

ORDINANCE NO. 591
AN ORDINANCE REPEALING AND REPLACING ORDINANCE 517,
PERTAINING TO NUISANCE CODES AND REGULATIONS IN THE
CITY OF MOUND CITY, KANSAS.

WHEREAS, the nuisance code of the City of Mound City, Kansas has not been updated in several years, and;

WHEREAS when Public Nuisances are allowed to exist unregulated in the City of Mound City it creates unsightly properties, lowers property values, and endangers the public health and welfare, and;

WHEREAS the governing body of the City of Mound City, Kansas desires to update its regulations with regards to nuisances;

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF MOUND CITY, KANSAS that Ordinance # 517 be repealed and replaced with the language below.

SECTION 1. Definitions

Unless the context specifically indicates otherwise, the following terms, as used in this chapter, are defined as follows:

“City” shall mean the City of Mound City, Kansas

“Developed” area shall mean any platted lot currently built upon, whether occupied or unoccupied, or any vacant lot or tract directly adjacent to a platted lot currently built upon, occupied or unoccupied.

“Director of finance” shall mean the director of finance, City Clerk, or an authorized subordinate representative.

“Code Enforcement Officer” shall mean the Code Enforcement Officer or an authorized subordinate representative.

“Noxious odors” shall mean an offensive, disagreeable, hazardous, noxious, or toxic odor, dust, vapor, smoke, fumes, mist or condition.

“Noxious plants” shall mean any plant capable of poisoning, including but not limited to poison ivy, at any height or state of maturity.

"Occupant" shall mean any person who has a legal or equitable interest in a parcel of real property other than a fee interest, including a life tenant, tenant, lessee, tenant at will, tenant at sufferance, or adverse possessor, as well as a person in possession or a person who has charge, care or control of the parcel of real property, as the agent or personal representative of the person holding legal title to a fee interest.

"Owner" shall mean any person who alone, jointly or severally with others, shall have legal title to a fee interest in the parcel of real property, with or without accompanying actual possession thereof. The land records filed in the office of the Recorder of Deeds of Linn County, Kansas and any other official office of the Recorder of Deeds of Linn County, Kansas, and any other official record of such county or of the city, may be used to determine the identity of such owners, as hereinabove defined, as of the date of the notice of the violation.

"Person" shall mean and include any individual, firm, corporation, association, partnership, cooperative or governmental agency.

"Premises" shall mean any public or private property, vacant or occupied lot, plot, parcel of land, street, sidewalk, alley, boulevard, highway, right-of-way, park, parkway, public square, or viaduct, including the structures or buildings thereon.

"Refuse" shall mean unwanted or discarded waste materials in a solid or semisolid state consisting of garbage, rubbish, or a combination thereof.

"Thickets" shall mean a dense growth of wild shrubbery having stems or trunks less than one inch in diameter, and briar patches.

"Undeveloped area" shall mean any property in any zoning district which is currently vacant or is zoned or used for agriculture purposes which is more than one hundred fifty (150) feet distant from any occupied residential subdivision, lot or parcel of land.

"Vehicle" shall mean every device or implement in, upon or by which persons or property may be transported, moved or carried, whether self-propelled, pushed or drawn, by any mode of power whatever, except devices moved exclusively by human power, or moving exclusively upon fixed rails or tracks.

"Weeds" shall mean all vegetation capable of emitting unpleasant or noxious odors or transmitting pollen into the air; any vegetation in excess of six (6) inches in a developed area or twelve (12) inches in an undeveloped area; all vegetation, regardless of height, including thickets, which may conceal or invite filthy deposits, harbor rodents, refuse or vermin, or create a fire hazard. Vegetation which shall be planted, cultivated and maintained for the production of grain, forage, commercial products, or for beauty and aesthetic purposes, shall not be considered weeds.

SECTION 2. Enumeration of nuisances.

