

ORDINANCE NO. 365

AN ORDINANCE TO PROTECT, PRESERVE, UPGRADE, AND REGULATE THE ENVIRONMENTAL QUALITY OF INDUSTRIAL, COMMERCIAL AND RESIDENTIAL NEIGHBORHOODS BY DECLARING CERTAIN MATTERS AS NUISANCES, MOTOR VEHICLE NUISANCES, AND MOTOR VEHICLE PARTS NUISANCES WITHIN THE CITY OF HAVILAND, KANSAS, WHICH ARE INJURIOUS TO THE HEALTH, SAFETY, WELFARE OR AESTHETIC CHARACTERISTICS OF THE NEIGHBORHOODS AND TO PROVIDE FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF. ORDINANCE NO. 345 AND ALL ORDINANCES IN CONFLICT HEREWITH ARE REPEALED.

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

SECTION 1. FINDINGS OF GOVERNING BODY. The governing body finds that junked, wrecked, dismantled, inoperative, abandoned, or non-tagged motor vehicles and junked, dismantled, abandoned or non-secured motor vehicle parts affect the health, safety and general welfare of citizens of the City, because they:

- A. serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
- B. are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
- C. are a ready source of fire and explosion;
- D. encourage pilfering and theft;
- E. constitute a blighting influence upon the area in which they are located;
- F. constitute a fire hazard, because they frequently block access for fire equipment to adjacent buildings and structures.

SECTION 2. DEFINITIONS. As used in this ordinance, unless the content clearly indicates otherwise:

- A. motor vehicle means, without limitation, any automobile, truck, tractor or motorcycle, which, as originally built contained an engine, regardless of whether it contains an engine at any other time.
- B. motor vehicle parts means any portion of a motor vehicle not attached to a motor vehicle.
- C. non-secured means not enclosed in a garage or other building.
- D. inoperable means a condition of being wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed.
- E. person means an individual, corporation, partnership or association

SECTION 3. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain any nuisance within the City as defined, but not be limited to, 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) filth, excrement, lumber, rocks, dirt, cans, paper, trash, wire, metal, tires, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk or refuse, or any other offensive or disagreeable thing or substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure or lot, whether vacant or occupied;
 - 2) all dead animals not removed within twenty-four (24) hours after death;
 - 3) any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
 - 4) all stagnant ponds or pools of water;
 - 5) all grass or weeds which have grown to seed;
 - 6) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property;
 - 7) all articles or things whatsoever caused, kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public or of any neighborhood;
 - 8) any fence, structure, thing or substance placed upon or being upon any street, sidewalk,

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alley or public ground so as to obstruct the same, except as permitted by the laws of the City.

- 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.
- C. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance or motor vehicle parts nuisance within the City.
 - 1) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Any one of the following conditions shall raise the presumption that a motor vehicle is junked, wrecked, inoperable or not currently registered:
 - a) absence of a current registration plate upon the motor vehicle;
 - b) placement of the motor vehicle or motor vehicle parts thereof upon jacks, blocks, or other supports;
 - c) absence of one or more motor vehicle parts of the motor vehicle necessary for the lawful operation of the motor vehicle upon street or highway.
 - 2) A motor vehicle parts nuisance is any abandoned or non-secured motor vehicle part.
 - 3) The provisions of this section shall not apply to:
 - a) any motor vehicle which is enclosed in a garage or other building; or
 - b) to the parking or storage of a motor vehicle inoperable for a period of thirty (30) consecutive days or less.

SECTION 4. PUBLIC OFFICER. The Haviland City Council shall designate a public officer to be charged with the administration and enforcement of this ordinance.

SECTION 5. COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two (2) or more persons stating that a nuisance exists and describing the same and where located, or is informed that a nuisance may exist by the City Council or any law enforcement officer authorized to enforce the ordinances of the City of Haviland.

SECTION 6. RIGHT OF ENTRY. It shall be a violation of this ordinance to deny the public officer the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

SECTION 7. NOTICE. The governing body shall serve upon the owner, any agent of the owner of the real property or any other person found by the public officer to be in violation of Section 3 a notice of such violation. The order shall be served on the owner or agent of such real property by certified mail, return receipt requested, or by personal service. If the real property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

If the owner or the agent of the owner of the real property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent, the governing body of the City may provide notice of the issuance of any further orders to abate or remove a nuisance from such real property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the real property, personal notification, telephone communication or first class mail. If the real property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

The notice shall state the condition(s) which is(are) in violation of Section 3. The notice shall also inform that the person shall have:

- A. ten (10) days from the receipt of the order to alleviate the exterior conditions (yard, motor

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vehicle, motor vehicle parts) violation; and/or;

- B. forty-five (45) days from the receipt of the order to alleviate the exterior conditions (structure) violation; or in the alternative to subsections A and B above,
- C. ten (10) days from the receipt of the order, plus any additional time granted under subsection C, to request, as provided in Section 9 a hearing before the governing body or its designated representative on the matter; and,

provided, however, that the governing body or its designee may grant one or more extensions to the time periods stated in subsections A, B, and C, above, if the owner or agent of the real property demonstrates that due diligence is being exercised in the abatement of the conditions which have caused the violation of this ordinance; and,

Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 8 and/or abatement of the condition(s) by the City as provided by Section 11.

SECTION 8. FAILURE TO ABATE THE NUISANCE OR REQUEST A HEARING; PENALTY.

Should the person fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the Municipal Court of the City against such person, and upon conviction of any violation of provisions of Section 3, be fined in an amount not to exceed one hundred dollars (\$100.00). Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

SECTION 9. HEARING. If a hearing is requested within the ten (10) day period as provided in Section 7, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing or appear at a requested 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 (5) days in advance thereof. At any such hearing, counsel may represent the person, 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 10. FAILURE TO ALLOW THE PUBLIC OFFICER ACCESS AND ENTRY; PENALTY. Should the person fail to allow the public officer access and/or entry as provided in Section 6, the public officer may file a complaint in the Municipal Court of the City against the person; and upon conviction of any violation of provisions of Section 6, be fined in an amount not to exceed one hundred dollars (\$100.00). Each day upon which a public officer's request for access and/or entry is denied shall constitute an additional or separate offense.

SECTION 11. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 8, the public officer may seek to remedy violations of Section 3 in the following manner: If a person to whom a notice has been sent has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time period specified in Section 7, the City Council may adopt a resolution authorizing the public officer or other agents of the City to abate the conditions causing the violation at the end of five (5) days after passage of the resolution. The resolution shall further provide that the costs incurred by the City shall be charged against the lot or parcel of ground on which the nuisance was located as provided in Section 12. 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;
- 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 with the City Clerk, and the serving of the resolution shall be made by publishing the same once in

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the official City newspaper and by posting a copy of the resolution on the premises where such condition exists.

SECTION 12. COSTS ASSESSED. If the City abates or removes the nuisance pursuant to Section 11, 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 thirty (30) days following receipt of the notice. The City may also recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid with the thirty- (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 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.

SECTION 13. This ordinance shall be in full force and effect from and after its adoption and publication in the official City newspaper.

Adopted and approved by the City Council, this 9th day of November 2015.

Robert Ellis, Mayor

Attest: _____
Shari McAfee, City Clerk