

(Summary Published in the Leavenworth Times on March 2, 2024)

ORDINANCE NO. 8235

AN ORDINANCE AMENDING CHAPTER 28 (NUISANCES), ADDING NEW AND SUBSTITUTE PROVISIONS THERETO, AND REPEALING THE PREVIOUS CHAPTER AND SECTIONS SO AMENDED.

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

Section 1. Chapter 28 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

CHAPTER 28. NUISANCES¹

ARTICLE I. IN GENERAL

Sec. 28-1. Nuisances; legislative findings.

- (a) The purpose of this article is to provide reasonable controls restricting and prohibiting the allowance of nuisances to exist on property within the city; to declare that certain conditions which are unsightly, are a menace and dangerous to the health of the inhabitants of the city, or are offensive to the general public health, safety and welfare of the community constitute public nuisances; to provide a method of enforcement of this article; to provide procedures to notify property owners or those in control of real property, notification and an opportunity to be heard concerning violations of this chapter; to provide administrative procedures to allow the city to direct the abatement of violations; to provide a method of assessment or collection of costs for abatement by the city; to declare that the existence of such violations are unlawful; and to provide penalties for enforcement through the municipal court system.
- (b) The governing body of the city hereby finds that the allowances of nuisances, as defined herein, on private property or adjacent rights-of-way or easements, are public nuisances, a menace and dangerous to the health of the inhabitants of the city, and of the residential or commercial areas of the city, and are offensive to the general public health, safety, and welfare of the community. Such nuisances promote conditions which may cause disease; pollution; proliferation or rats, vermin, mosquitoes, and snakes; the spread of fire; a harmful environment for transients and the community as a result of transient use; harmful attractions for children; creates long

¹ State law reference(s)—K.S.A. 12-1617e (Abatement of nuisances; notice; assessment and collection of costs; procedure; disposition of motor vehicles); K.S.A. 12-1617f (Weeds; removal or destruction; assessment and collection of costs; notice; procedure); K.S.A. 12-1617g (Ordinances on nuisances).

and short-term impacts on the area including the diminution of property values and the integrity of the neighborhood; and interferes with the orderly development of property in the city.

Sec. 28-2. Definitions.

- (a) As used in this chapter, the following terms shall have the following meanings. Certain terms used herein but not defined herein shall have such meanings as set forth in the International Building Code or the International Property Maintenance Code, as adopted by the city, which definitions are incorporated herein by this reference.
- (b) *Nuisance* – means any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either: injures or endangers the comfort, repose, health or safety of others; offends decency; is offensive to the senses; unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; in any way renders other persons insecure in life or the use of property; or essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others. The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions is declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:
 - (1) Weeds when such growth reaches twelve (12) inches in height, noxious weeds, and rank vegetation (as may be further defined in Article V below);
 - (2) Accumulation of garbage, rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things which create an unsightly appearance;
 - (3) Any condition which provides harborage for rats, mice, snakes and other vermin;
 - (4) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation or kept in such an insanitary condition that it is a menace to the health of people residing in the vicinity thereof or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;
 - (5) All unnecessary or unauthorized noises and annoying vibrations, including animal noises; any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the city;

- (6) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches;
- (7) The carcasses of animals or fowl not disposed of within a reasonable time after death;
- (8) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;
- (9) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;
- (10) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;
- (11) Dense smoke, noxious fumes, gas, soot, or cinders in unreasonable quantities; or
- (12) The parking, storing, leaving, or permitting the parking, storing or leaving, of any vehicle, machinery, appliances, implements or equipment, including abandoned, discarded or unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers, lumber, junk, trash or other debris, which is in a wrecked, junked, partially dismantled, inoperative, unsafe or abandoned condition on private property in the city, so located upon the premises as to be visible from any public place or any surrounding private property, unless it is in connection with a business enterprise properly operated in the appropriate business zone pursuant to the zoning laws and other ordinances of the city; or
- (13) Any nuisance condition identified under the International Property Maintenance Code, as adopted by the city.

