

ORDINANCE NO. 4433

AN ORDINANCE REPEALING EXISTING ENVIRONMENTAL CODE PROVISIONS AND REPLACING THEM WITH NEW PROVISIONS


Be it ordained by the governing body of the City of Independence:

Section 1: Repeal. The following environmental code ordinances are hereby repealed and replaced by the provisions of this ordinance: City Code Sections 42-61 through 42-74, 42-96 through 42-97, 42-111 through 42-113, 42-126 through 42-133, 42-141 through 42-148, 42-156 through 42-159, 42-181 through 42-188, and 102-83.

Section 2: Name. This ordinance shall be referred to as the Environmental Code of the City of Independence.

Section 3: Definitions. When used in this ordinance, the following words shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

- a. *abandoned motor vehicle*: Any motor vehicle which is not currently registered or tagged pursuant to state statute; or parked in violation of city ordinances; or is incapable of moving under its own power; or is in a junked or wrecked condition.
- b. *accessory structure*: A secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.
- c. *any part thereof*: Whenever the words premises, structure, building, or yard are used, they shall be construed as though they were followed by the words "or any part thereof."
- d. *calendar year*: The period of time beginning January 1 and ending December 31 of the same year.
- e. *code enforcement officer*: The person or persons designated by the city manager

State of Kansas, Montgomery County
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 Marilyn Calhoun, Register of Deeds



to enforce the provisions of this ordinance including specifically a city officer (as defined by city ordinance) and a law enforcement officer (as defined by state statute).

- f. *commercial or industrial*: Used or intended to be used primarily for a purpose other than residential purposes.
- g. *dilapidation, deterioration, or disrepair*: 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.
- h. *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.
- i. *garbage*: Without limitation, any accumulation of animal, fruit, or vegetable waste matter that results from handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.
- j. *inoperable*: A motor vehicle, or any type of vehicle, incapable of moving under its own power.
- k. *junk*: Things that have been thrown away or have little value or use; any old or discarded material, such as metal, paper, or rags; anything that is considered worthless; trash or scrap.
- l. *junking*: The act of collecting various discarded and unwanted items of junk, trash, scrap metal, or the like, and taking such items to a scrap yard or similar establishment, for monetary reward; scrapping.

- m. *motor vehicle*: Any automobile, truck, tractor, or motorcycle, or other motorized device, which is originally built containing an engine, regardless of whether it contains an engine at any other time.
- n. *person*: Any individual or individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent, or other representative who has charge, care, control, or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant, or lessee, whether or not in possession.
- o. *premises*: Any lot, plot, or parcel of land including the structures located thereon. Premises shall also mean any lot, plot, or parcel of land which has no structures located thereon.
- p. *property*: Any lot or area between property lines including, but not limited to, privately owned land and areas consisting of adjacent rights-of-way whether they be sidewalks, streets, alleys, or easements.
- q. *refuse*: Garbage or trash.
- r. *residential*: Used or intended to be used primarily for human habitation.
- s. *responsible party*: Any owner, agent, lessee, tenant, occupant, or other person or entity occupying or having charge or control of property or premises.
- t. *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 thereto.
- u. *trash*: Combustible waste consisting of, but not limited to, paper, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, 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.

v. *weathered*: Deterioration caused by exposure to the elements.

w. *weeds*: Any of the following:

1. Brush or woody vines;
2. Vegetation or indigenous grasses which may attain such large growth as to become, when dry, a fire hazard to adjacent properties;
3. Vegetation which may bear seeds of a downy or wingy nature;
4. Vegetation which is located in an area which harbors rats, insects, animals, reptiles, or any other creature which may or does constitute a hazard to the health, public safety, or welfare; and
5. Vegetation and indigenous grasses which, because of their height, have a blighting influence on the neighborhood. Any vegetation and indigenous grasses which **exceed eight (8) inches** in height shall be presumed to constitute a blight.

The definition of weeds shall not include trees, bushes, flowers, or other ornamental plants.

x. *yard*: The area of the premises not occupied by any structure.

Section 4: Legislative Findings of Fact. The governing body has found that there exists within the city unsightly and hazardous conditions due to dilapidation, deterioration, and disrepair of walls, sidings, fences, or other structure exteriors; accumulations of junk, garbage, trash, and other materials increasing the hazard of accidents or other calamities; structural defects; uncleanness;

unsightly stored or parked material, equipment, supplies, machinery, motor vehicles or parts thereof. Such conditions pose a risk to the health, safety, and public welfare of the community, serve as breeding grounds for flies, mosquitoes, rats, other insects and rodents, and other vermin; are dangerous to persons, particularly children, because of broken glass, sharp metal protrusions; encourage pilfering and theft; constitute a blighting influence upon the area in which they are located thereby causing depreciation of property values in the surrounding areas; and constitute a fire hazard in the area in which they are located.