The following are hereby declared, defined and deemed to be nuisances for purposes of this article; provided, however, that the following enumeration shall not be deemed to be exclusive:

- (1) Establishments or structures which emit noxious odors.
- (2) Substances emitting noxious odors, including but not limited to: any stable, stall, shed, compartment in any yard or appurtenance thereof in which any horse, cattle, cows, swine, dogs, rabbits or any other animal, chickens or any other fowl shall be kept, or any place in which manure or liquid discharges of such animals shall collect or accumulate, and which stable, stall, shed or compartment, or any yard or appurtenance thereof, is not kept in a clean and wholesome condition, so that an offensive smell shall be allowed to escape therefrom. Nothing in this article shall be so construed as to include manure deposits upon any private property for the purpose of cultivating the same.
- (3) Carcasses of animals remaining exposed twelve (12) hours after death.
- (4) Abandoned, discarded or unused objects or equipment such as: vehicles, furniture, stoves, refrigerators, freezers, toilets, water heaters, air conditioners, sinks; all ashes, cinders, slops, filth, excrement, boards, lumber scraps, sawdust, wood or metal shavings, rubber, old tires, plastic containers, bags, wrappers, stones, rocks, sand, oil, coal, gasoline, paint, dirt, dust, straw, soot, sticks, boxes, barrels, buckets, kegs, crates, cans, bottles, cartons, paper, trash, leavings, rubbish (rubbish shall mean solid waste consisting of combustible and noncombustible waste materials from residential apartments, commercial, industrial, institutional establishments, including yard waste and items commonly referred to as "trash"), manure, broken ware, iron or other metal, rags old wearing apparel, sweepings, refuse, debris, vehicle parts, broken concrete, slag, garbage, offal, putrid fish, meat entrails, decayed fruits or vegetables, wastewater, animal or vegetable products or matter, broken glass, bones, tacks, nails, wire, grass, dead limbs, leaves, brush, logs, weeds, foliage or shrub cuttings or clippings, or any other offensive or disagreeable substance or things thrown, cast dropped, blown, spilled, poured, discharged or swept, left or deposited by anyone in or upon any premises.

The outside covering or fencing, through the use of a tarpaulin or other nonstructural material, of abandoned, discarded or unused objects or equipment.

Compost piles. Grass, dead limbs, leaves, brush, logs, weeds, foliage, shrub cuttings or clippings are permitted as part of a compost pile located on a lot or tract used for single-family or two-family residential purposes. The compost piles:

- (a.) Must be located in the rear yard only. No compost piles are allowed in front or side yards. They may be no less than fifteen (15) feet from any other building on the premises.
- (b.) May contain the aforementioned materials as well as manure, straw, hay, sawdust and soil.
- (c.) Must be no larger than one hundred fifty (150) cubic feet. A pile shall not exceed four (4) feet in height. Only one compost pile is permitted on any residential premises up to one acre. On residential premises of more than one acre, no more than two (2) compost piles are permitted.
- (d.) The pile must be maintained in an enclosure and must be in moist condition. Permitted enclosure materials include woven wire or wood slat fence, cement blocks or bricks and boards of lumber.
- (e.) The director of community development has the authority to grant exemptions to these regulations. If a property owner cannot meet the placement, size or quality standards, he or she

may establish other reasonable compost piles with the approval of the director of community development.

(5) Unlicensed, inoperable, junked, etc., vehicles.

a. Any vehicle which is not currently licensed and is not visible displaying current license plates on the vehicle which remains parked or stored on private property longer than ten (10) days.

b. Any inoperable, partially dismantled, junked, wrecked, discarded motor vehicle or major parts of such vehicle; any vehicle under repair or not then in such condition of maintenance as to be operated in a normal and safe manner.

Except, that this section shall not apply to any vehicle in an enclosed building or so located upon the property as not to be readily visible from any public place or from any surrounding private property; or with regard to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city or any other public agency or entity, or in a zoning district permitting such use.

(6) Storage of old, unused, etc., vehicles and machinery. The outside storage through the use of a tarpaulin or other nonstructural covering of old, unused, stripped, junked or other vehicles not in good and safe operating condition or not currently licensed, or of any other vehicles, machinery, implements and/or equipment or personal property of any kind which are no longer safely usable for the purposes for which it was manufactured.

(7) A live or dead tree which constitutes a hazard to the safety of persons or of property, private or public. The director of community development and the director of parks and recreation may enter at all reasonable times upon any privately owned property for the purposes of inspection and investigation of any tree which may be in a hazardous condition.

