

**CHAPTER VIII
HEALTH, WELFARE AND NUISANCES**

Article 1.	Board of Health
Article 2.	Nuisances
Article 3.	Junked & Abandoned Motor Vehicles
Article 4.	Minimum Housing Code & Dangerous & Unfit Structures
Article 5.	Rodent Control
Article 6.	Hazardous Materials
Article 7.	Emergency Preparedness
Article 8.	Fair Housing
Article 9.	Insurance Proceeds Fund

**ARTICLE 1
BOARD OF HEALTH**

8-101 **BOARD OF HEALTH CREATED.** The board of health shall consist of a city health officer, who shall be a practicing doctor of medicine and the mayor and chief of police. Members of the board shall be appointed annually by the mayor at the first regular meeting of the governing body in May of each year, to serve for one year terms subject to confirmation by the city council. The board shall adopt such rules and regulations as may be necessary to guide its operations. The city clerk shall be secretary of the board but shall have no vote. He or she shall preserve its records, rules and regulations and shall issue all orders and notices which may be required by ordinance or order of the board. (Code 1993, 11-101:102; Code 1999)

8-102 **CITY HEALTH OFFICER; DUTIES.** The city health officer shall:

- (a) Cause health investigations and inspections to be made as required by the laws of Kansas and of the city;
- (b) Make recommendations to the board respecting the improvement of health of the inhabitants of the city;
- (c) Make all health reports required by the State Department of Health and Environment, Division of Health;
- (d) Prepare an annual health report of the city for submission to the governing body;
- (e) Perform such other duties as may be required of him or her under the laws of the State of Kansas or of the city. (Code 1993,11-106; Code 1999)

8-103 **SAME; DISEASES.** The board of health shall exercise a general supervision over the health of this city, with full power to take all necessary steps, and use all necessary measures to prevent the spread of any and all contagious or infectious diseases, and may at any time remove or order to be removed, to some suitable place, provided by the city any and all persons who may be attacked by the small pox or any other contagious, or infectious diseases by issuing orders to all persons who have been exposed to such contagious or infectious diseases to keep themselves confined within their respective dwelling places for such a period as may be designated in such order or notice, and may order any person or persons who may have been exposed to and who are liable to be attacked by the small pox to be vaccinated within such a time as they may

designate in the order or notice; and any person failing or refusing to obey any such order or notice of the board, or who shall violate any of the provisions of this section shall, upon conviction, be fined in any sum not less than \$10.00 nor more than \$100.00; provided, that it shall be the duty of the board to provide at the expense of the city, for the vaccination of those who are unable to pay for the same. (Code 1993, 11-103)

8-104 QUARANTINE; NOTICES; CONFINEMENT. The board of health shall have power, in order to prevent the introduction of contagious or infectious diseases in the city, to establish and enforce such quarantine regulations as they deem necessary to protect the inhabitants against the same and shall, in case anyone shall be attacked with the small pox, scarlet fever, diphtheria or other malignant, contagious or infectious disease, cause the person so attacked to be removed to some suitable place, or in case such person cannot be removed shall see that such person is closely confined at his or her place of dwelling, and shall cause written or printed notices to be placed at a conspicuous place at or near the place where such person is confined, stating the name of the disease with which such person is attacked, and shall order all persons acting as nurses to keep themselves closely confined, until such time as they shall designate; and any nurse or member of the family or boarder or lodger at the house where such disease exists who shall refuse to obey any order of the board, or who shall violate any of the provisions of this section, shall upon conviction, be fined in any sum not to exceed \$100.00. (Code 1993,11-104)

8-105 PHYSICIANS REPORT CERTAIN DISEASES. It shall be the duty of every physician of this city to report to the board any and all cases of smallpox, scarlet fever, diphtheria or other malignant, contagious or infectious diseases he, she or they may be called on to attend, within 12 hours after he, she or they have examined the patient, and any physician failing or refusing to comply with this section, shall upon conviction be fined any sum not less than \$5.00 nor more than \$100.00.
(Code 1993,11-105)

8-106 CLOSING SCHOOLS. The board of health shall have power to order the public schools of the city closed whenever they shall deem it necessary for the best interest of the city as protection from contagious or infectious diseases. (Code 1993, 11-107)

8-107 BOARD OF HEALTH; COMPENSATION. The chief of police and mayor shall receive no compensation as members of the board other than his or her regular salary; the City health officer shall receive such sum as shall be determined by the governing body, payable semi-monthly.
(Code 1993, 11-108)

ARTICLE 2 NUISANCES

8-201 NUISANCES DEFINED. "Nuisance" is hereby defined as any person or entity doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (a) Injures or endangers the comfort, repose, health or safety of others; or

- (b) Offends decency; or
- (c) Is offensive to the senses; or
- (d) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (e) In any way renders other persons insecure in life or the use of property; or
- (f) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

8-202 DEFINITIONS.

- (a) Date of Service - The date the Notice was received by the property owner, as applicable, the date that the recipient, or an authorized signor, signed for the certified letter, the date that the personal service was obtained, the date that a Notification was made by tack service, the date of telephone communication or other personal notification, or the date that a first class letter was mailed.
- (b) Dilapidated or Deterioration - shall mean any condition characterized by, but not limited to: holes, breaks, rot, decay, crumbling, cracking, peeling or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.
- (c) Exterior - those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to: sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.
- (d) Garbage, Trash, Refuse - 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, as well as combustible waste consisting of, but not limited to papers, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, or tree branches and non-combustible waste consisting of, but not limited to: metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings.
- (e) Industrial - used or intended to be used primarily for other than residential purposes.
- (f) Noxious Weeds - The term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L.), and Johnson grass (*Sorghum halepense*).
- (g) Person, Corporation, Partnership or association - any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who is the owner of record of property, whether or not in possession.
- (h) Premises - any lot, plot or parcel of land including the structures thereon. Premises shall also mean any lot, plot or parcel of land without any structures thereon.
- (i) Structure - anything constructed or erected which requires location on the ground or is attached to something having a location on the ground including any appurtenances belonging thereto.

8-203 ILLUSTRATIVE ENUMERATION. The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following

items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (a) Noxious weeds and other rank vegetation when such growth reaches 12 inches in height, bear, or may bear seeds of a downy or wingy nature, or weeds or grasses which, due to height, have a blighting influence on the neighborhood;
- (b) Accumulation of garbage, rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things which creates an unsightly appearance;
- (c) Any condition which provides harborage for rats, mice, snakes and other vermin;
- (d) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition, which emits or causes any offensive, disagreeable or nauseous odors, or that it is otherwise a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;
- (e) Unsightly Exterior conditions of any structure, fences, walls or retaining walls;
- (f) All unnecessary or unauthorized noises and annoying vibrations, including animal noises;
- (g) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches;
- (h) The carcasses of animals or fowl not disposed of within a reasonable time after death;
- (i) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;
- (j) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;
- (k) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;
- (l) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities;
- (m) Abandoned iceboxes, refrigerators or other household appliances, bicycles, lawn mowers, or other personal property kept on the premises;
- (n) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same.
- (o) Abandoned and junk motor vehicles, whether or not they are in running condition and/or are tagged, which are in a dilapidated, unsafe or unsightly condition.

8-204 PROHIBITED. It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance in the City.

8-205 RIGHT OF ENTRY. Any City Police Officer, or any Public Officer has the right of access and entry upon private property at any reasonable time, for the purpose of making inquiry and inspection to determine if a nuisance exists.

8-206 COMPLAINTS; INQUIRY AND INSPECTION. Any Police Officer, sanctioned by the City of Clay Center, or any Public Officer, appointed by the Mayor, may make inquiry and inspection of premises upon receiving a complaint or complaints, or upon visual notice of a possible nuisance infraction. Upon making any inquiry and inspection, any Police Officer or

Public Officer shall make a written report of findings and take photographs of the infraction.

