more than eight (8) inches in height above the ground, or in length, if matted down, as measured along the stem on developed residential lots, and shall mean vegetation which is more than twelve (12) inches in height above the ground or in length, if matted down, as measured along the stem in any other area of the City, except private property within an agricultural zoning district other than the yard area

surrounding the principal residential structure. The term shall not mean or include vegetation within areas that are exempted by a policy statement approved by the Governing Body, or undeveloped parcels of land which are located within an agricultural zoning district, except for vegetation on public right-of-way or within ten feet (10') of the property line adjacent to any public right-of way.

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.

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.

Grass(es). Any of a large family (Gramineae synonym Poaceae) of monocotyledonous mostly herbaceous plants with jointed stems, slender sheathing leaves, and flowers borne in spikelets of bracts.

Noxious Weeds. Means any of the following types of weeds as defined in K.S.A. 2-1314, or any amendments thereto, and those further declared as Noxious Weeds pursuant to K.S.A. 2-1314b, including, but not limited to: 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*); and shall further include those plants that are harmful to the touch, including but not limited to, poison ivy, poison oak, and poison sumac.

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.

Pond. A body of water usually smaller than a lake.

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.

Refuse. Garbage and trash.

Residential. Used or intended to be used primarily for human habitation. Residential can be single or multi-family.

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.

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 noncombustible waste consisting of, but not limited to, metal, tin cans, glass, crockery, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings.

Vegetation. Grass, weeds, and/or noxious weeds.

Weathered. Deterioration caused by exposure to the elements.

Weeds. A plant, usually of vigorous growth, that tends to overgrow or choke out more desirable plants.

Yard. The area of the premises not occupied by any structure.

Section 7. Prohibited conditions

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

- (1) Lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk or refuse, filth, excrement, 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;
- (2) Nauseous substances, carcasses of dead animals or places where animals are kept in an offensive manner;
- (3) Any place, structure or substance which emits or causes any offensive, disagreeable or nauseous odors or harbors rodents;
- (4) All stagnant ponds or pools of water;
- (5) Excessive growth, or other unsightly vegetation in excess of 12", not usually cultivated or grown for domestic use, or to be marketed or for ornamental purposes;
- (6) Abandoned motor vehicles on public or private property;
- (7) Abandoned items including furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property;
- (8) 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;

(9) 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;

(10) Deteriorated, dilapidated, or unsightly exterior of any structure, accessory structure, or fences, walls or retaining walls.

Section 8. Inquiry and inspection

The public officer shall make inquiry and inspection of premises upon receiving a complaint, either verbal or in writing. The public officer also 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.

Section 9. Notice of violation

(1) Any person found by the public officer to be in violation of **Section 7** shall be notified of such violation in writing by the public officer. The notice shall be sent to the owner or agent of the owner (tenant) of the property by certified mail, postage prepaid, return receipt requested, or by personal service and shall state:

- a. The condition which has caused the violation of this article;
- b. The person(s) in violation shall have 10 days from the date of the mailing or service of the notice to remove or abate the prohibited condition.
- c. The person(s) in violation shall have 10 days from the date of the mailing or service of the notice to request in writing a hearing before the City Manager, or his designee, on the matter as provided by Article.
- d. That failure to alleviate the condition, request an extension or to request a hearing, may result in prosecution in the municipal court and/or abatement of the condition by the city, with such costs assessed against the property under section.

(2) Any notice for excessive growth violations shall include a statement that “no further notice shall be given for 12 months from the date of this notice prior to further enforcement or abatement.”

(3) The public officer may grant extensions of such ten-day time period if the owner or agent of the property satisfactorily demonstrates in the opinion of the public officer that due diligence is being exercised in abating the nuisance.

- (4) Any further notices shall be by one or more methods of communication including, but not limited, door hangers, conspicuously posting notice of such order on the property, personal notification, email, telephone communication or first-class mail if the owner or agent of the owner of the property fails to accept delivery or otherwise effectuate receipt of a notice sent pursuant to this section during the preceding twenty-four month (24) period. If the property is unoccupied and the owner is a nonresident, notice shall be given by telephone communication or first-class mail.

Section 10. Hearing

If a hearing is requested within the 10-day period as provided in Section 9, such request shall be made in writing to the City Manager. 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 City Manager, or his designee, as soon as possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. Upon conclusion of the hearing, the City Manager, or his designee, shall record its determination.

Section 11. Abatement by city

In addition, or as an alternative, to prosecution, the public officer may seek to remedy violations of this article in the following manner. If a person to whom a notice has been sent pursuant to Section 9 has neither alleviated the conditions causing the alleged violation nor requested a hearing within the time periods specified, the public officer may proceed to have the things described in the order removed and abated from the lot or parcel of ground.

Section 12. Assessment of city's costs

If the city abates the nuisance pursuant to this article, the cost of abatement shall be charged against the lot or parcel of ground on which the nuisance was located. The city shall give notice to the owner or agent by certified mail, return receipt requested, of the total cost of such abatement or removal incurred by the city, including the cost of providing notice. The notice shall state that payment of such cost is due and payable within 30 days following receipt of notice.

If the cost of such removal or abatement is not paid within the thirty-day period, the city may levy a special assessment for such cost against the lot or piece of land in the same manner as provided in K.S.A. 12-1617e, and amendments thereto, or the city may collect the cost in the manner provided by K.S.A. 12-1,115, and amendments thereto. 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 any applicable interest has been paid in full.

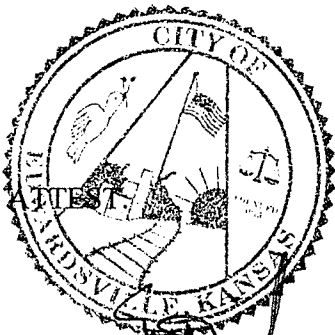
Section 13. Disposition of abandoned motor vehicles

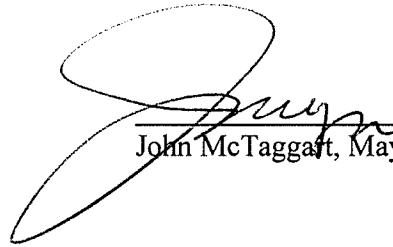
The city may remove and abate from property, other than public property or property open to use by the public, a motor vehicle determined to be a nuisance. Disposition of such vehicle shall be in compliance with the procedures for impoundment, notice and public auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amendments thereto, and K.S.A. 12-1617e(e).

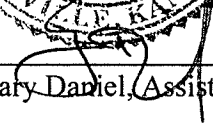
Section 3. All other ordinances or parts of ordinances in conflict with the provisions of this ordinance shall be and are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EDWARDSVILLE, KANSAS ON THIS 8TH DAY OF NOVEMBER, 2021.




John McTaggart, Mayor


Zachary Daniel, Assistant City Manager/City Clerk

APPROVED AS TO FORM:

Lisa Dehon, City Attorney