ORDINANCE NO. 650

AN ORDINANCE ADDRESSING
HEALTH, WEED AND MOTOR VEHICLE NUISANCES
WITHIN THE CITY OF BUHLER, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BUHLER, KANSAS:

SECTION 1.1 HEALTH NUISANCES UNLAWFUL; DEFINITIONS.

It shall be unlawful for any person to maintain or permit any health nuisance within the city as defined, without limitation, as follows:

(a) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure or lot whether vacant or occupied;

(b) All dead animals not removed within 24 hours after death;

(c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;

(d) All stagnate ponds or pools of water:

(e) All grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;

(f) Abandoned iceboxes or refrigerators kept on the premises under the control of any person, or any icebox or refrigerator not in actual use unless the door, opening or lid thereof is unhinged, or unfastened and removed therefrom;

(g) 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;

(h) 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.

SECTION 1.2 DESIGNATED PUBLIC OFFICER; APPOINTMENT

The designated public officer may be appointed or removed by the Mayor subject to approval by the City Council. In the event that no designated public officer is actively appointed, the duties of the designated public officer shall reside with the chief of police.

SECTION 2.1 WEED NUISANCES UNLAWFUL; DEFINITIONS.

It shall be unlawful for any owner, occupant or agent or other person 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 declared to be a nuisance and are subject to abatement. For purposes of this ordinance the term weeds means any of the following:

(a) Brush and woody vines;

(b) Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;

(c) Weeds which may bear seeds of a downy or wingy nature;

(d) 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;

(e) Weeds and indigenous grasses on or about any property which, because of its height, has a blighting influence on the neighborhood (weeds and indigenous grasses in excess of 12 inches in height being presumed to be blighting).

SECTION 2.2 WEED NUISANCE COMPLAINT; NOTICE; ABATEMENT

(a) Complaint:

(1) The designated public officer shall from time to time make inspection from the public roads of the City to ensure there does not exist any nuisance weeds, and if so, make notice to the Property Owner of such violation according to this section.

(2) Section 4 notwithstanding, any Buhler resident may make a complaint in any form to the designated public officer or the City Clerk's office of nuisance weeds, and the designated public officer shall make timely inspection of the same.

(b) Notice:

(1) The designated public officer or the city clerk shall serve any notice of weed nuisance findings as prescribed in Section 5. Such notice shall also include a copy of this ordinance and specific reference to Section

(2) After a notice as to a weed nuisance violation has been given once during a calendar year to the owner, it shall not be necessary to give any additional notices to such person or party as to any further violations of the weed nuisance provisions occurring upon any property of the owner during the same calendar year before abatement action may be taken on behalf of the city.

(c) Abatement:

(1) The City Clerk shall order contracted abatement of the weeds.

(2) The city clerk shall maintain a reputable list of lawn care providers who shall be authorized to abate weed nuisance violations on behalf of the city and fairly award contracts for weed abatement as needed.

(3) The city shall pay $50.00 for the weed abatement of a property which shall include all mowing, trimming and removal of excess grass and foliage. The clerk shall be authorized to decrease or increase payment up to $150 commensurate on the conditions of the property at the time, however any amounts higher shall follow the procedures set forth in Section 9.

(4) Upon abatement, the designated public office shall issue a citation via mail or in person to the property owner of record in the amount of $150.00 per abatement per property. Such citation may be timely contested by the property owner in city court as prescribed on the citation. The governing body may seek further costs repayment under section 9.

SECTION 3. MOTOR VEHICLE NUISANCES UNLAWFUL; FINDINGS OF GOVERNING BODY; DEFINITIONS; EXCEPTIONS.

(a) 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:

(1) Serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents;

(2) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;

(3) Are a ready source of fire and explosion;

(4) Encourage pilfering and theft;

(5) Constitute a blighting influence upon the area in which they are located:

(6) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

(b) As used in this section, unless the context clearly indicates otherwise:

(1) <u>Inoperable</u> 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;

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

(c) It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

(d) 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 not insured per the requirements of K.S.A. 40-3107; 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.

(e) 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 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;

provided, however that nothing herein shall be construed to authorize the maintenance of a public nuisance.

SECTION 4 COMPLAINTS; INQUIRY AND INSPECTION.

The designated public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by one or more residents of the City of Buhler stating that a nuisance exists in violation of this article and describing the same and where located or is informed that a nuisance may exist by the chief of police, fire chief, city clerk, city superintendent, or the Mayor. 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.

SECTION 5 NOTICE OF VIOLATION.

(a) Any person found by the public officer to be in violation of this article shall be served a notice of such violation.

(b) The notice shall be served upon such person and upon the owner of record of the lot or parcel of ground as to which such conditions exist by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then notice shall be sufficient if mailed to the owner by certified mail, return receipt requested, to the last known address of the owner.