8-207 UNLAWFUL INTERFERENCE. It shall be unlawful for any person to interfere with or to attempt to prevent any Police Officer, or Public Officer or his or her authorized representative or any City employee charged with the abatement of any such nuisance, from entering upon any such lot or piece of ground or from proceeding with such abatement of nuisance. Any person committing such interference shall be deemed to have committed a Class C Misdemeanor and upon conviction, be punished by a fine of not less than \$100.00, nor more than \$500.00, or be imprisonment for not more than 30 days, or by both such fine and imprisonment, for each offense.

8-208 NOTIFICATION; ISSUANCE OF NOTICE TO APPEAR. Any person found by the Police Officer, or Public Officer, to be in violation of any Section of this Article shall be:

- (a) Served a notice of such violation; and,
- (b) Issued a Notice to Appear by the Clay Center Police Department. (Ord. 2200 7-17-07)

8-209 NOTIFICATION, SERVICE OF. Service of Notification upon any property in violation of any Section of this Article shall be made by Certified mail, return receipt requested, personal service, telephone communication, conspicuously posting notice on the property or by first class mail.

8-210 SAME, CONTENTS OF.

- (a) Such Notice shall state the condition(s) which is (are) in violation of a Section of this Article.
- (b) The Notice shall also inform the person that:
 - (1) Any recipient of such Notification shall have 10 days from the date of service of Notice to abate the nuisance condition(s) for all instances, with the exception that a person shall have 45 days from the date of service of Notice to abate the nuisance conditions concerning the exterior of structure; and
 - (2) Any recipient of such Notification shall have 10 days from the date of service of Notice to request a hearing before the governing body of the City of Clay Center; and
 - (3) In the case of weeds and/or grasses, no further Notice shall be given prior to removal of weeds and/or grasses during the current calendar year
 - (4) If there is any failure to abate the nuisance violation within the period specified in (b)(1), the City may abate the nuisance, charging the property owner with the expense thereof, including administrative expenses; and
 - (5) If the cost of the removal or abatement is not paid within 30 days, the cost of the abatement or removal shall be:
 - (A) Collected in the manner provided by K.S.A. 12-1115, and amendments thereto; or
 - (B) 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; or

(C) Both collected in the manner provided by K.S.A. 12-1115, and amendments thereto and assessed as special assessments; but only until the full cost and applicable interest has been paid in full.

8-211 HEARING BEFORE GOVERNING BODY. If a hearing is requested within the 10 day period, such request shall be made in writing to the City Clerk. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the inspection committee before the governing body. The hearing shall be held by the Governing Body 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 (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 8-209.

8-212 APPEALS. Any person affected by any determination of the Governing Body under any Section of this Article may appeal such determination in the manner provided by K.S.A. 60-2101.

8-213 NOTICE TO APPEAR, CONTENTS OF. Any Notice to Appear issued shall set forth a hearing date before the Municipal Judge. Such hearing date shall not be less than 10 days from the date of issuance, except for those violations concerning the exterior condition of a structure, in which case the hearing date shall not be less than 45 days from the date of issuance. (Ord. 2200 7-17-07)

8-214 SAME, PENALTIES FOR.

(a) Any person found, by the Municipal Court, to be in violation of any Section of this Article, shall be:

- (1) Fined an amount of not less than \$100.00 nor more than \$500.00; or
- (2) Imprisoned for not more than 30 days; or
- (3) Both fined and imprisoned, for each offense.

(b) Each day during or on which a violation occurs or continues after the issuance of a Notice to Appear shall constitute an additional or separate offense. Abatement of a nuisance by the City shall not be a defense or excuse for the property owner, agent of the owner, or occupant, in any prosecution related to such nuisance. (Ord. 2200 7-17-07)

8-215 SAME; REPEAT OFFENDERS. In the event a property owner repeatedly abates a nuisance, after issuance of a Notice to Appear, but allows the violation to occur repeatedly, the Municipal Court Judge has the authority to impose a fine and/or imprisonment, even though a situation may be abated prior to the Court hearing. (Ord. 2200 7-17-07)

8-216 ABATEMENT. In addition to, or as an alternative to prosecution, the City may seek to remedy violations of this section in the following manner. If a person to whom a Notice has been sent, has neither alleviated the conditions causing the alleged nuisance violation, nor requested a hearing before the governing body, the City may authorize the abatement of the

conditions causing the nuisance violation. 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 violation was located. A copy of the resolution shall be served upon the person in violation pursuant to 8-209. The City Clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this section. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the City as other City taxes are collected and paid.

8-217 CONSTRUCTION. Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the City to enforce any provisions of its laws nor to prevent or punish violations thereof. The powers conferred by this article shall be in addition to and supplemental to the powers conferred by the Kansas Constitution, by any other law or by ordinance. (Ord. #2190 8-1-06)

8-218 EXCEPTION.

(a) Undeveloped properties of at least one (1) acre shall be exempt from the provisions included in 8-203(a) with regard to natural grasses and the height thereof. Said properties shall require zeroscaping with regard to the height of such grasses, but shall not be exempt from the remaining provisions provided in this entire section.

(b) Property owners falling under this exception shall be required to clear or mow an area of at least six feet (6') along the boundaries or edges of said property.

ARTICLE 3 JUNKED AND ABANDONED MOTOR VEHICLES

A. ABANDONED MOTOR VEHICLES ON PUBLIC PROPERTY

8-301 DEFINITIONS. For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the following meanings:

(a) Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. Where the word "highway" or the word "street" is used in this ordinance, it means street, avenue, boulevard, thoroughfare, alley, and other public way for vehicular travel by whatever name, unless the context clearly indicates otherwise.

(b) Motor Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively on stationary rails or tracks.

(c) Owner or Occupant. A party having fee simple title in the real property, or a party having a leasehold interest in the real property, or a party who is the beneficiary of a private easement for the purpose of egress or ingress to or from said real property.

8-302 IMPOUNDING VEHICLES. The police department may cause to be impounded:

(a) Any motor vehicle unlawfully parked on a highway in violation of any provision of a City ordinance which prohibits the parking of vehicles at the place where, or time when, the impounded motor vehicle is found.

- (b) Any motor vehicle that has been abandoned and left on a highway or other property open to use by the public for a period in excess of 48 hours pursuant to K.S.A. 8-1102.
- (c) Any vehicle which interferes with public highway operations.
- (d) Any motor vehicle which:
 - (1) Is subject to removal pursuant to K.S.A. 8-1570, or 8-1102, or
 - (2) Is subject to seizure and forfeiture under the laws of the state, or
 - (3) Is subject to being held for use as evidence in a criminal trial.
- (e) Any motor vehicle, the continued presence of which, because of the physical location or condition of the motor vehicle, poses a danger to the public safety or to the motor vehicle.
- (f) Any person who shall abandon or leave any vehicle on any real property other than public property or property open to use by the public within the City, which is not owned or leased by such person or by the owner or lessee of such vehicle, shall be guilty of criminal trespass. Any motor vehicle which has been abandoned or parked on any real property, other than public property or property open to use by the public, may be moved and disposed of in accordance with the terms of this ordinance by the City upon the request of the owner or occupant of such real property. The real property referred to herein shall not be owned or leased by the person who abandons or parks said vehicle or by the owner or lessee of such vehicle. The City or any person, partnership, corporation or their agent conducting a business enterprise for the purpose of towing vehicles which removes such vehicle from the real property at the request of the City, shall have a possessory lien on such vehicle for the cost incurred in removing, towing and storing such vehicle. For purposes of this ordinance, common areas shall be construed not to mean public property or property open to the public.

8-303 SAME. The police department may authorize storage of such impounded motor vehicles at any location, public or private, which is zoned for the storage of motor vehicles.

8-304 NOTICE OF IMPOUNDMENT; STORAGE OF VEHICLE.

