

ORDINANCE NO. 830

AN ORDINANCE REGULATING CONDITIONS ALLOWED TO EXIST ON ANY RESIDENTIAL, COMMERCIAL OR INDUSTRIAL PREMISES WHICH ARE INJURIOUS TO THE HEALTH, SAFETY, OR GENERAL WELFARE OF THE GENERAL COMMUNITY OR ARE DETRIMENTAL TO ADJOINING PROPERTY, THE NEIGHBORHOOD OR CITY; PROVIDING FOR NOTICE TO LANDOWNERS, TENANTS, OR OCCUPANTS OF ANY PROPERTY ALLEGED TO BE IN VIOLATION OF THIS ORDINANCE AND ADMINISTRATIVE PROCEDURE FOR DEALING WITH SUCH CASES; FOR COLLECTION OF FINES, COSTS, AND EXPENSES OF CLEANUP THROUGH MUNICIPAL COURT PROCEEDINGS, CERTIFICATION OF COSTS AND EXPENSES TO CHAUTAUQUA COUNTY, KANSAS, FOR PLACING ON REAL ESTATE TAX STATEMENTS, OR FOR FILING A LIEN ON REAL ESTATE PURSUANT TO K.S.A. 60-1101, ET SEQ.; AND PROVIDING FINES FOR VIOLATION OF THE PROVISIONS OF THIS ORDINANCE.

Section 1. Definitions.

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

Abandoned motor vehicle means any motor vehicle which is not currently registered or tagged pursuant to KSA 8-126 to 8-149 inclusive, as amended; or parked in violation of the Code; or incapable of moving under its own power; or in a junked or wrecked condition.

Accessory structure means a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns or outbuildings.

Any part thereof. Whenever the words premise, structure, building or yard are used they shall be construed as though they were followed by the words "or any part thereof."

Commercial or industrial means used or intended to be used primarily for other than residential purposes.

Dilapidation, deterioration or disrepair means 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.

Exterior means those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to, sidings, facing, veneer, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.

Garbage means without limitation any accumulation of animal, fruit or vegetable waste matter that results from handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.

Person means any individual, 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.

Premises means any lot, plot or parcel of land including the structures thereon. Premises shall also mean any lot, plot or parcel of land without any structures thereon.

Public officer means a public officer to be charged with the administration and enforcement of this section designated by the city council.

Refuse means garbage and trash.

Residential means used or intended to be used primarily for human habitation.

Structure means anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, including any appurtenances belonging thereto.

Trash means combustible waste consisting of, but not limited to, papers, cartons, boxes, bands, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, or tree branches and noncombustible waste consisting of, but not limited to, metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers or street rubbish and sweepings.

Weathered means deterioration caused by exposure to the elements.

Yard means the area of the premises not occupied by any structure.

Section 2. Legislative finding of fact.

The city council has found that there exists within the city unsightly and hazardous conditions due to dilapidation, deterioration and disrepair of walls, sidings, fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment; supplies, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on adjoining properties, the neighborhood and the city, or are injurious to the health and safety of the residents of the city. The city council desires to promote the public health, safety and welfare by the repair, removal, abatement and regulation of such conditions in the manner provided in this article.

Section 3. Purpose.

The purpose of this article is to protect, preserve, upgrade and regulate the environmental quality of industrial, commercial, and residential neighborhoods in this city, by outlawing 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 4. Construction.

Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its Charter Ordinances or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by the Kansas Constitution, by any other law or by ordinance.

Section 5. Enforcement standard.

No person shall be found in violation of this article unless the public officer, after a reasonable inquiry and inspection of the premises, believes that conditions exist of a quality and appearance not commensurate with the character of the neighborhood. Such belief must be supported by evidence of a level of maintenance significantly below conditions declared unlawful under section 6, but shall not include conditions which are not readily visible from any public place or from any surrounding private property.

Section 6. Unlawful acts.

