

ORDINANCE NUMBER 523

AN ORDINANCE PROVIDING FOR THE REMOVAL OF TRASH AND DEBRIS BY THE CITY OF WESTMORELAND; PROVIDING FOR THE ASSESSMENT OF THE COST OF SUCH REMOVAL AGAINST THE LOT OR PIECE OF LAND; AND PROVIDING PENALTIES FOR THE FAILURE TO REMOVE TRASH AND DEBRIS.

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

Section 1. TRASH AND DEBRIS 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 or land within the City of Westmoreland, Kansas, to permit trash or debris to accumulate or to remain upon said premises or land, other than in an enclosed building or enclosed structure or in a lidded trash container or lidded trash can, for a period in excess of thirty (30) days. All such trash or debris as hereinafter defined is hereby declared a nuisance and is subject to abatement or prosecution as hereinafter provided.

Section 2. DEFINITIONS. The terms “trash” and “debris” as used herein shall include, but shall not be limited to, any of the following: garbage, junk, refuse, papers, cartons, boxes, rubbish, lumber, loose boards, furniture, stoves, refrigerators appliances, televisions, sinks, automobile parts, tires, scrap metal, or any parts or pieces of such items, and downed branches or limbs of trees.

For the purposes of this Ordinance, the terms “trash” and “debris” shall not include the following: any of the above named items which are contained in or located in an enclosed building or enclosed structure; any of the above named items which are contained in a lidded trash container or lidded trash can; patio or similar furniture which is designed for outdoor use and is in usable condition; charcoal or gas cookers which are designed for outdoor use and are in usable condition; firewood for home use which is neatly stacked; a compost pile which is intended to be used and is used for the composting of vegetation or other compost material; construction materials or lumber situated on a construction site or premises which is intended to be used within 120 days, except that any construction materials or lumber which is not used for construction on the site within a period of 120 days shall be deemed to be “trash” and “debris” and shall be subject to abatement or prosecution as provided by this Ordinance.

Section 3. PUBLIC OFFICER, NOTICE TO REMOVE.

(a) The City of Westmoreland shall designate an enforcement officer to be charged with the administration and enforcement of this Ordinance. The enforcement officer or authorized assistant shall give written notice to the owner, occupant or agent of such property by certified mail, or by personal service, to remove from the property trash and debris, 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 the notice cannot be made upon such owner, occupant or agent, then notice shall be given by publication in the official city newspaper.

- (b) The notice to given hereunder shall state:
- (1) that the owner, occupant or agent in charge of the property is in violation of this ordinance;
 - (2) a general description of the trash or debris located on the property;
 - (3) that the owner, occupant or agent in control of the property is ordered to remove the trash or debris described in the notice within 10 days of the receipt of the notice;
 - (4) that the owner, occupant or agent in control of the property may request a hearing before the governing body or its designated representative within ten days of the receipt of the notice;

- (5) that if the owner, occupant or agent in control of the property does not remove the trash or debris from the property within ten days of the receipt of the order, or fails to request a hearing within the allowed time, the city or its authorized agent may remove the trash or debris from the property and that the cost of such removal, including a reasonable administrative fee, will be assessed against the owner, occupant or agent in charge of the property;
- (6) 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 the notice of such assessment, the assessment will be added to the property tax as a special assessment;
- (7) that no further notice will be given prior to the removal of the trash or debris from the property; and,
- (8) that in addition to or as an alternative to the removal of the trash or debris as provided above, the owner, occupant or agent in control of the property may be prosecuted in the Municipal Court of the City of Westmoreland for violation of this Ordinance.
- (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 removal of trash or debris from such property unless the new record owner of title to such property is provided notice as required by this ordinance.

Section 4. HEARING. If a hearing is requested within the ten (10) day period as provided in Section 3, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings and order of the enforcement 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. The governing body may uphold the order of the enforcement officer, may dismiss the order of the enforcement officer, or may modify the order of the enforcement officer in such manner as the governing body deems appropriate. The governing body shall grant extension of the ten day time period if the owner or agent of the property demonstrates that due diligence is being exercised in abating the nuisance. Upon conclusion of the hearing, the governing body shall record its determination of the matter by adopting a resolution and serving the resolution upon the person who filed the appeal.

Section 5. 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 enforcement officer or an authorized assistant may 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 or by personal service, 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 notice.
- (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. 12-1617e)

Section 6. RIGHT OF ENTRY. The enforcement officer, and the enforcement officer's authorized assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of removing such trash or debris in a manner not inconsistent with this ordinance.

Section 7. UNLAWFUL INTERFERENCE. It shall be unlawful for any person to interfere with or to attempt to prevent the enforcement officer or the enforcement officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such removal of trash or debris.

Section 8. PENALTIES FOR VIOLATION OF ORDINANCE. Any person, firm, partnership, corporation, or business entity violating any of the provisions of this Ordinance shall be deemed guilty of a Class C misdemeanor, and may be sentenced to pay a fine of not more than five hundred dollars (\$500.00), or sentenced to a jail term of not more than thirty (30) days, or both. No prosecution for violation of the provisions of this Ordinance shall be commenced until and unless the Notice provided for in Section 3 above has been mailed or personally served as provided by said Section 3.

Section 9. 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 13th day of January, 2011.



Attest:



City Clerk



Mayor

Published in the Westmoreland Recorder on January 27, 2011