

Article 6. Enforcement and Penalties

16.6.1. Enforcement officers; jurisdiction.

Enforcement of this Chapter within the boundaries of the City shall be by the City Engineer, Building Inspector, other designated code enforcement official(s) or contracted agent of the City (Enforcing Officer), and jurisdiction for prosecution of any violations of this code shall be in the Bel Aire Municipal Court.

16.6.2. Right of entry.

The Enforcing Officer is authorized to enter upon unsecured private property at all reasonable hours for the purpose of enforcing the provisions of this Chapter, but only with a warrant or as consistent with warrantless search exceptions. Before entering any residence without a warrant, the Enforcing Officer shall obtain consent to such inspection from a person of suitable age and discretion present in the residence or in control of the residence.

16.6.3. Unlawful interference.

It shall be unlawful for any person to interfere or attempt to interfere with, or to prevent or attempt to prevent, the Enforcing Officer from entering upon any property to carry out the duties described in this Chapter.

16.6.4. Enforcement; enforcement actions not exclusive.

A. Upon failure of the account holder to have a water distribution defect or other violation of this Chapter corrected within the time provided in the violation notice, the Enforcing Officer may cause the municipal water service to the service location to be disconnected after compliance with the due process provisions of this Article. All applicable administrative fees and provisions shall be enforced.

B. Intentional violation of any provision of this Chapter is grounds for prosecution of the property owner, resident, account holder, permit holder, or any other responsible party, but only upon review and approval of the City Attorney.

C. The prosecution and/or imposition of the penalties herein prescribed shall not preclude the City from instituting an appropriate action to restrain, correct, or abate a violation of this Chapter or to collect fees and charges in a civil or administrative action, and specific authority for such is hereby granted to take any action or impose any penalty allowed by the State law, this Chapter or any provision of this Code.

D. Violation of those sections of this Chapter associated with the installation, permitting, connection, or tap-on to the water system, is grounds for immediate revocation of an occupancy permit by the City.

16.6.5. Notice of violations.

A. Notice of violation associated with the service location detailing any violations of this Chapter shall:

1. Be in writing;
2. Describe the violations alleged to exist or to have been committed;

3. Provide a reasonable time for the correction of the violations described;
4. Be served upon the account holder or designated agent. An account holder who allows a tenant or other person to occupy the service location property without modifying the account is deemed to have designates such occupant as a designated agent.
5. Service of the notice can be accomplished by one or more of the following methods: personal service upon the account holder or a designated agent at of the service location property of lawful age, posting upon the property, placement of a door hanger, regular mail, publication or as otherwise requested in the account application. Notice to account holders at the address provided in the account application or as subsequently modified by the account holder's written request is deemed completed. Failure of the account holder to receive notification which the City provides by using the current account information will not alter the effectiveness of the notice.

B. All notices required by this Chapter which may be served upon tenants shall also be served upon the record owner of title to the property. Should there occur a change in the record title owner subsequent to the giving of notice pursuant to this section, the City may not recover any costs of abatement or levy an assessment for costs of abatement unless the new record title owner of such property has been provided notice as required by this Chapter, which may include notice of assessment filed with the appropriate agencies of Sedgwick County. Additionally, notices under this Chapter may be sent to prospective purchasers associated with any property in violation of this Chapter which is under a pending contract.

16.6.6. Administrative hearing/review.

Any person wishing to contest a notice to correct a violation has the right to an administrative hearing before the City Manager. Such hearing must be requested in writing and the request must be received at the office of the Utility Department no later than two (2) business days prior to the deadline for correction set in the notice. The format of the administrative hearing shall be a review of all written and photographic documentation submitted by the party requesting such hearing, all documentation maintained and presented by the Enforcement Officer, and oral testimony from the parties.

The decision of the City Manager shall be final and any further appeal of such decision shall be to the Eighteenth Judicial District Court of the State of Kansas under the provisions of K.S.A. 60-2101(d).

16.6.7. Uniform complaint and notice to appear.

In addition to the notice provided for in section 16.5.5, the Enforcing Officer may commence prosecution of intentional violations by issuing to the account holder, tenant or occupant a uniform complaint and notice to appear charging a violation of any section of this Chapter, subject to the approval of the City Attorney.

16.6.8. Violations, penalties.

Intentional violation of any provision within Article 6 of this Chapter is a misdemeanor punishable by a fine in an amount up to \$2,500.00.

16.6.9. Abatement; assessment of costs.

A. If within the time allowed for abatement or cure in the violation notice the account holder, or known tenant or occupant of the service location premises fails to comply with the directives contained in the notice, and further fails to timely file a request for administrative hearing, the Enforcing Officer may reasonably abate any violation, when such code enforcement officer deems the immediate abatement necessary to protect the health, safety, and welfare of any individual, property, or the community. The City and its agents shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the service location property for abatement action. If the account holder does not reside at the service location and the violation does not endanger public health, safety and welfare, abatement shall only take place either five days following the date of receipt provided on a return receipt of delivery, or ten days following the date of publication in an official City newspaper, whichever date is first.

B. The costs incurred by the City for any abatement action undertaken by the Enforcing Officer pursuant to this section of this Chapter shall be reported in detail and in writing by said Officer to the City Clerk. The City Clerk shall keep an account of such costs, as well as all costs of notices, service and/or mailing or other delivery of notices and publication of notices required by this Chapter, allocated to the associated service location. The City Clerk shall provide the report and accounting required by this section to be entered in the appropriate city record and report the same to the City Council.

C. The City Clerk shall, within ten (10) days of receipt of the Enforcing Officer's report of costs, give notice to the account holder, and any other known owner, occupant or agent in charge of the property of the costs required to be reported by subsection B of this section and such notice shall include a statement requiring payment of the costs to the City within thirty (30) days following receipt of such notice. Should the account holder and any other known owner, occupant or agent in charge of the property refuse to take delivery of the notice and return is made to the City indicating such refusal, the City Clerk shall send to the account holder and any known owner, occupant or agent in charge of the property, by first class mail, the notice previously sent and receipt by the account holder and any other addressees shall be deemed to have occurred upon such mailing. The City Clerk shall maintain records detailing the method and time of sending and receipt of such notice.

D. Should the costs remain unpaid after thirty (30) days of receipt of the notice provided for in this Chapter, and the responsible account holder is the owner of the service location property, the City Clerk shall, at the time required by law for certification of other city taxes, certify the unpaid portion of said costs to the Sedgwick County Clerk for extension of the same on the county tax rolls against the service location property.

E. In addition to levying a special assessment against the property upon which the violation(s) was/were located as provided for in this section, the City may also elect to collect the unpaid portion of the costs provided for in herein in the manner provided by K.S.A. 12-1,115 and amendments thereto, and may pursue such remedy without limiting its ability to levy special assessment, but only until such time as the full costs have been paid in full.

16.6.10. Authorization to contract for services.

In the event the account holder fails to comply with a violation notice and it becomes necessary for the Enforcing Officer to abate the violation(s), such Officer is authorized to contract with a service vendor to complete the violation abatement, and the costs of such service vendor shall be included in the report of costs under 16.6.09.B.

16.6.11. Liability.

The City provides inspections for regulatory purposes only, and not to determine the functional effectiveness or safety of any installation or condition. These regulatory inspections do not impose on the City, its officers, agents, or employees, any liability or responsibility for any damages to any property, any injury to any person or other liability loss arising out of or resulting from defective installation; natural, inherent or constructed condition; or any other reason.