

CHAPTER VIII. HEALTH AND WELFARE

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ARTICLE 1. SANITARY CODE

- 8-101. **JOHNSON COUNTY ENVIRONMENTAL SANITARY CODE INCORPORATED.**
There is hereby incorporated by reference, for the purpose of prescribing rules and regulations for controlling practices to minimize health and safety hazards, that certain sanitary code known as the "Johnson County Environmental Sanitary Code," 2004 edition, prepared and published by the Johnson County Health Department. No fewer than three copies of such "Johnson County Environmental Sanitary Code," marked or stamped "Official Copy as Adopted by Ordinance No. 792 and the Code of the City of Roeland Park;" shall be filed with the city clerk to be open for inspection and available to the public during regular business hours.
(Ord. 792, Sec. 1; Code 2007)

ARTICLE 2. RESERVED (Reserved for Future Use)

ARTICLE 3. HEALTH NUISANCES

- 8-301. NUISANCES UNLAWFUL; DEFINED. It shall be unlawful for any person to maintain or permit any nuisance within the city as defined, without limitation, as follows:
- (a) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure or lot whether vacant or occupied;
 - (b) All dead animals not removed within 24 hours after death;
 - (c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
 - (d) All stagnant ponds or pools of water;
 - (e) All grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;
 - (f) Abandoned iceboxes or refrigerators kept on the premises under the control of any person, or deposited on the sanitary landfill, or any icebox or refrigerator not in actual use unless the door, opening or lid thereof is unhinged, or unfastened and removed therefrom;
 - (g) All articles or things whatsoever caused, kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public or of any neighborhood;
 - (h) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the city.
- (K.S.A. 21-4106:4107; Code 2007)
- 8-302. PUBLIC OFFICER. The governing body shall designate a public officer to be charged with the administration and enforcement of this article. (Code 2007)
- 8-303. 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. (Code 2007)
- 8-304. 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. (Code 2007)
- 8-305. ORDER OF VIOLATION. (a) The governing body shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-301 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the

property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(K.S.A. 12-1617e; Code 2007)

8-306. SAME; CONTENTS. The order shall state the condition(s) which is (are) in violation of section 8-301. The order shall also inform the person, corporation, partnership or association that

(a) He, she or they shall have 10 days from the receipt of the order to abate the condition(s) in violation of section 8-301; provided, however, that the governing body [or its designee named in section 8-305] shall grant one or more extensions of the 10 day period if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions in violation of section 8-301; or,

(b) He, she or they have 10 days from the receipt of the order, plus any additional time granted under subsection (a), to request a hearing before the governing body or its designated representative of the matter as provided by section 8-209;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-307 and/or abatement of the condition(s) by the city as provided by section 8-308.

(Code 2007)

8-307. FAILURE TO COMPLY; PENALTY. Should the person, corporation, partnership or association fail to comply with the order to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any violation of provisions of section 8-301, be fined in an amount not to exceed \$100.00 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. (Code 2007)

8-308. ABATEMENT. In addition to, or as an alternative to prosecution as provided in section 8-307, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been served pursuant to section 8-305 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-306, the public officer may present a resolution to the governing body for

adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in section 8-310. A copy of the resolution shall be served upon the person in violation in one of the following ways:

(a) Personal service upon the person in violation;

(b) Certified mail, return receipt requested; or

(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(Code 2007)

8-309. HEARING. If a hearing is requested within the 10 day period as provided in section 8-306, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in section 8-308. (Code 2007)

8-310. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-308, 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. (Code 2007)

