

ORDINANCE NUMBER 527

AN ORDINANCE PROVIDING FOR THE CUTTING OR DESTRUCTION OF WEEDS AND VEGETABLE GROWTH BY THE CITY OF WESTMORELAND; PROVIDING FOR THE ASSESSMENT OF THE COST OF SUCH CUTTING OR DESTRUCTION AGAINST THE LOT OR PIECE OF LAND; AND REPEALING ORDINANCE NUMBER 460 OF THE CITY OF WESTMORELAND.

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

Section 1. WEEDS TO BE REMOVED. It shall be unlawful for any owner, agent, lessee, tenant, or other person occupying or having charge or control of any premises to permit weeds to remain upon said premises, or to permit weeds to remain upon any area between the property lines of said 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 hereby declared a nuisance and are subject to abatement as hereinafter provided.

Section 2. DEFINITIONS. “Weeds” as used herein, means any of the following:

- (a) Brush and woody vines shall be classified as weeds;
- (b) Weeds and grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- (c) Weeds which bear or may bear seeds of a down 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 grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and/or grasses shall be presumed to be blighting if they exceed 12 inches in height.

Section 3. PUBLIC OFFICER; NOTICE TO REMOVE.

- (a) The City of Westmoreland shall designate a public officer to be charged with the administration and enforcement of this article. The public officer or authorized assistant shall give written notice to the owner, occupant or agent of such property by certified mail, return receipt requested, or by personal service, to cut or destroy weeds; provided, however, that 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. If the owner is unknown, or if service of notice cannot be made upon such owner, occupant or agent, then notice shall be given by publication in the official city newspaper. Any notice hereunder shall only be given once per calendar year.

- (b) The notice to be given hereunder shall state:
- (1) that the owner, occupant or agent in charge of the property is in violation of the city weed control law;
 - (2) that the owner, occupant or agent in control of the property is ordered to cut or destroy the weeds within 10 days of the receipt of the notice;
 - (3) that the owner, occupant or agent in control of the property may request a hearing before the governing body or its designated representative within five days of the receipt of the notice;
 - (4) that if the owner, occupant or agent in control of the property does not cut or destroy the weeds or fails to request a hearing within the allowed time the city or its authorized agent will cut or destroy the weeds and assess the cost of the cutting or destroying the weeds, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property;
 - (5) that the owner, occupant or agent in control of the property will be given an opportunity to pay the assessment, and if it is not paid within 30 days of such notice, it will be added to the property tax as a special assessment;
 - (6) that no further notice will be given during the current calendar year prior to the removal of weeds from the property; and,
 - (7) that the public officer should be contacted if there are questions regarding the order.

(c) 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 ordinance.

Section 4. ABATEMENT; ASSESSMENT OF COSTS.

(a) If the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the time periods specified in Section 3, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

(b) If the city abates or removes the nuisance pursuant to this section, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section.

(c) The notice shall also state that if the cost of the removal or abatement is not paid within the 30 day period the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1, 115, and amendments thereto, or shall be assessed as

special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs to the county clerk, and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land 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 applicable interest has been paid in full, (K.S.A. 12-1617f)

Section 5. RIGHT OF ENTRY. The public officer, the public officer's authorized assistants, employees, contracting agents or other representatives, or City maintenance personnel are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds in a manner not inconsistent with this ordinance.

Section 6. UNLAWFUL INTERFERNECE. It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction.

Section 7. NOXIOUS WEEDS.

(a) Nothing in this ordinance shall affect or impair the rights of the city under the provisions of Chapter 2, Article 13 of the Kansas Statutes Annotated, relating to the control and eradication of certain noxious weeds.

(b) For the purpose of this ordinance, the term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L.), and Johnson grass (*Sorghum halepense*).

Section 8. EXCEPTIONS. The provisions of this Ordinance shall not apply to and shall not be enforced as to the following:

- (a) Cultivated ornamental grasses that do not block traffic visibility;
- (b) Cultivated or indigenous vegetation on any tract or parcel of land more than one acre is size;
- (c) Trees, shrubbery, flowers, ornamental plants, and properly maintained gardens.

Section 9. REPEAL OF ORDINANCE NUMBER 460. Ordinance Number 460 of the City of Westmoreland, Kansas, is hereby repealed.

Section 10. This Ordinance shall take effect and be in force from and after its passage and publication in the *Westmoreland Recorder*, the Official City Newspaper.

Passed and adopted by the City Council of Westmoreland, Kansas, this 8th day of September, 2011.

ss: Mark A. Goodenow
Mayor

ATTEST:
SEAL

ss: Vicki B. Zentner
City Clerk

Published in the *Westmoreland Recorder* on September 15, 2011.

CERTIFICATE OF THE CITY CLERK

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said ordinance was passed on the 8th day of September, 2011; that the record of the final vote on its passage is found on page 95 of the 2011 minutes; that it was published in the *Westmoreland Recorder* on the 15th day of September, 2011.

Signed: ss: Vicki B. Zentner
City Clerk