

ORDINANCE NO. 66-21

AN ORDINANCE REPEALING CHAPTERS 6.06, 6.12 AND 6.16 OF THE OLATHE MUNICIPAL CODE; FURTHER ADDING A NEW CHAPTER 6.06 PERTAINING TO ENVIRONMENTAL QUALITY.

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

SECTION ONE: That existing Chapters 6.06, 6.12 and 6.16 of the Olathe Municipal Code are hereby repealed.

SECTION TWO: That a new Chapter 6.06 is hereby added to the Olathe Municipal Code and shall read as follows:

"6.06 Environmental Quality

Sections:

- 6.06.010 Authority.
- 6.06.020 Purpose.
- 6.06.030 Definitions.
- 6.06.040 Unlawful Acts.
- 6.06.050 Right of Entry.
- 6.06.060 Responsibility to Abate.
- 6.06.070 Public Officer; Notice to Abate.
- 6.06.080 Notice Requirements.
- 6.06.090 Service of Notice.
- 6.06.100 Abatement of Immediate Vehicle Hazard.
- 6.06.110 Abatement Hearing.
- 6.06.120 Abatement by City.
- 6.06.130 Notice of cost; Assessment and Collection.
- 6.06.140 Action in Municipal Court.
- 6.06.150 Penalty.

6.06.010 Authority. The City, under the authority of Kansas Statutes Annotated 12-1617(e), is hereby authorized to provide for and require the removal and abatement of any and all nuisances, garbage and inoperable vehicles on lots or parcels of ground within the City.

6.06.020 Purpose. The purpose of this Chapter is to protect, preserve, upgrade and regulate the environmental quality of the City. This will be accomplished by prohibiting certain environmental conditions which may exist and are identified as a threat to the health, safety and welfare of the general public or to the aesthetic characteristics of the City and to provide for the administration and enforcement thereof.

6.06.030 Definitions. For the purposes of this Chapter, the following definitions apply:

- a. "City" shall mean the City of Olathe, Kansas;
 - b. "Code" means the Olathe Municipal Code;
 - c. "Commercial or Industrial" means areas which are used or intended to be used primarily for other than residential or agricultural purposes;
 - d. "Compost Pile" means a mixture consisting of leaves, stems, grasses, dirt and other organic matter which shall be stored in an enclosure and used for garden soil conditioning purposes. Said enclosure shall be screened or placed in a manner which is not offensive to neighboring residents or the general public;
 - e. "Garbage" means without limitation, any accumulation of animal, fruit or vegetable waste matter which normally is the by-product of handling, preparation, cooking, serving, delivering, storage or any other use of foodstuffs;
 - f. "Immediate vehicle hazard" means any unattended vehicle which has been placed on jacks, blocks or a stand unless such vehicle is placed in a garage or other building;
 - g. "Nuisance" means, without limitation, any accumulation or collection of filth, human or animal excrement, tree limbs, lumber, wood, glass, rocks, concrete, dirt, grass clippings, leaves, cans, containers, paper, trash, plastic, petroleum products, styrofoam, rubber, metal, discarded appliances or other household items, abandoned or inoperable vehicles or parts thereof, or any other material or item which is thrown, left, deposited or stored upon any public or private property, except that compost piles as defined by Section 6.06.030(d) shall not constitute a nuisance;
- The above also includes any place, operation, materials or substance offensive in appearance or which emits or causes any nauseous odors. Any dilapidated fence, wall, building or other structure in disrepair, open pits, pools or ponds of water or fluids, trenches or wells and/or any other condition which is offensive to or a threat to the environmental quality, health, safety or welfare of the City as determined by any City public officer shall also constitute a nuisance;
- h. "Inoperable vehicle" means a vehicle or component parts thereof which cannot function properly or be used for its original purpose, including, without limitation, a condition of being junked, parted out, used for salvage or any part thereof, discarded or stored, use of any part for

artful or decorative purposes. Also, included would be any vehicle which is not currently registered or licensed or parked in any manner which would be a violation of other City ordinances or incapable of moving under its own power or would be unlawful to operate upon any street, road or highway. A vehicle which is temporarily inoperative but is in the process of being repaired shall be repaired within thirty (30) consecutive days or it shall be deemed an inoperable vehicle as defined by this Section;

i. "Person" shall mean any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or any 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;

j. "Premises" means any lot, parcel or tract of land, including any structures, and/or excavations located thereon;

k. "Public Officer" means any City representative charged by the City Manager with the administration and enforcement of this Chapter;

l. "Unimproved Premises" means any lot parcel or tract of land without any structures or any other type of improvement or development thereon;

m. "Vehicle" means any automobile, van, truck, all terrain vehicle, motorcycle, moped, motorscooter, recreational vehicle, farm machinery, construction equipment, boat, boat trailer, airplane, bicycle, trailer, wagon or other device mounted on wheels and designed to carry any cargo, operator or passenger and may be powered by an engine or pulled or pushed by any device or person;

n. "Yard" means the area of the premises not occupied by a structure.