ARTICLE 4. ABATEMENT OF SPECIFIC NUISANCES

- 8-401. **WATER LEAKAGE.** All water originating from septic tanks, basement or kitchen drains cast upon or arising to the surface of any lot or tract of land in the city, or caused or permitted to flow upon, over, or under any portion of the streets of the city, except in properly constructed sewers, is hereby declared to be a nuisance and subject to abatement as provided for in this chapter. (Code 1977, 6-301; Code 1986)
- 8-402. **OVERHANGING TREES AND SHRUBS.** All trees and hedges on any private property or in the parking areas abutting on any public sidewalk or street, the branches of which are higher than one foot or lower than eight feet above the surface of such sidewalk or lower than nine feet above the traveled portion of such street which obstructs the vision of any person, pedestrian or driver of a vehicle, using the public streets or sidewalks, of persons or vehicles approaching from other directions on the same or other public streets or sidewalks shall be a nuisance subject to the provisions of this chapter. (Code 1977, 6-302; Code 1986)
- 8-403. **DEBRIS LEFT BY DEAD TREES.** All dead trees or dead limbs of trees on any private property or in the parking areas on any public street close enough to any street or sidewalk to fall upon any portion of the street or sidewalk shall be a nuisance subject to the provisions of this chapter. (Code 1977, 6-303; Code 1986)
- 8-404. **INFECTED ELM TREES AS A NUISANCE.** All elm trees affected by the Dutch Elm Tree Disease which have substantial portions thereof dead or dying and all dead trees, erect or fallen, and the branches thereof, of whatever variety or species are hereby declared to be a nuisance. (Ord. 486, Sec. 4)
- 8-405. **PROVIDING FOR ABATEMENT OF INFECTED ELM TREES.** The owner of any property upon which a nuisance exists as defined in section 8-404 shall abate the same within 30 days after written notice to abate such nuisance has been given. The city clerk shall send a notice by certified mail to the owner of record of the property at the address shown on the tax rolls of Johnson County, Kansas, stating that a nuisance exists and describing the same. Upon failure of the owner to abate such nuisance within 30 days, the governing body may abate the same and assess the cost thereof against the property upon which the nuisance exists. (Code 1977, 6-308)
- 8-406. **VIOLATION.** Failure to abate a nuisance described in this article within 30 days after written notice to abate such nuisance has been given as set forth in section 8-405 hereof shall constitute an offense and shall, upon conviction thereof, be punishable as prescribed in section 1-117. (Ord. 6, Sec. 5)

ARTICLE 5. RODENT CONTROL

8-501. DEFINITIONS. The terms and phrases contained in this article shall have the following definitions:

(a) Premises - means any structure and its surrounding property and grounds.

(b) Health Officer - means the director of health or any duly authorized person who may represent the health officer.

(c) Anti-Rodent Construction - applies to a form of construction to prevent the ingress of rodents into buildings from the exterior or from one building to another. It consists essentially of treatment with materials, impervious to rodents gnawing, all actual or potential openings in exterior walls, ground or other floors, basements, roofs, and foundations that may be reached by rodents from the ground by climbing or by burrowing.

(d) Rodent Harborage - shall mean any condition which provides shelter or protection for rodents, thus favoring their multiplication and continued existence in, under, or adjacent to any structure.

(Code 1977, 6-401)

8-502. ANTI-RODENT CONSTRUCTION. It shall be the duty of every person, firm or corporation owning, managing, operating, leasing, renting or otherwise occupying any property within the city limits, to maintain anti-rodent construction in a condition satisfactory to the health officer and to maintain their premises in a rodent-free condition by poisoning, fumigating, trapping or any other means deemed necessary to the satisfaction of the health officer. (Code 1977, 6-402, 6-404)

8-503. INSPECTIONS OF PREMISES. The health officer is empowered to make inspections of premises as, in the officer's opinion, may be necessary to determine full compliance with this article. (Code 1977, 6-405)

**ARTICLE 6. STRUCTURES UNFIT FOR HUMAN
USE AND HABITATION**

8-601. DEFINITIONS. The terms and phrases contained in this article shall have the following definitions:

(a) Residential structure or dwelling - shall mean any building or structure, or part hereof, used and occupied for human habitation or intended to be so used, and includes any appurtenances belonging thereto or usually enjoyed therewith.

(b) Non-residential structure - shall mean any structure which is used for other than residential purposes, or a part of such structure, or a structure a part of which is used for other than non-residential purposes and, where applicable, the premises on which such structures are situated.

(Code 1977, 6-501)

8-602. PUBLIC OFFICER. The governing body shall appoint a qualified person to exercise the powers prescribed by this article who shall be referred to as the public officer. (Code 1977, 6-502)

8-603. DETERMINATION THAT STRUCTURES ARE UNFIT. Procedural requirements for determining that structures are unfit are as follows:

(a) Whenever a petition is filed with the public officer by at least five residents of the municipality charging that any structure is unfit for human use or habitation, or whenever it appears to the public officer, on his or her own motion, that any structure is unfit for human use or habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such structure (including persons in possession) a complaint stating the charges in that respect. Such complaint shall contain a notice that a hearing will be held before the public officer or his or her designated agent at a place therein fixed not less than 10 days nor more than 30 days after the serving of the complaint. The owner, mortgagee and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(b) If, after notice and hearings, the public officer determines that the structure under consideration is unfit for human use or habitation he or she shall state in writing his or her findings of facts in support of such determination and shall issue and cause to be served upon the owner thereof an order which:

(1) If the repair, alteration, or improvement of the structure can be made at a reasonable cost in relation to the value of the structure, which shall not exceed 50% of the fair market value of such structure, the owner of the property shall, within the time specified in the order, repair, alter, or improve such structure to render it fit for human use or habitation or shall vacate and close the structure until conformance with this article is met; or

(2) If the repair, alteration, or improvement of the structure cannot be made at a reasonable cost in relation to the value of the structure, that is to say, under 30% of such fair market value, the owner shall, within the time specified in the order, remove or demolish such structure.

(c) If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the structure within 30 days from the date of such order, the public officer shall file with the governing body his or her written report of his or her proceedings and orders which shall be reviewed by the governing body at its next regular meeting. Upon approval of the report and proceedings by the governing body the public officer may cause such structure to be repaired, altered or improved, or to be vacated and closed.

(d) If the owner fails to comply with an order to remove or demolish the structure within 30 days from the date of such order, the public officer shall file with the governing body his or her written report of his or her proceedings and orders which shall be reviewed by the governing body at its next regular meeting. Upon approval of the report by the governing body, the public officer may cause such structure to be removed or demolished.

(e) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removing or demolition by the public officer, shall be a lien against the real property upon which such cost was incurred and the lien, including as part thereof allowance of his or her costs and the necessary attorney's fees, may be foreclosed in judicial proceedings, in the manner provided or authorized by law for loans secured by liens on real property or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located. The city clerk shall at the time of certifying other city taxes, certify the unpaid portion of the aforesaid costs and the county clerk shall extend the same on the tax rolls of the county against the lot or parcel of land. If the structure is removed or demolished by the public officer, he or she shall sell the materials of such structure and shall credit the proceeds of such sale against the costs of the removal or demolition. If there is any balance remaining, it shall be paid to the parties entitled thereto as determined by proper judicial proceeding instituted by the public officer after deducting the costs of such judicial proceedings, including his or her necessary attorney's fees incurred, as determined by the court.

(Code 1977, 6-503)

8-604.

DETERMINING CONDITION OF STRUCTURE. The public officer may determine that the structure is unfit for human use or habitation if he or she finds 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 such municipality, or which have a blighting influence on properties in the area. Such conditions may include the following, without limitations:

- defects therein increasing the hazards of fire, accident, or other calamities;
- lack of adequate water supply or facilities, lack of adequate ventilation, air pollution;
- light or sanitary facilities;
- dilapidation;
- disrepair, structural defects;
- uncleanliness;
- overcrowding;
- inadequate ingress and egress; dead and dying trees;
- limbs or other unsightly natural growth;

unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city;
walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood;
unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof;
vermin infestation;
inadequate drainage; or
any violation of health, fire, building or zoning regulations or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements.
(Code 1977, 6-504)

8-605. SERVICE OF COMPLAINTS OR ORDERS. Complaints or orders issued by the public officer pursuant to this article shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each for two consecutive weeks in the official newspaper of the city. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed with the clerk of the district court of Johnson County, Kansas, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law. (Code 1977, 6-505)

8-606. APPEAL PROCEDURE. Any person affected by the order issued by the public officer may petition the district court of Johnson County, Kansas, pursuant to laws of the State of Kansas, for relief pursuant to K.S.A. 17-4759; as amended.
(Code 1977, 6-506)

8-607. POWERS OF PUBLIC OFFICER. The public officer is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

- (a) To investigate the structure conditions in the municipality in order to determine which structures therein are unfit for human use or habitation;
- (b) To administer oaths, affirmations, examine witnesses and receive evidence;
- (c) To enter upon premises for the purpose of making examinations; provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;
- (d) To appoint and fix the duties of such officers, agents, and employees as he or she deems necessary to carry out the purposes of this article; and
- (e) To delegate any of his or her functions and powers under this article to such officers, agents and employees as he or she may designate.