(8) Building material abandoned or stored in an area where construction is not in progress and in an area not properly zoned for such storage; however, such storage shall be permitted in an area where construction is in progress and a valid building permit issued by the city is in effect. Such permitted storage shall not extend more than thirty (30) days beyond the expiration of the building permit or completion of construction, whichever first occurs. Usable building materials for use on the premises may be temporarily stored in the open. They shall be placed at least eighteen (18) inches off the ground, and stacked neatly.

(9) Weeds or noxious plants allowed to stand any season of the year.

(10) Any building or structure, or portion thereof, which is open to unauthorized or unlawful entry.

(11) All articles, acts, or things whatsoever caused, kept, maintained, or permitted by any person to the injury, inconvenience, or annoyance of the public.

(12) All pursuits followed or engaged in or acts done by any person to the injury, annoyance, or inconvenience of the public.

(13) Swimming pool discharge- The discharge of water from swimming pools or swimming pool backwashes onto adjoining property. Such discharge shall be directed and channeled into the public storm sewer system.

(14) Any building, structure or portion thereof that is structurally unsound or displays any of the following conditions:

- a. Roofs, eaves or soffits that are open to the elements.
- b. Gutters and downspouts that are damaged and not directing rainwater runoff as appropriate.
- c. Any exterior opening that is not fitted with a window, door, basement hatchway cover or crawl space cover, as appropriate.
- d. Windows that do not include intact glass windowpanes.
- e. Windows or exterior doors that do not fit well within their frames.
- f. Foundations that are open to the elements.
- g. Exterior wall surfaces that are not sheathed with weather resistant and durable materials consistent with those permitted under the city's building codes.
- h. Attachments to structures, including but not limited to porches, landings, fire escapes, decks, railings and exterior stairs that are not safe and functional.
- i. Fencing that is collapsed or does not function.

(15) Sight distance on corner lots. All corner lots shall provide sight distance triangles in both directions, the short leg of which shall be twenty (20) feet, and the long leg of which shall be one hundred forty (140) feet measured along the curb line or edge of the pavement. Within the area of the triangle there shall be no sight-obscuring or partly obscuring wall, fence, sign, or foliage higher than twenty-four (24) inches above curb grade or in the case of trees, foliage lower than six (6) feet when planted. Mature trees shall not have foliage lower than ten (10) feet in the public right-of-way. Vertical measurement shall be made at the top of the curb on the street or alley adjacent to the nearest street of the triangle or, if no curb exists, from the edge of the nearest traveled way.

These restrictions shall apply to basically level and square intersections. Intersections on grades, curves, or acute angles shall require special considerations.

SECTION 3. Prohibition of nuisances.

- (a) It shall be unlawful for any owner or occupant of any lot, tract, or parcel of land, to cause or permit any nuisance as defined in this article, to be created or remain upon his property, and it shall be the duty of owner or occupant to abate and remove any such nuisance from such premises.
- (b) No owner or occupant shall permit, cause, keep, maintain, or do any nuisance, as defined by the laws of the state or ordinances of the city, or cause to be committed, caused, kept, maintained, or done any such nuisance within the corporate limits of the city.
- (c) No owner or occupant of any house, building, lot, or premises shall cause or allow any nuisance to be or remain in or upon any such house, building, lot, or premises.

SECTION 4. Applicability of article to corporations.

When the owner or occupant of the premises on which a nuisance has been determined to exist is a corporation, any officer of such corporation or the person in charge of the local office of such corporation shall be guilty of violating the provisions of this chapter.

SECTION 5. Penalty

(a) Violation of any provision(s) of this article shall be deemed a misdemeanor, and any person violating any such provisions, upon conviction, shall be fined in an amount not to exceed five hundred dollars (\$500.00).

(b) Each day on which any nuisance, as herein defined, shall remain on any premises after the duty of the owner or occupant thereof arises to remove or abate the same, shall constitute a separate offense, for which the owner or occupant thereof may be arrested, tried, and punished separately.

SECTION 6. ABATEMENT—WEEDS

- Weeds, in general.

It shall be unlawful for any owner or occupant of real property, to allow the excessive growth of any weed, grass or uncultivated vegetation on any lot or parcel of land within the city, including any areas between the property lines of said lot or parcel and the centerline of any adjacent street or alley including sidewalks, streets, alleys, easements and rights-of-way, to a height in excess of six (6) inches in a developed area and twelve (12) inches in an undeveloped area.

