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ORDINANCE NO. 171

AN ORDINANCE AMENDING THE DANGEROUS AND UNSANITARY BUILDINGS CODE; REPEALING EXISTING OR CONFLICTING ORDINANCES; PROVIDING FOR PUBLIC OFFICER TO OVERSEE PROCEDURE; ASSESSING COSTS; AND PROVIDING FOR ABATEMENT OF IMMEDIATE HAZARDS; AND REPEALING EXISTING OR CONFLICTING ORDINANCES.

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

SECTION 1. This ordinance may be known as the City Beautification Act of the City of Hanston, Kansas.

SECTION 2. Declaration of Necessity. The Governing Body of the City of Hanston, Kansas, finds and declares that there exists within our city limits structures and dwellings which may be unfit for human use or habitation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation or sanitary facilities or conditions which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of such municipality or which have a blighting influence on other properties in the city. The Governing Body of the City deems it necessary to establish a procedure to identify properties in such disrepair as to cause a blighting influence, and require or cause the repair, closing, demolition or removal of such structures in the manner provided in this chapter.

SECTION 3. Public Officer. The City Clerk is designated as the "enforcing officer" or "public officer" of the City of Hanston, Kansas, and is charged with the administration of the provisions of KSA 12-1749 through 12-1756, the same being an
act authorizing cities to cause the repair or removal of any structure located within
the City which may have become unsafe or dangerous.

SECTION 4. Definitions. (a) “Residential structure or dwelling” means and
includes any building or structure or part thereof used and occupied for human
habitation or intended to be so used and includes any appurtenances belonging
thereof or usually enjoyed therewith. The definition includes mobile homes if other
ordinances allow the presence of mobile homes within the city limits of Hanston,
Kansas. However, the mention of mobile homes in this ordinance for definition
purposes does not, by itself, authorize mobile homes for habitation within this city.

(b) A "nonresidential structure" means and includes any structure or building
which is used for other than residential purposes or a part of such structure or a
structure a part of which is used for other than nonresidential purposes and where
applicable the premises on which such structures are situated.

(c) “Reasonable Cost In Relation To The Value Of The Structure” means an
amount for repairs of a structure that does not exceed fifty (50) percent of the fair
market value of such building. If repair costs exceed fifty percent, such costs in
relation to the value of the structure are unreasonable.

(d) “Fair market value” means the most recent valuation of the structure
placed thereon by the Hodgeman county assessor's office.

SECTION 5: Powers of the Public Officer (a) The Public Officer is authorized
to exercise such powers as may be necessary or convenient to carry out and effectuate
the purposes and provisions of this chapter including the following powers in addition
to others herein granted:

(1) To investigate the structure conditions in the municipality in order to
determine which structures therein are unfit for human use or habitation;

(2) To administer oaths of affirmation, examine witnesses and receive evidence;

(3) To enter upon premises for the purpose of making examinations and
enforcing final orders of courts; provided, that entry shall be made in such manner as
to cause the least possible inconvenience to the persons in possession. If entry is
denied or resisted, the Public Officer shall seek the assistance of law enforcement and obtain an administrative search warrant from a court of competent jurisdiction.

(4) To appoint and fix the duties of such officers, agents and employees as he or she deems necessary to carry out the purposes of this chapter; and

(5) To delegate any of his or her functions and powers under this chapter to such officers, agents and employees as he or she may designate.

(b) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the structure, the Public Officer may order and cause such structure to be repaired, altered or improved or to be vacated and closed.

SECTION 6: Procedure Initiated by Petition; Motion of the Public Officer. (a) Whenever a petition is filed with the Public Officer by at least five residents of the municipality charging that any structure is unfit for human use or habitation and identifying such structure, or wherever it appears to the Public Officer (on his or her own motion) that any structure is unfit for human use or habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner or owner's agent, every mortgagee of record and all parties in interest in such structure (including persons in possession) a complaint stating the charges in that respect. Such complaint shall contain a notice stating:

(1) that a hearing will be held before the Public Officer or designated agent at a place therein fixed not less than ten (10) days nor more than thirty (30) days after the serving of such complaint;

(2) That the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint; and

(3) That the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Public Officer.