It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions which are injurious to the health, safety, or general welfare of the residents 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:

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

Section 7. Notice.

Any person found by the public officer to be in violation of section 6 shall be sent a notice of such violation by the public officer. The notice shall be sent by certified mail, postage prepaid, return receipt requested. Provided, if the owner is a resident of the county, the notice of violation may be personally served by the public officer. The notice shall state:

- (1) The condition which has caused the violation of the section; and
- (2) That the person in violation shall have:
 - a. Ten days from the date of the mailing of the notice to alleviate the exterior conditions (yard) violation; and/or
 - b. Thirty days from the date of the mailing of the notice to alleviate the exterior conditions (structure) violation; or
 - c. In the alternative to subsection a. and/or b. of this subsection, 10 days from the date of mailing of the notice to request, as provided in section 11, a hearing before the municipal court on the matter;
- (3) That failure to alleviate the condition or to request a hearing may result in prosecution under section 8 and/or abatement of the condition by the city according to section 9, with the costs assessed against the person under section 13.

Section 8. Penalty.

The public officer may file a complaint in the municipal court against any person found to be in violation of section 6. Provided, however, that such person shall first have been sent a notice as provided in section 7, and that the person has neither alleviated the conditions causing the alleged violation nor requested a hearing before the municipal court within the time periods specified in section 7. If a person is found by the public officer to be in violation of section 6 on three or more occasions within a 12 month period, the notice requirement of section 7 shall be inapplicable. Upon such complaint in the municipal court, any person found to be in violation of section 6 shall, upon conviction, be punished as provided in section 36.

Section 9. Abatement.

In addition to, or as an alternative to prosecution as provided in section 8, the public officer may seek to remedy violations of this section in the following manner. If a person to whom a notice has been sent pursuant to section 7 has neither alleviated the condition causing the alleged violation nor requested a hearing before the municipal court within the time periods specified in section 7, the public officer may present a resolution to the city council 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 person in violation as provided in section 13. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (1) Personal service upon the person in violation ;
- (2) Service by certified mail, postage prepaid, return receipt requested; or
- (3) If 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.

Section 10. Storage and disposal of property.

- (a) Whenever the public officer is authorized to abate the conditions causing a violation, as provided in section 9, the following procedures shall be observed:
 - (1) Items confiscated which have no practical value to the person in violation shall be disposed of by the city.
 - (2) Items confiscated which might reasonably be of some value to the person in violation shall be placed in storage by the city.
- (b) The person in violation of this article shall be informed by certified mail, postage prepaid, return receipt requested, of the disposition or storage of any items confiscated. In the case of items stored, the person in violation shall be further informed that such items shall be stored for a period of 30 days, and further that those items may be claimed by such person upon payment to the city for expenses incurred, as provided in section 13. If the items are not claimed within the 30 day period, the city may sell the items and deduct its expenses, returning the amount in excess of expenses, if any, to the person.

Section 11. Hearing.

If a hearing is requested within the 10-day period provided in provided in section 7, such request shall be made in writing to the municipal court. 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 municipal court. The hearing shall be held by the municipal court as soon as

possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five 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 municipal court. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the bearing, the municipal court shall record its determination and serve said determination upon the person in the manner provided in section 9.

Section 12. Appeals.

Any person, affected by any determination of the municipal court under sections 9 and 11 may appeal such determination in the manner provided by K.S.A. 60-2101.

Section 13. Expenses.

All costs and expenses incurred by the city in carrying out the provisions of sections 9 and 11 may be charged to the person in violation and, in addition, if the person in violation is also the record owner of the property on which the violation exists, the expenses may be assessed against the person in violation in the manner provided by K.S.A. 12-6a17.

Section 14. Assessment, collection of amounts levied.