Section 5: Purpose. The purpose of this ordinance is to protect, preserve, upgrade, and regulate the environmental quality of the industrial, commercial, and residential neighborhoods of the city by outlawing certain conditions which are injurious to the health, safety, welfare, or aesthetic characteristics of the neighborhoods, and to provide for the administration and enforcement thereof.

Section 6: Enforcement Standards. No person shall be found to be in violation of this ordinance unless the code enforcement officer has made a determination that a violation of the standards hereinafter set forth exists based upon conditions which are readily visible from any public place or from surrounding private property.

Section 7: Right of Entry. The code enforcement officer is granted express authority to enter upon private property at reasonable hours for the purpose of enforcement of this ordinance and for the purpose of abatement as hereinafter set forth in this ordinance.

Section 8: Exterior Conditions. It shall be unlawful for any person either as owner, tenant, or occupant of any premises to allow to exist on any residential, commercial, or industrial premises, conditions which are injurious to the health, safety, or general welfare of the residences of the community, or conditions which are detrimental to adjoining property, the neighborhood, or the city.

For the purpose of fair and efficient enforcement and administration, such unlawful conditions shall

be classified as follows:

- a. Exterior Conditions (yard) shall include, but not be limited to, dead or dying trees, the scattering over or the parking, depositing, or accumulation on the yard of any of the following:
 1. Lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk, garbage, trash, or refuse;
 2. Abandoned motor vehicles; or
 3. Furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property.
- b. Exterior Conditions (structure) shall include, but not be limited to, deteriorated, dilapidated, or unsightly:
 1. Exteriors of any structures;
 2. Exteriors of any accessory structures; or
 3. Fences, walls, or retaining walls.

Section 9: Abandoned Motor Vehicles. It shall be unlawful for any person, either as owner, tenant, or occupant of any premises to park, store, or deposit, or permit to be parked, stored, or deposited, on any premises, including publicly owned land, an abandoned motor vehicle unless it is enclosed in a garage or other building. The following exceptions shall apply:

- a. The provisions of this section shall not apply to any person with one vehicle inoperable for a period of 30 consecutive days or less, unless the abandoned motor vehicle impedes or constitutes a substantial risk to vehicular traffic; or
- b. Provisions of this section shall not apply to any person who is conducting a

business enterprise in compliance with existing zoning regulations or who places such vehicle behind screening of sufficient size, strength, and density to screen such vehicle from the view of the public using streets and sidewalks, and to prohibit ready access to such vehicle by children. Nothing contained in this exception shall authorize the maintenance of a public nuisance.

Section 10: Off Street Residential Parking. It shall be unlawful for any person either as owner, tenant, or occupant of any residential premises to allow parking on surfaces located on the premises which are not approved surfaces for off street parking as set forth in the zoning code. The zoning code requires off street parking surfaces for residential premises to be concrete, asphalt concrete, or asphalt double-seal surfaces maintained adequately for all weather use, and so drained as to avoid flow of water across sidewalks.

Section 11: Junking. It shall be unlawful for any person either as owner, tenant, or occupant of any premises to collect, accumulate, keep, store, or park, or permit any other person to do the same, any junk, abandoned or junked vehicles, abandoned or junked vehicle parts, upon privately owned residential premises unless such usage and conduct is in compliance with all zoning regulations and all applicable city ordinances dealing with permits and licensing, and further provided that such items are stored within a fully enclosed building. This section shall not apply to any vehicles which are otherwise in compliance with city ordinances regarding storage of such vehicles.

Section 12: Stagnant Water. It shall be unlawful for any person as owner, tenant, or occupant of any premises to remove any earth or soil from such premises so as to cause water to collect therein and become stagnant, unclean, offensive or injurious to public health.

Section 13: Weeds. It shall be unlawful for any person as owner, tenant, or occupant of any premises to permit weeds (as previously defined) to remain on the premises. Weeds which are not

cut or mowed as required by this ordinance are hereby declared to be a nuisance subject to abatement as provided herein.