- (a) When Owner Present. When the police department intends to impound a motor vehicle pursuant to 8-302 and the owner of the motor vehicle is then present, the police department shall, before the motor vehicle is removed:
 - (1) Provide the owner with a notice, in the form prescribed by the police department that the motor vehicle is being impounded, that towing and storage charges will be assessed against the impounded motor vehicle, that the owner may claim and regain possession of the impounded motor vehicle at the location to which it is being removed for storage without prepayment of towing and storage charges and that the owner may request a hearing as to the propriety of the impoundment and as to the amount of and the owner's liability for the towing and storage charges.
 - (2) The notice shall also state the location where the impounded motor vehicle will be stored and the place where the owner may make his or her request for the hearing.
 - (3) The notice shall also state, in prominent language, that failure by the owner to request a hearing within five days after receipt of the notice may act as a waiver of his or her right to a hearing and that this may result in the placing of a lien against the motor vehicle for the towing and storage charges without further

notice to the owner;

(4) And that the motor vehicle be sold at public auction to the highest bidder for cash after 15 days from the date of the mailing of the notice.

(A) The owner of the impounded motor vehicle shall sign the notice as an acknowledgment that he or she has received a copy of the notice and a copy of the notice shall be provided to the owner.

(B) Failure or Refusal to Sign Notice. If any person required by this ordinance to sign a notice of impoundment willfully fails or refuses to do so, or if such person cannot be found, the police department shall note this fact on the face of the notice, which shall constitute prima facie evidence of delivery or service of notice as required by this ordinance.

(b) When Owner not Present. When the police department impounds and removes a motor vehicle pursuant to 8-302 and the owner of the motor vehicle is not present at the time of the impoundment, the police department shall:

(1) If such motor vehicle has displayed thereon a registration plate issued by the division of motor vehicles and has been registered with said division, mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state.

(A) The notice shall be in the form prescribed by the police department containing the same information as required by 8-302(a).

(B) The police department shall use reasonable diligence in determining the title owner, or if from a non-title state, the registered owner, of the vehicle, and shall inquire by mail of the office of the register of deeds of the county in which the title shows the owner resides, if registered in this state, as to whether there are any lienholders of record.

(C) If the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed to be a resident of the state whose whereabouts are unknown and service shall be made on the Secretary of State as provided in K.S.A. 8-301.

(D) If the owner does not reside in the state, as appears from the motor vehicle registration and the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed a nonresident of the state and service shall be made on the Secretary of State as provided in K.S.A. 8-301.

8-305 IMPOUNDMENT AFTER REQUEST TO LEAVE MOTOR VEHICLE. In all cases wherein the owner or operator of a motor vehicle which is on a public street has requested that the motor vehicle be left unattended at that location, in lieu of impoundment of the motor vehicle pursuant to 8-302, the police department may honor said request for a period of time not exceeding 24 hours, after which time the motor vehicle shall either be removed from the location by the owner or operator or be impounded by the police department pursuant to 8-304. The police department shall be immune from liability for any damage, loss or destruction of the motor vehicle occasioned by its being left unattended pursuant to the request of the owner or operator

thereof, in lieu of impoundment. Nothing in this ordinance shall be construed to limit the authority of the police department to order the removal of a motor vehicle by its owner or operator or to impound a motor vehicle pursuant to 8-304 at any time whenever in his or her judgment the presence of the unattended motor vehicle constitutes a danger to the public safety.

8-306 RELEASE OF MOTOR VEHICLE FROM IMPOUNDMENT.

(a) Generally. Unless the vehicle is impounded pursuant to 8-302 herein, the owner of an impounded motor vehicle may secure the release of the motor vehicle from impoundment upon requesting such release and presenting proof of ownership satisfactory to the custodian of the place where the motor vehicle is stored. If the custodian is satisfied that the person making the request is the owner or his or her authorized agent, he or she shall release the motor vehicle to the owner or his or her agent. Nothing in the preceding sentence shall preclude the owner of the impounded motor vehicle or his or her agent from paying any towing and storage charges that may be assessed against the motor vehicle, but neither the police department nor the custodian of the storage space may require payment of any towing or storage charges as a condition precedent to such release. At the same time as the owner or his or her agent requests release of the impounded motor vehicle, and if such request is made within 40 days after the owner receives a copy of the notice of impoundment, the police department shall provide him or her an opportunity to make a request for a hearing on the propriety of the impoundment and on the amount and his or her liability for the towing and storage charges occasioned by the impoundment; provided, that if the owner or his or her agent requests release of the impounded motor vehicle more than 40 days after the owner receives a copy of the notice of impoundment, no hearing may be requested on the impoundment or on the towing and storage charges and the owner shall be conclusively presumed to have consented to the impoundment and to the amount of and his or her liability for the towing and storage charges.

(b) Security for Payment of Charges. If the ownership of the impounded motor vehicle is evidenced by a title certificate issued by the Kansas Department of Highway Safety and Motor Vehicles, the owner or his or her agent may secure the release of the motor vehicle from impoundment without the payment of any towing or storage charges or the deposit of any security for the payment thereof. If the ownership of the impounded motor vehicle is evidenced by a foreign title instrument, or if the jurisdiction in which title is recorded is not evidenced from the document establishing ownership, the owner or his or her agent, before the custodian of the place where the motor vehicle is stored authorizes release of the motor vehicle from impoundment, shall deposit with the custodian cash in the amount of the towing and storage charges to the date of the request. If the owner or his or her agent refuses to provide the cash deposit, the custodian shall not authorize release of the impounded motor vehicle but if the request is timely made, a date shall be set for the hearing on the impoundment and charges.

8-307 HEARING. If the owner of an impounded motor vehicle or his or her agent timely requests the release of the motor vehicle from impoundment and a hearing on the impoundment and charges, as provided in 8-306, a date shall be set, not more than five days after the date of request, for the hearing. The City attorney shall provide a hearing examiner to conduct the hearings required by this ordinance. At the hearing, the owner,

his or her agent, or his or her attorney shall be afforded an opportunity to present, by oral testimony or documentary evidence, his or her objections to

- (a) the impoundment of the motor vehicle and
- (b) the amount of the towing and storage charges and his or her liability for the payment thereof.

If the owner or his or her agent requested the hearing more than five days but not more than 40 days after the owner received a copy of the notice of impoundment, the owner, his or her agent or his or her attorney shall be required at the hearing, as a condition precedent to the presentation of any objections by the owner, to show good cause for the delay in making the request more than five days after the owner received a copy of the notice of impoundment: if good cause cannot be shown, the hearing officer shall dismiss the hearing and make the finding stated in sub-section (b) below; otherwise, the hearing examiner shall proceed to hear the owner's objections. At the conclusion of the hearing on the owner's objections, the hearing examiner shall render his or her decision if the hearing examiner:

- (a) Finds that the impoundment was improper, he or she shall:
 - (1) Find that the owner is not liable for any towing or storage charges occasioned by the impoundment and
 - (2) Determine whether and to what extent the City shall bear the expense of the towing and storage charges; or
- (b) Finds that the impoundment was proper, he or she shall establish:
 - (1) The amount of the towing and storage charges to be assessed against the impounded motor vehicle;
 - (2) The amount of publication costs required to notify the owner of impoundment and sale of the vehicle.
 - (3) The Impound charges shall be set at \$40.00 for removal and towing of the vehicle to the storage location, plus \$10.00 per each day the vehicle is stored;
 - (4) The extent of the liability of the owner for payment of the towing and storage charges so established. The decision of the hearing examiner shall be final, and a copy of the decision shall be furnished to the owner of the impounded motor vehicle, to the custodian of the place where the motor vehicle is stored and to the City attorney.

In the event that the impoundment was pursuant to K.S.A. 8-1102(b), the owner or occupant of the real property upon which the abandoned vehicle was located shall not be assessed the costs of towing and storage of the vehicle. Further, nothing within this ordinance shall be construed to modify or effect the validity of the possessory lien of the person removing such vehicle from the real property established by K.S.A. 8-1102(b).