Such amounts levied and assessed under this article shall be due and payable from and after the publication of the ordinance from which this article was derived, and the city clerk shall notify the owners of the above described property so far as known to him of the amounts of their respective assessments and that unless such assessments are paid within 30 days from the publication of the ordinance from which this article was derived, bonds will be issued therefor. The city clerk shall certify to the county clerk in the same manner and at the same time as other taxes are certified for a period of ten years all of the above assessments which have not been paid within 30 days after the publication of the ordinance from which this article was derived, together with interest on such amount, thereof at a rate not exceeding 12 percent per annum.. Such amounts so certified be shall placed on the tax rolls and collected as other taxes are collected over such period of ten years, the levy for each year being for one-tenth the principal amount of the assessment plus one year's interest on the amount remaining unpaid.

Section 15. Hazards.

(a) Hazards, for the purpose of this section, include:

- (1) Storing or abandoning, in any place accessible to a child of less than 14 years of age, a container which has a compartment of more than one and one-half 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, and failing to remove the door, lock, lid or fastening device on such container; or
- (2) Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located and knowingly failing to cover the same with a protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom..

(b) The public officer is authorized to take immediate action to abate the hazard described in subsection (a) of this section in addition to any other action provided by law :

- (1) by removing any locks, lids or doors;
- (2) confiscating such items if such items have value by placing it in storage; or
- (3) if the property appears to be abandoned and has no present value, has the authority to dispose of such item.

- (c) All costs and expenses incurred by the city in carrying out the provisions of this section shall be charged to the person in violation or the record owner of the property on which the violation exists. The expenses may be assessed in the manner provided by KSA 12-6a17.

ABANDONED PROPERTY OTHER THAN VEHICLES

Section 16. Notice to owner, redemption.

Whenever any personal property, other than abandoned vehicles as provided for in K.S.A. 8-1101 and 8-1102, has been permitted to remain upon any public street or alley in the city for a period of 48 hours, the city council may forthwith cause such property to be removed from the public street or alley and impounded. The city council shall cause a written notice of seizure of such property, if the owner thereof can be ascertained, advising the owner that he had the right to redeem the impounded property by paying the cost of removal and the impounding fees.

Section 17. Sale of property.

If the owner does not redeem any property impounded under this division within ten days after such notice, the city council may cause such personal property to be sold in such manner as it deems advisable and the proceeds of the sale of such property be used to pay the costs of removal and the impounding fee. A fee as established by the city council shall be imposed for each day that the personal property is impounded by the city. Any sums in excess of such charges shall be deposited with the city clerk subject to withdrawal by the owner of such property.

JUNKED, ABANDONED VEHICLES

Section 18. Definitions.

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

Inoperable means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purpose for which it was originally constructed.

Vehicle means any automobile, truck, tractor, or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

Section 19. Findings.

The city council finds that junked, wrecked, dismantled, inoperative, discarded or abandoned vehicles in and upon real property within the city is a matter affecting the health, safety and general welfare of the citizens of the city for the following reasons:

- (1) Such vehicles serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
- (2) Such vehicles are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or supports, and because they are a ready source of fire and explosion;
- (3) Such vehicles encourage pilfering and theft, and constitute a blighting influence upon the area in which they are located, thereby causing a loss in property value to surrounding properties;
- (4) Such vehicles constitute a fire hazard in that they block access for fire equipment to adjacent buildings and structures.

Section 20. Prohibitions.

Except as provided in sections 21 and 22, it shall be unlawful for any person, either as owner, lessee, tenant or occupant of any lot or land within the city, to park, store, or deposit, or permit to be parked, stored, or deposited thereon an inoperable vehicle unless it is enclosed in a garage or other building.

Section 21. Temporarily disabled vehicles.

The provisions of section 20 shall not apply to any person with one vehicle inoperable for a period of 30 consecutive days or less.

Section 22. Screening.

