

CHAPTER 8.

HEALTH AND WELFARE

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ARTICLE 1. BOARD OF HEALTH

8-101. CREATED.

There is hereby established the Westwood Board of Health, which may also be referred to as the "Board" or "Board of Health." ¹

(Code 1993; Code 2008, § 8-101; Ord. 722, Sec. 1)

8-102. MEMBERSHIP. ²

The board of health of the city shall consist of not more than five (5) persons who shall be qualified residents of the city. The board shall be appointed by the mayor with consent of the governing body. Members shall hold their office for a term of one year and until their successors are appointed.

The following shall serve as ex-officio members of the board: the city council public safety committee chairperson, property maintenance official, a representative from the city

¹ **Legal analysis: 8-101. CREATED.** Revise to allow for shorthand designations of said board.

² **Legal analysis: 8-102. MEMBERSHIP.** Please advise of any changes to the board of health membership provisions.

clerk's department and a police department representative.
(Code 2008, § 8-102; Ord. 722, Sec. 2)

8-103. OFFICERS.

There shall be a chairperson elected by a majority vote of the board for a term of one year, or until his or her successor takes office. The chairperson's duties shall include scheduling and conducting regular meetings and serving as the liaison to the Westwood city council. An ex-officio member shall be designated to serve as secretary to the board and shall be responsible for minutes, agenda, and records.
(Code 1993; Code 2008, § 8-103; Ord. 722, Sec. 3)

8-104. DUTIES.

The duties of the board of health shall be:

- (a) Continuously review and insure the applicability of all health and environment city codes and ordinances, and forward recommendations for revision to the governing body.
- (b) Conduct a regularly scheduled review of service requests for environmental and health ordinance action. The board shall be supplied with a monthly summary report on such requests for their review.
(Code 2008, § 8-104; Ord. 722, Sec. 4)

ARTICLE 2. GENERAL PROVISIONS

8-201. JOHNSON COUNTY SANITARY CODE.

The certain code known as the "Johnson County Sanitary Code of 2004" and all future amendments and supplements thereto, adopted by the Johnson County Commissioners of Johnson County, Kansas, is hereby incorporated herein by reference and made part of this chapter, save and except such portions as are hereinafter deleted or amended.
(Code 1993; Code 2008, § 8-201; Ord. 639)

8-202. SAME; CONFLICTING PROVISIONS.

In the event of conflicting provisions between the sanitary code incorporated in section 8-201, and the Code of the City of Westwood, the Code of the City of Westwood shall control.
(Code 1983; Code 2008, § 8-202)

8-203. PUBLIC OFFICER. ³

The Property Maintenance Official ("Public Officer") or his or her designee shall be charged with the administration and enforcement of this chapter unless otherwise designated.
(Code 1993; Code 2008, § 8-203)

³ **Legal analysis: 8-203. PUBLIC OFFICER.** Please advise whether Property Maintenance Official is still the current title for this position.

ARTICLE 3. HEALTH NUISANCES

8-301. NUISANCES UNLAWFUL; DEFINED.

It shall be unlawful for any person to maintain or permit any nuisance within the city as defined, without limitation, as follows:

- (a) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal 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;
 - (b) All dead animals not removed within 24 hours after death;⁴
 - (c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
 - (d) All stagnant ponds or pools of water;
 - (e) All overgrown grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;⁵
 - (f) Abandoned iceboxes, freezers or refrigerators kept on the premises under the control of any person, or any icebox, freezer or refrigerator not in actual use unless the door, opening or lid thereof is unfastened and removed therefrom;
 - (g) 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;
 - (h) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the city.
- (Code 1993; Code 2008, § 8-301)
~~(K.S.A. 21-4106:4107)~~ (K.S.A. 21-6204)⁶

8-302. 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 or more persons stating that a nuisance

⁴ **Legal analysis: 8-301. NUISANCES UNLAWFUL; DEFINED, (b).** Please advise whether "removed" means removed from premises, removed from city limits, etc. Also, whether the city would like to include an exception for the burial of household pets on the pet owner's private property.

⁵ **Legal analysis: 8-301. NUISANCES UNLAWFUL; DEFINED, (e).** Revised for clarity. Also please advise whether the city has or plans to enact any kind of policy or program allowing for native/prairie habitat areas, pollinator gardens, etc.