8-308 CHARGES CONSTITUTE A LIEN. The towing and storage charges, as well as any publication costs occasioned by the impoundment of a motor vehicle pursuant to 8-302 shall be and constitute a lien upon the impounded motor vehicle, except as provided in this ordinance. If the hearing examiner finds pursuant to 8-307 that the impoundment was improper and if he or she determines that the City shall bear part or all of the towing and storage charges, the lien created by this ordinance shall be discharged. If the hearing examiner finds pursuant to 8-307 that the impoundment was proper but that the towing and storage charges should be in an amount less than the amount of the lien, the lien created by this ordinance shall be discharged to the extent that it exceeds the amount

established by the hearing examiner. The holder of a lien created by this ordinance may perfect such lien in any manner provided by law, but he or she may not retain possession of the motor vehicle when it has been released pursuant to 8-306(a). In the event that the impounded motor vehicle is released from impoundment and the owner or his or her agent has provided security for payment of charges as required by 8-306(b), the lien created by this ordinance shall also be a lien against the security so provided, subject to being wholly or partially discharged as provided in this ordinance.

8-309 **SATISFACTION OF LIEN; NOTICE OF PUBLIC SALE.** The holder of a lien against a motor vehicle created by 8-308, to the extent that such lien has not been discharged as provided in 8-308 or otherwise satisfied, may enforce such lien in any manner provided by law after 60 days from the date the motor vehicle is impounded by the police department. If the owner of the motor vehicle or his or her agent has provided security for the payment of the lien as provided in 8-306(b), the lien shall first be satisfied out of the security so provided and, if any portion of the lien remains unsatisfied and undischarged, may then be enforced in any manner provided by law. If the motor vehicle against which the lien is created pursuant to 8-308 is still under impoundment 60 days from the date it is impounded by the police department and the owner has not requested release of the motor vehicle from impoundment nor paid the towing and storage charges that are the basis for the lien, the motor vehicle shall be sold at public sale to the highest and best bidder for cash to satisfy the lien. Notice of the sale shall be given in accordance with K.S.A. 8-1102. Publication, required by K.S.A. 8-1102, may be made before the termination of the 60 day period for a sale thereafter.

8-310 **REDEMPTION.** If the City is to conduct the sale:

(a) Any holder of a recorded lien or retained title on a motor vehicle to be sold by the City under the provisions of 8-309 may claim and take possession thereof, upon payment of accrued charges and estimated costs of publication of the notice of sale to the police department and the deposit with the police department of sufficient assurance by surety bond or otherwise, approved by the City attorney, that the motor vehicle will be forthcoming for public sale thereof or upon claim of the rightful owner prior to the sale. The police department shall, within three days, make a report to the City treasurer and deliver the charges and costs so paid to the City treasurer, taking a receipt therefore and filing it, together with a duplicate copy of the report to the City treasurer, with the records in his or her office. The funds shall be held in a trust account until final disposition of the motor vehicle. Not less than five days before the date for sale of the motor vehicle, the police department shall notify the lienholder or retained titleholder of the time and place for the sale, and the lienholder or retained titleholder shall deliver such motor vehicle to the police department at or before 12:00 noon of the day before the sale. At the sale the amount paid shall be credited on the bid of the lienholder or retained titleholder. If the lienholder or retained titleholder is the successful bidder for the motor vehicle, the police department shall report this fact to the City treasurer and then the funds previously paid by the lienholder or retained titleholder shall be relieved of the trust previously impressed and become the same as other funds received by the City for storage and costs of impounded motor vehicles. If the motor vehicle is sold for a higher bid to any person other than the lienholder or retained titleholder, the police department shall report this fact to the City treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him out of the trust account.

(b) And if the rightful owner of the motor vehicle claims the same before the sale by payment of the accrued charges, the police department shall immediately notify the lienholder or retained titleholder in possession of the motor vehicle and he or she shall return the same to the police department within 12 hours. The police department shall report this redemption by the rightful owner to the City treasurer and the lienholder or

retained titleholder shall be refunded the amount previously paid by him or her out of the trust account.

- 8-311 **SALE PROCEEDS.** The proceeds of a public sale held pursuant to 8-308 whether such sale was conducted by the City or by any other person, after payment of the towing and storage charges and costs and expenses incident to the sale, shall be deposited with the City treasurer, if the owner of the motor vehicle is absent from the sale, for credit to the trust account. The funds deposited in the trust account pursuant to this ordinance shall remain in the account subject to the order of the person legally entitled thereto, but if no claim is made for these funds within a period of one year after the sale, the funds shall become the property of the City, be released from the trust account and be paid into the general fund as miscellaneous revenues.
- 8-312 **STATUTORY PROCEDURES.** Nothing in this ordinance shall be construed to augment, diminish, supersede or otherwise interfere with any statutory procedure established by the legislature for the collection of unpaid towing and storage charges. The procedures in this ordinance are supplementary and cumulative to any statutory procedures.
- 8-313 **IMPLEMENTATION OF ORDINANCE.** The police department and City treasurer are authorized to make rules for the implementation and administration of this ordinance.
- 8-314 **REIMBURSEMENT FOR DISCHARGED LIENS.** If a lien created by 8-308 and held by a private wrecker or towing firm is discharged by 8-308 pursuant to a determination by a hearing examiner that an impoundment was improper and that the City shall bear part or all of the towing and storage charges, the City shall pay to the firm the amount determined by the hearing examiner. No payment shall be made until it is authorized by the City attorney.

B. ABANDONED OR JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

- 8-315 **FINDINGS OF GOVERNING BODY.** The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the City because they:
- (a) Serves as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
 - (b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
 - (c) Are a ready source of fire and explosion;
 - (d) Encourage pilfering and theft;
 - (e) Constitute a blighting influence upon the area in which they are located;
 - (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.
- 8-316 **DEFINITIONS.** As used in this ordinance, unless the context clearly indicates otherwise:
- (a) Inoperable means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed;
 - (b) Vehicle means, without limitation, any automobile, truck, tractor or motorcycle which as originally built, contained an engine, regardless of whether it contains an engine at any other time.
- 8-317 **NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS.** It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the City.

(a) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of City ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable;

- (1) Absence of a current registration plate upon the vehicle;
- (2) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
- (3) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.

(b) The provisions of this ordinance shall not apply to:

- (1) Any motor vehicle which is enclosed in a garage or other building;
- (2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
- (3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this sub-section shall be construed to authorize the maintenance of a public nuisance.

8-318 PUBLIC OFFICER. The City Council shall designate one or more public officers to be charged with the administration and enforcement of this ordinance.

8-319 RIGHT OF ACCESS. Any City Police Officer, or any Public Officer has the right of access and entry upon private property at any reasonable time, for the purpose of making inquiry and inspection to determine if a nuisance exists.

8-320 COMPLAINTS; INQUIRY AND INSPECTION. Any Police Officer, sanctioned by the City of Clay Center, or any Public Officer, appointed by the Mayor, may make inquiry and inspection of premises upon receiving a complaint or complaints, or upon visual notice of a possible nuisance infraction. Upon making any inquiry and inspection, any Police Officer or Public Officer shall make a written report of findings and take photographs of the infraction.

8-321 UNLAWFUL INTERFERENCE. It shall be unlawful for any person to interfere with or to attempt to prevent any Police Officer, or Public Officer or his or her authorized representative or any City employee charged with the abatement of any such nuisance, from entering upon any such lot or piece of ground or from proceeding with such abatement of nuisance. Any person committing such interference shall be deemed to have committed a Class C Misdemeanor and upon conviction, be punished by a fine of not less than \$100.00, nor more than \$500.00, or be imprisonment for not more than 30 days, or by both such fine and imprisonment, for each offense.

8-322 NOTIFICATION; ISSUANCE OF CRIMINAL CITATION. Any person found by the Police Officer, or Public Officer, to be in violation of any Section of this Article shall be:

- (a) Served a notice of such violation; and,
- (b) Issued a criminal citation by the Clay Center Police Department.