The provisions of section 20 shall not apply to any person who is conducting a business enterprise, or who places such vehicle behind screening of sufficient size, strength, and density to screen such vehicles from the view of the public using the streets and sidewalks, and to prohibit ready access to such vehicles by children. Nothing in this section shall authorize the maintenance of a public nuisance.

Section 23. Presumptions.

Any one of the following conditions shall raise the presumption that a vehicle is inoperable under this division:

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

Section 24. Administrative procedure.

- (a) Whenever informal complaint is made to the public officer, or notice is given to such officer of the existence of an apparent violation of this division, the public officer shall, within ten days thereafter, cause to be served upon the person in possession or the owner or occupant of the real property upon which such inoperable vehicle is located a written notice. Such notice shall inform such person of the violation, and direct that he take action within ten days after receipt of such notice to comply with the provisions of this article, or prosecution will be commenced for violation thereof.
- (b) If such person fails to comply with the provisions of this division within such time, the public officer shall notify the city attorney, who shall commence prosecution under this division.

Section 25. Liens for labor, equipment, materials or supplies.

- a) Pursuant to the provisions of K.S.A. 60-1101, when the City of Sedan has furnished labor, equipment, materials or supplies to eliminate the conditions which the city deems injurious to the health, safety, or general welfare of the general community or are detrimental to adjoining property, the neighborhood or City, the city may file a lien pursuant to K.S.A. 60-1101, et seq., against the real estate for improvements to the real estate by filing such lien statement with the Clerk of District Court of Chautauqua County, Kansas, within four (4) months after the date material, equipment, labor or supplies were last furnished, said lien statement to show the name of the owner, the name and address sufficient for service of process of the claimant, a description of the real estate, and a reasonably itemized statement of the amount of the claim, and if said lien is not satisfied by the landowner, proceed to foreclosure of said lien pursuant to K.S.A. 60-1101 et seq.

WEEDS AND WILD GROWTH

Section 26. Definitions.

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

Calendar year means that period of time beginning January 1 and ending December 31 of the same year.

Weeds means any of the following:

- (1) Brush and woody vines shall be classified as weed;
- (2) Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property.
- (3) Weeds which bear or may bear seeds of a downy or wingy nature;
- (4) Weeds which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which, either may or does constitute a menace to health, public safety or welfare;
- (5) Weeds and indigenous grasses on or about residential property which, because of their height, have a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 12 inches in height.

Section 27. Removal required.

It shall be unlawful for any owner, agent, lessee, tenant or other person occupying or having charge or control of any premises to permit weeds to remain upon such premises or any area between the property lines of such premises and the centerline of any adjacent street or alley, including but not specifically limited to sidewalks, streets, alleys, easements, rights-of-way and all other areas, public or private. All weeds, as hereinafter defined are hereby declared a nuisance and are subject to abatement as provided in this article.

Section 28. Permitting growth unlawful.

It shall be unlawful for any owner, occupant, tenant, or other person in charge of any lot, tract, or piece of land within the city to allow or permit grass or obnoxious vegetation of any type or nature to grow, mature, or obtain a size in excess of 12 inches in height. This section shall not apply to trees, bushes, flowers, or other ornamental plants.

Section 29. Mowing required.

The owner, occupant, tenant, or other person in charge of any lot, tract, or piece of land within the city shall keep such lot, tract, or piece of land including the right-of-way area adjoining such property, mowed and shall cut all such grass, weeds, and obnoxious vegetation of any type before the same matures or attains a size in excess of 12 inches in height.

Section 30. Nuisance.

Grass, weeds, or other obnoxious vegetation which are not cut or mowed as required by this article are hereby declared to be a nuisance. It shall be unlawful to permit any such grass, weeds, or obnoxious vegetation in excess of 12 inches in height to grow or remain upon any lot, tract, or piece of land within the city.

Section 31. Public officer; notice to remove.