(Code 1977, 6-507)

- 8-608. ORDER OF DEMOLITION. The owner of any structure ordered to be demolished or removed by the public officer shall comply with the pertinent provisions of the building code. Upon removing such structure, the owner, wrecker or licensed contractor shall seal the sanitary sewer connection in the manner set forth by the building inspector or public officer. In addition, the owner or licensed contractor shall fill any basement or other excavation located upon the premises and take such other action necessary to leave the premises in a safe condition. (Code 1977, 6-508)
- 8-609. ORDER OF CONDEMNATION. Upon the issuance of an order by the public official, under section 8-605, the public officer shall place a notice on the particular structure covered by the order as follows:
"This structure has been found unfit for human habitation by the order of the public officer of the City of Roeland Park, Kansas. This notice shall remain on this structure until it is (use either of the following phrases as applicable)
(1) repaired, altered, or improved or vacated and closed as required by the order.
(2) removed and demolished as required by the order."
(Code 1977, 6-509)
- 8-610. CONFLICT OF LAWS. Nothing in this article shall be construed to abrogate or impair the powers of the city, its courts, or department of the city to enforce any other provisions of its laws, or regulations nor to prevent or punish violations thereof; and the powers conferred by this article upon the designated public officer or other public officials shall be in addition and supplemental to the other powers conferred by any other law. (Code 1977, 6-510)
- 8-611. PENALTY. It shall be unlawful for any owner of any residential structure or dwelling to fail to comply with the terms of an order issued pursuant to subsection (a) of section 8-603, or for any person to inhabit a residential structure or dwelling ordered to be vacated and closed pursuant to subsection (b) of section 8-603, and any person convicted thereof shall be punished in accordance with the terms of section 1-117 of the Code of City of Roeland Park, Kansas. Each day's violation shall constitute a separate offense. (Ord. 595, Sec. 1)
- 8-612. ADDITIONAL REMEDY. In addition to any other remedy provided by this article, the failure of an owner of a residential structure or dwelling to comply with the terms of an order of the public officer issued pursuant to subsection (b) of 8-603 shall constitute grounds for revocation of a rental housing license pursuant to subsection (c) of section 5-709 of the Code of the City of Roeland Park, Kansas. No additional notice or hearing shall be required for said revocation to take effect. (Ord. 595, Sec. 2)

ARTICLE 7. INOPERABLE, ABANDONED VEHICLES

8-701. FINDING OF GOVERNING BODY. The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles constitute nuisances affecting the health, safety and general welfare of citizens of the city because they:

- (a) Serve 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) They are ready source of fire and explosion;
- (d) Encourage pilfering and theft;
- (e) Constitute a blighting influence upon the area in which they are located;

or

- (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

(Code 1998)

8-702. DEFINITIONS. As used in this article, 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 any automobile, truck, tractor, motorcycle or other means of conveyance, required to be licensed by the State Motor Vehicle Department regardless of whether it contains an engine.

(Code 1986)

8-703. MOTOR VEHICLE 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 ordinances; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Anyone 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 a street or highway.
- (b) The provisions of this section shall not apply to:
 - (1) Any motor vehicle which is enclosed in a garage or other building;
 - (2) The parking or storage of a vehicle inoperable for a period of 10 consecutive days or less; or
 - (3) Any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to

prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance. (Code 1998)

8-704. PUBLIC OFFICER; PROCEDURES. (a) The city administrator shall designate a public officer to be charged with the administration and enforcement of this article. 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 motor vehicle nuisance exists and describing the same and where located or upon being informed by the chief of police or the fire department that a nuisance may exist. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a motor vehicle nuisance. Upon making any inquiry and inspection, the public officer shall make a written report of findings.

(b) It shall be a violation of this article to deny the public officer the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

(c) Any person found by the public officer to be in violation of section 8-703 shall be served a notice of such violation. The notice shall be served by certified mail, return receipt requested; provided, however, that if the owner or his or her agent in charge of the property is a resident of Johnson County, Kansas, the notice may be personally served by the public officer or a law enforcement officer.

(d) The notice shall state the condition(s) which is (are) in violation of section 8-703. The notice shall also inform the person that:

(1) He, she or they shall have 10 days from the date of service of the notice to abate the condition(s) in violation of section 8-703; or

(2) He, she or they shall have 10 days from the date of service of the notice to request a hearing before the governing body of the matter as provided by subsection (e); and

(3) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-705 and/or abatement of the condition(s) by the city as provided by section 8-706.

(e) If a hearing is requested within the 10 day period as provided in subsection (d), such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer before the governing body. The hearing shall be held by the governing body as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five 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 subsection (c).