8-323 NOTICE 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 8-317 a Notice stating the violation. The Notice 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 Notice 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 Notice 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 by such methods including, but not limited to, door hangers, conspicuously posting notice of such Notice 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)

8-324 SAME; CONTENTS. The Notice shall state the condition(s) which is (are) in violation of 8-317. The notice shall also inform the person, corporation, partnership or association that

(a) He, she or they shall have 10 days from the date of serving the Notice to abate the condition(s) in violation of 8-317; or

(b) He, she or they have 10 days from the date of serving the notice to request a hearing before the governing body or its designated representative of the matter as provided by 8-329;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by 8-327 and/or abatement of the condition(s) by the City as provided by 8-325.

8-325 CRIMINAL CITATION, CONTENTS OF. A Criminal Citation issued shall set forth a hearing date before the Municipal Judge. Such hearing date shall not be less than 10 days from the date of issuance.

8-326 REPEAT OFFENDERS. In the event a property owner repeatedly abates a nuisance, by removing such junked motor vehicle, after issuance of a criminal citation, but allows the violation to occur repeatedly, the Municipal Court Judge has the authority to impose a fine and/or imprisonment, even though a situation may be abated prior to the Court hearing.

8-327 ABATEMENT. In addition to, or as an alternative to prosecution as provided in 8-323, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom a Notice has been sent pursuant to 8-321 has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in 8-322, 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 8-327. 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 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

8-328 DISPOSITION OF VEHICLE. 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.

8-329 HEARING. If a hearing is requested within the 10 day period as provided in 8-322, 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 8-324.

8-330 COSTS ASSESSED. If the City abates or removes the nuisance pursuant to 8-324, 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. (Ord. #2159; April 2004)

ARTICLE 4

MINIMUM HOUSING CODE AND DANGEROUS & UNFIT STRUCTURES

8-401 **PURPOSE.** The governing body declares the purpose of this code is to protect, preserve, and promote the physical and mental health of the people, investigate and control communicable diseases, regulate privately and publicly-owned structures or dwellings, and all premises for the purpose of sanitation and public health, general appearance, and safety of the people. The governing body has found that there exist within the corporate limits of the city structures which are unsafe or unfit for human use or habitation because of dilapidation, defects increasing the hazards of fire or accidents, structural defects or other conditions which render such structures unsafe, unsanitary or otherwise inimical to the general welfare of the city, or conditions which provide a general blight upon the neighborhood or surrounding properties. It is hereby deemed necessary by the governing body to require or cause the repair, closing or demolition or removal of such structures as provided in this ordinance. (K.S.A. 12-1751 et seq.)

Structures located within the City Limits, shall conform to the requirements of this code. Each structure shall be maintained in good repair by the owner or agent. The roof shall be maintained so as not to leak and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, porches, windows, skylights, chimneys, toilets, sinks, walls, and ceilings shall be kept in good repair and usable condition.

This policy shall:

- (a) Establish minimum standards for basic equipment and facilities for light, ventilation and hearing, for safety from fire, for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance;
- (b) Establishes standards concerning unsightly and blighted buildings and premises, both residential and non-residential structures;
- (c) Determines the responsibilities of owners, operators and occupants; and
- (d) Provides for the administration and enforcement thereof.

8-402 **DEFINITIONS.** For the purpose of this ordinance, the following words and terms shall have the following meanings:

- (a) Dwelling - shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants;
- (b) Structure - shall include any building, wall, superstructure or other structure which requires location on the ground, or is attached to something having a location on the ground;
- (c) Occupant - shall mean any person living, sleeping, cooking or eating in, or having actual possession of, a dwelling;
- (d) Owner - shall mean any person, firm, or corporation, who jointly or severally, along with others, shall be in actual possession of, or have charge, care and control of any structure or dwelling within the City as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder and such person shall be deemed and taken to be the owner of such property within the true intent and meaning of this code and shall be bound to comply with the provisions of this article to the same extent as the record owner and notice to any such person shall be deemed and taken to be good and sufficient notice as if such person or persons were actually the record owner of such property;
- (e) Lienholder - shall mean any lending institution or individual who holds a mortgage or lien on said property;
- (f) Public officer - shall mean any Public Officer designated by the City Council, or his or her authorized representative.

8-403 PUBLIC OFFICER; DUTIES. The public officer is hereby authorized to exercise such powers as may be necessary to carry out the purposes of this ordinance, including the following:

- (a) Inspect any structure which appears to be unsafe, dangerous or unfit for human habitation;
- (b) Have authority to enter upon premises at reasonable hours for the purpose of making such inspections. Entry shall be made so as to cause the least possible inconvenience to any person in possession of the structure. If entry is denied, the enforcing officer may seek an order for this purpose from a court of competent jurisdiction;
- (c) Report all structures which he or she believes to be dangerous, unsafe or unfit for human habitation to the governing body;
- (d) Receive petitions as provided in this ordinance.

8-404 DESIGNATION OF DANGEROUS AND UNFIT DWELLINGS. The designation of dwellings or dwelling units as unfit for human habitation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the following requirements:

- (a) The Public Officer may determine, or five citizens may petition in writing, that any dwelling is unfit for human use or habitation if he, she or they find that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the neighborhood, or which shall have a blighting influence on properties in the area.
- (b) Conditions may include the following without limitation:
 - (1) Defects therein increasing the hazards of fire, accident, or other calamities.
 - (2) Dilapidation
 - (3) Disrepair
 - (4) Structural defects
 - (5) Overcrowding
 - (6) Inadequate ingress and egress
 - (7) Unsightly appearance that constitutes a blight to the adjoining property, the neighborhood or the city
 - (8) Air pollution
 - (9) Lack of the following:
 - A) Adequate ventilation
 - B) Light
 - C) Cleanliness
 - D) Sanitary facilities
- (c) Any dwelling condemned as unfit for human habitation, and so designated and placarded by the public officer, shall be vacated within a reasonable time as so ordered.
- (d) No dwelling which has been condemned as unfit for human habitation shall again be used for human habitation until written approval is secured from the Public Officer or City of Clay Center.

8-405 PROCEDURE;

- (a) INFORMAL DISCUSSION. Whenever the City Council or any Public Officer or his or her authorized representative determines that there has been a violation of any provision of this code, the Public Officer will arrange or attempt to arrange with the alleged violator, an informal discussion regarding the violations of this Article 8 of the City Code.
- (b) STATEMENT OF PUBLIC OFFICER. Whenever a Statement of Public Officer is filed with the City, or complaints by at least five residents, charging that any structure is

dangerous, unsafe or unfit for human habitation, or whenever it appears to the public officer on his or her own motion that any structure is dangerous, unsafe or unfit for human habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, report such findings to the governing body.

8-406 SAME; NOTICE, HEARING. The governing body, upon receiving a report as provided in 8-405 shall, by resolution, fix a time and place at which the owner, the owner's agent, any lienholder of record, and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished.
(K.S.A. 12-1752)

8-407 SAME; PUBLICATION, NOTICE.

(a) Said resolution shall be published once each week for two consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing.

(b) Each owner, agent, lienholder and occupant, at their last known place of residence, shall be served with a copy of the resolution. Said service shall be obtained by certified mail, registered mail or personal service and shall be marked "deliver to addressee only."

(K.S.A. 12-1752)

8-408 SAME; HEARING, ORDER. If, after notice and hearing, the governing body determines that the structure under consideration is dangerous, unsafe or unfit for human use or habitation, it shall state, in writing, its findings of fact in support of such determination and shall cause the resolution to be published once in the official city newspaper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be razed and removed.

8-409 DUTIES OF OWNER.

(a) Whenever any structure within the city shall be found to be dangerous, unsafe or unfit for human use or habitation, it shall be the duty and obligation of the owner of the property to render the same secure and safe or to remove the same.

(b) In the event that the owner intends to demolish a structure, it shall be the duty of the owner to remove any appliances in accordance with all State and Federal environmental regulations and to pay for any and all charges required by the Clay County Landfill for discarded materials. It shall also be the owner(s) responsibility to obtain any permits that may be required by KDHE.

8-410 SAME; FAILURE TO COMPLY.

(a) If, within the time specified in the order, the owner fails to comply with the order to repair, alter, improve or vacate the structure, the Public Officer or City Council may cause the site to be made safe, the structure to be repaired, altered, improved, or to be vacated and closed.

