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State law references-Special assessment for cost of abatement of nuisances, K.S.A. 12-1,115; refuse collection and disposal, K.S.A. 12-2111; nuisance, abatement, K.S.A. 121617e; maintenance of common nuisance, K.S.A. 21-3760; public nuisance, K.S.A. 21-4106; permitting a public nuisance, K.S.A. 21-4107; fuel carriers, K.S.A. 55-516; injunctions, K.S.A. 60-908; health nuisances, K.S.A. 65-159, 65-160; cosmetics, drugs, medicines, food nuisances, K.S.A. 65-660; junkyards, K.S.A. 68-2209.

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- Sec. 10-811 Incorporation and effective date

New Article added: (Ord. No. 3657-07, 12-05-07: Effective 6/1/08)

Changed: 1-11-08

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ARTICLE I. PUBLIC HEALTH AND SAFETY; ENVIRONMENTAL HAZARDS

Sec. 10-101 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:

Emergency action- means all activities conducted in order to evaluate, prevent, mitigate or alleviate harm to the public health and safety or the environment from a release or threatened release of any solid, liquid or gaseous material or any combination thereof into or upon land, water or air.

Government entity- means the City or any entity responding under a mutual aid agreement with the city.

Recoverable expenses- means and includes full costs expended by the governmental entity that are reasonably and prudently incurred in responding to an emergency action and may include but are not limited to:

- A. Costs of all materials and supplies consumed and expended in responding to an emergency action.
- B. Compensation of governmental entity employees for time and effort devoted to an emergency action.
- C. Costs of renting or leasing equipment needed to evaluate and respond to an emergency action.
- D. Replacement costs of equipment owned, leased or rented by the governmental entity that is contaminated or damaged beyond reuse or repair in responding to an emergency action.
- E. Costs for decontaminating and/or repairing of equipment owned, rented or leased by the governmental entity that is contaminated or damaged in responding to an emergency action.
- F. Costs for special technical services and personnel required for evaluating and/or responding to an emergency action.
- G. Costs for special services specifically required for evaluating and/or responding to an emergency action.
- H. Laboratory analysis costs incurred in evaluating and responding to an emergency action.
- I. Any costs of cleanup, storage or disposal of material released or threatened to be released or used in responding to an emergency action.
- J. Costs associated with services, supplies and equipment owned, leased or rented by the governmental entity for evacuation of persons or property in response to an emergency action.
- K. Medical expenses incurred by the governmental entity's employees or agents as a result of responding to an emergency action.

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- L. Legal expenses and administrative costs that may be incurred as a result of an emergency action, including efforts to recover expenses pursuant to this article.

Recoverable expenses- shall not include expenditures that are incurred in the course of providing routine firefighting protection.

Release- means any actual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon land, water or air, of any material which the City determines may be harmful to the public health and welfare or the environment.

Threatened release- means any imminent or impending event potentially causing but not yet resulting in a release of material, but causing the governmental entity to undertake an emergency action to prevent a possible release of material.

REVISED: (Ord. No. 3012-91, 12-04-91)

Cross reference-Definitions and rules of construction generally, § 1-101; 1-102.

Cross references-Smoking prohibited in the auditorium, § 5-211; smoking restricted at the airport, § 5-116.

State law reference-Emergency involving discharge of hazardous materials, K.S.A. 65-3471, 65-3472.

Sec. 10-102 Strict liability for release.

Any person causing or responsible for a release or threatened release resulting in an emergency action shall be strictly liable to the governmental entity for the recoverable expenses resulting from an emergency action. There shall be a rebuttable presumption that any person owning or controlling real or personal property causing a release or threatened release is responsible for such release or threatened release.

REVISED: (Ord. No. 3012-91, 12-04-91)

Sec. 10-103 Recovery of expenses.

- A. *Itemization of recoverable expenses.* Staff of the governmental entity shall keep an itemized record of its recoverable expenses resulting from an emergency action and shall certify those expenses to the City Clerk after completion of an emergency action.
- B. *Submission of claim.* The City Clerk shall submit a written, itemized claim for the total certified expenses incurred by the governmental entity for an emergency action to the responsible party and a written notice that unless the amounts are paid in full to the governmental entity within thirty (30) days after the date of mailing of the claim and notice, a civil action will be commenced against the responsible person for recovery of the amount claimed and all costs including legal expenses incurred in efforts to recover emergency action expenses.
- C. *Lien on property.* The governmental entity involved in an emergency action may cause a lien in the amount of the recoverable expenses to be placed on any real property located within the boundaries of the governmental entity owned by the person causing or responsible for an emergency action.

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- D. *Civil suit.* The governmental entity involved in an emergency action may bring a civil action upon open account for recoverable expenses against any and all persons causing or responsible for an emergency action.

- E. *Distribution of moneys recovered.* Moneys recovered under this article shall be credited to the appropriate funds of the governmental entity from which moneys were expended in performing an emergency action.

REVISED: (*Ord. No. 3012-91, 12-04-91*)

Sec. 10-104 Conflict with state or federal law.

Nothing in this article shall be construed to conflict with State or Federal laws requiring persons causing or responsible for releases or threatened releases of materials from engaging in remediation activities and/or paying the costs thereof.

REVISED: (*Ord. No. 3012-91, 12-04-91*)

Sec. 10-105 Notification requirement; penalty.

If a release occurs, the person causing or responsible for such release shall immediately notify the governmental entity and request emergency action. Failure of any person to report any release shall be an ordinance violation and upon conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500.00). Each day a violation of this section occurs shall be considered and punishable as a separate offense.

