

CITY OF CHERRYVALE

ORDINANCE NO. 13-4637

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 3, ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE MOTOR VEHICLES, OF THE MUNICIPAL CODE OF THE CITY OF CHERRYVALE, KANSAS.

WHEREAS, the Governing Body of the City of Cherryvale, Kansas desires to modify and replace Chapter VI, Article 3, Abandoned, Wrecked, Dismantled or Inoperative Motor Vehicles, in the Municipal Code of the City of Cherryvale, Kansas; and,

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHERRYVALE, KANSAS:

ARTICLE 3. ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE MOTOR VEHICLES

6-301. FINDINGS OF GOVERNING BODY. The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens, of the city because they:

- (a) Service as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
- (b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
- (c) Are a ready source of fire and explosion;
- (d) Encourage pilfering and theft;
- (e) Constitute a blighting influence upon the area in which they are located;
- (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

6-302. DEFINITIONS. As used in this ordinance, unless the context clearly indicates otherwise:

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

(b) *Vehicle* means, without limitation, any automobile, truck, tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

6-303. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

(a) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of city ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable:

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

(b) The provisions of this section shall not apply to:

- (1) Any motor vehicle which is enclosed in a garage or other building;
- (2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
- (3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.

6-304. PUBLIC OFFICER. The City of Cherryvale shall designate a public officer to be charged with the administration and enforcement of this article.

6-305. COMPLAINTS; INQUIRY AND INSPECTION. The public officer, or his or her designee, shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings.

6-306. RIGHT OF ENTRY. It shall be a violation of this ordinance to deny the public officer, or his or her designee, the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

6-307. NOTICE. Any person found by the public officer to be in violation of Section 6-303 shall be served a notice of such violation. The notice shall be served by restricted mail, postage prepaid, return receipt requested; provided, that if the owner or his or her agent in charge of the property is a resident of Montgomery County, Kansas, the notice shall be personally served by the public officer or a law enforcement officer.

6-308. SAME; CONTENTS. The notice shall state the condition(s) which is (are) in violation of Section 6-303. The notice shall also inform the person that:

(a) He, she or they shall have 10 days from the date of serving the entice to abate the condition(s) in violation of Section 6-303; or

(b) He, she or they have 10 days from the date of serving the notice to request a hearing before the governing body of the matter as provided by Section 6-312;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution in municipal court, as provided by Section 6-309 and/or abatement of the condition(s) by the city as provided by Section 6-310.

6-309. FAILURE TO COMPLY; PENALTY. Should the person fail to comply with the notice to abate the nuisance, the public officer may file a complaint in the municipal court of the city against such person and upon conviction of any violation of provisions of Section 6-303, be fined in an amount not to exceed \$500 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

6-310. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 6-309, the public officer may seek to remedy violations of this article in the following manner.

(a) If a person to whom a notice has been sent pursuant to Section 6-307 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time period specified in Section 6-308, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate -the conditions causing the violation at the end of 10 days after passage of the resolution.

(b) The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in Section 6-313.

(c) 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) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the service 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 premise where such condition exists.

(d) Alternatively, if a person is convicted in municipal court, the court may order agents of the city to abate the conditions at the expense of said person. Should the abatement be ordered in municipal court then the associated costs may be recovered through municipal court of the same methods as described above.

6-311. DISPOSITION OF VEHICLE. Disposition of any motor vehicle removed and abated from private property pursuant to this ordinance shall be as provided by K.S.A. Supp. 8-1102, as amended.

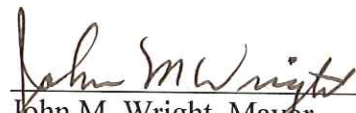
6-312. HEARING. If a hearing is requested within the 10 day period as provided in Section 6-308, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer before the governing body. The hearing shall be held by the governing body as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the matter provided in Section 6-310.

6-313. COSTS ASSESSED. If the city abates the nuisance pursuant to Section 6-310, the cost of abatement 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.

REPEALED. All ordinances in conflict herewith are hereby repealed.


EFFECTIVE DATE. This ordinance shall be in full force and effect upon its publication in the official city newspaper.

PASSED AND APPROVED By the Governing Body of the City of Cherryvale, Kansas, this 16th day of September, 2013.




John M. Wright, Mayor

ATTEST:



Christopher Weiner, City Clerk

APPROVED TO FORM:



John Bullard, City Attorney