Sec. 28-3. Nuisances unlawful; responsibility to abate.

It shall be unlawful for any property owner, owner's agent, or tenant of real property to allow or maintain a nuisance on any lot or parcel of ground within the city, including any areas between the property lines of said property and the center line of any adjacent street or alley including sidewalks, streets, alleys, easements, and rights-of-way. The property owner, owner's agent, or tenant shall be responsible for the removal or abatement of any nuisance. The City shall have the power to cause the removal of, or to remove or abate, any nuisance as provided in this chapter and under Kansas statute.

Sec. 28-4. Designation of officer.

In addition to those persons identified as the "code official" under the International Property Maintenance Code, as adopted by the city, the director of planning and community development, the building official, building inspector, code enforcement officer, or other designated city official tasked with enforcing property maintenance laws in the city are designated as the enforcing officer(s) charged with the administration of the provisions of this chapter. The city commission authorizes the enforcing officer, or his or her designee, to serve as the city commission's designated representatives for purposes of hearings as described in this section.

Sec. 28-5. Notice of abatement; commencement of proceedings.

If it is determined that a nuisance exists, then the enforcing officer, or his or her designated agent, shall file a written report describing the situation, its location, and the circumstances supporting the determination that the matter is a nuisance. The enforcing officer, on behalf of the city commission, may:

- (1) Issue an order of abatement without the commencement of city abatement procedures, in an attempt to obtain voluntary compliance. In such cases, the order of abatement shall be served on the property owner, owner's agent, or tenant by such means as may be reasonably calculated by the enforcing officer to obtain compliance, including but not limited to mailing, personal service, door hangers, conspicuously posting notice of such order on the property, personal notification, or telephone communication.
- (2) Commence city abatement procedures as provided in section 28-6 below by issuing an order of abatement directing the property owner or owner's agent, and any tenant, to remove and abate the nuisance within a time, not exceeding ten (10) days, to be specified in the order of abatement; and/or
- (3) Commence or cause to be commenced proceedings in the municipal court in accordance with this chapter, with notice and service to be provided as may be required under applicable law, including but not limited to section 28-157 of this code.

Sec. 28-6. Notice of abatement to commence city abatement process.

- (a) If the city should determine to proceed with possible removal or abatement of a nuisance itself, as described in section 28-5(2) above, then the order of abatement shall state:
 - (1) A common or legal description of the property, or both;
 - (2) That the property is in violation of this article;
 - (3) The nature of the nuisance, including relevant ordinances or statutes, with sufficient information to reasonably enable the recipient to determine the nature of the violation to allow for self-abatement;

- (4) That the recipient must remove and abate the nuisance within a time, not exceeding ten (10) days, to be specified in the order;
 - (5) That the recipient, upon written request, may obtain a hearing before the city commission or its designated representative, provided that such request is received by the city clerk within the period of time established for abatement of the nuisance;
 - (6) That failure to comply with the order shall result in the city's right to remove and abate the nuisance with assessment of the city's costs being made against the property and the recipient;
 - (7) That failure to pay such assessment within thirty (30) days after the city's notice of costs of such removal and abatement may result in the filing of a tax lien against the property, or the filing for a personal judgment against the recipient, or both; and
 - (8) That such violations are subject to prosecution, and that such prosecution shall be independent of the order of any enforcement of the order.
- (b) The order of abatement shall be served on the property owner or owner's agent, or tenant by certified mail, return receipt requested, or by personal service; provided, any order served on a tenant shall also be served on the owner or owner's agent. If the property is unoccupied and the owner is a nonresident, then the order will be mailed by certified mail, return receipt requested, to the owner's last known address. If during the preceding twenty-four (24) month period the owner, owner's agent or tenant has failed to accept delivery or to otherwise effectuate receipt of a notice or order sent pursuant to this section, in addition to the methods of service described above, the enforcing officer, on behalf of the city commission, may serve on such person any further order by other 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; provided, if the property is unoccupied and the owner is a nonresident, any alternative notice provided for in this paragraph shall be given by telephone communication or first class mail.
- (c) If a recipient of an order of abatement makes a written request for a hearing within the period of time established by the order, a hearing shall be scheduled before the city commission or its designated representative. At such hearing, all relevant parties, interest holders, and city officials shall be allowed to present evidence concerning the status of the property and the conditions creating the nuisance. Thereafter, the city commission or its designated representative may rescind, modify, or uphold the order of abatement. In making such a determination the city commission or its designated representative shall describe the relevant facts and specific statute or code provisions being relied upon and state any such other stipulations, methods of removal and abatement of orders as deemed necessary. If the order of abatement is either modified or upheld, the