REVISED: (*Ord. No. 3012-91, 12-04-91*)

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ARTICLE II. JUNKED, WRECKED, ABANDONED PROPERTY

Section 10-201 Findings of the Governing Body.

The governing body finds that junked, salvaged, inoperable, or dismantled materials, including vehicles, affect the health, safety and general welfare of citizens of the city because they:

1. Serve as a breeding ground for flies, mosquitoes, rats, mice, snakes 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.

REVISED: *(Ord. No 3134-95, 02-15-95; Ord. No. 3585-06, 08-02-06)*

Section 10-202 Definitions.

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

1. Salvage material means materials that are obtained from the disassembly of various kinds of machinery, mechanical appliances and/or the demolition of buildings and structures;
2. Junk material means materials, which are obtained from the aggregation of salvage materials reassembled or in the process of disassembly;
3. 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, disallowed from legal or safe operation on any public road, or unable to be used;
4. 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 and any tractor or other vehicle designed to be towed or otherwise conveyed by another vehicle.

REVISED: *(Ord. No. 3134-95, 02-15-95; Ord. No. 3585-06, 08-02-06)*

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Section 10-203 Nuisances Unlawful; Exceptions.

It shall be unlawful for any person, corporation, or association to maintain, store or permit the maintenance or storage of any salvaged or junked material nuisances, as defined; and the premises of any such person, corporation, partnership or association, or under the control thereof, shall be kept free of litter, and refuse.

1. 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;
 - i. Absence of a current registration plate upon the vehicle;
 - ii. Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
 - iii. Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street, highway or any public rights-of-way.
2. The provisions of this section shall not apply to:
 - i. Any material or vehicle that is enclosed in a garage or other building;
 - ii. Any person conducting a business enterprise in compliance with existing zoning regulations if such materials or vehicles are placed behind screening of sufficient size, strength and density to screen such items from view of the public and to prohibit ready access by children and protect the public health and safety as may be directed by the public officer, however, nothing in this section shall be construed to authorize the maintenance of a public nuisance.
3. Sentence enhancement is appropriate refer to Sec. 10-209

REVISED: (Ord. No. 3134-95, 02-15-95; Ord. No. 3437-03, 3-19-03; Ord. No. 3585-06, 08-02-06; Ord. No. 3595-06, 09-20-06)

Section 10-204 Complaints; Inquiry and Inspection.

The public officer shall make inquiry and inspection of premises upon receiving a complaint stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist. The public officer may make such inquiry and inspection when he or she observes conditions that appear to constitute a salvage, junk and motor vehicle nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings.

REVISED: (Ord. No. 3134-95, 02-15-95; Ord. No. 3585-06, 08-02-06)

Section 10-205 Public officers; notice to remove.

The city manager shall designate a public officer to administer and enforce this ordinance. The public officer, or an authorized assistant, shall notify in writing the owner, occupant or agent in charge of any premises or violation stored on public right-of-way or parking lot in the city upon which junked, salvaged, or dismantled materials, including vehicles, exist in violation of this ordinance, by certified mail or by personal service. Such notice shall include the following:

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1. That the owner, occupant or agent in charge of the property is in violation of the city's junked, wrecked, abandoned property ordinance, including a description of the specific violations noted.
2. That the owner, occupant, or agent in charge of the property is ordered to abate the conditions in violation within ten (10) days from the date of personal service of notice, or three days in addition to the ten days if service is by certified mail (the three days to begin the day after the date of the letter). In the case where the owner of the nuisance has placed the item(s) on the public property the owner must remove them within 24 hours.

If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice sent pursuant to this section during the preceding twenty-four month period, the public officer may provide notice of the issuance of any further orders to abate or remove a nuisance. Except as specifically provided the public officer may 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. K.S.A. 12-1617e.

3. That the owner, occupant, or agent in charge of the property may request a hearing before the governing body or its designee within five (5) days of the receipt of notice. The governing body hereby designates the city manager or his/her designee as its representative for such hearing.
4. Should the person fail to comply with the notice to abate the nuisance or fail to request a hearing, the public officer may file a complaint in municipal court of the city against such person and upon conviction of any violation, be fined in an amount not to exceed one thousand dollars (\$1,000) or be imprisoned not to exceed thirty (30) days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.
5. As an alternative to prosecution, when the owner, occupant, or agent in charge of the property neglects or fails to comply with the requirements, the city or its authorized agent, may cause to have the salvage, junk and motor vehicle nuisance removed as provided by K.S.A. 12-1617e and K.S.A. Supp.8-1102, as amended. The actual cost of the removal of the salvage, junk and motor vehicle nuisance, the cost of providing notice, including postage, and an \$85 administration fee will be assessed against the owner, occupant, or agent in charge of the property.
6. The public officer should be contacted if there are any questions regarding the order.
7. Sentence enhancement is appropriate refer to Section 10-209

REVISED: (*Ord. No. 3134-95, 02-15-95; Ord. No. 3585-06, 08-02-06; Ord. No. 3595-06, 09-20-06; Ord. No. 3612-07, 1-3-07*)

Section 10-206 Abatement; assessment of costs.

1. The public officer, or an authorized assistant, shall give notice to the owner, occupant, or agent in charge of the premises by certified mail of the costs of abatement of the salvage, junk and motor vehicle nuisance. The notice shall state that payment of the costs is due and payable within thirty (30) days following receipt of notice.

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2. If the costs of removal or abatement remain unpaid after thirty (30) days following the receipt of notice, a record of the costs shall be certified to the city clerk. The city may levy a special assessment for such costs to be assessed against the particular lot or piece of land on which such violation occurred or originated from, in the same manner as provided by K.S.A. 12-1617e. The city clerk shall certify the assessment to the county clerk at the time other special assessments are certified for placing such on the tax rolls of the county.