- Notice to abate rank weeds and violation.

When the growth of said weeds, grass or uncultivated vegetation exceeds the prescribed height and is observed and reported as a violation, the director of development shall give at least ten (10) days written notice to the owner or owners of the property, his, her, or their agents, including occupants, in the manner provided as follows:

- (1) Be in writing;
- (2) Delivered either personally, or by United States mail, or by posting such notice upon the premises;
- (3) Set forth the allegation of observation or report of such violation; and
- (4) Set forth the option to request a hearing before said director of development.

If, upon said hearing, the city declares such weeds, grass, or uncultivated vegetation to be a nuisance, it may be ordered that the same be abated by cutting and removing such weeds, grass, or uncultivated vegetation within five (5) days. If the violation is not abated within said five (5) days, the city may remove or cause the removal of the nuisance and charge the owner for the abatement costs thereof. All other varieties of weeds as defined in other sections

- Repeat violations.

If, more than once during the same growing season, repeat violations of the same code provision by the same person at the same property are reported, the city may, without further notification, have the weeds removed and the cost of the same shall be billed to the owner as provided in section

- Special tax bill for city removal of rank weeds.

In the event that such weeds are not cut down and removed within such five-day period, the Code Enforcement Officer shall have the weeds cut down and removed and shall certify the cost of the same to the director of finance, who shall cause the special tax bill therefor against the property to be prepared and to be collected with other taxes assessed against the property; and the tax bill from the date of its issuance shall be a first lien upon the property described therein until paid and shall be prima facie evidence of the recitals therein and of its validity, and no mere clerical error or informality in the same, or in the proceedings leading up to the issuance, shall be a defense thereto. Each such special tax bill shall be issued by the director of finance on or before the first day of June of each year, and if not paid when due shall bear interest at the rate of eight (8) per cent per annum from said due date. In addition to the costs associated with the removal of weeds, the city may include as a portion thereof the reasonable cost of administering the provisions of this chapter with respect to the property affected. This section is not exclusive of other remedies provided in this article, but shall be independent of and cumulative and in addition to other penalties provided herein.

SECTION 7. ABATEMENT—OTHER NUISANCES

- Enforcement through civil action.

In addition to the abatement procedure provided hereinafter, the city may apply to a court of competent jurisdiction for injunctive relief to either prohibit the continuance of any nuisance or for an order to abate any nuisance. Such application for relief may be by seeking a temporary restraining order, temporary injunction and/or permanent injunction.

- Emergency abatement without notice.

(a) Whenever it becomes necessary to abate a nuisance immediately in order to secure the general health of the city, or any of its inhabitants, the community development director is authorized to abate such nuisance without notice, and he may use any suitable means or assistance for that purpose, whether employees of the city or day laborers specially employed for that purpose, or any other help or assistance necessary therefor. The community development director shall certify the cost of abating such nuisance to the director of finance (collector) and may, by ordinance, levy the cost thereof as a special city assessment against the property on which such nuisance was located, which tax shall be collected pursuant to section below and shall be a first lien on the property until paid.

(b) It shall be the duty of the owner or occupant of private property, his agent, or the person causing or maintaining any nuisance thereon to abate the same after an order by the community development director, chief of police or police officer in accordance with the terms prescribed in such order.

- Notice to abate nuisances.

Whenever the director of community development shall have determined that a nuisance exists on any premises within the city limits, but that is not immediately necessary for the protection of the health and welfare of the inhabitants of the city, the community development director shall give at least ten (10) days' written notice to the owner or occupant of the premises where such nuisance exists or his agent, stating the nature of such nuisance and ordering its immediate abatement in the manner provided as follows:

- (1) Be in writing.
- (2) Set forth the nature of such nuisance and that same constitutes a nuisance upon such property.
- (3) Describe the premises where the nuisance is alleged to exist or to have been committed.
- (4) Specify a period of ten (10) days for the abatement of said nuisance and advise the occupant/owner of his right to request a hearing.
- (5) Specify the method or methods available for abatement.
- (6) Be served upon the owners or occupants of the premises by delivery of a notice to them personally or by leaving such copy at their usual place of abode with a member of the family over the age of fifteen (15) years or by mail addressed to the owner, occupant or agent. If one or more persons to whom such notice is addressed cannot be found after diligent effort to do so, service may be made upon such person by posting the notice in or upon the premises described in the notice, or by causing such notice to be published in a newspaper of general circulation. If the owner or occupant is a corporation, notice shall be served upon an officer, a person in charge of any local business office or its registered agent or any agent authorized by appointment or required by law to receive service of process.
- (7) State the consequences of failure to comply with the notice.