property owner, owner's agent or tenant shall be given a reasonable time to remove and abate the nuisance, not to exceed ten (10) days.

- (d) Notwithstanding the foregoing, the enforcing officer and the city commission shall grant extensions of such ten-day time period if the owner or agent of the property demonstrates that due diligence is being exercised in abating the nuisance.

Sec. 28-7. Emergency abatement by city.

- (a) When, in the opinion of the enforcing officer there is actual and immediate danger to the public or occupants of a particular premises caused by a nuisance on such premises, the enforcing officer is authorized and empowered, without any notice or hearing, to order and require such premises to be vacated. The enforcing officer shall immediately post the premises, warning of the dangerous condition, and shall then abate such nuisance.
- (b) Notwithstanding the foregoing, nothing in this chapter shall preclude the city from proceeding as to unsafe or dangerous structures as provided in Article XI (Unsafe or Dangerous Properties; Abandoned Property) of Chapter 10 (Buildings and Construction) of the Leavenworth Code of Ordinances.

Sec. 28-8. Abatement of nuisance by city; notice of costs; assessment and collection.

- (a) If the recipient of the notice of abatement under section 28-6 above fails to comply with the order of abatement or, if appropriate, with any order after a hearing on the matter, the city shall have the right to go onto the property to remove and abate the nuisance in a reasonable manner, or as otherwise permitted under applicable law. It shall be unlawful for any person to interfere with or attempt to prevent the city or its agents from such action. The city and its agents shall not be responsible for damage to any real or personal property due to reasonable methods of gaining entrance onto the property or for damages to any real or personal property in the reasonable exercise of the removal and abatement of the nuisance. The city may use its own employees or contract for services to remove and abate the nuisance.
- (b) If the city removes and abates the nuisance, the city shall give a notice of costs to the property owner or owner's agent, or tenant, by certified mail, return receipt requested, stating the costs of such removal and abatement incurred by the city; provided, any notice served on a tenant shall also be served on the owner or owner's agent. The costs shall include the city's cost of providing the notice, including any postage, and administrative costs to the extent permitted under applicable law and as set forth in the city fee schedule. The recipient shall have thirty (30) days from the date of receipt of such notice to make full payment. The notice of costs shall state:
 - (1) The common or legal description of the property, or both;

- (2) The nature of the nuisance, including relevant ordinances;
 - (3) The nature of the work performed to remove and abate the nuisance;
 - (4) The costs incurred for the abatement of the nuisance in either a lump sum or in an itemized form (including the cost of the notice);
 - (5) That payment is due and payable within thirty (30) days of receipt of the notice;
 - (6) That payment should be made payable to the City of Leavenworth, Kansas, by check or money order with no post-dating of the check, and submitted to the city clerk with a written indication of the purpose of the payment and the address of the property where the nuisance occurred;
 - (7) That failure to pay the entire amount within the thirty (30)-day period shall allow the city to file a lien against the property or to pursue litigation for recovery of the costs, or both; and
 - (8) That such additional remedies to recover costs shall include additional amounts, including interest, court costs, attorney fees and administrative costs.
- (c) If the costs are not paid within the 30-day period, the costs shall be collected in a manner provided by K.S.A. 12-1,115 as amended, or shall be assessed as a special assessment against the property. The city clerk at the time of certifying other city taxes, shall certify the unpaid portion of the costs, and the county clerk shall extend the same on the tax roll of the county against the property, 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 as amended, but only until the full costs, including applicable interest, court costs, attorney's fees, and administrative costs have been paid in full.

