

**CITY OF CLAY CENTER, KANSAS
NOTICE OF CITY CODE VIOLATION**

You are hereby notified by the city public officer of the city of Clay Center, Kansas, that you are in violation of the following sections of city code:

8-201 et. seq. - General Nuisances - 10 days to request hearing
Abatement of Offense - 10 days

8-301 et. seq. - Abandoned Motor Vehicles- 5 days public/10 days private to request hearing
Abatement of Offense - 15 days/Publication/Hearing

SPECIAL NOTICE REQUIRED IF OWNER OF VEHICLE PRESENT For Dangerous Structures - 8-401 et. seq. Please Use Separate Form Set
(See Reverse Side for explanation of individual code sections)

The specific conditions on your property located at _____

which constitute the violation of the City Codes are as follows:

Pursuant to the city code, you have _____ days from the date of mailing or personal service of this notice to take the necessary actions to change the conditions stated above which are causing the violation.

OR

If you desire, you may request a hearing before the City Council within _____ days from the date of mailing or personal service of this notice. A request for hearing must be in writing and submitted to the City Clerk at City Hall, 427 Court St., P.O. Box 117, Clay Center, KS 67432.

If you fail to alleviate the condition on the property or request a hearing within the times set forth above, the City may abate the condition and assess the costs against your property.

If the offense stated above is for a violation of Weeds (8-201+), then no further notice will be given, during the current calendar year, prior to the City removing the Weeds at the owners' expense.

RETURN

I hereby certify that I served the original of this Notice of Code Violation on the _____ day of _____ to each of the following, by:

Personal Service Certified mail return receipt requested to the above addresses Tack Service

Public Officer

Date

ACKNOWLEDGMENT OF RECEIPT

I, _____, hereby acknowledge receipt of the original of the attached Notice of Code Violation.

Date: _____

(Property Owner/Tenant)

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.

8-301 - 3a - Junked Motor Vehicles on Public Property

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

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.

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.

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.

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, 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.

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) Have the vehicle towed to the Waste Water Treatment Plant for storage 2) Call the City Attorney and provide a detailed description of the vehicle, VIN, any Tag or Registration information which is available, and the date the vehicle was towed to the Waste Water Treatment Plant. 3) If any additional information is known about the Owner that should also be provided to the City Attorney.

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 (5) 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: 1) the impoundment of the motor vehicle and 2) the amount of the towing and storage charges and his or her liability for the payment thereof.

3b - Junked Motor Vehicles on Private Property

8-317 NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

1) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 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; 2) Absence of a current registration plate upon the vehicle; 3) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports; 4) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.

The provisions of this ordinance shall not apply to: A) Any motor vehicle which is enclosed in a garage or other building;

A. To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or B) 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.

8-319 COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings.

8-320 RIGHT OF ENTRY. The public officer has the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

8-323 FAILURE TO COMPLY; PENALTY. Should the person fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against such person and upon conviction of any violation of provisions of 8-317, be fined in an amount not to exceed \$100 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

8-324 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 an order 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.

8-326 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. 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.