⁶ **Legal analysis: 8-301. NUISANCES UNLAWFUL; DEFINED.** Change this and all subsequent statutory history notes into the standard state law reference format. Also update statutory citation.

exists and describing the same and where located, or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings. ⁷
(Code 1993; Code 2008, § 8-302)

8-303. RIGHT OF ENTRY.

The public officer may request access and entry upon private property as permitted by law at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.
(Code 2008, § 8-303)

8-304. ORDER OF VIOLATION.

(a) The city, or its authorized representative, shall serve upon the owner, any agent of the owner of the property, any tenants, or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-301 an order stating the violation. The order shall be served on the owner, agent and any tenants of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then service may be made by mailing the order by certified mail, return receipt requested, to the last known address of the owner. ⁸

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such 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 property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.
(Code 2008, § 8-305)
(K.S.A. 12-1617e)

8-305. SAME; CONTENTS.

The order shall state the condition(s) which is (are) in violation of section 8-301. The order shall also inform the person, corporation, partnership or association that

(a) He, she or they shall have 10 days from the receipt of the order to abate the condition(s) in violation of section 8-301; provided, however, that the governing body [or its designee named in section 8-304] shall grant one or more extensions of the 10 day

⁷ **Legal analysis: 8-302. COMPLAINTS; INQUIRY AND INSPECTION.** Please advise as to whether this report is to subsequently be submitted to a particular department.

⁸ **Legal analysis: 8-304. ORDER OF VIOLATION, (a).** Clarify whether this is to take place after a review of the report completed in Section 8-302.

period if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions in violation of section 8-301; or,

(b) He, she or they have 10 days from the receipt of the order, plus any additional time granted under subsection (a), to request a hearing before the governing body or its designated representative of the matter as provided by section 8-308;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-306 and/or abatement of the condition(s) by the city as provided by section 8-307.

(Code 2008, § 8-35)

8-306. FAILURE TO COMPLY; PENALTY.

Should the person, corporation, partnership, association or other entity fail to comply with the order 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, corporation, partnership, association or other entity and upon conviction of any violation of provisions of section 8-301, be fined in an amount not to exceed \$500.00 or be imprisoned not to exceed 180 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. (Code 1993; Code 2008, § 8-306)

8-307. ABATEMENT.

In addition to, or as an alternative to prosecution as provided in section 8-306, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been served pursuant to section 8-304 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-305, 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 10 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 8-309. 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) 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 condition exists.

(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section

article during the **preceding twenty-four month period**, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such 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 property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. ⁹

(Code 2008, § 8-309)

8-308. HEARING.

If a hearing is requested within the 10 day period as provided in section 8-305, 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. The hearing shall be held by the governing body or its designated representative 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 or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in section 8-307.

(Code 1993; Code 2008, § 8-308)

8-309. COSTS ASSESSED.

If the city abates or removes the nuisance pursuant to section 8-307, 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 30 days following receipt of the notice. The city also may 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 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 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.

⁹ **Legal analysis: 8-307. ABATEMENT.** Revise for clarity. As previously written, this article could have allowed for a 24-month non-receipt period under section 8-304(b), and another 24-month non-receipt period under section 8-307(d), for a potential 4 years before abatement could occur. Please advise if the suggested revision fails to reflect the city's intention behind these provisions.

(Code 2008, § 8-309)

8-310. DEPOSITS ON PUBLIC GROUND PROHIBITED.

It shall be unlawful for any person, firm or corporation to cause or to permit any offal, manure, rubbish or filth or permit any decaying animal or vegetable matter, or any foul or nauseous substance to be discharged out of or flow from the premises occupied by him or to throw upon or permit the same to be thrown upon, deposited or left in any stream or pond within the city or in or upon any street, alley, public square, vacant lot or other place in the city.

(Code 1970, 7-203; 1993; Code 2008, § 8-310)

8-311. COMPOST PILES; DEFINITIONS.

Compost pile and/or compost bed. - Any accumulation or stack or a quantity heaped together of any mixture of material containing decayed organic matter and primarily used for fertilizing and conditioning of land.

(Code 1993; Code 2008, § 8-311; Ord. 637, Sec. 1)

8-312. SAME; PROHIBITED CONTENTS.

No compost bed or pile shall be allowed in any yard, other than the rear yard, and shall contain no food waste.

(Code 1993, 8-312; Code 2008, § 8-312; Ord. 637, Sec. 2)

8-313. SAME; ODORS.