(Code 1998)

8-705. FAILURE TO COMPLY; PENALTY. Should the person fail to comply with the notice to abate the motor vehicle nuisance or to request a hearing before the

governing body, the public officer may file a complaint in the municipal court of the city against such person and, upon conviction of any violation of the provisions of section 8-703, 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. (Code 1998)

8-706. ABATEMENT OF MOTOR VEHICLE NUISANCES. In addition or as an alternative to prosecution as provided in section 8-705, the city may remove and abate motor vehicle nuisances from property other than public property or property open to use by the public. Disposition of any such vehicle shall be in compliance with the procedures for impoundment, notice and public auction provided by sections 8-707:709. (Code 1998)

8-707. ABANDONED VEHICLES; AUTHORITY TO REMOVE. Whenever any person shall abandon and or leave a vehicle unattended on a street or other property open to use by the public for more than 48 hours or when the motor vehicle interferes with public highway operations, the city may remove and impound the motor vehicle. (Code 1998)

8-708. SAME; NOTICE. Any motor vehicle which has been impounded pursuant to section 8-707 shall be disposed of in the following manner:

(a) If such motor vehicle has displayed thereon a registration plate issued by the Kansas Division of Vehicles and has been registered with the division, the city shall 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 the record in the county in which the title shows the owner resides, stating that if the owner or lienholder does not claim such motor vehicle and pay the removal and storage charges incurred by the city on it within 15 days from the date of the mailing of the notice, that it will be sold at public auction to the highest bidder for cash. The city shall inquire by mail of the Division of Vehicles concerning the last registered owner and any lienholders, if any.

(b) After 15 days from the date of mailing notice, the city shall publish a notice once each week for two consecutive weeks in a newspaper of general circulation within Johnson County, which notice shall describe the motor vehicle by name of maker, model serial number, and owner, if known, and stating that it has been impounded by the city and that it will be sold at public auction to the highest bidder for cash if the owner thereof does not claim it within 10 days of the date of the second publication of the notice and pay the removal and storage charges and publication costs incurred by the city.

(c) If the motor vehicle does not display a registration plate issued by the Kansas Division of Vehicles and is not registered with the Division, the city after 30 days from the date of impoundment may publish a notice in a newspaper of general circulation in Johnson County, which notice shall describe the motor vehicle by name of maker, model, color and serial number, and shall state that it has been impounded by the city and will be sold at public auction to the highest bidder for cash if the owner thereof does not claim it within 10 days of the date of the second publication of the notice and pay the removal and storage charges and publication costs incurred by the city. (Code 1998)

- 8-709. SAME; SOLD AT AUCTION. (a) Whenever the city has complied with the provisions of section 8-708 and the owner thereof does not claim it within the time stated in the notice and pay the removal and storage charges and publication costs incurred by the city on such motor vehicle, the city may sell the motor vehicle at public auction to the highest bidder for cash.
- (b) After any sale pursuant to this section, the purchaser may file proof thereof with the Division of Vehicles, and the Division shall issue a certificate of title to the purchaser of such motor vehicle. All monies derived from the sale of motor vehicles pursuant to this section, after payment of the expenses of the impoundment and sale, shall be paid into a fund of the city which is used by it for the construction or maintenance of highways.
- (Code 1998)
- 8-710. SAME; ON PRIVATE PROPERTY. (a) Any person who shall abandon and leave any vehicle on any real property, other than public property or property open to use by the public, which is not owned or leased by such person or by the owner or lessee of such vehicle, shall be guilty of trespass. Upon request of the owner or occupant of such real property the city or its designated agent may remove and dispose of such vehicle in the manner provided in this article except that the provisions that a motor vehicle be abandoned for a period of time in excess of 48 hours prior to its removal shall not be applicable to abandoned vehicles which are subject to the provisions of this section.
- (b) Any person removing such vehicle from the real property at the request of the city shall have a possessory lien on such vehicle for the costs incurred in removing, towing and storing such vehicle.
- (Code 1986)
- 8-711. ENFORCING OFFICER. The chief of police is hereby designated as the enforcing officer of the city and charged with the administration of the provisions of this article. (Code 1986)