(b) If, within the time specified in the order, the owner fails to comply with the order to remove or demolish the structure, the Public officer or City Council may cause the structure to be removed and demolished and said site made safe.

8-411 SAME; MAKE SITE SAFE. Upon removal of any structure, the owner shall fill any basement or other excavation located upon the premises and take any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the Public Officer

may proceed to make the site safe.

8-412 ASSESSMENT OF COSTS.

- (a) The cost to the City of any repairs, alterations, improvements, vacating, removal or demolition by the Public Officer, including making the site safe, shall be reported to the City Clerk.
- (b) The cost of any publications or postage expense associated with service of notice shall be reported to the City Clerk.
- (c) The city shall give notice to the owner of the structure by restricted mail of the cost of removing the structure and making the premises safe and secure. The notice shall also state that payment of the cost is due and payable within thirty (30) days following receipt of the notice.
- (d) If the costs remain unpaid after thirty (30) days following receipt of notice, the City Clerk may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the site safe. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the premises upon which the structure was located.
- (e) If the proceeds of the sale of salvage is insufficient to recover the costs, or if there is no salvage, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments against the lot or parcel of land on which the structure was located and the City Clerk, at the time of certifying other City taxes, shall certify the unpaid portion of the costs and the County Clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (K.S.A. 12-1755)

8-413 IMMEDIATE HAZARD. When in the opinion of the Public Officer or the City Council any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, the enforcing officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay, such action may be taken without prior notice to, or hearing of, the owners, agents, lienholders and occupants. The cost of any action under this section shall be assessed against the property as provided in 8-412. (K.S.A. 12-1756)

8-414 APPEALS FROM ORDER. Any person affected by an order issued by the governing body under this ordinance may, within thirty (30) days following service of the order, petition the District Court of the County in which the structure is located for an injunction restraining the enforcing officer from carrying out the provisions of the order pending final disposition of the case.

8-415 SCOPE OF ORDINANCE.

- (a) In the event of conflicts between this article, with a provision of any other ordinance or code of the City, existing on the effective date of this article, which establishes a lower standard, the provisions of this article shall be deemed to prevail and such other laws or codes are hereby declared to be repealed to the extent that they may be found in conflict with this code.
- (b) Nothing in this ordinance shall be construed to abrogate or impair the powers of the Courts or of any department of the City to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers

conferred by this ordinance shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this ordinance shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise or to exercise those powers granted specifically by K.S.A. 12-1750:1756. (Ord. #2160; April 2004)

ARTICLE 5 RODENT CONTROL

8-501 **DEFINITIONS.** For the purposes of this article, the following words and phrases shall have the following meanings:

- (a) **Building.** Any structure, whether public or private, that is adapted for occupancy as a residence, the transaction of business, the rendering of professional services, amusement, the display, sale or storage of goods, wares or merchandise or the performance of work or labor, including office buildings, public buildings, stores, theaters, markets, restaurants, workshops and all other houses, sheds and other structures on the premises used for business purposes.
- (b) **Occupant.** The person that has the use of, controls or occupies any business building or any portion thereof, whether owner or tenant. In the case of vacant business buildings or any vacant portion of a business building, the owner, agent or other person having custody of the building shall have the responsibilities of an occupant of a building.
- (c) **Owner.** The owner of any building or structure, whether individual, firm, partnership or corporation.
- (d) **Rat harborage.** Any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside a structure of any kind.
- (e) **Rat-stoppage.** A form of rat-proofing to prevent the ingress of rats into buildings from the exterior or from one building to another, consisting essentially of the closing of all openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat-gnawing. (Code 1999)

8-502 **BUILDING MAINTENANCE.** All buildings and structures located within the present or future boundaries of the city shall be rat-stopped, freed of rats and maintained in a rat-stopped and rat-free condition. (Code 1999)

8-503 **NOTICE TO RAT-STOP; WHEN CITY TO DO WORK.** Upon receipt of written notice from the governing body, the owner of any building or structure specified therein shall take immediate measures for the rat-stoppage of such building or structure. The work shall be completed in the time specified in the written notice, which shall be within 15 days, or within the time of any written extension thereof that may have been granted by the governing body. (Code 1999)

8-504 **FAILURE TO COMPLY.** If the owner fails to comply with such written notice or extension, then the governing body is authorized to take such action as may be necessary to completely rat-stop the building or structure at the expense of the owner, and the city clerk shall submit bills for the expense thereof to the owner of the building or structure. If the bills are not paid within 60 days, the city clerk shall certify the amount due to the city treasurer and the charge shall be a lien against the property where the work has been done, and the owner shall be

promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for rat-stoppage. (Code 1999)

8-505 REPLACE RAT-STOPPAGE. It shall be unlawful for any occupant, owner, contractor, public utility company, plumber or any other person to remove the rat- stoppage from any building or structure for any purpose and fail to restore the same in a satisfactory condition or to make any new openings that are not closed or sealed against the entrance of rats. (Code 1999)

8-506 NOTICE TO ERADICATE RATS. Whenever the governing body notifies in writing the owner of any building or structure theretofore rat-stopped as hereinabove defined, that there is evidence of rat infestation of the building or structure, the owner shall immediately institute appropriate measures for freeing the premises so occupied of all rats. Unless suitable measures for freeing the building or structure of rats are instituted within five days after the receipt of notice, and unless continually maintained in a satisfactory manner, the city is hereby authorized to free the building or structure of rats at the expense of the owner thereof and the city clerk shall submit bills for the expense thereof to the owner of the building or structure and if the same are not paid, the city clerk shall certify the amount due from the owner to the city treasurer, and the owner shall be promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for the eradication measures. (Code 1999)

8-507 CONDITIONS CONDUCIVE TO HARBORAGE OF RATS.

(a) All food and feed kept within the city for feeding animals shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-stopped building.

(b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.

(c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and which are rat harborages, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.

(d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication. (Code 1999)

8-508 INSPECTIONS. The public officer is empowered to make such inspections and re-inspections of the interior and exterior of any building or structure as in his or her opinion may be necessary to determine full compliance with this article. (Code 1999)

ARTICLE 6 HAZARDOUS MATERIALS

8-601 HAZARDOUS MATERIAL DEFINED. As used in this article, the term hazardous material shall mean any compressed gas, explosive, flammable liquid, liquid propane or LP gas, liquefied petroleum gas cylinder or bottle, fossil fuel, home heating oil, flammable solid,

oxidizer, poison, radioactive material, Anhydrous Ammonia or any substance that due to its nature may cause damage to property, death, disability or injury upon contact therewith. (Code 2007)

8-602 STORAGE AND USE OF HAZARDOUS MATERIAL. It shall be unlawful to store, handle, use or otherwise maintain any materials described above, within the City Limits of the City of Clay Center. (2007)

8-603 SAME; EXCEPTIONS. The provisions of this article shall not apply to the following:

(a) Any storage container which shall have a capacity of 150 gallons or less which shall be used for the purpose of supplying fuel for the vehicle on which it is mounted or for transport to any other vehicle;

(b) Propane or LP tanks under 100 lbs., used for household barbecue grills or shop heaters;

(c) Individuals, retailers and/or wholesalers licensed to handle, distribute, sell or maintain propane or LP tanks, fossil fuel or home heating oil;

(d) Propane or LP tanks, or fossil fuel or home heating oil tanks considered to be for household use, installed prior to March 20, 2007.

(1) Any Propane or LP tank, fossil fuel or home heating oil tanks, considered to be for household use, installed prior to March 20, 2007 shall be permitted to remain as the property of the owner of record of said property. In the event said property is sold or transferred to any other individual, other than the owner's spouse, Trust or other like transfer, said Propane or LP tank shall no longer be allowed by the City. Any new record owner must obtain gas service through the local gas company, unless said gas company is unable to provide such service.