No compost bed or pile shall be allowed to emit or cause any foul, unhealthful or disagreeable odors in the neighborhood in which said bed and pile exists.

(Code 1993; Code 2008, § 8-313; Ord. 637, Sec. 3)

ARTICLE 4. WEEDS AND NUISANCE PLANTS

8-401. WEEDS AND PLANTS 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 to permit weeds to remain upon said premises or any area between the property lines of said premises and the centerline of any adjacent street or alley, including but not specifically limited to sidewalks, streets, alleys, easements, rights-of-way and all other areas, public or private. All weeds as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided.

(Code 1993; Code 2008, § 8-401)

8-402. DEFINITIONS.

Weeds and Nuisance Plants - as used herein, means any of the following:

- (a) Brush and woody vines shall be classified as weeds, excluding ornamental plantings placed for ornamental purposes;

- (b) Weeds and grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- (c) Weeds which bear or may bear seeds of a downy or wingy nature.
- (d) Weeds which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare;
- (e) Weeds and grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 8 inches in height, excluding ornamental plants such as pampas grass.
- (f) Volunteer trees growing on utility easements.
(Code 1993; Code 2008, § 8-402)

8-403. PUBLIC OFFICER; NOTICE TO REMOVE.

- (a) The **Property Maintenance Official**, or designee, is the public officer charged with the administration and enforcement of this article. The public officer or authorized assistant shall give written notice to the owner, occupant or agent of such property by mail or by personal service, or by posting on the property, to cut or destroy weeds; provided, however, that if the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified, return receipt requested, to the last known address of the owner. Such notice shall only be given once per calendar year.
- (b) The notice to be given hereunder shall state:
 - (1) that the owner, occupant or agent in charge of the property is in violation of the city weed control law;
 - (2) that the owner, occupant or agent in control of the property is ordered to cut or destroy the weeds within 10 days of the receipt of the notice;
 - (3) that the owner, occupant or agent in control of the property may request a hearing before the governing body or its designated representative within five days of the receipt of the notice or, if the owner is unknown or a nonresident, and there is no resident agent, 10 days after notice has been published by the city clerk in the official city newspaper;
 - (4) that if the owner, occupant or agent in control of the property does not cut or destroy the weeds or fails to request a hearing within the allowed time the city or its authorized agent will cut or destroy the weeds and assess the cost of the cutting or destroying the weeds, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property;
 - (5) 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 such notice, it will be added to the property tax as a special assessment;

(6) that no further notice will be given during the current calendar year prior to the removal of weeds from the property; and,

(7) that the public officer should be contacted if there are questions regarding the order.

(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 the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this article.

(Code 2008, § 8-403)

8-404. 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 8-403, the public officer or an authorized assistant shall 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, 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 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section.

(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 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.

(Code 2006; Code 2008, § 8-404) **10**

(K.S.A. 12-1617f)

8-405. RIGHT OF ENTRY.

The public officer, and the public officer's authorized assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private

¹⁰ **Legal analysis: 8-404. ABATEMENT; ASSESSMENT OF COSTS.** This section and 8-501 both have a history note to "Code 2006." These are the only sections referencing this code. Please advise whether this is merely a typo, or if there is another version of the code that should be referenced/history noted throughout.

property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds pursuant to section 8-403.
(Code 1993; Code 2008, § 8-405)

8-406. UNLAWFUL INTERFERENCE.

It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute an code violation.
(Code 1993; Code 2008, § 8-406)

8-407. NOXIOUS WEEDS.

(a) Nothing in this article shall affect or impair the rights of the city under the provisions of ~~Chapter 2, Article 13 of the Kansas Statutes Annotated~~ the Noxious Weed Act (K.S.A. 2-1313a et seq.), relating to the control and eradication of certain noxious weeds.

(b) For the purpose of this article, the term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L.), poison ivy, poison oak, Johnson grass (*Sorghum halepense*), and *Sericea lespedeza*.
(Code 2008, § 8-407)
(K.S.A. 2-1314)

8-408. DEAD OR DISEASED TREE REMOVAL.

