

ORDINANCE NO. 1739

AN ORDINANCE AMENDING CHAPTER 26 OF THE NEODESHA CITY CODE DEALING WITH NUISANCES, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH.

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

Section 1: Chapter 26 of the Neodesha City Code is hereby amended to read as follows:

Chapter 26 - NUISANCES

ARTICLE I. - IN GENERAL

Sec. 26-1. - Form of complaint.

A complaint charging a violation under any section of this chapter shall be in writing and signed by the city administrator, public officer, city attorney, or special assistant corporation counsel. An electronic signature shall have the same effect as that of an original signature.

Secs. 26-2—26-18. - Reserved.

ARTICLE II. - HEALTH NUISANCES

Sec. 26-19. - 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:

- (1) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown or left or deposited, or run off by natural or unnatural migration upon or under the surface of any street, avenue, alley, sidewalk, park, public or private enclosure, lot or lots, whether vacant or occupied;
- (2) All dead animals not removed within 24 hours after death;
- (3) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
- (4) All stagnant ponds or pools of water;
- (5) All grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;
- (6) 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;

- (7) 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;
- (8) 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;
- (9) Waste, industrial waste, hazardous waste (as defined by 36-399) thrown or left or deposited or run off by natural or unnatural migration upon or under the surface of any street, avenue, alley, sidewalk, park, public or private enclosure, lot or lots, whether vacant or occupied.

Sec. 26-20. - Public officer.

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

Sec. 26-21. - 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 the health officer, city administrator, chief of police or the fire chief. The public officer may also 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.

Sec. 26-22. - Right of entry.

It shall be a Class C violation of this Code 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.

Sec. 26-23. - 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 26-19 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)

Sec. 26-24. – Same; contents.

The order shall state the condition(s) which is (are) in violation of section 26-19. 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 26-19; provided, however, that the governing body [or its designee named in section 26-20] 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 26-19; 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 26-27;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 26-25 and/or abatement of the condition(s) by the city as provided by section 26-26.

Sec. 26-25. - 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 26-19, 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.

Sec. 26-26. – Abatement.

In addition to, or as an alternative to prosecution as provided in section 26-25, 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 26-23 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 26-24, 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 26-28. 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

Sec. 26-27. – Hearing.

If a hearing is requested within the 10-day period as provided in section 26-24, 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 26-26.

Sec. 26-28. – Costs assessed.

If the city abates or removes the nuisance pursuant to section 26-26, 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.

Secs. 26-29—26-35.

ARTICLE III. - ENVIRONMENTAL CODE

Sec. 26-36. - Title.

This article shall be known as the "Environmental Code."

Sec. 26-37. - Legislative finding of fact.

The governing body has found there exists 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.

Sec. 26-38. - Purpose.

The purpose of this article 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.

Sec. 26-39. - 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.

Sec. 26-40. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned motor vehicle means any motor vehicle which is:

- (1) Not currently registered or tagged pursuant to K.S.A. 8-126—8-149;
- (2) Parked in violation of this Code;
- (3) Incapable of moving under its own power; or
- (4) In a junked or wrecked condition.

Accessory structure means 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 means used or intended to be used primarily for other than residential purposes.

Dilapidation, deterioration or disrepair means 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.

Exterior means 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 means, 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.

Person means 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.

Premises means any lot, plot or parcel of land including the structures thereon. The term "premises" also means any lot, plot or parcel of land without any structures thereon.

Refuse means garbage and trash.

Residential means used or intended to be used primarily for human habitation.

Structure means 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 means 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.

Weathered means deterioration caused by exposure to the elements.

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

Sec. 26-41. - Public officer.

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

Sec. 26-42. - 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 26-43, but shall not include conditions which are not readily visible from any public place or from any surrounding private property.

Sec. 26-43. - 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.
 - c. Furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property.
 - d. Noxious 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.

Sec. 26-44. – Order of violation.

(a) The public officer 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 26-43 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:

(1) The condition which has caused the violation of this ordinance; and

(2) That the person in violation shall have:

(A) 10 days from the receipt of the order to alleviate the exterior conditions (yard) violation; and/or;

(B) 45 days from the receipt of the order to alleviate the exterior conditions (structure) violation; or

(C) 10 days from the receipt of the order, plus any additional time granted under subsection (c), to request, as provided in section 26-47 a hearing before the governing body or its designated representative on the matter; and;

(c) Provided, however, that the governing body [or its designee named herein] shall grant one or more extensions to the time periods stated in subsections (b)(2)(A) and (B), 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 ordinance; and,

(d) That failure to alleviate the condition or to request a hearing may result in prosecution under section 26-45 and/or abatement of the condition by the city according to section 26-46 with the costs assessed against the property under section 26-49.

Sec. 26-45. - Penalty

The public officer may file a complaint in the municipal court against any person found to be in violation of section 26-43; provided, however, that such person shall first have been sent a notice as provided in section 26-44 and that the person has ~~not~~ neither alleviated the conditions causing

the alleged violation nor requested a hearing before the governing body within the time periods specified in section 26-44. Upon such complaint in the municipal court, any person found to be in violation of section 26-43 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 ordinance, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

Sec. 26-46. - Abatement.

