

## **ORDINANCE 09-01**

AN ORDINANCE DEFINING CONDITIONS WHICH ARE NUISANCES, PROVIDING FOR THEIR ABATEMENT OR PROSECUTION; ESTABLISHING A DEPARTMENT OF HEALTH AND SANITATION AND ENFORCING OFFICER, REPEALING ORDINANCE 98-01.

### SECTION I: NUISANCES-ENUMERATED

A. For the purposes of this Ordinance, the words “*public nuisance*” are hereby defined as any person, corporation, partnership or association doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which the act, omission, condition or thing either:

1. Injures or endangers the welfare, health or safety of others; or
2. Offends decency; or
3. Is offensive, unsightly or hazardous; or
4. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, alley, stream, ditch, drainage or any public easement; or
5. In any way renders other persons insecure in life or the use and enjoyment of property; or
6. Essentially interferes with comfortable enjoyment of life or property, or tends to depreciate the value of the property of others.

B. *Illustrative Enumeration.* The maintaining, using, placing, depositing, leaving, or permitting to be or remain on any public, or private property of any of the following items, conditions or actions, constitute a public nuisance; provided however, the following enumeration shall not be deemed or construed to be conclusive, limiting, or restrictive:

1. Filth, excrement, lumber, concrete blocks, siding, building materials, rocks, dirt, cans, paper, trash, metal, disabled automobiles and/or parts of any other offensive, disagreeable thing or substance thrown or left or deposited upon any street, avenue, easement, alley, sidewalk, park, public or private enclosure or lot whether vacant or occupied;
2. All dead animals, not removed within twenty-four (24) hours after death;
3. Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors,

4. All stagnant ponds or pools of water;
5. All grass, bushes, shrubbery, weeds or other unsightly vegetation nor usually cultivated or grown for domestic use or to be marketed for ornamental purposes;
6. Domestically cultivated grass which is in excess of ten inches (10") in height, however, grasses commonly cultivated as ornamental plants, i.e., plume grass, pampas grass, fountain grass shall be exempted from this section;
7. Abandoned iceboxes, freezers, refrigerators or appliances kept outdoors on the premises under the control of any person not in actual use; if such appliance are in actual use, they must be kept locked by a locking device that is an integral part of the appliance or by a chain and padlock, except for the time the owner thereof is placing articles in or removing articles from said appliance; this Subsection does not apply to commercial ice machines or commercial ice storage appliances when in actual use;
8. 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;
9. 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;
10. Any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of City ordinance; or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable;
  - a. Absence of current registration upon the vehicle;
  - b. Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
  - c. Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.
11. The provisions of Subsection (10), shall not apply to:
  - a. Any motor vehicle which is enclosed in a garage or other building;
  - b. To the parking of a vehicle inoperable for a period of thirty (30) consecutive days or less, as long as Subsections 10 (a,b,c) do not apply;

c. To any person conducting a business enterprise in full compliance with existing zoning regulations;

d. To any person who places such vehicle behind screening of sufficient size, strength and density, to screen such vehicles from the view of the public and to prohibit ready access to such vehicles by others as long as such screening is in compliance with existing ordinances and zoning regulations. However, nothing in this Subsection shall be construed to authorize the maintenance of a public nuisance.

12. Any condition which provides harborage for rat, mice, snakes and other vermins;

13. Any building or other structure which is in such condition that it is unfit for human habitation, as defined in Ordinance 78-5, that it is a menace the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;

14. Pollution of any public or private well, stream, lake, or other body of water by sewage, dead animals, industrial wastes or other substances;

15. Any building, structure or other place or location where any activity which is in violation of Local, State or Federal law, is frequently conducted, performed or maintained. Two (2) such violations within one (1) year period are deemed to be frequent;

16. Dense smoke, noxious fumes, gas, soot, or cinders, such as to be injurious to the public health.

17. Conditions relating to mobile homes:

- a. Missing skirting;
- b. Presence of rust which is detectable from the street curb or any adjacent property;
- c. Broken windows, torn window or door screens;
- d. Vacant mobile homes if uninhabitable due to deteriorated condition.

## SECTION II. PROHIBITED

It shall be unlawful for any person, corporation, partnership to cause, permit, maintain or allow the creation or maintenance of a public nuisance within the corporate limits of the City of Grandview Plaza.