The city shall remove or cause to be removed any dead or diseased tree immediately, whether on public or private property, if such tree is deemed to pose an imminent or urgent threat to life, property, or public safety. Diseased trees are defined as those trees that may constitute a hazard to life and property, or harbor insects or disease which represent a potential threat to other trees within the city. The parks and recreation committee or their designee will notify in writing the owners of such trees. Removal is the responsibility of the owners of such trees and shall be accomplished within 30 days of notification; however, if in the opinion of the city's representative, a tree poses an immediate threat to life and safety, the tree shall be removed within the time specified by that representative. In the event of an emergency tree removal, notification shall be served by a police officer to the resident of the property. In the event of failure to remove by the owner, the city shall have the authority to remove such trees and the city clerk is authorized to charge the cost of removal on the owner's property tax notice.
(Code 2008, § 8-408)

ARTICLE 5. REFUSE DISPOSAL

8-501. DEFINITIONS.

As used in this article, the following terms shall have the following meanings:

(a) Garbage - is the animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking or serving of meat, produce or other foods and shall include unclean containers.

(b) Solid Waste - is all garbage, refuse, waste tires, and other discarded materials including, but not limited to solid, semisolid, sludges, liquid and contained gaseous waste materials, excluding hazardous wastes, recyclables, yard waste or the waste of domestic animals.

(c) Yard waste - is all grass clippings, leaves, tree limbs, weeds and other plant or vegetation waste (excluding vegetation or plant materials that are garbage).

(d) Refuse - is all trash, garbage, yard waste, and any other waste substance or product thrown out or discarded.

(e) Recycling or Recyclable material - is newspapers, magazines, junk mail, office paper, telephone books, corrugated cardboard, chipboard cardboard, brochures, aluminum beverage cans, steel (tin) food/beverage cans, #1 through #7 plastic containers plastic containers, excluding those having previously contained household hazardous materials and automotive oils and fluids. Unacceptable plastics shall also include but not necessarily be limited to expanded polystyrene ("Styrofoam").

(f) Bulky Item Refuse - includes appliances, beds, chairs, mattresses, box springs, hot water tanks, washers, dryers, refrigerators, tubs and other items not normally considered regular residential refuse.

(Code 1970, 7-413; Code 2006; Code 2008, § 8-501; Ord. 283, Sec 2; Ord. 325; Ord. 830, Sec. 1; Ord. 894; Ord. 903; Ord. 913)

8-502. REFUSE: ACCUMULATION PROHIBITED.

It shall be unlawful for any householder or business establishment to accumulate refuse except in a closed container and it shall be unlawful to fail to dispose of the same so that refuse shall not be scattered about the city, or become a nuisance, or fire hazard, or constitute a menace to the public health or safety, or become unsightly or constitute a violation of any ordinance of the city, and no material shall be burned.

(Code 1970, 7-401; Code 1993; Code 2008, § 8-502; Ord. 894; Ord. 903; Ord. 913)

8-503. HAULING REFUSE: VEHICLES; LITTERING.

It shall be unlawful to haul garbage, trash, or solid waste materials of any kind over the streets or public ways of the city, except in a vehicle so closed and covered as to prevent the loss of or escape of any refuse during transit, or except in closed and covered containers which will prevent the loss of or escape of any refuse during transit.

(Code 1970, 7-406; Code 1993, 8-504; Ord. 894; Code 2008, § 8-5; Ord. 894; Ord. 903; Ord. 913)

8-504. LITTERING.

It shall be unlawful to deposit, leave, throw, place or abandon any garbage, trash, refuse,

paper, bottles, cans or other solid waste material on public property or on the property of another except to deposit said materials in containers or receptacles designated for that purpose.

(Code 1993, 8-505; Code 2008, § 8-504; Ord. 512, Sec. 1; Ord. 894; Ord. 903; Ord. 913)

8-505. TRASH, GARBAGE, REFUSE: BACKYARDS; OCCUPANTS' DUTIES.

The space in the rear of any business lot, house, or mercantile establishment between the rear of the building and the alley line, shall be kept clean and clear of all the matter set out in section 8-504 of this article. The occupant or occupants of the ground floor are hereby charged with the duty of keeping the said space clean, except such refuse or filth deposited by other occupants of the premises who must remove the same.

(Code 1970, 7-408; Code 1993, 8-506; Code 2008, § 8-505; Ord. 894; Ord. 903; Ord. 913)

8-506. TRASH, GARBAGE, REFUSE: ADJACENT ALLEYS.

The owner of the ground floor, or the occupant thereof, is hereby charged with the duty of keeping the alley in the rear of the premises, or adjacent thereto, clean and free from the matter set out in section 8-504 of this article.