ARTICLE 8. NOISE

- 8-801. PURPOSE. It is found and declared that:
- (a) The making and creation of loud, unnecessary or unusual noises within the limits of the city is a condition which has existed for some time and the extent and volume of such noises is increasing;
 - (b) The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city; and
 - (c) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public prohibitions hereinafter contained and enacted, are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.
- (Code 1986)
- 8-802. STANDARDS. The standards which shall be considered in determining whether a violation of this article exists shall include, but shall not be limited to the following:
- (a) The volume of the noise;
 - (b) The intensity of the noise;
 - (c) Whether the nature of the noise is usual or unusual;
 - (d) Whether the origin of the noise is natural or unnatural;
 - (e) The volume and intensity of the background noise, if any;
 - (f) The proximity of the noise to residential sleeping facilities;
 - (g) The nature and zoning of the area within which the noise emanates;
 - (h) The density of the inhabitation of the area within which the noise emanates;
 - (i) The time of the day or night the noise occurs;
 - (j) The duration of the noise;
 - (k) Whether the noise is recurrent, intermittent or constant; and
 - (l) Whether the noise is produced by a commercial or noncommercial activity.
- (Code 1986)
- 8-803. PROHIBITION GENERALLY. (a) It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the limits of the city. The provisions of this article shall not apply to such occasional and infrequent uses as authorized by special permit of the city council upon showing by an applicant and determination by the city council that the proposed use is not detrimental to public health, safety or welfare.
- (b) The acts mentioned in the following sections of this chapter among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive.
- (Code 1986)

- 8-804. HORNS, SIGNALING DEVICES, ETC. (a) The sounding of any horn or signaling device on any automobile, motorcycle, street car or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such signaling device of any reasonable loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time is unlawful.
 (b) The use of any signaling device, except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust. (Code 1986)
- 8-805. RADIOS, PHONOGRAPHS, LOUDSPEAKERS, ETC. (a) The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, loudspeakers, phonograph, tape player, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which the machine or device is operated and who are voluntary listeners thereto is unlawful.
 (b) The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section. (Code 1986)
- 8-806. CONSTRUCTION OR REPAIRING OF BUILDINGS. The erection (including excavating), demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 9:00 p.m. is unlawful, except in case or urgent necessity in the interest of public health and safety, and then only with a permit from the building inspector, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues. If the building inspector determines that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 9:00 p.m. and 7:00 a.m., and further determines that loss or inconvenience would result to any party in interest, the inspector may grant permission for such work to be done within the hours of 9:00 p.m. and 7:00 a.m., upon application being made at the time the permit for work is awarded or during the progress of the work. (Code 1986)

ARTICLE 9. NOXIOUS WEEDS AND GRASS

8-901. OWNER TO CUT NOXIOUS WEEDS AND GRASS. The owner, as defined in section 8-902 hereof, of any lot or tract of land, including the front or side portion to the paved street within the dedicated portion of the street, easement or right-of-way on such land, shall keep the lot or tract of land free and clear of all noxious weeds as defined by K.S.A. 2-1314, noxious plants and rank weeds as defined in 8-902 hereof, and grass in excess of six inches in height or in length if such grass is matted down. (Ord. 500, Sec. 1)

8-902. DEFINITIONS. The following terms, as used in this article, unless the context specifically indicates otherwise, are defined as follows:

(a) Noxious Plants - means poison ivy, poison oak and poison sumac, at any height or state of maturity;

(b) Owner - includes the real and actual owner of the fee title, the life tenant, occupant, tenant, lessee, tenant at will, tenant at sufferance, adverse possessor, and any other person, firm, partnership, corporation or association, or any agent, broker or representative thereof, asserting or having any right, title or interest in any lot, tract or parcel of land in the city. The land records filed in the office of the recorder of deeds of the county within which any such lot, tract or parcel of land is located, and any other official record of such county or of the city, may be used to determine such owner, as herein-before defined as of any given date;