(e) Vehicles, trailers, containers or tanks containing anhydrous ammonia or other material primarily used by farmers for fertilizer purposes when such vehicles, trailers, containers or tanks are parked or housed upon property designated for the placement of such vehicle, trailer, container or tank by any farmers cooperative, elevator company or farm supply store located within the city limits. (Code 2007)

8-604 SAME; PERMITS REQUIRED;

(a) A permit may be obtained for the use of Propane or LP gas, liquefied petroleum gas cylinder or bottle, fossil fuel or home heating oil, by request, for household properties wherein a natural gas line cannot be run, and any such property shall be inspected by the Fire Chief prior to installation of any household Propane or LP tank, located within the City Limits.

(b) A permit may be issued for usage of Propane or LP gas tanks over 100 lbs. Any individual requesting such a permit shall make a request to the City Clerk who will refer the matter to the Fire Chief. After inspection, the Fire Chief shall make a recommendation to the City Council and the City Council shall make a determination of whether or not to issue said permit. (Code 2007)

8-605 SAME; APPEALS. Whenever the Fire Chief shall disapprove an application, or when it is claimed that the provisions of the International Fire Code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Fire Chief to the City Council and the Council may consider the application without the recommendation of the Fire Chief. (Code 2007)

8-606 SAME; PERMIT NOT OBTAINED; PENALTIES. Violation of any section of this

Code is considered a Class "C" Misdemeanor, and will result in receiving a summons, and upon conviction thereof, shall be subject to confinement of up to one month in jail and/or the imposition of a fine of up to \$500.00. (Code 2007)

8-607 TRANSPORTATION OF HAZARDOUS MATERIALS. Except as provided in section 8-608 it shall be unlawful for any person, firm, corporation or other entity to transport any hazardous material upon any street, avenue, road, alley or any other public right-of-way in the city. (Code 1999)

8-608 HAZARDOUS MATERIALS ROUTES. The provisions of this Article shall apply to all streets, avenues, highways, roadways, alleys or other public right-of ways within the City except those specified within this section where transportation of hazardous materials shall be allowed. Transportation of hazardous materials shall be allowed upon the following streets, avenues, highways or roadways:

(a)(Reserved)

(b)(Reserved)

(c)(Reserved)

(Code 1999)

8-609 PARKING OF VEHICLES OR TRAILERS CARRYING HAZARDOUS MATERIALS.

(a) Except as provided in subsection (b), it shall be unlawful for any person, firm, corporation or other entity to park any vehicle, trailer or semitrailer carrying any hazardous material within

(b) Subsection (a) shall not apply to any vehicle, trailer or semi-trailer carrying any hazardous material where such vehicle, trailer or semi-trailer is not parked within 500 feet of any structure used for human habitation. (Code 1999)

8-610 REMOVAL OF ILLEGALLY PARKED TRAILERS. If any vehicle, trailer or a semi-trailer is found parked in violation of the provisions of this article, the fire chief or assistant chief or any law enforcement officer may require the owner, operator or lessee of the trailer to move it within two (2) hours. If such removal is not accomplished on the order of any such officer, it may be accomplished by any such officer, by any reasonable means, if the continued presence of the trailer or semitrailer at its parked location constitutes, adds to or prevents correction of a situation threatening imminent injury or damage to persons or property. (Code 1999)

ARTICLE 7 EMERGENCY PREPAREDNESS

8-701 DEFINITION. As used in this article the term emergency preparedness shall include measures necessary to provide for the mobilization, organization and direction of civilian populace and necessary support to prevent or minimize the effect of enemy or subversive activities against the populace, communities, industrial plants, facilities and other installations. (Code 1999)

8-702 MUNICIPAL EMERGENCY PREPAREDNESS FACILITATOR AND RECOGNITION OF THE COUNTY EMERGENCY PREPAREDNESS DIRECTOR.

(a) The City of Clay Center recognizes the existence of the County Emergency Preparedness Director and the County Emergency Preparedness Plan, and shall adopt said Plan each year, at the first regular meeting of each fiscal year.

(b) In addition to adherence to the County Emergency Preparedness Plan, the City shall create an office of Municipal Emergency Preparedness Facilitator. Such Facilitator shall be appointed, annually, by the Mayor, with the consent of the Council. (Ord. #2184 - 11/05)

8-703 SAME; DUTIES. The Municipal Emergency Preparedness Facilitator shall:

(a) Coordinate with the Mayor on all matters pertaining to emergency preparedness and facilitate actions necessary for the City to comply with the County and City Emergency Preparedness Plans.

(b) Develop a City Emergency Preparedness Plan. This plan shall provide for the effective mobilization of all resources to the city, both private and public.

(c) Obtain and utilize cooperation of city officials in the preparation and implementation of emergency preparedness.

(d) During periods of emergency, direct the services of all city emergency preparedness.

(e) During periods of emergency obtain vital supplies and equipment lacking, needed for the protection of life and property of people and bind the city for the value thereof and if required immediately requisition same. (Ord. #2184 - 11/05)

8-704 EMERGENCY PREPAREDNESS CORPS. The emergency preparedness corps shall consist of all officers and employees of the city together with volunteer forces enrolled to aid them during an emergency and all groups, organizations and other persons performing duties necessary to the protection of the fire and property of the city during such an emergency. (Code 1999)

8-705 SAME; DUTIES. The functions and duties of the Emergency Preparedness Corps shall be distributed among the division as listed below, each division to be under the direction of a service chief appointed by the local director. The divisions are as follows:

(a) Operations

Police

Health Welfare

Fire & Rescue

Radiological

(b) Supporting Services

Warning

Communications

Transportation

Supply

Industry

Manpower

Training

Religious Affairs

(c) Administration Intelligence

Economic Control Information

Continuity of Government

(Code 1999)

8-706 VOLUNTEERS. All persons other than officers and employees of the city volunteering in services pursuant to the defense of this article shall serve without compensation. While engaged in such services they shall have the same immunities as persons and employees of the city performing similar duties. (Code 1999)

8-707 PROHIBITED ACTS. It shall be a misdemeanor during an emergency:

- (a) To willfully obstruct, hinder or delay any member of the emergency preparedness corps, in the performance of any duty imposed upon his or her by the virtue of this article.
- (b) To do any act forbidden by any lawful rules or regulations issued pursuant to this article.
- (c) To wear or carry or display without authority any mark or identification specified to be worn by authorized emergency preparedness personnel. (Code 1999)

ARTICLE 8 FAIR HOUSING

8-801 DEFINITIONS. For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein, unless the context otherwise indicates:

- (a) Aggrieved Person- any person who is attempting to provide housing for themselves and/or their family, or who believes they have been excluded from participation in, or denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance, state financial assistance, Clay County financial assistance or City of Clay Center financial assistance.
- (b) Discrimination-Defined as making distinctions in treatment based upon race, color, national origin, religion, sex or ancestry of any person.
- (c) Person - Any individual, firm, partnership or corporation. (Code 1993, 5-901)

8-802 DISCRIMINATORY PRACTICES DEFINED. It shall be discriminatory practice:

- (a) For any person, having the right, responsibility or authority to sell, rent, lease or assign or sublease any dwelling unit, commercial unit, or real property or an part or portion thereof, or interest therein, to refuse to sell, rent, lease, or assign or sublease any dwelling unit, commercial unit, real property or part or portions thereof or interest therein to any person because of the race, color, national origin, religion, sex or ancestry of the person.
- (b) For any person having the right, responsibility or authority to sell, rent, lease or assign or sublease any dwelling unit, commercial unit or real property or any part or portion thereof or interest therein, to impose upon any person because of the race, color, national origin, religion, sex or ancestry of such person unusual, extraordinary, onerous terms, conditions or privileges in the sale, rental, leasing, assignment or subleasing of any dwelling unit, commercial unit or real property on any part or portion thereof or interest therein, or to require a higher sale price or rental or otherwise impose terms more burdensome upon any person because of race, color, national origin, religion, sex or ancestry, which would not be required of other persons.
- (c) For any person engaged in lending money guaranteeing loans, accepting mortgages or otherwise making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any dwelling unit, commercial unit or real

property or any dwelling unit, commercial unit or real property or any part or portion thereof, or interest therein to discriminate because of race, color, national origin, religion, sex or ancestry of any person applying for loans or guarantees or otherwise making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any dwelling unit, commercial unit or real property or any part or portion thereof or interest therein as to place unusual, extraordinary, onerous rates of interest, terms or conditions on the lending of the money, the guaranteeing of the loans, acceptance of the mortgages or the availability of such loans.