Sec. 28-9. Right of entry; unlawful interference.

Any authorized officer or agent of the city, pursuant to this chapter, shall be allowed to enter onto any land within the city limits to investigate violations of this chapter or for the abatement of violations pursuant to this chapter. It shall be unlawful for any person to interfere with a public officer or agent of the city in performing his or her duties pursuant to this chapter whether investigating or abating violations. Any person who interferes with an officer or agent of the city pursuant to this chapter shall be punished as provided in this chapter.

Secs. 28-10—28-28. Reserved.

ARTICLE II. ADDITIONAL PROVISIONS REGARDING JUNK ON PRIVATE PROPERTY AND VEHICLES

Sec. 28-29. Abatement of junk on private property; redemption by owner; sale.

In the process of abating any nuisance consisting of any vehicle, machinery, appliances, implements or equipment, including abandoned, discarded or unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers, lumber, junk, trash or other debris, which is in a wrecked, junked, partially dismantled, inoperative, unsafe or abandoned condition, the city shall dispose of the property or contract with a third party for removal of the property. The owner shall be notified of the contact information for any such third-party contractor. Claiming of the property shall be governed by state law.

Sec. 28-30. Motor vehicles.²

The city may remove and abate from property other than public property or property open to use by the public a motor vehicle determined to be a nuisance. Notwithstanding other provisions of this article, disposition of such vehicle shall be in compliance with the procedures set forth in K.S.A. 12-1617e(e), K.S.A. 8-1102, and K.S.A. 8-1103, and amendments thereto. Reference is hereby further made to the International Property Maintenance Code (IPMC), as adopted by the city, which may contain additional provisions regarding motor vehicles.

Secs. 28-31—28-56. Reserved.

ARTICLE III. ADDITIONAL PROVISIONS REGARDING EXCESSIVE NOISE

Sec. 28-57. Horns, warning devices.

The sounding of any horn or other warning device on any automobile, motorcycle or other vehicle on any street or public place of the city, except as a danger warning, the creating by means of any such warning device of any unreasonably loud or harsh sound, the sounding of any such device for an unnecessary and unreasonable period of time, and the use of such warning device when traffic for any reason is held up, shall be deemed a violation of this chapter.

Sec. 28-58. Radios, phonographs, etc.

- (a) Using, operating or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto, shall be deemed a violation of this chapter.

² State law reference(s)—K.S.A. 12-1671e(e) (Disposition of motor vehicles).

- (b) The operation of any such set, instrument, phonograph, machine, or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this chapter.

Sec. 28-59. Loudspeakers, sound amplifiers.

It is unlawful for any person to play, use or operate on the streets, alleys or public grounds of the city any instrument known as a loudspeaker or sound amplifier without first procuring a permit therefor from the city. Such permit shall be granted or refused at the discretion of the city. The fee for permits under this section shall be as provided in the city fee schedule.

Sec. 28-60. Defect in vehicle or load.

The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise shall be deemed a violation of this chapter.

Sec. 28-61. Heavy equipment.

The operation between the hours of 10:00 p.m. and 7:00 a.m. of any piledriver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise, shall be deemed a violation of this chapter.

Sec. 28-62. Blowers and engines.

The operation of any noise-creating blower or power fan or any internal-combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise, shall be deemed a violation of this chapter.

Sec. 28-63. Screeching of tires.

The operation of any motor vehicle in such a way as to cause the tires thereof to screech, except where the same is necessarily caused in an emergency in an attempt by the operator to avoid an accident or the causing of damage or injury, shall be deemed a violation of this chapter.

Sec. 28-64. Power mowers; construction and demolition.