(c) Rank Weeds - means all vegetation which may give off unpleasant or noxious odors, or transmit pollen into the air at any state of maturity, and which exceeds six inches in height. Such rank weeds include, but are not limited to the following: Large crabgrass, large hairy crabgrass (*digitaria sanguinalis*); barnyard grass (*echinochloa crusgalli*); Pennsylvania smartweed (*polygonum pennsylvanicum*); ladythumb, smartweed (*polygonum persicaria*); curled dock, sour dock (*rumex crispus*); lambaquarter (*chenopodium album*), rough pigwood, redroot (*amaranthus retroflexus*); sheperd's purse (*capsella bursapastoris*); nodding spurge, upright spotted spurge (*euphorbia maculata*); velvet leaf, indian mallow (*abutilon theophrasti*); sticktight, blue stickseed (*lappula echinata*); common ragweed (*ambrosia artemisifolia*); giant ragweed, horseweed, kinghead (*ambrosia trifida*); dandelion (*taraxacum officinale*); cocklebur, clotbur (*xanthium pennsylvanicum*); downy bromegrass, downy chess (*bromus tectorum*); devilgrass (*cynodon dactylon*); stinkgrass, lovegrass (*eragrostis cilianensis*); witchgrass, tumble panicgrass (*panicum capillare*); giant fox tail (*setaria fabeni*); Johnson grass (*sorghum halepense*); hop sedge, sloughgrass (*carex lupulina*); hemp (*cantiabis sativa*); stinging nettle, nettle (*urtica procera*); swamp smartweed, tanweed, devil's shoestring (*polygonum coccineum*); smooth dock (*rumex altissimus*); maple-leaved goosefoot (*chenopodium hybridum*); water hemp (*acnida altissima*); tumbleweed, tumble amaranth (*amaranthus albus*); common milkweed (*asclepias syriaca*); common mullen (*verbascum thapsus*); burdock (*arotium minus*); beggar tick, sticktight, devil's pitchfork (*bidens frondosa*); tall cone flower, golden glow (*rudbeckia laciniata*); gray goldenrod field goldenrod (*solidago nemoralis*). (Ord. 500, Sec. 2; Ord. 502, Sec. 1)

8-903.

ABATEMENT OF NUISANCE; PROCEDURE. (a) Whenever the code enforcement officer or other appropriate officer of the city determines that noxious weeds, noxious plants, rank weeds or grass in excess of six inches in height, or in length if the grass is matted down, exists upon any lot or tract of land within the city, such officer shall forthwith notify the city clerk.

(b) The city clerk shall issue a notice to the owner, occupant or agent by certified mail, return receipt requested, or by personal service to cut or destroy such weeds or grass. If the property is unoccupied and the owner is a non-resident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner. The notice shall state that before the expiration of the waiting period provided herein that the recipient thereof may request a hearing before the governing body or its designated representative. If the occupant, owner or agent fails to request a hearing or refuses to cut or remove such weeds, after five days notice by the city clerk, or in cases where the owner is unknown or is a non-resident, and there is no resident agent, 10 days after notice has been published by the city clerk in the official city newspaper, the city shall cut or destroy such weeds and shall keep an account of the cost of the same and report to the city clerk.

(c) The city shall give notice to the owner, occupant or agent by certified mail, return receipt requested, of the total cost of such cutting or removal incurred by the city. The city may also recover the cost of providing notice, including postage required by this section. Such notice shall also state that payment of such cost is due and payable within 30 days following receipt of such notice. If the cost of such removal or abate is not paid within the 30 days period, the city may levy a special assessment for such costs against the lot or piece of land in the same manner as provided in K.S.A. 12-1617e, and amendments thereto, or the city may collect the costs in the manner provided by K.S.A. 12-1,115, and amendments thereto. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full costs and any applicable interest has been paid in full.

(Ord. 469; Code 1998)

8-904.

SAME; ALTERNATIVE PROCEDURE. (a) As an alternative to the procedures set forth in section 8-903, the city may cause the abatement of noxious weeds, noxious plants, rank weeds or grass in excess of six inches in height, or in length if such grass is matted down, in accordance with the following procedures.

(b) At least once each calendar year the city shall give written notice of the removal policy provided herein by mail or personal service to the owner, occupant or agent of any property within the city. Such notice shall include the same information required by section 8-903. In addition, such notice shall include a statement that no further notice shall be given prior to removal of noxious weeds, plants or grass.

(c) If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this section, the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds, plants or grass on such property unless the new record owner of title to such property is provided notice as required by this section.

(Ord. 469; Code 1998)

8-905. VIOLATION; PENALTY. Any person violating any of the provisions of this article shall be punished by a fine of not more than \$499.00 and imprisonment for not more than 30 days or both such fine and imprisonment. Each day on which grass, noxious weeds, rank weeds or noxious plants remain on any premises after the duty of the owner arises under this article to cut and remove or destroy same constitutes a separate offense for which the owner thereof may be fined separately, without necessity of further notices. (Ord. 500, Sec. 3)

ARTICLE 10. SMOKING

8-1001. PURPOSE. The purpose of this Article is to promote public health by decreasing citizens' exposure to secondhand smoke and creates smoke free environments for workers and citizens through regulation in the work place and all public places. (Ord. 793, Sec. 1; Code 2007)

8-1002. DEFINITIONS. For the purposes of this Article, the following words shall have the meanings respectively ascribed to them by this Section:

(a) Employee. - Any person who performs services for an employer, with or without compensation.