REVISED: *(Ord. No. 3134-95, 02-15-95; Ord. No. 3585-06, 08-02-06)*

Section 10-207 Right of entry.

The public officer, and the public officers authorized assistants, employees, contracting agents or other representative are hereby given the right to enter onto private property at reasonable hours to inspect and make inquiry to determine if a salvage, junk and motor vehicle nuisance exists or has been abated. If entry is denied, the public officer may seek an order for this purpose from a court of competent jurisdiction. The public officer is not authorized to enter residences or buildings.

REVISED: *(Ord. No. 3134-95, 02-15-95; Ord. No. 3585-06, 08-02-06)*

Section 10-208 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 removal of salvage, junk and motor vehicle nuisances. Such interference shall constitute a Class B misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than \$50 nor more than \$500, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each separate day or part thereof shall constitute a separate offense.

REVISED: *(Ord. No. 3134-95, 02-15-95; Ord. No. 3585-06, 08-02-06)*

(This entire Article II was changed to reflect Ordinance No. 3585-06, dated 8/2/06)

Section 10-209 Sentence enhancements for violation of prohibitions.

The City Prosecutor shall have the authority to seek the enhancement of sentences as provided in this Ordinance by following the following procedure:

1. Enhancement is appropriate if the defendant has violated the same or similar Code at least two (2) times in the preceding five (5) years from the date of the charge of the current violation.
2. The City Prosecutor shall file a notice to enhance the sentence prior to the trial or plea in the current case, and shall provide the defendant notice of the enhancement at least 10 days prior to the plea or trial.
3. For each defendant the enhancement shall be as follows: for the first filing the enhancement shall be double the penalty provisions contained in this chapter; for second and subsequent filings for a defendant the enhancement shall be triple the penalties contained in this chapter.

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4. Sentence enhancement is appropriate for violations of the following Sections:

10-203, Nuisances Unlawful

10-205, Public Officers; Notice to Remove

New Section Added: (Ord. No. 3595-06, 09-20-06)

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**ARTICLE IIA. VINTAGE, CLASSIC, MUSCLE, AND MODERN CLASSIC
VEHICLES**

Section 10-201A Findings of the Governing Body.

The governing body finds that vintage, classic, muscle, and modern classic cars that being restored are not considered an inoperable vehicle if they meet the following criteria:

1. The property owner or the occupant has obtained a permit to restore vehicle and it is valid.
2. Permits will be valid for 90 days with possible additional 90 days for the second permit and the permits are not over 180 days.
3. The property owner or the occupant does not have more than one (1) permit at any one time.
4. The City shall only have 50 outstanding permits at any one time. No permit holder can have more than two (2) permits for the same property in the same calendar year. Any permit requesters that are not able to obtain a permit due to the above restriction shall be placed on a first come/first serve list for the following year.
5. The vehicle(s) should be stored in the front yard limited to immediately adjacent to the garage on a hard surface or in the backyard immediately adjacent to the garage or shed where tools are stored.
6. The vehicle(s) will have a car cover when the car is stored and no one is working on the vehicle. (The type of car cover is determined by the city)
7. Parts for the vehicle are stored in a secured area indoors.

Section 10-202A Definitions.

As defined by the Classic Car Club of America and used in this ordinance, unless the context clearly indicates otherwise:

1. **Vintage Car:** is a car built between 1919 and 1930.
2. **Classic Car:** is a car built between 1931 and 1960.
3. **Muscle Car:** is a car built between 1961 and 1974.
4. **Modern Classic Car:** is a vehicle that is at least 25 years preceding the current year.

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Section 10-203A Exceptions.

The provisions of this ordinance shall not apply to:

1. Any material or vehicle which is enclosed in a garage or other building;
2. To any person conducting a business enterprise in compliance with existing zoning regulations.

Section 10-204A Permit fees.

Permit fees shall be set by resolution.

Section 10-205A Public Officer.

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

Section 10-206A Complaints; Inquiry and Inspection.

The public officer shall make inquiry and inspection of the premises upon receiving a complaint stating that a code violation exists and describing the same. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a code violation. Upon making any inquiry and inspection the public officer shall make a written report of findings.

Section 10-207A Right of Entry.

The public officer, and their authorized assistants, employees, contracting agents or other representative are hereby given the right to enter onto private property at reasonable hours to inspect and make inquiry to determine if a nuisance exists or has been abated. If entry is denied, the public officer may seek an order for this purpose from a court of competent jurisdiction. The public officer is not authorized to enter residences or buildings.

Section 10-208A Unlawful Interference.

It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or their authorized representative from entering upon any such lot or piece of ground or from proceeding with such nuisance removal. Such interference shall constitute a Class B misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than \$50 or more than \$500, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each separate day or part thereof shall constitute a separate offense.

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Section 10-209A Notice.

Any person, corporation, partnership or association found by the public officer to be in violation of Section 201A, or any other section of the Zoning Regulations or Municipal Code shall be served a notice of such violation. The notice shall be served by certified mail, return receipt requested, or personally served by the public officer or a law enforcement officer to the owner, agent, and/or occupant in charge of the property.

Section 10-210A Same; Contents.

The notice shall state the condition(s) which is (are) in violation of Section 201A, the Zoning Regulations or the Municipal Code. The notice shall also inform the person, corporation or association that:

1. He, she, or they shall have ten (10) days from the date of personal service of notice, or three days in addition to the ten days if service is by certified mail (the three days to begin the day after the date of the letter), to abate the condition(s) in violation of Section 201A; or
2. He, she, or they shall have ten (10) days from the date of personal service of notice, or three days in addition to the ten days if service is by certified mail (the three days to begin the day after the date of the letter), to request a hearing before the governing body of the matter as provided by Section 213A;
3. Failure to abate the condition(s) or to request a hearing with the time allowed may result in prosecution as provided by Section 211A.