Section 14: Notice. Any person found to be in violation of any portion of this ordinance by the code enforcement officer shall be served a notice in a manner hereinafter set forth. The notice shall substantially state the following:

- a. The condition which has caused the violation of the ordinance; and
- b. That the person in violation shall have seven (7) days from the date of the notice to correct or alleviate the violation; in the event that the violation concerns the exterior conditions of a structure, the notice shall provide the person forty-five (45) days from the date of the notice to correct or alleviate the violation; and
- c. That the person may request in writing a hearing to contest the violation provided the written request is made no later than seventy-two (72) hours from the date of service of the notice; and
- d. That failure to correct or alleviate the violation may result in issuance of a complaint for prosecution through the municipal court, and/or abatement of the condition by city staff with costs assessed back to the person upon whom notice has been served.

Section 15: Administrative Procedure as to Abandoned Motor Vehicles. The following provisions shall apply to abandoned motor vehicles:

- a. Whenever the code enforcement officer determines the existence of an abandoned motor vehicle in violation of this ordinance, then in addition to the notice requirements otherwise provided for under this ordinance, the notice shall additionally warn the person that the abandoned motor vehicle may be towed and

impounded at the cost of the owner of the abandoned motor vehicle. In lieu of, or in addition to, prosecution for a violation of this ordinance, the abandoned motor vehicle may be towed and impounded pursuant to procedures set forth in state statutes, as amended, which are incorporated herein by reference: K.S.A. 8-1102(a)(2)(3)(e); K.S.A. 8-1103(c); K.S.A. 8-1104; K.S.A. 8-1105; K.S.A. 8-1108; including imposition of a lien for towing and storage fees and the notice procedure permitting sale of abandoned motor vehicle, subject to the following:

1. The maximum rate that a wrecker service or towing service may charge for towing an abandoned motor vehicle, and the maximum rate of storage fees for an abandoned motor vehicle are as set forth in Appendix D.
2. The owner of a towed abandoned motor vehicle shall have access to personal property in such motor vehicle for forty-eight (48) hours after such motor vehicle has been towed and such personal property may be released to the owner.
3. Upon the towing of an abandoned motor vehicle, the wrecker service or towing service shall report the storage location of such vehicle to the police department within two (2) hours of such towing.

Section 16: Service of Notice. The code enforcement officer shall serve any notice of violation upon the person being cited in any of the following manners:

- a. By personal service; or
- b. By physically posting a copy of the notice on or near the door of the structure located on the premises or property, followed by mailing a copy of the notice, first class mail, to the person being cited; or

c. Certified mail, return receipt requested.

There shall be a presumption that any notice sent by first class mail was delivered unless the letter was returned as undeliverable. Only those persons served with the notice of violation may be held responsible for the assessment of the costs of abatement.

Section 17: Slaughterhouses. It shall be unlawful for any person to build, erect, maintain, or operate, or do cause to be kept, built, erected, maintained or operated any slaughterhouse or rendering plant within the city limits for the purpose of slaughtering, butchering, or rendering any cattle, swine, or any other animal. This section shall not apply to the maintenance or operation of a meat processing plant or to the slaughter or processing of cattle, swine, or other animals in a meat processing plant which has been duly licensed by the State of Kansas and is otherwise in full conformity with all laws of the State of Kansas and city ordinances. The notice of violation provisions of this ordinance shall not apply to this type of violation. Violation of this section may lead to immediate issuance of a complaint for prosecution in municipal court.

Section 18: Pollution of Streams. It shall be unlawful for any person to throw, place, or deposit in any stream, creek, lake, or pond within the city limits, any matter or thing liable to impede, impair, or pollute the water therein, or to build, place, throw, or deposit on or along the banks thereof, any structure or any matter or thing of any description liable to decay and produce any noxious gases or effluents calculated to pollute or obstruct any such waters. The notice of violation provisions of this ordinance shall not apply to this type of violation. Violation of this section may lead to immediate issuance of a complaint for prosecution in municipal court.

Section 19: Noxious Weeds. Nothing in this ordinance shall affect or impair the rights of the city under the provisions of Kansas statutes relating to the control and eradication of certain noxious weeds. For purposes of this ordinance, the term noxious weeds shall mean kudzu (*Pueraria lobata*),

fiel 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 (*Carduusnatans L.*), and Johnson grass (*Sorghum halepense*).

Section 20: Distribution of Handbills. It shall be unlawful for any person to distribute, in any manner other than by handing to a person, printed handbills on the streets, alleys, or other public property or in or upon any automobile upon the public streets and parking lots of the city. The notice of violation provisions of this ordinance shall not apply to this type of violation. Violation of this section may lead to immediate issuance of a complaint for prosecution in municipal court.

Section 21: Municipal Court Complaint. In addition to, or as an alternative to, all other remedies for violations of this ordinance, and if the person has neither alleviated the condition nor requested a hearing within the time stated in the notice, the code enforcement officer may issue a complaint to the person requiring the person to appear in municipal court to answer for violation of the ordinance.