It is unlawful for any person to operate a motor-driven or power-operated lawnmower, or to engage in any construction or demolition work within the city between the hours of 10:00 p.m. and 6:00 a.m. the following day; provided, however, that in the event of an emergency, a permit may be issued exempting any person from this section for any period of time specified on the face of the permit. The permit may be issued free of charge by the police department. This

section shall not apply to emergencies of any governmental subdivision or any public utility.

Secs. 28-65—28-90. Reserved.

ARTICLE IV. ADDITIONAL PROVISIONS REGARDING TREE DISEASES³

Sec. 28-91. Declaration of nuisance.

The following are declared to be public nuisances that no person shall permit to remain on any premises owned or controlled by such person within the city:

- (1) Any living or standing elm tree or part thereof infected with the Dutch elm disease fungus *Ceratocystis ulmi* (Buisman) Moreau which harbors any of the elm bark beetles, *Scolytus multistriatus* (Eichh.) or *Hylurgopinus rufipes* (Marsh.).
- (2) Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying insecticide.

Sec. 28-92. Inspections; right of entry.

- (a) The parks and recreation director shall inspect or cause to be inspected all premises and places within the city at least twice each year to determine whether a violation of this article exists thereon, and shall also inspect or cause to be inspected any elm tree reported or suspected to be infected with the Dutch elm disease fungus or any elm bark-bearing material reported or suspected to be infested with the elm bark beetle.
- (b) The parks and recreation director shall have the authority to enter upon private premises at all reasonable times for the purpose of carrying out any of the provisions of this article.

Sec. 28-93. Abatement.

- (a) Whenever the parks and recreation director shall find with reasonable certainty on examination or inspection that any public nuisance as described in this article exists within the city, the director shall cause it to be sprayed, removed, burned, or otherwise abated in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease fungus or the insect pests or vectors known to carry such disease.
- (b) Before abating any such nuisance on private premises or in any terrace strip between the lot line and the curb, the parks and recreation director shall pursue abatement by the owner in the following manner:

³ State law reference(s)—Diseased trees, K.S.A. 12-3204.

- (1) If the director shall determine that danger to other elm trees from the nuisance is not imminent because of elm dormancy, he shall make a written report of his findings to the city commission which shall proceed as provided in K.S.A. 12-3201 et seq.
 - (2) If a competent city authority, or competent state or federal authority when requested by the city commission, files with the city commission a statement in writing based upon a laboratory test or other supporting evidence that trees or tree materials or shrubs located upon private property within the city are infected or infested with or harbor any tree or plant disease or insect pest or larvae, the uncontrolled presence of which may constitute a hazard to or result in the damage or destruction of other trees or shrubs in the community, describing the same and where located, the city commission shall direct the city clerk to issue notice requiring the owner or agent of the owner of the premises to treat or remove any such designated tree, tree material or shrub within a time specified in such notice.
 - (3) The notice shall be served by the police chief or other police officer by delivering a copy thereof to the owner or agent of such property or, if the property is unoccupied and the owner is a nonresident, then the city clerk shall notify the owner by mailing a notice to the owner's last-known address.
 - (4) If the owner or agent shall fail to comply with the requirements of the notice within the time specified in the notice, then the director shall proceed to have the designated tree, tree material or shrub treated or removed and report the cost thereof to the city clerk, and the cost of such treatment or removal shall be paid by the owner of the property or shall be assessed and charged against the lot or parcel of ground on which the tree, tree material or shrub was located.
 - (5) The city clerk shall at the time of specifying other city taxes to the county clerk certify the unpaid costs of such treatment or removal and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground.
- (c) No damage shall be awarded to the owner for the destruction of any elm tree, elm wood or elm material or any part thereof pursuant to this section.

Sec. 28-94. Spraying of elm trees.

If it is determined that Dutch elm disease fungus is present within the city, the parks and recreation director may cause to be sprayed all trees located on the city right-of-way with a recognized effective elm bark beetle concentrate or may authorize use of a systemic insecticide, provided that spraying shall be done between November 15 and May 1. Before causing the spraying of any elm tree on private property, the director shall notify the owner in the manner provided in section 28-93.