Section 10-211A Failure to comply: Penalty.

1. A permit can be revoked should the owner, agent, and/or occupant in charge of the property is in violation of any of the provisions of Section 201A.
2. If an owner, agent, and/or occupant in charge of the property have had a permit revoked for violation of the provisions of Section 201A, the owner, agent, and/or occupant in charge of the property shall be prohibited from obtaining a permit for three (3) years.
3. Should the person fail to comply with the notice to abate the code violation or fail to 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 201A, be fined in an amount not to exceed one thousand dollars (\$1,000) or be imprisoned not to exceed thirty (30) days or be both fined and imprisoned. Each day

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during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

Section 10-212A Abatement.

In addition to, or as an alternative to prosecution as provided in Section 211A the public officer may seek to remedy violations of this article in the following manner. The public officer may cause to have the violation removed as provided by K.S.A. Supp.8-1102, as amended. The cost of the removal of the violation, the cost of providing notice, including postage, and an \$85 administration fee will be assessed against the owner, occupant, or agent in charge of the property.

Section 10-213A Hearing.

If a hearing is requested within the ten (10) day period as provided in Section 210A, 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 before the governing body. The hearing shall be held by the governing body 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 (5) 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. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the manner provided in Section 209A.

NEW ARTICLE ADDED (*Ord. No. 3722-10, 02-03-10*)

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ARTICLE III. WEEDS

Section 10-301 Weeds to be removed.

It shall be unlawful for any owner, occupant, or agent to permit weeds or indigenous grasses to remain upon said premises or any area between the property lines of said premises and the center line 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 and indigenous grasses as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided. K.S.A. 12-1617f.

REVISED: *(Ord. No. 3226-97, 04-02-97; Ord. No. 3570-06, 04-19-06)*

Section 10-302 Definitions.

- A. Calendar year as used herein, means that period of time beginning January 1 and ending December 31 of the same year.
- B. Indigenous grasses as used herein, means those grasses having originated or being produced in Kansas and being considered a native grass, whether cultivated or uncultivated.
- C. Weeds as used herein, means any of the following:
 - 1. Brush and woody vines;
 - 2. Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
 - 3. Weeds or indigenous grasses which bear or may bear seeds of a downy or wingy nature;
 - 4. Weeds or indigenous grasses which are located in an area which harbors rats, insects, animals, reptiles, or any other creatures which may or do constitute a menace to health, public safety or welfare;
 - 5. Weeds or indigenous grasses which become rank in odor, and;
 - 6. Weeds and indigenous 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 twelve (12) inches in height.

REVISED: *(Ord. No. 3226-97, 04-02-97; Ord. No. 3570-06, 04-19-06)*

Section 10-303 Public officers; notice to remove.

The City Manager shall designate a public officer to be charged with the administration and enforcement of this ordinance. The public officer, or an authorized assistant, shall notify in writing the owner, occupant or agent in charge of any premises in the city upon which weeds or indigenous grasses exist in violation of this ordinance, by certified mail or by personal service, once per calendar year. Such notice shall include the following:

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1. That the owner, occupant or agent in charge of the property is in violation of the city's weed ordinance.
2. That the owner, occupant, or agent in charge of the property is ordered to cut the weeds within five (5) days of the receipt of notice or in cases where the owner is unknown or is a nonresident, and there is no resident agent ten (10) days after notice has been published in the official city paper K.S.A. 12-1617f.
3. That the owner, occupant, or agent in charge of the property may request a hearing before the governing body or its designated representative within five (5) days of the receipt of notice. The governing body hereby designates the city manager or designee as its representative for such hearing.
4. In the event that the owner, occupant, or agent in charge of the property shall neglect or fail to comply with the requirements, the city or its authorized agent, shall cause to be cut, destroyed and/or removed all such weeds and indigenous grasses and abate the nuisance created thereby at any time during the same calendar year. The cost of cutting of the weeds, the cost of providing notice, including postage, and an \$85 administration fee will be assessed against the owner, occupant, or agent in charge of the property.
5. That the owner, occupant, or agent in charge of the property will be given 30 days to pay the assessment, and, if it is not paid, it will be added to the property tax as a special assessment.
6. That no further notice shall be given prior to any subsequent removal of weeds during the same calendar year.
7. That the public officer should be contacted if there are any questions regarding the order.

If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this section, the new record owner of title to such property shall be provided notice as required by this section, and thereafter the city may recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property.

REVISED: (*Ord. No. 3226-97, 04-02-97; Ord. No. 3447-03, 6-4-03; Ord. No. 3570-06, 04-19-06; Ord. No. 3570-06, 04-19-06*)

Section 10-304 Abatement; assessment of costs.

1. The public officer, or an authorized assistant, shall give notice to the owner, occupant, or agent in charge of the premises by certified mail of the costs of abatement of the nuisance. The notice shall state that payment of the costs is due and payable within thirty (30) days following receipt of notice.

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2. If the costs of removal or abatement remain unpaid after thirty (30) days following the receipt of notice, a record of the costs of cutting and destruction and/or removal shall be certified to the city clerk. The city may levy a special assessment for such costs to be assessed against the particular lot or piece of land on which such weeds or indigenous grasses were so removed, and against such lots or pieces of land in front of or abutting on such street or alley on which such weeds or indigenous grasses were so removed in the same manner as provided by K.S.A. 12-1617e. The city clerk shall certify the assessment to the county clerk at the time other special assessments are certified for spreading on the tax rolls of the county.