Section 22: Penalty. Upon conviction in municipal court for any violation of this ordinance, the person may be fined an amount not to exceed \$250.00 for a first offense, an amount not to exceed \$500.00 for a second offense, or an amount not to exceed \$1,000.00 for a third offense. In addition thereto, the person may be sentenced to jail for up to thirty (30) days. When rendering sentence, the municipal court may in its discretion assess an additional per diem fine not to exceed \$25.00 per day in cases where the violation persists until such time as the violation has been corrected or alleviated as determined in the sole discretion of the municipal court.

Section 23: Abatement. In addition to, or as an alternative to, all other remedies of the city for violations of this ordinance, the code enforcement officer, or any member of city staff, may take

reasonable steps to abate the violation. If a person to whom notice has been provided has neither alleviated the condition nor requested a hearing within the time stated in the notice, the code enforcement officer, or any member of city staff, may take the necessary steps to abate the violation and request that the governing body assess the costs of abatement against the person in violation.

When abatement is utilized, the following procedure shall be observed:

- a. Any items removed or confiscated from the premises which have no practical value to the person in violation shall be disposed of by the city; and
- b. Any items removed or confiscated which might reasonably be of some value to the person in violation shall be placed in storage by the city.
- c. If removed or confiscated items are placed in storage by the city, the city shall provide further notice to the person or owner of the property removed or confiscated that the items may be claimed by such person upon payment to the city for expenses incurred in the abatement process and storage process. If the items are not claimed within a thirty (30) day period following notice, the city may sell the items and deduct the expense of abatement and storage, then remit any remaining amount to the person in violation or owner of the property.

Section 24: Abatement without Notice. In the following situations which constitute an immediate hazard to public health, safety, and welfare, the code enforcement officer may without notice take immediate steps to abate the hazardous condition:

- a. The storage or abandonment of containers which have a compartment of more than one and one-half (1½) cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside by a child;

- b. The existence of a cistern, well, or cesspool located on premises that is not covered with a protective covering of sufficient strength or quality to exclude human beings and domestic animals therefrom.
- c. The existence of abandoned personal property or abandoned motor vehicles located on any public street or alley in such a manner so as to impede or constitute a substantial risk to vehicular traffic for a period of forty-eight (48) hours or longer.
- d. The existence of noxious weeds as defined within this ordinance.

Section 25: Appeal. A person who has been served a notice of violation may appeal that determination by delivering a written request for hearing to the office of the city clerk within seventy-two (72) hours of service of the notice of violation. All enforcement and abatement procedures shall be stayed once an appeal has been filed with the city clerk and until such time as the appeal has been decided. The hearing shall be held by a hearing officer designated by the city manager and shall be conducted as soon as possible after the written appeal is made. At the hearing, the person may be represented by counsel and may introduce witnesses and evidence as deemed necessary. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the hearing officer shall make a written determination of the matter and provide the person a copy of the same. Any person that fails to request an appeal hearing shall be considered to have waived his or her right to contest the findings of the code enforcement officer that a violation exists. Should the hearing occur, and a written determination be made adverse to the person, the person may take further appeal as provided by state statute, K.S.A. 60-2101, as amended. Should a person request an appeal hearing and participate in an appeal hearing which results in a determination adverse to such person, the adverse determination shall constitute a final

determination that a violation exists, and the person shall be assessed the reasonable costs of the appeal hearing.

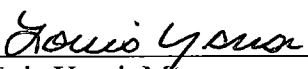
Section 26: Collection of Costs of Abatement. All costs of abatement and other costs properly charged under this ordinance shall be presented to the governing body for approval by resolution. Upon approval by the governing body, the resolution assessing the costs shall be served upon the person assessed by first class mail at such person's last known address, or in any other manner reasonably calculated to provide notice to such person. If the amount of the assessment is not paid within thirty (30) days of the notice of assessment, the assessment may be collected in any or all of the following methods:

- a. By civil action; or
- b. By referral to a collection agency; or
- c. By adoption of an ordinance certifying the assessment to the county clerk to be added to the tax rolls of the person assessed.

All unpaid assessments shall accrue interest at a rate not to exceed twelve percent (12%) per annum from a date thirty (30) days after adoption of the resolution making the assessment.

Section 27: This ordinance shall take effect upon its publication in the official city newspaper.

Adopted by the governing body of the City of Independence on the 25th day of May, 2023.



Louis Ysusi, Mayor

ATTEST:



David Schwenker, City Clerk