(c) The notice shall state the conditions which are in violation of this article, and shall also inform the person:

(1) That such person has 5 days from the date of serving notice to abate the violating conditions or to submit to the city clerk a written request for a hearing before the governing body of the matter as provided by Section 6. The City may allow an extension of the 5 day nuisance abatement requirement if the owner of the property can demonstrate due diligence in abating the nuisance.

(2) That failure within the time allowed to either abate the violating conditions or to request a hearing may result in prosecution as provided by Section 7 and/or Section 2.2 and/or abatement of the conditions by the city as provided by Section 8 and/or Section 2.2.

(d) Failure to make a timely request for a hearing shall constitute a waiver of any right to contest the findings of the public officer.

SECTION 6 HEARING

Except for weed nuisance violations, if a timely request for a hearing is given to the city clerk as provided in
Section 5 (c) (1), the hearing shall be held by the governing body as soon as possible after the filing of the request, and the person requesting the hearing 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, any interested party may be represented by counsel, and any interested party 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, and the hearing may be continued from time to time as the governing body deems appropriate. Upon conclusion of the hearing, and if the governing body finds that any violating conditions are present, the governing body shall record its determination by adopting by motion, a Letter of Finding specifying the violating conditions found to exist and the amount of time thereafter within which the conditions shall be removed or abated. A copy of the Letter of Finding shall be served in the same manner as set forth in Section 5 (b), except that no publication thereof shall be required.

SECTION 7 FAILURE TO COMPLY; PENALTY.

Should any person fail to either comply with the notice to abate the nuisance or request a hearing, or should any person following a requested hearing fail to comply with any abatement order which then is issued by the governing body within the time for abatement as prescribed by the governing body, the city clerk, the chief of police or the designated public officer may file a complaint in the municipal court of the city against such person. Provided however, failure to comply with weed nuisance violations shall not require a finding by the governing body prior to a complaint filing or issuance of fine or penalty.

Except for weed nuisance violations or as otherwise prescribed by the governing body, conviction of any violation of provisions of this article shall be punishable by a fine in an amount not to exceed $100, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

SECTION 8 ABATEMENT.

(a) In addition to or as an alternative to prosecution as provided in Section 7, the governing body or the designated 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 5, has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time period specified, or if following a requested hearing there is a failure to comply with any abatement order which then is issued by the governing body within the time for abatement as prescribed by the governing body, the governing body may adopt a resolution authorizing any public officer or other agents, employees or contractors of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution; provided, however, that as to a weed nuisance no such resolution shall be required and the designated public officer may proceed upon the expiration of such time to abate such nuisance. A copy of the resolution shall be served in the same manner as set forth in Section 5 (b).

(b) Disposition of any motor vehicle removed and abated from private property pursuant to this article shall be as provided by K.S.A. 8-1102, and any amendments thereto.

SECTION 9 COSTS ASSESSED AND COLLECTED.

If the city abates any nuisance condition pursuant to this article, the cost of abatement and all costs associated with giving notices as prescribed in this article may be assessed against the lot or parcel of ground as to which such nuisance condition existed in the following manner. The city clerk shall give written notice in the same manner as prescribed in Section 5 (b) of the costs of such abatement and the costs of giving notices under these proceedings, including a

statement that payment of such costs is due and payable within 30 days following receipt or deemed receipt of such notice. If such costs are not paid within such time, 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. The governing body may also direct the collection of such costs against the owners of such lot or parcel of ground on which such nuisances were located in the manner as prescribed in K.S.A. 12-1,115 and any amendments thereto.

SECTION 10 RIGHT OF ENTRY; UNLAWFUL INTERFERENCE.

(a) It shall be a violation of this article 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.

(b) It shall be a violation of this article to deny any public officer, employee, agent or contractor charged with the duty of abating any nuisance condition under this article the right of access and entry upon private property at any reasonable time for the purpose of conducting such abatement, or to otherwise interfere with such abatement actions.

SECTION 11 NOXIOUS WEEDS,

Nothing in this article shall affect or impair the rights of the city under the provisions of Chapter 2, Article 12 of the Kansas Statutes Annotated, relating to the control and eradication of certain noxious weeds.

SECTION 12 CONFLICTING REGULATIONS.

(a) Activities, uses, or conditions allowed in the Industrial or Commercial zoned areas of the City of Buhler, regulated by the Zoning Regulations and Subdivision Regulations of the City of Buhler, Kansas, are exempt from this Ordinance when a conflict between the regulations is determined to exist.

(b) That Ordinance 628 shall be and is hereby repealed.

SECTION 13 EFFECTIVE DATE.

This ordinance shall take effect and be in force from and after its passage by the governing body of the City of Buhler, and publication of a summary of this ordinance once in the official city newspaper in accordance with K.S.A. 12-3007.

PASSED and approved by the governing body of the City of Buhler, Kansas, on this 24th day of September , 2024.

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Mayor Jake Schmidt

ATTEST:

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Sara Howard
City Clerk

(SEAL)