

ARTICLE 7. PROPERTY MAINTENANCE; NUISANCE REGULATIONS

9-701 DEFINITIONS.

(a) BUILDING MATERIALS means lumber, masonry, concrete, metal, stone, roofing materials and other building materials utilized in the construction or repair of a structure.

(R00-01-002, Sec. 1)

(b) 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.

(R00-01-002, Sec. 1)

(c) PUBLIC OFFICER means any County officer, employee or authorized agent.

(R00-01-002, Sec. 1)

(d) TRASH means solid waste normally produced by persons in their dwellings or on their premises that can be stored for collection in trash containers and includes but is not limited to wrapped garbage, paper, rags, cans, bottles and other containers and household wares.

(R00-01-002, Sec. 1)

(e) VEHICLE Means, without limitation, any automobile, truck, tractor, trailer, motorcycle, aircraft, boat or other water craft designed originally for the transportation and conveyance of people, livestock and/or cargo.

(R00-01-002, Sec. 1)

(f) WASTE means and includes the following:

1. Demolition and construction waste includes but is not limited to, waste lumber, masonry, concrete, other building materials and the resultant mixture with soil or other solid waste resulting from construction, remodeling, repair or demolition of buildings, structures, pavements, bridges and similar projects.
2. Industrial waste means waste normally generated by industrial and manufacturing operations which may include but is not limited to metal, plastic or similar materials produced by commercial operations.
3. Residential bulk waste includes but is not limited to, items of waste normally produced by persons in their dwellings or on their dwelling premises including household appliances, furniture, plumbing fixtures, tires, playground equipment, yard appliances and equipment.

(R00-01-002, Sec. 1)

9-702

UNLAWFUL NUISANCES. It shall be unlawful and deemed a nuisance for any person or legal entity to maintain or permit the following nuisances within the unincorporated area of Miami County, Kansas.

(a) Any junked, dismantled, inoperable or abandoned vehicle or parts thereof that is not contained within a building and said nuisance exists for more than 30 consecutive days. Any one or more of the following conditions shall rise the presumption that a vehicle is junked, wrecked, abandoned or inoperable :

(1) The vehicle is not currently licensed or registered to operate on public roadways pursuant to Kansas statutes;

(2) The vehicle is incapable of moving under its own power;

(3) Placement of the vehicle or parts thereof upon jacks, blocks or other supports;

(4) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle on the public streets or highways, airways or waterways;

(5) Vegetation, including weeds and trees, growing on, around or within a vehicle to such an extent that it is obvious that the vehicle has not been moved for at least 30 days.

(b) The accumulation of trash that is not contained within enclosed trash containers or the containers are not enclosed so as to prevent the trash from blowing onto other property.

(c) Tires, containers, storage tanks, unmaintained swimming pools or other items or conditions that may allow water to accumulate and provide a means for the breeding and infestation of flies, mosquitoes or rodents.

(d) The accumulation or storage of waste, as defined in Section 701 (f), that is not contained within an enclosed building.

(e) The accumulation or storage of building materials outside of a building for more than 90 days unless the materials are: part of a construction project for which a building permit has been issued and the permit is current; are contiguous to the building site; are of a quantity that is not in excess of what is needed for the project and are relevant to said project.

(f) Fences that are not a part of an agricultural operation that are in a state of disrepair that renders them unfit for their intended purpose.

(R00-01-002, Sec. 2)

9-703

EXCEPTIONS. The above provisions shall not apply to persons conducting a business enterprise in compliance with state statutes and/or existing zoning regulation who places the above activities entirely within an enclosed building or said conditions are caused by acts of nature or god, criminal acts or fire and explosions and the conditions have existed for a period of less than 90 days.

(R00-01-002, Sec. 3)

9-704

PUBLIC OFFICER DUTIES. A public officer is hereby authorized to exercise such powers necessary to carry out the purposes of the resolution, including the following:

(a) Inspect any property which appears to be in violation of this resolution;

(b) Have authority to enter upon the premises at reasonable hours for the purpose of making such inspections. Entry shall be made so as to cause the least possible inconvenience to any person in possession of the property. If entry is denied, the public officer may seek an order from a court of competent jurisdiction;

(c) Report all violations to the proper administrative and legal authorities;

(d) Receive reports and petitions from the public and investigate same in a timely manner.

(R00-01-002, Sec. 4)

9-705

INQUIRY AND INSPECTION. A public officer shall make inquiry and inspection of premises upon receiving a written complaint or complaints from the public or after receiving a referral from other public officials that a nuisance may exist. The written complaint shall describe the alleged nuisance and the location thereof. A public officer may make an inquiry and inspection after observing conditions which appear to constitute a nuisance as defined by this resolution. A written report shall be made of the public officer's findings.

(R00-01-002, Sec. 5)

9-706

NOTICE.

(a) Any person found by a public officer to be in violation of this Resolution shall be served a notice of such violation. The notice shall be served by certified_mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then the order shall be sent by certified mail, return receipt requested, to the last known address of the owner.

(b) If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice sent pursuant to this section during the preceding twenty-four month period, the public officer may provide notice of the issuance of any further orders to abate or remove a nuisance from such property in the manner provided in

by subsection (a) or as provided in this subsection. Except as specifically provided in this subsection, the county may provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(R00-01-002, Sec. 6)

(c) The notice shall state the condition(s) which is/are in violation of this Resolution. The notice shall also inform the person that:

(1) He/she shall have 30 days from the date of serving of the notice to abate the condition(s) in violation of this Resolution; or

(2) He/she shall have 10 days from the date of serving of the notice to request a hearing before the County Commission;

(3) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution and/ or abatement by the County.