(Code 1970, 7-409; Code 1993, 8-507; Code 2008, § 8-506; Ord. 894; Ord. 903; Ord. 913)

8-507. INTERFERING WITH CONTAINERS.

No unauthorized person shall interfere with solid waste or recyclable material containers in any manner or remove the same or remove the contents thereof or place anything in any solid waste or recyclable material receptacle of another person.

(Code 1970, 7-414; Code 1993, 8-508; Code 2008, § 8-507; Ord. 283, Sec. 4; Ord. 894; Ord. 903; Ord. 913)

8-508. RULES AND REGULATIONS. ¹¹

(a) The city shall provide for solid waste and recyclable material collection from residences within the city by contract. Solid waste and recyclable material will be collected from each residence one day a week. Notice of the collection day shall be given to the citizens in advance.

(b) Residents of the city shall be provided one (1) sixty-five (65) gallon cart for disposal of solid waste.

(c) Residents of the city shall leave their solid waste at the curb side in the sixty-five (65) gallon containers provided to residents which solid waste shall be in plastic bags or the like. Additional or overflow residential solid waste that is not able to be placed in the sixty-five (65) gallon container must be placed in plastic bags with a total weight not to

¹¹ **Legal analysis: 8-508. RULES AND REGULATIONS.** Please advise as to any changes regarding the waste collection procedures.

exceed forty (40) pounds each and must display an approved overflow waste sticker available from the City at a cost set administratively by the City. (Code 2008; Ord. 894; Code 2008; Ord. 903; Ord 913; Ord. 921)

(d) On a twice a month basis, on the same day as regular residential refuse collection, during the first and third collection day of each month, refuse collection shall additionally include the collection of bulky item refuse. ¹²

(e) The weekly refuse collection shall not include collection of rocks, dirt, construction trash or rubbish or other construction materials or hot coals, hot ashes or other household hazardous waste materials, automobile parts, tires, batteries and items that cannot reasonably be transported or carried by two individuals and shall only provide for collection of yard waste and bulky item refuse as provided herein.

(f) During the growing season (March 15th through January 15th), the City shall provide for the removal of yard waste. Each resident shall be responsible for leaving such yard waste at the curb side of their residence. All yard waste must be placed in biodegradable paper bags, rigid containers marked with "YW", or appropriately bundled in bundles not exceeding four (4') feet in length or eighteen (18") inches in diameter and tied with twine or string only. No single bag, container, or bundle of yard waste shall exceed sixty-five (65) pounds in weight. Yard waste set outs are limited to a combined total of eight (8) bags, containers or bundles per week. Additional yard waste set outs in excess of eight (8) must have an appropriate sticker attached available from the City at a cost set administratively by the City.

(g) Residents of the City shall leave their recycling materials at the curb side at the time of the weekly refuse collection in the sixty-five (65) gallon recycling cart provided by the City to residents which is labeled for recycling use. Additional or overflow recycling materials may be placed in paper bags/sacks placed adjacent to the recycling bin. (Code 2008 ; Code 2008, § 8-508; Ord. 894; Ord. 903; Ord. 913)

8-509. SERVICE CHARGE

The city shall assess a refuse collection service charge in the form of an assessment or charge against each real estate household within the city in an amount determined yearly by the governing body ~~beginning with the year 1992, and the assessment or charge is continued each year thereafter until terminated or changed by the governing body.~~¹³ (Code 1993, 8-510; Code 2008, § 8-509; Ord. 755, Sec. 3; Ord. 894; Ord. 903)

8-510 Repealed. (Ord.894; Code 2008; Ord. 903; Ord 913) ¹⁴

8-511. PLACEMENT.

¹² **Legal analysis: 8-508. RULES AND REGULATIONS.** Please advise as to any limit on the number of bulky items per residence that can be placed for collection.

¹³ **Legal analysis: 8-509. SERVICE CHARGE.** Delete dated language as no longer needed.

¹⁴ **Legal analysis: 8-510 Repealed.** For this section, we can leave as is, mark as "reserved" to save the place for potential future provisions, or move 8-511 Placement down to section 8-510.

