

(First published in the Mount Hope Clarion on the 29th day of June, 1995.)

ORDINANCE NO. 95-2

AN ORDINANCE DECLARING CERTAIN MATTERS AS NUISANCES WITHIN THE CITY OF ANDALE, KANSAS; PROVIDING FOR THE REMOVAL OR ABATEMENT OF NUISANCES; AUTHORIZING THE ASSESSMENT OF COSTS AND PROVIDING FOR PENALTIES

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

Section 1.

NUISANCES UNLAWFUL; DEFINED. It shall be unlawful for any person to maintain or permit any nuisance within the city as defined, without limitation as follows:

- (a) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, derelict water tanks, 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 stagnant 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 2.

PUBLIC OFFICER. The governing body shall designate a public officer to be charged with the administration and enforcement of this ordinance.

Section 3.

COMPLAINTS; INQUIRY AND INSPECTION. The public officer 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 mayor, chief of police or the governing body. 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 4.

RIGHT OF ENTRY. It shall be a violation of this ordinance to deny the public officer 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.

Section 5.

NOTICE. Any person, corporation, partnership or association found by the public officer to be in violation of Section 1 shall be served a notice of such violation by the city clerk. The notice shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service, or if the same is unoccupied and the owner is a nonresident, then by mailing a notice by certified mail, return receipt requested, to the last known address of the owner.

Section 6.

SAME; CONTENTS. The notice shall state the condition(s) which is (are) in violation of Section 1. The notice shall also inform the person, corporation, partnership or association that:

- (a) He, she or they shall have 10 days from the date of serving the notice to abate the condition(s) in violation of Section 1; 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 9.
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 7 and/or abatement of the condition(s) by the city as provided by Section 8.

Section 7.

FAILURE TO COMPLY; PENALTY. Should the person, corporation partnership or association fail to comply with the notice to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any violation of provisions of Section 1, be fined in an amount not to exceed \$500.00 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.

Section 8.

ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 7, the 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 periods specified in Section 6, 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. 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 10. Notice of the date the resolution shall be presented to the governing body shall be served on the owner or his or her agent in charge of the property as provided in Section 5.

Section 9.

HEARING. If a hearing is requested within the 10 day period as provided in Section 6, such request shall be made in writing to the city clerk. 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 manner provided in Section 8.

Section 10.

COSTS ASSESSED. If the city abates the nuisance pursuant to Section 8, the city shall give notice to the owner or agent by certified mail, return receipt requested, of the total cost of such abatement or removal incurred by the city. Such notice shall also state that payment of such costs is due and payable within 30 days following receipt of such notice. The city also may recover the cost of providing notice, including any postage required by this ordinance. If the cost of such removal or abatement and notice is not paid within the 30-day period, the cost shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed and charged against the lot or parcel of ground on which the nuisance was located. If the cost is to be assessed, the city clerk, at the time of certifying other city taxes to the county clerk, shall certify the aforesaid costs, and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115 and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

Section 11.

MOTOR VEHICLES. The city may remove and abate from a public street, road or alleyway or other property open to use by the public or from property other than public property or property open to use by the public a motor vehicle determined to be a nuisance. Disposition of such vehicle shall be in compliance with the procedures for impoundment, notice and public auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amendments thereto. This ordinance shall not restrict the authority of the city or other public agency to impound motor vehicles pursuant to K.S.A. 8-1101 et. seq., and amendments

thereto or other Kansas law.

Section 12.

All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 13.

This ordinance shall be in full force and effect from and after its adoption and publication in the official city newspaper.

ADOPTED AND APPROVED BY THE GOVERNING BODY, this 26th day of
June, 1995.

Paul Lemert
Mayor

ATTEST:

Barbara J. Ottum, CMC.
City Clerk

NOTICE

TO: _____

YOU ARE HEREBY NOTIFIED BY THE CITY OF ANDALE, KANSAS THAT YOU ARE IN VIOLATION OF ANDALE ORDINANCE NO. 95-2 WHICH DECLARES THAT CERTAIN MATTERS CONSTITUTE NUISANCES WITHIN THE CITY OF ANDALE, KANSAS.

THE ITEMS WHICH CONSTITUTE A NUISANCE ON YOUR PROPERTY ARE LISTED BELOW:

YOU HAVE TEN DAYS FROM THE DATE YOU RECEIVE THIS NOTICE TO EITHER ABATE OR REMOVE THE CONDITIONS LISTED ABOVE OR TO REQUEST A HEARING BEFORE THE ANDALE CITY COUNCIL.

IF YOU FAIL TO ABATE THE CONDITIONS OR REQUEST A HEARING WITHIN TEN DAYS, THEN YOU MAY BE PROSECUTED IN THE ANDALE MUNICIPAL COURT AND / OR THE CITY MAY ABATE THE NUISANCE CONDITIONS AND ASSESS THE COSTS TO YOU.

IF YOU WISH TO HAVE A HEARING THEN THE REQUEST MUST BE MADE IN WRITING WITHIN THE TEN DAY PERIOD TO THE CITY CLERK. A HEARING WILL THEN BE SCHEDULED BEFORE THE ANDALE CITY COUNCIL OR ITS DESIGNEE. YOU WILL BE NOTIFIED OF THE DATE, TIME AND LOCATION OF THE HEARING.

ANDALE PUBLIC OFFICER