- Hearing.

If such hearing is requested in writing and delivered to the city clerk within said ten-day period of time, that officer shall conduct a hearing as soon as may be practicable, but not earlier than five (5) days after notification of such alleged occupant/owner of the hearing date, place and time, by personal service or by certified or registered mail. At such hearing such alleged occupant/owner shall have the right to be represented by counsel, to present testimony, offer evidence and arguments, and cross examine witnesses. All testimony shall be taken under oath.

- Order to abate.

The codes officer, upon such hearing, shall state in writing his findings of fact, conclusions of law, and his order, if he finds such nuisance to exist, that the same be abated within said period of five (5) days, and shall cause such findings, conclusions, and order to be served upon such occupant/owner in the same manner as provided for notice of such hearings, or by mailing a copy thereof to counsel for such occupant/owner if any such appeared therefor at the hearing, by certified or registered mail.

- Enforcement and abatement.

In the event that either no hearing shall have been requested or the Code Enforcement Officer upon such hearing shall have ordered such nuisance to be abated as aforesaid; and such nuisance shall not have been abated within the respective period specified, then the director of community development may cause such nuisance to be abated forthwith by any appropriate means. The Code Enforcement Officer, or one contracted to do work, may enter the premises upon which such nuisance is situated for the purpose of abating same with or without the consent of the owner thereof without being guilty of trespass.

- Special city assessment.

Upon the order of the Code Enforcement Officer causing any such nuisance to be abated as aforesaid, he shall determine the cost of such abatement, including as a portion thereof the reasonable cost of administering the provisions of this chapter with respect to the property affected. Such administrative costs shall not exceed the sum of one hundred dollars (\$100.00). The director of community development shall certify a statement of such costs, and of service of notice on the owner, describing the real property upon which such abatement was accomplished, to the director of finance as a special assessment upon such real property. Provided, however, that if any appeal shall have been filed of the order from the Code Enforcement Officer within the period allowed by law therefor, such costs of abatement shall not be so certified to the department of finance unless and until final judgment shall have been rendered on such appeal confirming such order. Upon receipt of such certification, the director of finance shall immediately enter such property in appropriate books kept for that purpose, and shall cause a copy of such statement to be sent to the owner of such property by regular United States mail, and the original thereof to be retained in that office appropriately filed. Each such special assessment shall constitute a lien upon the real property described thereon and shall be payable within sixty (60) days after the date of issuance without interest and thereafter, with interest from the date of its issue until paid at the rate of one per cent per month. Such lien shall remain in effect for a period of five (5) years from the date of verification to the director of finance, at which time it shall automatically terminate unless legal proceedings to enforce such a lien shall have been instituted. Such lien may be enforced by any lawful method, action or procedure.

- Notice of lien.

If such special assessment shall not be paid in full within sixty (60) days after date of issuance thereof, the director of finance shall cause to be filed in the office of the Recorder of Deeds of Linn County, Kansas, a "notice of lien," which shall state the following information:

- (1) The name and last known address of the owner.
- (2) The description of the land subject to lien.
- (3) The amount and date of issuance of said special assessment, and that the same bears interest at the rate of one per cent per month until paid.
- (4) A statement that such amount and interest constitutes a lien upon the land, under the Mound City Code, of Mound City Kansas, until said special assessment with such interest from the date of issuance be paid in full.
- (5) Is certified as correct by the director of finance of the city.

SECTION 8. This ordinance shall be included in the Code of the City of Mound City, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Mound City, Kansas, this 10th day of May, 2023.



Wade Doering, Mayor

ATTEST:



Shelby Murray, City Clerk

(SEAL)