No refuse or recyclable material shall be placed for collection more than 24 hours before the designated collection date, and all containers shall be removed from the curbside within 12 hours after each collection date. However, yard waste may be stored in appropriate containers outside, but behind the front facade of the house, prior to the next pick up date. All other refuse or recyclable material must be stored in the residence or garage, in a secured shed or undercroft of a porch, or out of sight or screened from view of persons not on the property. All refuse or recyclable material except yard waste shall be stored in tight, sealed containers of sufficient durability and security to prevent odors from spreading and to keep animals from getting into the container.
(Code 2008, § 8-511; Ord. 830, Sec. 2; Ord. 894; Ord. 903; Ord 913)

ARTICLE 6. SWIMMING POOLS

8-601. ENCLOSURES.

(a) This article shall be applicable to all existing and hereafter constructed swimming pools and family pools, other than indoor pools, which contain 12 inches or more of water in depth at any point. No person in possession of land within the city, either as owner, purchaser, lessee, tenant or licensee, upon which is situated a swimming pool or family pool, having a depth of 24 inches or more of water at any point, shall fail to provide and maintain a fence or wall as provided in section 8-602 of this article. **15**

(b) The provisions of this Article shall not apply to temporary pools, such as inflatable pools for children. Such pools are only permitted for no more than five (5) consecutive days at a time.

(c) This article shall permit only permanent in-ground pools, permanently installed spas, hot tubs, Jacuzzi's, whirlpools, and the like, except as stated above.
(Code 2008, § 8-601; Ord. 422, Sec. 3)

8-602. SAME; DIMENSIONS.

Every outdoor swimming pool or family pool shall be completely surrounded by a fence or wall or both six feet in height, which shall be so constructed as not to have openings, holes or gaps larger than four inches in any dimension except for doors and gates. Spas, hot tubs and the like need not be fenced, provided they are locked and secured when not in use. Any pool which is 24 inches or less in depth need not be fenced or secured. A dwelling house or accessory building may be used as part of an enclosure.
(Code 1993; Code 2008, § 8-602; Ord. 422, Sec. 1)

8-603. SAME; GATES.

All gates or doors opening through an enclosure required by this article shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed and locked at all times when not in actual use, except that the door of any dwelling which

¹⁵ **Legal analysis: 8-601. ENCLOSURES.** Revise to clarify, as the first sentence states that the entire article applies to outdoor pools with over 12" of water, but that only those with 24" of water require enclosure. In the alternative, separate these two sentences into separate subsections.

forms a part of the enclosure need not be so equipped.
(Code 1993; Code 2008, § 8-603; Ord. 422, Sec. 2)

ARTICLE 7. JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

8-701. FINDINGS OF GOVERNING BODY.

The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city because they:

- (a) Serves 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.

(Code 1993; Code 2008, § 8-701; Ord. 744, Sec. 1)

8-702. DEFINITIONS.

As used in this article, unless the context clearly indicates otherwise:

- (a) Inoperable - means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed;
- (b) 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.

(Code 1993; Code 2008, § 8-702; Ord. 744, Sec. 2)

8-703. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS.

It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

- (a) 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 parked in violation of city ordinance; 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 vehicle is junked, wrecked or inoperable;

- (1) Absence of a current registration plate upon the vehicle;
 - (2) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
 - (3) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.
 - (4) Absence of any indication of movement over a 60-day period.
- (b) The provisions of this article shall not apply to:
- (1) Any motor vehicle which is enclosed in a garage or other building;
 - (2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
 - (3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.
(Code 2008, § 8-703; Ord. 744, Sec. 3)

8-704. PUBLIC OFFICER.

The Property Maintenance Official, or designee, shall be the public officer charged with the administration and enforcement of this article.
(Code 2008, § 8-704)

8-705. 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 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 board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings. ¹⁶
(Code 1993; Code 2008, § 8-705; Ord. 744, Sec. 4)

8-706. RIGHT OF ENTRY. ¹⁷

The public officer may obtain access and entry upon private property within reasonable hours and as provided by law, for the purpose of making inquiry and inspection to determine if a nuisance exists.

¹⁶ **Legal analysis: 8-705. COMPLAINTS; INQUIRY AND INSPECTION.** Please advise as to whether this report is to subsequently be submitted to a particular department.

¹⁷ **Legal analysis: 8-706. RIGHT OF ENTRY.** Revised to avoid potential constitutional issues.

(Code 2008, § 8-706)

8-707. ORDER OF VIOLATION.

(a) The city shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-703 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the 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.