### SECTION III. NOTICE

Any person, corporation, partnership, or association found by the designated Enforcing Officer to be in violation of this Article, shall be served a notice of such violation. The notice shall be sent regular mail, to the last known address of such person, corporation, partnership, or association. The Enforcing Officer will prepare and maintain a certificate of mailing indicating the date on which the letter was sent, the addressee and the address to which the notice was sent. The addressee will be presumed to have received the notice three (3) days after mailing. If such notice is returned to the City Enforcing Officer by the Postal Service as not deliverable, the City Enforcing Officer, after revivifying the proper address of the person, corporation, partnership, or association, shall serve the notice by restricted mail, return receipt requested. Alternatively, if the person, corporation, or association or agent thereof in charge of the property is a resident of Geary County, Kansas, the notice may be personally served by a Law Enforcement Officer or the Enforcing Officer.

#### SECTION III-A CONTENTS OF THE NOTICE

The notice shall state the condition (s) which is (are) in violation of this Ordinance. The notice shall also inform the person, corporation, partnership or association that:

1. He, she or they have three (3) days from the date of serving the notice to abate the condition (s) in violation of Section 1; or
2. He, she or they have three (3) days from the date of serving the notice to request hearing before the Board of Health and Sanitation on the matter claimed to be in violation of Section 1; or
3. Failure to abate the condition (s) or to request a hearing within the time allowed, may result in prosecution and/or abatement of the condition (s) by the City.
4. Only one notice will be given for a specified violation in a calendar year, such that should the Violation reoccur, enforcement action may commence without further notice.

#### SECTION IV. FAILURE TO COMPLY-PENALTY

Should the person, corporation, partnership or association fail to comply with the notice to either abate the public nuisance or request a hearing, the City Attorney may file a complaint in the Municipal Court of the City against such person, corporation, partnership or association and conviction of any violation of provisions of this Article, the person, corporation, partnership or association and conviction of any violation of provisions of this Article, the person, corporation, partnership or association may be fined an amount not to exceed one hundred dollars (\$100.00) or be imprisoned not to exceed thirty (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 addition or separate offense.

## SECTION V. ABATEMENT

In addition to, or as an alternative to prosecution as provided in Section 4, the City may seek to remedy violations of this Ordinance in the following manner: If a person to whom a notice has been sent pursuant to Section 2, has neither alleviated the conditions causing the alleged violation nor requested a hearing within the time periods specified in Section 3, the City may authorize the abatement of the conditions causing the violation.

## SECTION VI. HEARING

The Board of Health and Sanitation shall conduct all hearings pursuant to this Section. If a hearing is requested within the three (3) day period as provided in Section 3, such request shall be made in writing to the designated Enforcing Officer. Failure to make a timely request for a hearing, shall constitute a waiver of the person's right to contest the findings of the Enforcing Officer before the "Board". The hearing shall be held as soon as possible after the filing of the request therefore, and the person shall be advised by the Enforcing Officer of the time and place of the hearing at least three (3) days in advance thereof. At any such hearing, the person and the Enforcing Officer may introduce such witnesses and evidence as is deemed necessary and proper by the "Board". Upon the conclusion findings of the matter and shall take action as necessary to carry put the determinations and findings.

## SECTION VII. COSTS ASSESSED

If the City abates the nuisance pursuant to Section 5, the City Clerk shall give notice to the person, corporation, partnership or association found to be in violation of the Ordinance, by mail of the costs of abatement of the nuisance, to include administrative costs. The notice shall state that payment of the costs is due and payable within thirty (30) days following receipt of the notice, such costs shall be charged against the lot or parcel of ground on which the nuisance was located. The City Clerk shall, at the time of certifying other taxes to the County Clerk, certify the costs as provided in this Section. The County Clerk shall extend the same on the tax roll and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid.

Non administrative costs shall be assessed on the basis of \$100.00 per hour or any portion thereof for any City employee participating in the abatement with a two (2) hour minimum charge, in addition to any actual expenses incurred by the City in the abatement process.

## SECTION VIII.

There is hereby created within the City of Grandview Plaza a Department of Health and Sanitation. The department shall be overseen by and Enforcing Officer, who shall be appointed by the Mayor. The Enforcing Officer, who shall report to the City Council which is designated as the Board of Health and Sanitation.

SECTION IX.

Ordinance Number 98-01 is hereby repealed

SECTION X.

This Ordinance shall be effective upon its adoption and as of the date of its publication in the official City newspaper. Passed and adopted this 16<sup>th</sup> day of June, 2009.

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KEN HALL  
MAYOR

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SHIRLEY BOWERS  
CITY CLERK