In addition to, or as an alternative to, prosecution as provided in section 26-45, the public officer may seek to remedy violations of this section in the following manner. If a person to whom an order has been served pursuant to section 26-44 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 26-44, 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 26-49.

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

Sec. 26-47. - Hearing.

If a hearing is requested within the 10-day period as provided in section 26-44 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 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. 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 26-46.

Sec. 26-48. - Appeals.

Any person affected by any determination of the governing body under section 26-46 or 26-47 may appeal such determination in the manner provided by K.S.A. 60-2101.

Sec. 26-49. - Costs assessed.

If the city abates or removes the condition in violation of this article pursuant to section 26-46, 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 ground 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.

Sec. 26-50. - Abrogation.

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 or by any other law or ordinance.

Secs. 26-51—26-63. - Reserved.

ARTICLE IV. – JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

Sec. 26-64. - Findings of government 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:

- (1) Service as a breeding ground for flies, mosquitoes, rats and other insects and rodents;

- (2) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
- (3) Are a ready source of fire and explosion;
- (4) Encourage pilfering and theft;
- (5) Constitute a blighting influence upon the area in which they are located;
- (6) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

Sec. 26-65. - Definitions.

As used in this article, unless the context clearly indicates otherwise:

- (1) 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;
- (2) 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.

Sec. 26-66. - Nuisances unlawful; defined; exceptions.

It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

- (1) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126—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;
 - a. Absence of a current registration plate upon the vehicle;
 - b. Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
 - c. Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.
- (2) The provisions of this section shall not apply to:
 - a. Any motor vehicle which is enclosed in a garage or other building;
 - b. To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
 - c. 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.

Sec. 26-67. - Public officer.

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

Sec. 26-68. - 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 the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings.

Sec. 26-69. - Right of entry.

It shall be a Class C violation of this article 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.

Sec. 26-70. - 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 26-66 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)

Sec. 26-71. - Same; contents.

The notice shall state the condition(s) which is (are) in violation of section 26-66. The notice shall also inform the person, corporation, partnership or association that:

- (1) He, she or they shall have ten days from receipt of the order to abate the condition(s) in violation of section 26-66; or
- (2) He, she or they have ten 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 26-75;
- (3) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 26-72 and/or abatement of the condition(s) by the city as provided by section 26-73.

Sec. 26-72. – 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 26-66, 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.

Sec. 26-73. – Abatement.

In addition to, or as an alternative to prosecution as provided in section 26-72, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom an order has been sent pursuant to section 26-70 has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in section 26-71, 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 26-76. 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

Sec. 26-74. – 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.

Sec. 26-75. – Hearing.

If a hearing is requested within the 10-day period as provided in section 26-71, 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 26-73.

Sec. 26-76. – Costs assessed.

If the city abates or removes the nuisance pursuant to section 10, 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.

Secs. 26-77—26-84. - Reserved.

ARTICLE V. – WEEDS

Sec. 26-85. - 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.

Sec. 26-86. - Definitions.

Weeds as used herein, means any of the following:

- (1) Brush and woody vines;
- (2) Weeds and grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- (3) Weeds which bear or may bear seeds of a downy or wingy nature;
- (4) 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;
- (5) 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 eight inches in height.

Sec. 26-87. - Public officer; notice to remove.

(a) The city administrator shall designate a public officer to be charged with the administration and enforcement of this article. The public officer or an 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 [mail], return receipt requested, to the last known 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 ten days of the receipt of 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 shall be given prior to removal of weeds during the current calendar year.

(7) That the public officer should be contacted if there are any 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 section, 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.

Sec. 26-88. - 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 in section 26-87, 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, occupant or agent in charge of the premises by certified mail, return receipt requested, of the total cost of 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 costs of 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 a special assessment for such cost 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 any applicable interest has been paid in full. (K.SA 12-1617f)

Sec. 26-89. - 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 ordinance.

Sec. 26-90. - 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 Class C Code violation.

Sec. 26-91. - Noxious weeds.

(a) Nothing in this ordinance 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 article, the term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea repens*), hoary cress (*Cardaria draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), bur ragweed (*Ambrosia grayii*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans L.*), Johnson grass (*Sorghum halepense*), and sericea lespedeza (*Lespedeza cuneata*) (K.S.A. 2-1314)

Section 2: Old Chapter 26 of the Neodesha City Code and all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3: EFFECTIVE DATE. This ordinance shall be in full force and effect upon its publication in the official city newspaper.

Passed by the Governing Body of the City of Neodesha, Kansas and signed by the Mayor this 25th day of November, 2020.

ATTEST:

/s/ Devin Johnson

Devin Johnson, Mayor

/s/Stephanie Fyfe

Stephanie Fyfe, City Clerk

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