Sec. 28-95. Storing and transporting elm wood prohibited; exception.

No person shall store or harbor within the city any bark-bearing elm wood and may transport such wood only for disposal.

Sec. 28-96. Interference with director prohibited.

No person shall prevent, delay or interfere with the parks and recreation director or any agents or city employees while they are engaged in the performance of duties imposed by this article.

Secs. 28-97—28-120. Reserved.

ARTICLE V. ADDITIONAL OR ALTERNATIVE PROVISIONS REGARDING WEEDS AND OTHER VEGETATION⁴

Sec. 28-121. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Weeds – means all grasses, annual plants, and vegetation, other than trees or shrubs; provided, however, this term shall not include cultivated flowers and gardens; and this term shall further mean and include any of the following:

- (1) Brush and woody vines shall be classified as weeds;
- (2) Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- (3) Weeds which bear or may bear seeds of a downy or wingy nature;
- (4) 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;
- (5) Weeds and indigenous grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed twelve (12) inches in height; or
- (6) As otherwise described in the International Property Maintenance Code, as adopted by the city.

⁴ State law reference(s)— K.S.A. 12-1617f (Weeds, removal or destruction; assessment and collection of costs; notice; procedure); K.S.A. 2-1314 *et seq.* (Declaring plants as noxious weeds; control and eradication).

Sec. 28-122. Abatement of nuisance weeds.

- (a) As an alternative to the general nuisance provisions of this chapter, K.S.A. 12-1617f, as amended, provides that the city commission may provide for and require, and the city commission hereby does provide for and require, the cutting or destruction of all weeds on lots or pieces of land within the city as provided in this section. Reference is hereby further made to the International Property Maintenance Code (IPMC), as adopted by the city, which may contain additional provisions regarding weeds and plants. Pursuant to K.S.A. 12-1617f, the city hereby incorporates by reference the provisions of this article and the International Property Maintenance Code, as adopted by the city, as its nuisance and weed removal policy.
- (b) Except as provided by subsection (c) below, the city clerk shall issue a notice to the owner, occupant or agent by certified mail, return receipt requested, or by personal service to cut or destroy such weeds. If the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner. The notice shall state that before the expiration of the waiting period provided herein the recipient thereof may request a hearing before the city commission or its designated representative. If the occupant, owner or agent fails to request a hearing or refuses to cut or remove such weeds, after five (5) days' notice by the city clerk, or in cases where the owner is unknown or is a nonresident, and there is no resident agent, ten (10) days after notice has been published by the city clerk in the official city paper, the city shall cut or destroy such weeds and shall keep an account of the cost of same and report to the city clerk. Except as provided by subsection (c) below, the city shall give notice to the owner, occupant or agent by certified mail, return receipt requested, of the total cost of such cutting or removal incurred by the city. The city also may recover the cost of providing notice, including postage, required by this section. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost of such removal or abatement is not paid within the thirty-day period, the city may levy a special assessment for such cost against the lot or piece of land in the same manner as provided in section 28-6 above and K.S.A. 12-1671e, and amendments thereto, or the city may collect the cost in the manner provided by K.S.A. 12-1,115, and amendments thereto. 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.
- (c) In lieu of giving notice as provided by subsection (b) above, the city may give notice as provided by this subsection. The building official or other enforcing officer shall issue a notice of violation and order the owner, occupant, or agent of any property in the city upon which weeds exist in violation of this article; provided, however, that if a notice and order regarding weeds was previously served upon the owner, occupant, or agent of the property for a violation of the city's weed control regulations, the city may provide a one-time yearly written notification by mail or personal service to the owner, occupant or agent of such policy and

regulations. Such notice shall include the same information required by subsection (b) above. In addition, such notice shall include a statement that no further notice shall be given prior to removal of weeds by the city. Notwithstanding the foregoing, if there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this section.

Sec. 28-123. Noxious weeds.