(d) For any person to discriminate in furnishing any facilities or services to any dwelling unit, commercial unit, real property or part or portion thereof because of race, color, national original, religion, sex or ancestry of any person making application for such facilities or services.

(e) In the real estate business, whether a dealer, broker, or regardless of the capacity in which serving, to discriminate in the selling, renting, leasing, assigning or subleasing of any dwelling unit, commercial unit, real property or any part or portion thereof interest therein, against an person because of race, color, national origin, religion, sex or ancestry of such person, and further, to indicate in any way that any dwelling unit, commercial unit, real property, or any part or portion thereof, or interest therein, is not available for inspection, sale, rental, lease, assignment or sublease, or otherwise to deny or withhold any dwelling unit, commercial unit, real property or any part or portion thereof, or interest therein, from any person because of the race, color, national original, religion, sex or ancestry of such person.

(f) To include in any agreement relating to the sale, rental, lease, assignment or sublease of any dwelling unit, commercial unit, or real property, or an part or portion thereof, or interest therein, as a condition of the transaction, that the purchaser, renter, tenant, or occupant or assignee does not agree to sell, rent, lease, assign or sublease the dwelling unit, commercial unit or real property, or any part or portion thereof, or interest therein, to any person because of race, color, national origin, religion, sex or ancestry of such person.

(g) To discriminate or to engage in economic or other reprisals against another person because such person complies with the provision of this article or has opposed any practice forbidden under this article, or has filed a complaint, testified, or assisted in any processing under the article.

(h) Aid, abet, incite, compel, coerce, cooperate or participate in the doing of any act declared to be a discriminatory practice under the provisions of this article, or to obstruct or prevent compliance with the provisions of this article, or to attempt directly or indirectly to commit any act declared by this article to be a discriminatory practice.

(i) Induce or attempt to induce the sale or listing for sale of any dwelling unit, commercial unit, or real property, or any part or portion thereof by representing that a change has occurred or will or may occur with respect to the racial, religious or ethnic composition of the block, neighborhood or area in which the property is located, or to induce or attempt to induce such sale by representing that the presence or anticipated presence of persons of any particular race, religion or national origin will or may result in:

- (1) The lowering of property values.
- (2) A change in the racial, religious or ethnic composition of the area.
- (3) An increase in criminal or anti-social behavior in the area.
- (4) A decline in the quality of schools serving the area.

(j) To make any representations to any prospective seller, real estate broker, salesman,

agent, owner, or to an financial institution for the purpose of obtaining acts or evidence when such representation is not made for a bona fide purchase, rental or lease; provided however, this section shall not apply to any person employed by the city or the State of Kansas whose duty it is to discover or prosecute violations of civil rights relating to open housing.

(k) In the employ of the city or in the employ of any contractor, subcontractor or supplier having business with the city to exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination under any program or activity receiving federal financial assistance, State of Kansas financial assistance, Clay County financial assistance or the City of Clay Center financial assistance on the grounds of race, color, national origin, religion, sex or ancestry of such person.

(Code 1993, 5-902)

8-803 APPLICABILITY. The provisions of this article and particularly section 8-802 hereof, shall not apply to the following:

(a) Any bonafide religious institution with respect to any qualifications it may impose, based upon religion, when such qualifications are related to a bona fide religious purpose.

(b) A rental or leasing of a dwelling unit in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his or her family reside in such dwelling unit.

(c) A rental or leasing to less than five persons living in a dwelling unit by the owner if the owner or members of his or her family reside therein. (Code 1993, 5-903)

8-804 ADMINISTRATION. Administration of this article shall be accomplished in the following manner:

(a) There is hereby created a Fair Housing and Civil Rights Board whose membership shall consist of five members, one of whom shall hold office for one year, two for two years, and two for three years. All subsequent terms upon expiration of the original appointment shall be for a three year term. The appointment of the members shall be made by the mayor, with the consent of the city council. Robert's Rules of Order shall govern the conduct of the meeting of such board.

(b) Every complaint of a violation of this article shall be referred to the Fair Housing and Civil Rights Board. The Fair Housing and Civil Rights Board shall forthwith notify the person against whom a complaint is made. The identity of the aggrieved person shall be made known to the person against whom the complaint is made at the time. If the Fair Housing and Civil Rights Board, after investigation, finds there is no merit to the complaint, the same shall be dismissed. If the Fair Housing and Civil Rights Board finds that there is merit to the complaint, in their opinion, then and in that event, the Fair Housing and Civil Rights Board will endeavor to eliminate the alleged discriminatory practice by conference and conciliation.

(c) If the Fair Housing and Civil Rights Board is unable to eliminate the alleged discriminatory practice by a conference and conciliation, then in that event, the Fair Housing and Civil Rights Board shall forward the complaint to the city attorney for handling. The final determination of whether or not to prosecute on the complaint shall be left to the city attorney. (Code 1993, 5-904)

8-805 ENFORCEMENT. Enforcement of this article shall be carried out by:

(a) Any person convicted of a violation of this article shall be punished by a fine of not more than \$100.00 or by confinement in the county jail for not more than 30 days, or by

both such fine and imprisonment.

(b) The city attorney, instead of filing a complaint in the municipal court of the city, may, as an alternative remedy, seek to have the alleged discriminatory practices abated by an action for an injunction to be maintained in the appropriate district court of the State of Kansas. (Code 1993, 5-905)

8-806 CONSTRUCTION. The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this article shall be deemed to repeal any of the provisions of any other law of this city relating to discrimination because of race, color, national origin, religion, sex or ancestry unless the same is specifically repealed by this article. Nothing in this article shall be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel or discharge qualified or competent personnel. (Code 1993, 5-906)

ARTICLE 9 INSURANCE PROCEEDS FUND

8-901 SCOPE AND APPLICATION. The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, arising out of any fire, explosion, or windstorm, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this article. (Code 1999)

8-902 LIEN CREATED. The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, caused by or arising out of any fire, explosion, or windstorm, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss. (Code 1999)

8-903 SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by section 8-902, the insurer or insurers shall contact the county treasurer, Clay County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Clay County, Kansas. (Code 1999)

8-904 SAME; PRO RATA BASIS. Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure. (Code 1999)

8-905 PROCEDURE.

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement

exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city treasurer in an amount equal to the sum of 15 percent of the covered claim payment, unless the chief building inspector of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the chief building inspector shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article. (Code 2001)

8-906 FUND CREATED; DEPOSIT OF MONEYS. The city treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city treasurer as provided for by this article shall be placed in said fund and deposited in an interest-bearing account. (Code 1999)

8-907 BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of moneys as provided for by this article, the city treasurer shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.

(b) Within 20 days of the receipt of said moneys, the chief building inspector shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(c) Prior to the expiration of the 20 days established by subsection (b) of this section, the chief building inspector shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(d) If the chief building inspector has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the moneys by the city treasurer.

(e) Upon notification to the city treasurer by the chief building inspector that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city treasurer shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the moneys from the insurance company or companies. (Code 1999)

8-908 REMOVAL OF STRUCTURE; EXCESS MONEYS. If the chief building inspector has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys in excess of

that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured. (Code 1999)

8-909 SAME; DISPOSITION OF FUNDS. If the chief building inspector, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city treasurer under the authority of section 8-905(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the chief building inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city treasurer under section 8-905(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred. (Code 1999)

8-910 EFFECT UPON INSURANCE POLICIES. This article shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy. (Code 1999)

8-911 INSURERS; LIABILITY. Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article. (Code 1999)