REVISED: *(Ord. No. 3226-97, 04-02-97; Ord. No. 3570-06, 04-19-06)*

Section 10-305 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.

REVISED: *(Ord. No. 3226-97, 04-02-97; Ord. No. 3570-06, 04-19-06)*

Section 10-306 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 B misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than \$50.00 nor more than \$500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each separate day or part thereof shall constitute a separate offense.

REVISED: *(Ord. No. 3226-97, 04-02-97; Ord. No. 3447-03, 6/4/03; Ord. No. 3570-06, 04-19-06)*

Sec. 10-307 Noxious weeds.

1. 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.
2. For the purpose of this section, 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 desiflora*), musk (nodding) thistle (*Carduus nutans* L), Johnson grass (*Sorghum halepense*), giant ragweed, common ragweed, bull thistle, wild hemp, stinging nettle, poison ivy, poison sumac, poison oak, common milkweed, and uncultivated multiflora rose.

REVISED: *(Ord. No. 3226-97, 04-02-97; Ord. No. 3570-06, 04-19-06)*

(This entire Article III was changed to reflect Ordinance No. 3570-06 dated 4/19/06)

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ARTICLE IV. HEALTH NUISANCES

Sec. 10-401 Nuisance prohibited.

The act of keeping or allowing to exist upon any private property within the City any open cellars, open basements, cisterns, wells, ditches, holes or other excavations is hereby declared to be a nuisance; provided, however, that open cellars, basements or other excavations which are necessarily open during a period of construction shall not be construed to be a nuisance for the purposes of this article.

(Code 1982)

Sec. 10-402 Nuisance; Notice to remove and abate.

Whenever the City Inspector or authorized agent determines that a nuisance exists, s/he shall issue a notice requiring the owner or agent of the premises to abate the nuisance described in subsection (a) within a time not to exceed ten days from the service of such notice. The time limit shall be specified within the notice. The notice shall be sent by certified mail to the last known address of the owner or occupant.

(Code 1982)

Sec. 10-403 Special assessment.

If the owner of the premises on which the nuisance is located does not comply with the notice sent, then the City Inspector or authorized agent shall proceed to have the nuisance described in such notice removed and abated from the premises and report the cost thereof to the City Clerk. The cost of such removal and abatement shall be assessed and charged against the premises on which the nuisance was located.

(Code 1982)

Sec. 10-404 Failure to abate nuisance; penalty.

Any person who fails, neglects or refuses to abate and remove a nuisance from his premises pursuant to the notice and within the time specified by such notice shall be guilty of a Class C misdemeanor.

(Code 1982)

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ARTICLE V. LITTER

Sec. 10-501 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:

Garbage- means all waste material, including animal and vegetable matter, such as has been prepared or intended to be used as food, waste products, yard clippings, leaves, paper, rubbish, glasses, ashes and refuse.

Litter- means garbage, refuse and rubbish and all other waste material which, if thrown or deposited as prohibited in this article, tends to create a danger to the public health, safety and welfare.

(Code 1982)

Cross reference-Definitions and rules of construction generally, § 1-101; 1-102.

Sec. 10-502 Garbage or litter in public places; penalty.

- A. No person shall throw or deposit garbage or litter in or upon any street, sidewalk or other public place within the City except in public receptacles or in authorized private receptacles for collection.
- B. A violation of this section is a Class C misdemeanor.

(Code 1982)

Sec. 10-503 Garbage or litter upon private property; penalty.

- A. It shall be unlawful for any owner of private property or any person in control of or occupying any private property to throw, deposit or maintain garbage or litter upon such premises.
- B. A violation of this section is a Class C misdemeanor.

(Code 1982)

State law reference-Weeds, K.S.A. 2-1314 et seq.

Sec. 10-504 Duty to remove snow and ice from sidewalks.

It is hereby made the duty of the owner, agent or occupant of any lots abutting upon any sidewalks to cause to be removed from such sidewalks all snow and ice within five (5) hours adjacent to non-residential properties and within (24) hours adjacent to residential properties from the time such snow has fallen or ice has accumulated; provided, that if the snow falls or ice accumulates upon such sidewalks in the nighttime, removal of such snow or ice must be made within prescribed hours of daylight the following day. A violation of this Section shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00).

REVISED: *(Ord. No. 3610-06, 12-20-06)*

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(Code 1982)

Changed: 3/28/07

Cross references- Streets and sidewalks, Ch. 70; traffic and motor vehicles, Ch. 13.

State law references-Refuse collection and disposal, K.S.A. 12-2101 et seq.; littering, K.S.A. 21-3722.

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ARTICLE VI. SANITARY NUISANCES

Section 10-601 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, KSA 12-1617e:

1. 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;
2. All dead animals not removed within 24 hours after death;
3. Any place, structure or substance that emits or causes any offensive, disagreeable or noxious odors;
4. All stagnant ponds, pools or accumulations 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 freezers or refrigerators kept on the premises not in actual use must be removed immediately and freezers or refrigerator placed outside used as freezers or refrigerators must be secured;
7. All articles or things whatsoever caused, kept, maintained or permitted by any person that could or do result in 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. Any condition providing harbor or breeding space for rats, mice, snakes, mosquitoes or other vermin;
10. Improperly stored appliances, furniture, or other machinery that constitute a hazard to children;
11. Building materials stored outside. However, if a) there is a current building permit for the premises and b) materials are stored at least eighteen inches (18") off the ground and not closer than forty-eight inches (48") to a wall or fence (unless the city inspector has approved a lesser distance), and c) the materials will be used within six (6) months, then material storage may be allowed.
12. Sentence enhancement is appropriate refer to Sec. 10-607

REVISED: (*Ord. No. 3134-95, 02-15-95; Ord. No. 3586-06, 08-02-06; Ord. No. 3595-06, 09-20-06*)

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Section 10-602 Complaints; inquiry and inspection.