SECTION 7. Order Which May Result. (a) If after such notice and hearing the Public Officer takes testimony and determines that the structure under consideration is unfit for human use or habitation, he or she shall state in writing his or her finds of
fact in support of such determination and shall issue and cause to be served upon the owner and any adult occupant of the residence or building thereof an order which:

(1) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure requires the owner within the time specified in the order to repair, alter or improve such structure to render it fit for human use or habitation or to vacate and close the structure until conformance with ordinances established under KSA Supp. 17-4759; or

(2) if the repair, alteration or improvement of the structure cannot be made at a reasonable cost in relation to the value of the structure, requires the owner within the time specified in the order to remove or demolish such structure.

SECTION 8: Unfitness For Use or Habitation. The Public Officer may determine that a structure is unfit for human use or habitation if he or she finds that conditions exist in such structure which is dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of such municipality or which have a blighting influence on properties in the area. Such conditions may include the following without limitations: Defects therein increasing the hazards of fire, accident or other calamity; lack of adequate ventilation; air pollution; lack of light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; dead and dying trees, limbs or other unsightly natural growth; unsightly appearances that constitute a blight to adjoining property, the neighborhood or the City; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material; equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements.

SECTION 9: Service of Complaints. Complaints or orders issued by the Public Officer shall be served upon persons either personally or by registered or certified
mail or any form of commercial mail delivery that results in an independent written record of when such mail was delivered, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the Public Officer in the exercise of reasonable diligence and the Public Officer shall make an affidavit to that effect, then the serving of such complaint or order upon such person may be made by publishing the same once each week for two consecutive weeks in the official City newspaper. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed with the Clerk of the District Court of Hodgeman County and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

SECTION 10: Injunction. Any owner, owner's agent, or occupant affected by an order issued by the Public Officer may petition the District Court of Hodgeman County for an injunction restraining the Public Officer from carrying out the provisions of the public officer's order. The court may upon such petition issue a temporary injunction restraining the Public Officer pending the final disposition of the cause; provided however, the petition shall be filed within thirty (30) days after the posting and service of the order of the Public Officer. A hearing shall be had by the court on such petitions as soon thereafter as possible.

SECTION 11: Other Powers Not Abrogated. Nothing in this chapter shall be construed to abrogate or impair the powers of the City of Hanston to enforce any other provisions of its ordinances or its Charter or regulations nor to prevent or punish violations thereof, and the powers conferred by this chapter upon the Public Officer and other public officials shall be in addition and supplemental to the other powers conferred by the Governing Body of the City.

SECTION 12: Violation—Penalty. (a) It is unlawful for any person, firm or corporation to violate any of the provisions of this chapter, and violation includes the obstruction of a public officer or assisting law enforcement from carrying out their duties. Every person, firm or corporation declared to be in violation of any provision of this ordinance by the Public Officer for which another penalty is not provided shall be
punished by an administrative fine of not to exceed five hundred dollars ($500.00). Each and every day that such violation continues shall constitute a separate offense.

(b) The appropriate authorities of the City of Hanston, Kansas in additional to other remedies may institute injunction, mandamus or other appropriate actions or proceedings to prevent, correct, or abate any such violation.

(c) Such administrative fine may be added to any costs imposed by the City on the Owner under this ordinance and collected by law.

SECTION 13. Making the Site Safe. When so ordered to remove or demolish any structure, the owner shall fill any basement or other excavation located upon the premises and takes any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the enforcing officer may proceed to make the site safe and shall assess costs.

SECTION 14: Assessment of Costs. (a) The cost to the city of any notices, repairs, alterations, improvements, vacating, removal or demolition by the enforcing officer, including making the site safe, and a reasonable attorneys fee not to exceed 15% of all legal fees expended by the city on each separate property and if the attorney is billing the city by the hour, shall be reported to the city clerk.

(b) The city clerk shall give notice to the owner of the structure by certified mail, return receipt requested, marked "restricted delivery" of the cost of removing the structure and making the premises safe and secure. If the certified mail restricted delivery notice goes unclaimed but the letter is not returned as insufficient address, the Clerk shall mail the same notice by first class mail to the same address and if the second letter is not returned marked insufficient address, notice shall be deemed delivered. 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 for 30 days following receipt of notice, the enforcing officer may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the site safe. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the premises upon which the structure was located.
(d) If the costs remain unpaid and if the proceeds of the sale of salvage is insufficient to recover the cost or if there is no salvage, the city clerk shall at the time of certifying other city taxes, certify the unpaid portion of the costs to the county clerk who shall extend the same on the tax roll of the county.

(e) Should any special assessment of costs levied under this section remain unpaid for a period of one (1) year or more after initial levy, the City may collect the amount due in the same manner as a personal debt of the property owner to the City by bringing an action in the District Court of Hodgeman County, Kansas as provided for pursuant to K.S.A. 12-1, 115, and any amendments thereto.