(b) Employer. - A person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.

(c) Enclosed. - A space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and halls.

(d) Permanently Designated. - A hotel or motel room may be designated as a smoking room only one time a year.

(e) Place of Employment - means any enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.

(f) Public Place - means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

(g) Service Line - means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(h) Smoking - means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

(i) Sports Arena - means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places

where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.
(Ord. 793, Sec. 2; Code 2007)

8-1003. PROHIBITION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT AND ALL ENCLOSED PUBLIC PLACES. (a) Smoking shall be prohibited in all enclosed places of employment within the City.

(b) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

(c) Each employer having any enclosed place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy that shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

(d) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this ordinance.

(e) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

(f) Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:

(1) any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs;

(2) elevators;

(3) restrooms;

(4) libraries, educational facilities, child care and adult day care facilities, museums, auditoriums, aquariums and art galleries;

(5) any health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors' offices and dentists' offices;

(6) any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools;

(7) service lines;

(8) facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;

(9) shopping malls;

(10) sports arenas, including enclosed places in outdoor arenas;

(11) bars;

(12) restaurants;

(13) convention facilities;

(14) all public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities;

(15) any other area used by the public or serving as a place of work, including open office landscaping;

(16) every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee,

including, but not limited to, joint committees, or agencies of the City or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City;

(17) all enclosed facilities owned by the City; and

(18) rooms in which meetings or hearings open to the public are held, except where the rooms are in a private residence.

(Ord. 793, Sec. 3; Code 2007)

8-1004. WHERE SMOKING IS NOT REGULATED. Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article:

(a) private residences, not serving as enclosed, places of employment or an enclosed public place; and

(b) hotel and motel rooms that are rented to guests and are permanently designated as smoking rooms; provided, however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated.

(Ord. 793, Sec. 4; Code 2007)

8-1005. RESPONSIBILITIES OF PROPRIETORS, OWNERS AND MANAGERS.

(a) The person having control of a place shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in that place.

(b) The person having control of a place shall clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) at every entrance and every place where smoking is prohibited by this Article. This signage shall consist of letters not less than one inch in height.

(Ord. 793, Sec. 5; Code 2007)

8-1006. PENALTY FOR VIOLATION OF ORDINANCE. (a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50.00).

(b) A person having control of a public place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:

(1) a fine not exceeding one hundred dollars (\$100.00) for a first violation;

(2) a fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year; and

(3) a fine not exceeding five hundred dollars (\$500.00) for each additional violation within one (1) year.

(c) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

(d) In addition to the fines established by this Section, violation of this Article by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(Ord. 793, Sec. 6; Code 2007)

8-1007. NON-RETALIATION. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or

customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. (Ord. 793, Sec. 7; Code 2007)

8-1008. OTHER APPLICABLE LAWS. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 793, Sec. 8; Code 2007)

8-1009. ENFORCEMENT OF ORDINANCE. (a) The authority to administer the provisions of this Article is vested in the Chief of Police and his/her duly authorized representatives.

(b) Whenever the need arises, the Chief of Police may call upon the fire and police departments and other departments of the City to aid in the enforcement of the provisions of this Article.

(c) Notice of the provisions of this Article shall be given to all applicants for a business license in the City.

(d) Any citizen who desires to register a complaint under this Article may initiate enforcement with the Chief of Police.

(Ord. 793, Sec. 9; Code 2007)

ARTICLE 11. INSURANCE PROCEEDS FUND

- 8-1101. 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 1998)
- 8-1102. 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% 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 1998)
- 8-1103. SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by section 8-12, the insurer or insurers shall contact the county treasurer, Johnson 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, Johnson County, Kansas. (Code 1998)
- 8-1104. 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 1998)
- 8-1105. 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% 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% 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 2003)

8-1106. 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 1998)

8-1107. 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 1998)

8-1108. 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 1998)

- 8-1109. 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 8-1105(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 8-1105(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 1998)
- 8-1110. 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 1998)
- 8-1111. 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 1998)