The public officer shall make inquiry and inspection of premises upon receiving a complaint that a nuisance exists and describing the same and where located or is informed that a nuisance may exist. The public officer may make any inquiry and inspection when he or she observes conditions that appear to constitute a nuisance. Upon making an inquiry and inspection the public officer shall make a written report of findings.

Section 10-603 Public officers; notice to remove.

The city manager shall designate a public officer to be charged with the administration and enforcement of this ordinance. The public officer, or an authorized assistant, shall notify in writing the owner, occupant or agent in charge of any premises or violation stored on public right-of-way or parking lot in the city upon which a nuisance exists in violation of this ordinance, by certified mail or by personal service. Such notice shall include the following:

1. That the owner, occupant or agent in charge of the property is in violation of the city's nuisance ordinance, with a description of such nuisance(s).
2. That the owner, occupant, or agent in charge of the property is ordered to abate the conditions in violation within ten (10) days from the date of personal service of notice, or three days in addition to the ten days if service is by certified mail (the three days to begin the day after the date of the letter). In the case where the owner of the nuisance has placed the item(s) on the public property the owner must remove them within 24 hours.

If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice sent pursuant to this section during the preceding twenty-four month period, the public officer may provide notice of the issuance of any further orders to abate or remove a nuisance. Except as specifically provided the public officer may 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. K.S.A. 12-1617e.

3. That the owner, occupant, or agent in charge of the property may request a hearing before the governing body or its designated representative within five (5) days of the receipt of notice. The governing body hereby designates the city manager or his/her designee as its representative for such hearing.
4. Should the person fail to comply with the notice to abate the nuisance or fail to 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, be fined in an amount not to exceed one thousand dollars (\$1,000) or be imprisoned not to exceed thirty (30) days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.
5. As an alternative to prosecution, when an owner, occupant, or agent in charge of the property neglects or fails to comply with the requirements, the city or its authorized agent, may cause to have the nuisance removed as provided by K.S.A. Supp.8-1102, as amended. The cost of the removal of the nuisance, the cost of providing notice, including postage, and an \$85 administration fee will be assessed against the owner, occupant, or agent in charge of the property.

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6. If a nuisance exists that, in the opinion of the public officer, presents an immediate threat or danger to the health, safety, or welfare of any citizen, such nuisance or condition must be abated immediately and in no instance shall remain for more than 24 hours.
7. That the public officer should be contacted if there are any questions regarding the order.
8. Sentence enhancement is appropriate refer to Sec. 10-607

REVISED: (*Ord. No. 3133-95, 02-15-95; Ord. No. 3586-06, 08-02-06; Ord. No. 3595-06, 09-20-06; Ord. No. 3612-07, 1-3-07*)

Section 10-604 Abatement; assessment of costs.

1. The public officer, or an authorized assistant, shall give notice to the owner, occupant, or agent in charge of the premises by certified mail of the costs of abatement of the nuisance. The notice shall state that payment of the costs is due and payable within thirty (30) days following receipt of notice.
2. If the costs of removal or abatement remain unpaid after thirty (30) days following the receipt of notice, a record of the costs shall be certified to the city clerk. The city may levy a special assessment for such costs to be assessed against the particular lot or piece of land on which such nuisance was so removed as provided by K.S.A. 12-1617e. The city clerk shall certify the assessment to the county clerk at the time other special assessments are certified for placing on the tax rolls of the county.

REVISED: (*Ord. No. 3133-95, 02-15-95; Ord. No. 3586-06, 08-02-06*)

Section 10-605 Right of entry.

The public officer, and their authorized assistants, employees, contracting agents or other representative are hereby given the right to enter onto private property at reasonable hours to inspect and make inquiry to determine if a nuisance exists or has been abated. If entry is denied, the public officer may seek an order for this purpose from a court of competent jurisdiction. The public officer is not authorized to enter residences or buildings.

REVISED: (*Ord. No. 3133-95, 02-15-95; Ord. No. 3586-06, 08-02-06*)

Section 10-606 Unlawful interference.

It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or their authorized representative from entering upon any such lot or piece of ground or from proceeding with such nuisance removal. Such interference shall constitute a Class B misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than \$50 nor more than \$500, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each separate day or part thereof shall constitute a separate offense.

REVISED: (*Ord. No. 3133-95, 02-15-95; Ord. No. 3586-06, 08-02-06*)

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(This entire Article VI was changed to reflect Ordinance No. 3586-06 dated 8/2/06)

Sec. 10-607 Sentence enhancements for violation of prohibitions.

The City Prosecutor shall have the authority to seek the enhancement of sentences as provided in this Ordinance by following the following procedure:

1. Enhancement is appropriate if the defendant has violated the same or similar Code at least two (2) times in the preceding five (5) years from the date of the charge of the current violation.
2. The City Prosecutor shall file a notice to enhance the sentence prior to the trial or plea in the current case, and shall provide the defendant notice of the enhancement at least 10 days prior to the plea or trial.
3. For each defendant the enhancement shall be as follows: for the first filing the enhancement shall be double the penalty provisions contained in this chapter; for second and subsequent filings for a defendant the enhancement shall be triple the penalties contained in this chapter.
4. Sentence enhancement is appropriate for violations of the following Sections:

10-601, Nuisances Unlawful
10-603, Public Officers; Notice to Remove

New Section Added: (Ord. No. 3595-06, 09-20-06)

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ARTICLE VII. SOLID WASTE

Sec. 10-701 Definitions.