6.06.040 Unlawful Acts. It shall be unlawful for any person to allow to exist on any premises any garbage, nuisance, inoperable vehicles or immediate vehicle hazard as defined. Except that the provisions of this Section shall not apply to (a) any vehicle which is enclosed in a garage or other building; (b) to the parking or storage of one temporarily disabled vehicle for a period of thirty (30) consecutive days or less; or (c) to any person conducting a business enterprise in compliance with existing zoning regulations and who places such vehicles behind screening of sufficient size, strength and density in order to screen

such vehicles from the view of the public and to prohibit ready access to stored vehicles.

6.06.050 Right of Entry. 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.

6.06.060 Responsibility to Abate. The property owner, representative, tenant or other such person with control, occupancy or possession of real property shall be responsible for the abatement of any unlawful acts defined by Section 6.06.040.

6.06.070 Public Officer; Notice to Abate. The City Manager shall designate a public officer to be charged with the administration and enforcement of this Chapter. The public officer shall authorize the investigation of violations of this Chapter. If it is determined that a violation of this Chapter is in existence, then the officer shall send a notice of abatement to the property owner, representative, tenant or other such responsible person.

6.06.080 Notice Requirements. The notice of abatement shall state:

a. A common and/or legal description of the property upon which the violation exists;

b. That the property is in violation of the provisions of this Chapter;

c. A description of the nature of the violation that would reasonably allow the property owner or other responsible person, representative or tenant to determine the nature of the violation to allow for self-abatement;

d. That the person in charge of the property shall have five (5) days from the date of the mailing of the notice to either remove and abate the violation of this Chapter or request a hearing before the City's designated representative on the matter;

e. That upon written request received prior to the expiration of the notice period, the property owner, representative, tenant or other responsible person may request a hearing before a designated hearing officer of the City;

f. That if the owner, occupant, or agent of the property fails to correct the violation or request a hearing

within five (5) days of the mailing of notice, the City or its authorized agent will remove and abate the violation of this Chapter by reasonable means and assess the costs of removal, including reasonable administrative costs, against such person. Notice of the total cost of such abatement shall be provided to the owner, occupant or agent by certified mail, return receipt requested, or personal service;

g. That if the assessed costs of removal, including administrative costs, are not paid within thirty (30) days of the date when the assessment comes due, the costs will be added to the property tax as a special assessment;

h. That if any special assessments levied by the City in accordance with this Chapter remain unpaid for a period of one year or more after their 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 Johnson County District Court. Such actions may be maintained, prosecuted and all proceedings taken, including any award of postjudgment interest, in accordance with K.S.A. 16-204, and amendments thereto, to the same effect and extent as for the enforcement of an action for debt. All provisional remedies available in such actions shall be available to the City in the enforcement of the payment of such obligations. In such actions the City also shall be entitled to recover interest at the rate provided in K.S.A. 79-2968, and amendments thereto, from and after the date a delinquency occurs in the payment of special assessments levied under this Chapter. The City may pursue collection both by levying a special assessment and in the manner provided by this Section, but only until the full cost and any applicable interest has been paid in full;

i. Violation of any provisions of this article shall be deemed a misdemeanor and be punishable by a fine of not less than Fifty Dollars (\$50.00) or more than Five Hundred Dollars (\$500.00) or imprisonment not to exceed thirty (30) days, or both. Each day any violation of this Chapter continues shall constitute a separate offense punishable as a misdemeanor;

Prosecution of any offender under this Section does not limit the City's right to abate any violation as defined under this Chapter or to additionally recover any costs incident to the abatement process, including reasonable administrative costs;

j. That the public officer should be contacted if there are any questions regarding the notice.

6.06.090 Service of Notice. a. The notice shall be personally served or sent by certified mail, return receipt requested, or if the property is unoccupied and the owner is a nonresident of the State of Kansas, then by mailing notice by certified mail to the last known address of the owner;

b. Failure to sign for the certified return, receipt requested, mail notice from the City, or failure to pick up said notice from the post office within fifteen (15) days shall not be deemed a lack of notice under this Chapter where delivery was attempted and a record of this attempt was provided as required by procedures for restricted mail.