SECTION 15: Immediate Hazard. When in the opinion of the governing body any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, the governing body may direct the enforcing officer to erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay. Such action may be taken without prior notice to or hearing of the owners, agents, lien holders and occupants. The cost of any action under this section shall be assessed against the property as provided in the previous Section.

SECTION 16: Assessment of Costs. (a) The cost to the city of any notices, repairs, alterations, improvements, vacating, removal or demolition by the public officer or his or her designees, including making the site safe or removing immediate hazards, and a reasonable attorneys fee not to exceed 15% of all legal fees expended by the city on each separate property and if the attorney assisting the city is billing the city by the hour, shall be reported to the city clerk.

(b) The city clerk shall give notice to the owner of the structure by certified mail, return receipt requested, marked "restricted delivery" of the cost of removing the structure and making the premises safe and secure. If the certified mail restricted delivery notice goes unclaimed but the letter is not returned as insufficient address, the Clerk shall mail the same notice by first class mail to the same address and if the second letter is not returned marked insufficient address, notice shall be deemed delivered. The notice shall also state that payment of the cost is due and payable
within 30 days following receipt of the notice. The clerk may utilize personal service of process through private process servers.

(c) If the costs remain unpaid for 30 days following receipt of notice, the enforcing officer may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the site safe. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the premises upon which the structure was located.

(d) If the costs remain unpaid and if the proceeds of the sale of salvage is insufficient to recover the cost or if there is no salvage, the city clerk shall at the time of certifying other city taxes, certify the unpaid portion of the costs to the county clerk who shall extend the same on the tax roll of the county.

(e) Should any special assessment of costs levied under this section remain unpaid for a period of one (1) year or more after initial levy, the City may collect the amount due in the same manner as a personal debt of the property owner to the City by bringing an action in the District Court of Hodgeman County, Kansas as provided for pursuant to K.S.A. 12-1, 115, and any amendments thereto.

SECTION 17. Cost Assessment; Lien. (a) The amount of the cost of such repairs, alterations or improvements or costs of vacating and closing or removal or demolition by the Public Officer shall be a lien against the real property upon which such cost was incurred and such lien, including as part thereof allowance of his or her costs and not more than 15% of necessary attorney's fees paid to an attorney billing the city by the hour, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located.

(b) The city shall give notice to the owner of the structure by restricted mail of the costs incurred in Section (a). Payment of the cost is due and payable within 30 days following receipt of the notice.

(c) If the costs remain unpaid after the 30 days set forth in subsection (b), the Public Officer may order the structure razed and demolished and sell any salvage
from the structure and apply the proceeds or any necessary portion thereof to pay the
cost of removing the structure and making the site safe. Any proceeds in excess of
that required to recover the costs shall be paid to the owner of the premises. The City
may also choose to sue for damages in limited actions court.

(d) If the proceeds of the sale of salvage or from the proceeds of any
insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901, et
seq., and amendments thereto, are insufficient to recover the above stated costs, or if
there is no salvage, the balance shall be collected in the manner provided by K.S.A.
12-1,115, and amendments thereto, or shall be assessed as special assessments
against the lot or parcel of land on which the structure 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 who 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 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. The city may also utilize the state setoff system until the amounts are paid in
full.

(e) If there is no salvage material, or if the moneys received from the sale of
salvage or from the proceeds of any insurance policy in which the city has created a
lien pursuant to K.S.A. 40-3901, et seq., and amendments thereto, are insufficient to
pay the costs of the work and the costs of providing notice, such costs or any portion
thereof in excess of that received from the sale of salvage or any insurance proceeds
may be financed, until the costs are paid, out of the general fund or by the issuance of
no-fund warrants.

SECTION 13: Statutory Authority. This ordinance is enacted by authority and
under the provisions of KSA Supp. 17-4759 et seq.
SECTION 14: Repealer. Ordinance 155 and such other ordinances or portions of ordinances of the City of Hanston, Kansas, that are in whole or in part in conflict with this Ordinance, are hereby repealed.

SECTION 15: Effective Date. This Ordinance shall take effect and be in force from and after its publication in the official city newspaper of the City of Hanston, Kansas or after compliance with K.S.A. 2012 Supp. 12-3007(b).

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR this 4th day of August, 2014.

[Signature]
Gary Seiler, MAYOR

ATTEST:

[Signature]
Michelle Walters, CITY CLERK