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

Garbage- means all organic household waste, offal, or animal and vegetable matter, such as has been prepared or intended to be used as food, or shall have arisen in the preparation of food, wastepaper, refuse, discarded material and trash.

(Code 1982)

Cross reference-Definitions and rules of construction generally, § 1-101; 1-102.

Cross references - Utilities, Ch. 14.

State law references-Solid waste collection, K.S.A. 12-2102; solid and hazardous waste, K.S.A. 65-3401 et seq.; authority to provide collection or disposal of solid waste, K.S.A. 65-3410.

Sec. 10-702 Containers required for placement of garbage.

It shall be the duty of every householder, tenant and occupant of any dwelling or building to provide or cause to be provided and kept at all times portable vessels, tanks or receptacles to be perfectly watertight and provided with a tightly fitting cover, of sufficient capacity to hold garbage accumulated from the respective premises.

(Code 1982)

Sec. 10-703 Transporting in closed containers.

It shall be unlawful for any person to transport trash or other refuse upon the streets or alleys of the City, except in closed containers or in vehicles equipped with an enclosed compartment so constructed, equipped and used as to not permit garbage or other refuse to be blown and otherwise discharged onto the streets and alleys of the City during transportation.

(Code 1982)

Cross reference-Traffic and motor vehicles, Ch. 13.

Sec. 10-704 Penalty for violation of chapter.

Any person failing to comply with any duty imposed by this Chapter, or violating any of the terms and provisions of this Chapter, shall be deemed guilty of a Class C misdemeanor.

(Code1982)

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ARTICLE VIII. INDOOR CLEAN AIR

Sec. 10-801 Findings

Legislative findings are attached as an addendum

Sec. 10-802 Purpose

The purpose of this Article is to:

1. Improve and protect the public's health by eliminating smoking in eating establishments and public places; and
2. Guarantee the right of nonsmokers to breathe smoke-free air; and
3. Recognize that in public spaces the need to breathe smoke-free air shall have priority over the choice to smoke.

Sec. 10-803 Definitions

1. "Access point" is defined as stated in K.S.A. 21-4009 (a);

"Access point" means the area within a ten foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of K.S.A. 21-4010, and amendments thereto.

2. "Bar" is defined as stated in K.S.A. 21-4009 (b);

"Bar" means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.

3. "Employee" is defined as stated in K.S.A. 21-4009 (c);

"Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.

4. "Employer" is defined as stated in K.S.A. 21-4009 (d);

"Employer" means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.

5. "Enclosed area" is defined as stated in K.S. A. 21-4009 (e);

"Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an "enclosed area": (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a room and which are completely open to the

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elements and weather at all times; and (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is a least 30% of the total perimeter wall area of such room or area.

6. "Food Service Establishment" is defined as stated in K.S.A. 21-4009 (f);

"Food service establishment" means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries, and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

7. "Outdoor recreational facility" is defined as stated in K.S.A. 21-4009 (i);

"Outdoor recreational facility" means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.

8. "Place of Employment" is defined as stated in K.S.A. 21-4009 (j);

"Place of Employment" means any enclosed area under the control of a public or private employer, including, but no limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For purposes of this section, a private residence shall not be considered a "place of employment" unless such residence is used as a day care home, as defined in K.S. A. 65-530, and amendments thereto.

9. "Private Club" is defined as stated in K.S.A. 21-4009 (k);

"Private building" means an outdoor recreational facility operated primarily for the use of its owners, members and their guest that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.

10. "Public Building" is defined as stated in K.S.A. 21-4009 (l);

"Public building" means any building owned or operated by: (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof; (2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state or any municipality. (m)

11. "Public Place" is defined as stated in K.S.A. 21-4009 (n);

"Public place" means any enclosed areas open to the public or used by the general public including, but not limited to: Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums,

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arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a "public place" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

REVISED: *(Ord. No. 3759-10, 06-16-10)*

Sec. 10-804 Prohibitions

No person shall smoke in an enclosed area or at a public meeting, including but not limited to:

1. Public places;
2. Taxicabs and limousines;
3. Restrooms, lobbies or other common areas in public and private buildings, condominiums and other multiple residential facilities;
4. Restrooms, lobbies or other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel;
5. Access points of all buildings that are not exempt in Section 10-806;
6. Any place of employment.

REVISED: *(Ord. No. 3759-10, 06-16-10)*

Sec. 10-805 Responsibilities of Employers and Proprietors

1. The person having control of a place, subject to this Ordinance, shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Ordinance in that place.
2. The person having control of a place, subject to this Ordinance, shall clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circles with a red bar across it) at every public entrance.
3. To the extent necessary for the enforcement of this Ordinance, the provisions of K.S.A. 21-4009 (b) and (c) are incorporated into this Ordinance.

REVISED: *(Ord. No. 3759-10, 06-16-10)*

Sec. 10-806 Exceptions

The provisions of this Ordinance shall not apply to:

1. Private homes or residences, except at noted in K.S.A. 21-4009 (d) (2);
2. The outdoor areas of any building or facility beyond the access point of such building or facility;
3. Hotel or motel rooms rented to one or more guests if the total percentage of such hotel or motel rooms does not exceed 20%;
4. That portion of an adult day care facility as stated in K.S.A. 21- 4009 (d) (5);

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5. Tobacco shops;
6. Class A and B clubs as stated in K.S.A. 21-4009 (d) (8);
7. Private clubs in areas where minors are prohibited.