As an alternative to the general nuisance provisions of this chapter, K.S.A. 12-1617f, as amended, and the International Property Maintenance Code, as adopted by the city, the control and eradication of noxious weeds shall be in compliance with K.S.A. 2-1314 *et seq.*

Secs. 28-124—28-152. Reserved.

ARTICLE VI. ADDITIONAL PROVISIONS REGARDING SMOKE⁵

Sec. 28-153. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dense smoke – means smoke that contains soot or other substances in sufficient quantities to permit the deposit of such soot or other substances on any surface within the limits of the city.

Sec. 28-154. Prohibition.

Any person operating, carrying on or conducting any business, factory, occupation or establishment within the limits of the city, burning or using soft coal or other fuel from which dense smoke is emitted or discharged through any flue, chimney, smokestack or other structure or appliance so as to be offensive to the residents or inhabitants of the city, shall equip the same with some device or apparatus which successfully consumes the smoke so the smoke is not discharged or emitted, and it is unlawful for any person to so operate, carry on or conduct the same within the limits of the city without so equipping such flue, chimney, smokestack, structure or other appliance with such device or apparatus, provided that this section shall not be construed to compel the owner or occupant of any building or house used exclusively as a private residence to provide such device or apparatus when the chimney of such building or house used exclusively as a private residence shall extend as high as the top of the roof of the highest adjoining building; provided further, that in that section of the city zoned as heavy industrial, the emission of dense smoke for a period of fifteen (15) minutes in any one hour

⁵ State law reference(s)—Kansas Air Quality Act, K.S.A. 65-3001 *et seq.*

during which the firebox is being cleaned out or a new fire is being built therein is excepted from the provisions of this section.

Sec. 28-155. Declared public nuisance.

The emission or discharge of dense smoke into the open air within the corporate limits of the city so as to be offensive or noxious, or to annoy or produce inconvenience or damage to the surrounding property or the owners or occupants thereof, is declared to be a public nuisance.

Sec. 28-156. Enforcement.

- (a) It shall be the duty of the fire chief and the building inspector to enforce this article.
- (b) Upon receipt of a written complaint, the enforcement officer shall immediately make an inspection of the flue, chimney or smokestack complained of and, if it is determined to be emitting dense smoke in violation of this article, to issue a notice to the owner, lessee or operator thereof to discontinue the violation.

ARTICLE VII. MUNICIPAL COURT ENFORCEMENT

Sec. 28-157. Enforcement in municipal court; penalties

- (a) In addition to, or as an alternative to, any enforcement of this chapter as provided herein, or enforcement of any other portion of the Leavenworth Code of Ordinances that incorporates by reference the enforcement provisions of this chapter or any article herein, if an authorized public officer (including but not limited to the city prosecutor) determines that a violation of this chapter (or other portion of the code that incorporates by reference this chapter) exists, he or she may issue or cause to be issued a notice to appear and complaint in municipal court for such violation. No other procedures are required as a prerequisite to the issuance of a notice to appear or complaint. The imposition of any removal and abatement action described in this chapter shall not preclude any appropriate prosecution or penalties. Likewise, the imposition of any prosecution or penalties shall not preclude any appropriate action described in this chapter or otherwise provided by applicable law to remove or abate a nuisance, an unsafe or dangerous structure, abandoned property, or to collect removal and abatement costs.
- (b) Any person who violates this chapter shall be punished as provided in section 1-10 of the Leavenworth Code of Ordinances, as amended. Each day the violation continues after notice from the enforcing officer to cease violation shall be deemed a separate and distinct offense and punishable as such, including but not limited to imposition of daily fines. The municipal court shall further have the power to issue an order of abatement.

Section 2. Chapter 28 of the Leavenworth Code of Ordinances, including Sections 28-1 through 28-156, inclusive, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the 27th day of February, 2024.

/s/ Griff Martin
Griff Martin, Mayor

{SEAL}

ATTEST:

/s/ Sarah Bodensteiner
Sarah Bodensteiner, CMC, City Clerk