6.06.100 Abatement of Immediate Vehicle Hazard. When in the opinion of the public officer an immediate vehicle hazard as defined by 6.06.030(f) exists in such a condition as to require immediate action to protect the public, such officer may erect barricades or cause the vehicle to be taken down or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents or lienholders. The costs of any such action shall be assessed and paid in the manner set out in Section 6.06.130.

6.06.110 Abatement Hearing. If the recipient of the notice of abatement makes a written request for hearing within the notice period, then the City shall immediately schedule a hearing during a regular business day within ten (10) calendar days from the receipt of the written request. The hearing shall be conducted by a designated hearing officer appointed by the City Manager who shall not be a subordinate of the officer who issued the notice of abatement or conducted the investigation. The hearing officer shall receive evidence, review the investigation and prepare a written order. The order shall be sent by certified mail to all relevant parties within ten (10) days of the hearing, unless otherwise stated at the hearing, and prior to the City taking any action to abate the violation. The order shall describe the relevant facts relied upon, state the specific code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement or orders as deemed necessary by the hearing officer.

6.06.120 Abatement by City. If the property owner, representative or tenant fails to request a hearing and fails to abate the violations within the notice period, then the City shall go onto the property to abate the violation in a reasonable manner. The City shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the

violations. The City may use its own employees or contract for services to abate violations of this Chapter.

6.06.130 Notice of Cost; Assessment and Collection.

a. If the City takes action to abate the violation, it shall provide a notice of costs to the property owner, representative or tenant. The notice of costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the notice of costs may also be posted on the property in a reasonable manner. The notice of costs shall state:

1. The common or legal description of the property, or both;

2. The nature of the violation, including relevant ordinances;

3. The nature of the work performed to abate the violation;

4. The costs incurred for the abatement of the violations in either a lump sum or in itemized form;

5. That the notice is a demand for payment within thirty (30) days from the date of the notice;

6. That failure to pay the entire amount within thirty (30) days shall allow the City to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;

7. That such additional remedies to recover costs shall include additional amounts, including additional administrative costs, attorneys' fees when applicable, and interest;

8. That payments shall be made by check or money order made payable to the City, with no post-dating of the check, and sent to the address stated within the notice, with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments.

b. If the payment of costs is not made within the 30-day period, the City may levy a special assessment for such cost against the lot or piece of land. The City Clerk, at the time of certifying other City taxes to the County Clerk, shall certify the aforesaid costs, and the County Clerk shall extend the same on the tax roll of the county against

the lot or parcel of ground, and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid.

Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt.

The City may pursue both assessment and collection at the same time until the full cost, including applicable interest, court costs, attorneys' fees and administrative costs have been paid in full.

6.069.140 Action in Municipal Court. If an authorized public officer determines that a violation of this Chapter exists, the officer may file a complaint with the Municipal Court for such violation. No other procedures are required as a prerequisite to the filing of a complaint.

16.06.150 Penalty. a. Any property owner, representative or tenant found in violation of this Chapter shall be subject to prosecution in the Olathe Municipal Court. Any person found guilty of violating the provisions of this Chapter shall be subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00); or imprisonment for a term not to exceed thirty (30) days, or both;

b. Prosecution of any offender under this Chapter does not limit the City's right to pursue assessment or collection of costs as stated in this Chapter, or by other laws;

c. Each day that any violation of this Chapter continues shall constitute a separate offense;

e. The City shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provision of this Chapter and to seek civil penalties, and to abate nuisances maintained in violation thereof, and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceedings to prevent such unlawful nuisance or condition."

SECTION THREE: Severability. If for any reason any Chapter, Article, Section, subsection, sentence, portion or part set out in this Ordinance, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this Chapter or other Ordinances.

SECTION FOUR: Savings Clause. The repeal of Ordinance sections, as provided hereinbelow, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said Ordinance or parts thereof. Said Ordinance repealed is hereby continued in force and effect after the passage, approval and publication of this Ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

SECTION FIVE: This Ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 27th day of March, 1990.

SIGNED by the Mayor this 27th day of March, 1990.

James J. Sheen
Mayor
March 20, 1990

ATTEST:

W. DeLoach
City Clerk

(SEAL)

APPROVED AS TO FORM:

Thomas C. [Signature]
Municipal Counsel

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.