

ENVIRONMENTAL CODE

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

Section 1. TITLE. This ordinance shall be known as the "Environmental Code."

Section 2. LEGISLATIVE FINDING OF FACT. The governing body has found that there exists within the city unsightly and hazardous conditions due to: dilapidation, deterioration or disrepair of walls, siding, fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment, supplies, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on the adjoining properties, the neighborhood and the city, or are injurious to the health and safety of the residents of the city. The governing body desires to promote the public health, safety and welfare by the repair, removal, abatement, and regulation of such conditions in the manner hereafter provided.

Section 3. PURPOSE. The purpose of this ordinance is to protect, preserve, upgrade, and regulate the environmental quality of industrial, commercial and residential neighborhoods in this city, by outlawing conditions which are injurious to the health, safety, welfare or aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof.

Section 4. RULES OF CONSTRUCTION. For the purpose of this ordinance, the following rules of construction shall apply:

- (1) Any part thereof - Whenever the words premises, structure, building or yard are used they shall be construed as though they were followed by the words "or any part thereof."
- (2) Gender - Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.
- (3) Number - Words of number shall be construed to mean singular or plural, as may be applicable.
- (4) Tense - Words of tense shall be construed to mean present or future, as may be applicable.
- (5) Shall - The word shall is mandatory and not permissive.

Section 5. DEFINITIONS. The words and phrases listed below when used in this ordinance shall have the following meanings:

- (1) Abandoned Motor Vehicle - any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of the ordinance; or incapable of moving under its own power; or in a junked or wrecked condition.
- (2) Accessory Structure - a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.
- (3) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.
- (4) Dilapidation, Deterioration or Disrepair - shall mean any condition characterized by, but not limited to: holes, breaks, rot, decay, crumbling, cracking, peeling or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.
- (5) Exterior - those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to: sidings, facings, veneers, masonry, roofs,

foundations, porches, screens, shutters, windows, doors or signs.

(6) Garbage - without limitation any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.

(7) Person - any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.

(8) Premises - any lot, plot or parcel of land including the structures thereon. Premises shall also mean any lot, plot or parcel of land without any structures thereon.

(9) Refuse - garbage and trash.

(10) Residential - used or intended to be used primarily for human habitation.

(11) Structure - anything constructed or erected which requires location on the ground or is attached to something having a location on the ground including any appurtenances belonging thereto.

(12) Trash - combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, or tree branches and non-combustible waste consisting of, but not limited to: metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings.

(13) Weathered - deterioration caused by exposure to the elements.

(14) Yard - the area of the premises not occupied by any structure.

Section 6. PUBLIC OFFICER. The city council shall designate a public officer to be charged with the administration and enforcement of this ordinance.

Section 7. ENFORCEMENT STANDARDS. No person shall be found in violation of this ordinance unless the public officer, after a reasonable inquiry and inspection of the premises, believes that conditions exist of a quality and appearance not commensurate with the character of the neighborhood. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood. Such evidence shall include conditions declared unlawful under Section 8 but shall not include conditions which are not readily visible from any public place or from any surrounding private property.

Section 8. UNLAWFUL ACTS. It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions which are injurious to the health, safety or general welfare of the residents of the community or conditions which are detrimental to adjoining property, the neighborhood or the city. For the purpose of fair and efficient enforcement and administration, such unlawful conditions shall be classified as follows:

(a) Exterior conditions (yard) shall include, but not be limited to, the scattering over or the parking, leaving, depositing or accumulation on the yard of any of the following:

(1) lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk or refuse;

(2) abandoned motor vehicles; or

(3) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property.

(4) nauseous substances, carcasses of dead animals or places where animals are kept in an offensive manner.

(b) Exterior conditions (structure) shall include, but not be limited to, deteriorated, dilapidated, or unsightly:

(1) exteriors of any structure;

(2) exteriors of any accessory structure; or

(3) fences, walls, or retaining walls.

Section 9. NOTICE. Any person found by the public officer to be in violation of Section 8 shall be sent a notice of such violation by the public officer. The notice shall be sent by certified mail, return receipt requested. The notice shall state:

- (a) The condition which has caused the violation of this ordinance; and
- (b) That the person in violation shall have:
  - (1) 15 days from the date of the mailing of the notice to alleviate the exterior conditions (yard) violation; and/or;
  - (2) 45 days from the date of the mailing of the notice to alleviate the exterior conditions (structure) violation; or in the alternative to subsections (1) and (2) above,
  - (3) 15 days from the date of the mailing of the notice to request, as provided in Section 13 a hearing before the governing body on the matter; and
- (c) That failure to alleviate the condition or to request a hearing may result in prosecution under Section 10 and/or abatement of the condition by the city according to Section 11 with the costs assessed against the property under Section 14.

Section 10. PENALTY. The public officer may file a complaint in the municipal court against any person found to be in violation of Section 8, provided however, that such person shall first have been sent a notice as provided in Section 9, and that the person has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 9. Upon such complaint in the municipal court, any person found to be in violation of Section 8 shall, upon conviction, be punished by a fine of not less than \$50 nor more than \$100, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment, for each offense. For the purposes of this ordinance, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

Section 11. ABATEMENT. In addition to, or as an alternative to, prosecution as provided in Section 10, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom a notice has been sent pursuant to Section 9 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 9, 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 20 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be assessed against the property as provided in Section 15.

A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Service by certified mail, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such conditions exist.

Section 12. HEARING BEFORE GOVERNING BODY. If a hearing is requested within the 15 day period as provided in Section 9, 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 of the public officer before the governing body. The hearing shall be

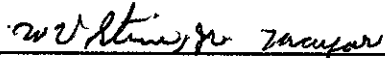
held by the governing body as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city 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 11.

Section 13. APPEALS. Any person affected by any determination of the governing body under Sections 11 or 12 may appeal such determination in the manner provided by K.S.A. 60-2101.

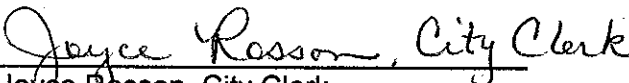
Section 14. COSTS ASSESSED. If the city abates the conditions in violation of this ordinance pursuant to Section 11, the cost of abatement shall be charged against the lot or parcel of ground on which the conditions were located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this ordinance. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

Section 15. CONSTRUCTION. Nothing in this ordinance shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its laws nor to prevent or punish violations thereof. The powers conferred by this ordinance shall be in addition to and supplemental to the powers conferred by the Kansas Constitution, by any other law or by ordinance.

Passed and adopted this 10th day of May, 2001.

  
\_\_\_\_\_  
W.V. Stine, Jr., Mayor

ATTEST:

  
\_\_\_\_\_  
Joyce Rosson, City Clerk

Published in the official city newspaper on the 16 day of May, 2001.