REVISED: *(Ord. No. 3759-10, 06-16-10)*

Sec. 10-807 Enforcement and penalties

Any person who violates the provisions of this Ordinance shall be guilty of a cigarette and tobacco infraction as shall be punished by a fine;

1. For the first infraction, \$100.00;
2. For the second infraction, \$200.00;
3. For the third and subsequent infractions, \$500.00;
4. Infraction timing shall be counted by starting on the day of the first conviction or diversion of the first offense, and shall proceed for a year from that date.

REVISED: *(Ord. No. 3759-10, 06-16-10)*

Sec. 10-808 Other Applicable Laws

This ordinance is intended to conform to the enactment of the Kansas Legislature and shall be construed in conformance with K.S.A. 21- 4009 and any amendments thereto. To the extent necessary any provision of this Ordinance that is in conflict with K.S.A. 21-4009 shall be deemed null and void, and the provisions of the Kansas Legislature shall control.

REVISED: *(Ord. No. 3759-10, 06-16-10)*

Sec. 10-809 Liberal Construction

The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, and welfare, and convenience.

Sec. 10-810 Savings Clause

The repeal of Ordinance or Code sections, as provided herein below shall not affect any rights acquired, fines, penalties, forfeitures, or liabilities therefore. Said Ordinance or Code repealed is hereby continued in fore and effect after the passage, approval, and publication of the Ordinance for the purposes of such rights, fines, penalties, forfeitures, liabilities, and actions therefore.

Sec. 10-811 Incorporation and effective date

This ordinance shall be incorporated into the Ottawa Municipal Code upon its adoption and publication in the official city newspaper, but the ordinance shall not become effective until June 1, 2008.

New Article VIII added: *(Ord. No. 3657-07, 12-05-07 effective 6/1/08)*

See: Legislative findings following. Findings are attached as an addendum.

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Addendum—legislative findings

- (A) Smoking areas may be designated pursuant to K.S.A. 21-4010 by proprietors or other persons in charge of public places, except those places where smoking is prohibited by law.
- (B) There exists a substantial body of scientific research demonstrating that smoking and the effects of second hand smoke pose significant health hazards to persons who are in the presence of smokers.
- (C) Kansas statutory law regarding smoking in public places addresses at K.S.A. 21-4013 the potential for city or county regulation of smoking within its boundaries, so long as such regulation is at least as stringent as state law.
- (D) Secondhand smoke, which contains 4,000 chemicals, 63 of which cause cancer, is the third leading cause of preventable death in the United States, and the National Cancer Institute determined in 2000 (Monograph # 10) that secondhand smoke is responsible for the early deaths of as many as 65,000 Americans annually; and
- (E) The Public Health Services National Toxicology Program has listed secondhand smoke as a known carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997), and (2) numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart, stroke, respiratory disease, and lung cancer; and
- (F) The ills of smoking and secondhand smoke are well documented in all of the independent medical studies and secondhand smoke is particularly hazardous to elderly people, children individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- (G) (1) the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke, (2) the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation, (3) air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke, (4) American Society of Heating, Refrigerating and Air conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments because it cannot determine a safe level of exposure to secondhand smoke, which contains cancer-causing chemicals, and ASHRAE acknowledges that the technology does not exist that can remove chemicals from the air that cause cancer; and
- (H) (1) a recently promulgated ASHRAE Position Document of Environment Tobacco Smoke concludes that at present, the only means of eliminating health risks associated with indoor exposure is to ban all smoking activity, and (2) ASHRAE further concludes that no current ventilation, air cleaning or other technologies have been demonstrated to control health risks from environmental tobacco smoke exposure in spaces where smoking occurs; and
- (I) A significant amount of secondhand smoke exposure occurs in the workplace, and employees who work in smoking permitted businesses suffer a higher risk of heart attack

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and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and a measurable decrease in lung function; and

- (J) Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates and increased liability claims for diseases related to exposure to secondhand smoke; and
- (K) The Ottawa City Commission recognizes that environmental tobacco smoke poses a serious public health hazard; that nonsmokers need protection from environmental tobacco smoke exposure and that regulation of the burning of tobacco in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of Ottawa;
- (L) Numerous studies have determined that environmental tobacco smoke (ETS) is a significant source of exposure to toxic air indoor contaminants, causally associated with respiratory illness, including lung cancer, asthma and emphysema; and
- (M) There is scientific research linking ETS with heart disease, responsible for an estimated 35,000 coronary heart disease deaths annually among adult nonsmokers in the United States as a result of ETS exposure; and
- (N) ETS carcinogens and poisons pose special risk to children, the elderly, food service employees, and individuals with cardiovascular disease and/or impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- (O) ETS exposure has been causally associated with developmental, respiratory, carcinogenic and cardiovascular effects, including fetal outcomes such as sudden infant death syndrome.
- (P) Tobacco use is the single largest cause of preventable death in Kansas, and according to the CDC's Tobacco Control - State Highlights 2002, tobacco use alone was responsible for an estimated 3,800 deaths in Kansas in 1999, or 16% of the total deaths in Kansas in 1999; and
- (Q) The separation of smokers from nonsmokers within the same airspace does not eliminate the exposure of nonsmokers to ETS, given that no safe level of exposure to ETS has been found;
- (R) Accordingly the Ottawa City Commission recognizes that ETS poses a serious public health hazard, that nonsmokers need protection from ETS exposure and that therefore, regulation by the City Commission of the burning of tobacco in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of Ottawa:

New Article and Addendum added: Article VIII and Legislative findings attached as addendum.

(Ord. No. 3657-07, 12-05-07; effective 6/1/08)

Changed: 1-11-08