(R00-01-002, Sec. 7)

9-707

HEARING. If a hearing is requested within the 10 day period as above provided, such request shall be made in writing to the County Administrator. Failure to make a timely request for a hearing shall constitute a waive of the person's right to contest the findings of public officers before the County Commission. The hearing shall be held by the County Commission as soon as possible after the filing of the request thereof, and the person shall be advised by the County 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 County may introduce such witnesses and evidence as is deemed necessary and proper by the County Commission. The hearing need not be conducted according to formal rules of evidence. Upon conclusion of the hearing, the County Commission shall record its determination of the matter by means of adopting a resolution and serving the resolution as provided in Section 609.

(R00-01-002, Sec. 8)

9-708

VIOLATION AND PENALTIES

(a) Any person, company, corporation, institution, municipality or agency of the State of Kansas who violates any provision of this article shall be subject to the penalties and remedies provided for in this Section.

(b) Any violation of this article shall constitute a Class C violation of the Schedule of Fines for Violations of Codes and Resolutions of Miami County, Kansas and shall be prosecuted in the County Codes Court. Each and every day that a violation is allowed to continue may be deemed to constitute a separate offense.

9-709

ABATEMENT.

(a) Whenever any condition considered to be an unlawful nuisance by these regulations is found to exist, the Board of County Commissioners, in addition to other remedies, may institute appropriate action or proceedings to correct or abate such unlawful nuisance in accordance with the provisions of this Section.

(b) If a person to whom a notice has been sent pursuant to the above Sections has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the specified time period, the public officer or his/her legal representative may present a resolution to the County Commission for adoption authorizing the public officer or any agents of the County to abate the conditions causing the violation at the end of 30 days after passage of the resolution. The resolution shall further provide that the costs incurred by the county shall be charged against the parcel of ground on which the nuisance is located. 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, return receipt requested;
- (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 County Clerk, and the serving of the resolution shall be made by publishing the same once each week on the same day of the week twice in the official county newspaper and by posting a copy of the resolution on the premises where such condition(s) exists.

(R00-01-002, Sec. 9)

(c) Any motor vehicle removed and abated from private property pursuant to this resolution shall be disposed of pursuant to K.S.A. 8-11-2 and amendments thereto. All other property removed and abated shall be photographed and an inventory made thereof. If the property has market or salvage value, the property shall be offered for sale at either public or silent auction, and notice thereof shall be published to two consecutive weeks in the official county newspaper. Notice of the auction shall be sent to the owner(s) and lienholders of record in the manner described in Section 606.

R00-01-002, Sec. 10)

(d) COSTS ASSESSED.

(1) The costs to the County of abatement shall be charged against the lot or parcel of ground on which the nuisance was located and said costs, along with documentation thereof, shall be reported to the County Clerk.

(2) The County shall give notice to the owner of the property by certified mail of the abatement costs and an itemized list of the costs incurred by the County. The notice shall also state that

payment of the cost is due and payable within 30 days following receipt of the notice.

(3) If the costs remain unpaid after 30 days following receipt of notice, the County may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of abatement. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the ground.

(d) If the proceeds of the sale of salvage is insufficient to recover the County's cost of abatement, the County Clerk shall, at the time of certifying other County taxes, certify the unpaid portion of the cost and extend the same on the County's tax role. Said costs shall be collected by the County Treasurer as any other taxes.

(R00-01-002, Sec. 11)

9-710

DISPOSITION OF PROPERTY. Any motor vehicle removed and abated from private property pursuant to this resolution shall be disposed of pursuant to K.S.A. 8-11-2 and amendments thereto. All other property removed and abated shall be photographed and an inventory made thereof. If the property has market or salvage value, the property shall be offered for sale at either public or silent auction, and notice thereof shall be published to two consecutive weeks in the official county newspaper. Notice of the auction shall be sent to the owner(s) and lienholders of record in the manner described in Section 606.

(R00-01-002, Sec. 10)

9-711

COSTS ASSESSED.

(a) The costs to the County of abatement shall be charged against the lot or parcel of ground on which the nuisance was located and said costs, along with documentation thereof, shall be reported to the County Clerk.

(b) The County shall give notice to the owner of the property by restricted mail of the abatement costs and a itemized list of the costs incurred by the County. The notice shall also state that payment of the cost is due and payable within 30 days following receipt of the notice.

(c) If the costs remain unpaid after 30 days following receipt of notice, the County may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of abatement. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the ground.

(d) If the proceeds of the sale of salvage is insufficient to recover the County's cost of abatement, the County Clerk shall, at the time of certifying other County taxes, certify the unpaid portion of the cost and extend the same on the County's tax role. Said costs shall be collected by the County Treasurer as any other taxes.

(R00-01-002, Sec. 11)

9-710

SEVERABILITY. If a court of competent jurisdiction declares any section, subsection, paragraph, sentence, clause or phrase of this code to be invalid or unconstitutional, the remaining portion of this resolution shall remain in full force and effect; and to this end, the provisions of this resolution are hereby declared to be severable and shall be presumed to have been adopted knowing that the part of the section declared invalid would be so declared.

(R00-01-002, Sec. 12)