- (a) The city council shall designate a public officer to be charged with the administration and enforcement of this article. The

public officer or an authorized assistant shall notify in writing the owner, occupant or agent in charge of any premises in the city upon which weeds exist in violation of this article, by mail or by personal service, once per calendar year. Such notice shall include the following:

- (1) The owner, occupant or agent in charge of the property is in violation of the city weed control law.
- (2) The owner, occupant or agent in charge of the property is ordered to cut the weeds within ten days of the receipt of notice.
- (3) The owner, occupant or agent in charge of the property may request a hearing before the municipal court or its designated representative within five days of the receipt of notice.
- (4) If the owner, occupant or agent in charge of the property does not cut the weeds, the city or its authorized agent will cut the weeds and assess the cost of the cutting, including a reasonable fee, against the owner, occupant or agent in charge of the property.
- (5) The owner, occupant or agent in charge of the property will be given an opportunity to pay the assessment, and if it is not paid it will be added to the property tax as a special assessment.
- (6) No further notice shall be given prior to removal of weeds during the current calendar year.
- (7) The public officer should be contacted if there are any questions regarding the order.

(b) 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 any assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this section.

Section 32. Abatement; assessment of costs.

(a) Upon the expiration of ten days after receipt of the notice required by section 31, and in the event that the owner, occupant or agent in charge of the premises shall neglect or fail to comply with the requirements of section 27, the public officer or an authorized assistant shall cause to be cut, destroyed and/or removed all such weeds and abate the nuisance created thereby at any time during the current calendar year.

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

(c) If the cost of removal or abatement remain unpaid after 30 days following receipt of notice, a record of the costs of cutting and destruction and/or removal shall be certified to the city clerk who shall cause such costs to be assessed against the particular lot or piece of land on which such weeds were so removed, and against such lots or pieces of land in front of or abutting on such street or alley on which such weeds were so removed. The city clerk shall certify the assessment to the county clerk at the time other special assessments are certified for spreading on the tax rolls of the county.

State law reference(s)--Liens, KSA. 12-1,115.

Section 33. Right of entry onto property.

The public officer and the public officer's authorized assistants, employees, contracting agents or other representatives, are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds in a manner not inconsistent with this article.

Section 34. Unlawful interference.

It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute an ordinance violation.

Section 35. Noxious weeds.

- (a) Nothing in this article shall affect or impair the rights of the city under the provisions of KSA ch. 2, art. 13. relating to the control and eradication of certain noxious weeds.
- (b) For the purpose of this section, the term "noxious weeds" shall mean kudzu (*Pueraria lobata*), fial 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 (*Hoffmanseggia densiflora*), musk (nodding), thistle (*Carduusnatans L.*), and Johnson grass (*Sorghum halepense*).

State law reference(s)--Noxious weeds, K.S.A. 2-1314 et seq.; removal, K.S.A. 12- 1617f.

Section 36. Penalties and fines.

- (a) It is unlawful for any person to violate any of the provisions of this ordinance.
- (b) Should the city attorney commence prosecution in the Municipal Court of the City of Sedan, Kansas, against any person for violation of this ordinance, and said person be found guilty thereof, the judge of the municipal court shall punish for first conviction thereof by a fine of not less than \$50.00 nor more than \$500.00; for a second or subsequent conviction thereof by a fine of not less than \$100.00 nor more than \$1,000.00 or by imprisonment for not more than ten (10) days or by both such fine and imprisonment.

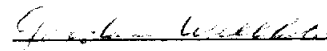
Section 37. Repeal of ordinances or part of ordinances in conflict herewith.

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

Section 38. When ordinance takes effect.

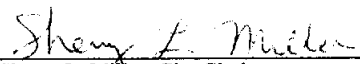
This ordinance shall take effect and be in full force from and after its passage and approval by the mayor and city council for the City of Sedan, Kansas, and its publication one (1) time in the Sedan Times Star.

Passed and approved this 2nd day of December, 2002.



 Gordon Willhite, Mayor

Attest:



 Sherry L. Miller, City Clerk