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(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such 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 property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(Code 2008, § 8-707)

(K.S.A. 12-1617e)

8-708. SAME; CONTENTS.

The order shall state the condition(s) which is (are) in violation of section 8-703. The notice shall also inform the person, corporation, partnership or association that

(a) He, she or they shall have 10 days from receipt of the order to abate the condition(s) in violation of section 8-703; or

(b) He, she or they have 10 days from receipt of the order to request a hearing before the governing body or its designated representative of the matter as provided by section 8-712;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-709 and/or abatement of the condition(s) by the city as provided by section 8-710.

(Code 1993; Code 2008, § 8-708; Ord. 744, Sec. 7)

8-709. FAILURE TO COMPLY; 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

18 Legal analysis: 8-707. ORDER OF VIOLATION. Clarify whether this is to take place after a review of the report completed in Section 8-302.

such person and upon conviction of any violation of provisions of section 8-703, be fined in an amount not to exceed \$500.00 or be imprisoned not to exceed 180 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

(Code 1993; Code 2008, § 8-709; Ord. 744, Sec. 8)

8-710. ABATEMENT.

In addition to, or as an alternative to prosecution as provided in section 8-709, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been sent pursuant to section 8-707 has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in section 8-708, 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 10 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 8-713. 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 condition exists.
- (d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this ~~section~~ article during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such 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 property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. ¹⁹

(Code 2008, § 8-710)

8-711. DISPOSITION OF VEHICLE; RECOVERY OF VEHICLE.

¹⁹ **8-710. ABATEMENT, (d).** Revised for clarity, as in previous nuisance article, so as to not allow for 48 months before abatement may occur.

(a) Disposition of any motor vehicle removed and abated from private property pursuant to this article shall be as provided by K.S.A. Supp. 8-1102, as amended.

(b) Any person attempting to recover a motor vehicle impounded as provided in this article, shall show proof of valid registration and ownership of the motor vehicle before the motor vehicle shall be released. In addition, the person desiring the release of the motor vehicle shall pay all reasonable costs associated with the impoundment of the motor vehicle, including transportation and storage fees, prior to the release of the motor vehicle.

(Code 2008, § 8-711)

8-712. HEARING.

If a hearing is requested within the 10 day period as provided in section 8-708, 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. The hearing shall be held by the governing body or its designated representative 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 or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the matter provided in section 8-710.

(Code 1993; Code 2008, § 8-712; Ord. 744, Sec. 10)

8-713. COSTS ASSESSED.

If the city abates or removes the nuisance pursuant to section 8-710, the city shall give notice to the owner or his or her agent by personal service or 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 30 days following receipt of the notice. The city also may 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 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 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.

(Code 2008, § 8-713)

ARTICLE 8. ENVIRONMENTAL RELEASES

8-801. DEFINITIONS.

(a) Emergency Action. - Includes all exigent activities conducted in order to prevent or mitigate harm to the public health and safety and the environment from a release or threatened release of any material into or upon land, water or air.

~~(b) Person. - Includes any individual, corporation, association, partnership, firm, trustee, legal representative, or any combination thereof.~~ **20**

(c) Recoverable Expenses. - Includes those expenses of the city that are reasonable, necessary and allocable to an emergency action. Recoverable expenses shall not include normal budgeted expenditures that are incurred in the course of providing what are traditionally city services and responsibilities, such as routine firefighting protection. Expenses allowable for recovery may include, but are not limited to:

(1) Disposable materials and supplies consumed and expended specifically for the purpose of the emergency action.

(2) Compensation of employees for the time and efforts devoted specifically to the emergency action.

(3) Rental or leasing of equipment used specifically for the emergency action (e.g., protective equipment or clothing, scientific and technical equipment).

(4) Replacement costs for equipment owned by the city that is contaminated beyond reuse or repair, if the equipment was a total loss and the loss occurred during the emergency action (e.g., self-contained breathing apparatus irretrievably contaminated during the response).

(5) Decontamination of equipment contaminated during the response.

(6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the city).

(7) Other special services specifically required for the emergency action.

(8) Laboratory costs of analyzing samples taken during the emergency action.

(9) Any costs of cleanup, storage, or disposal of the released material.

(10) Costs associated with the services, supplies and equipment procured for a specific evacuation of persons or property.

(11) Medical expenses incurred as a result of response activities.

²⁰ **Legal analysis: 8-801. DEFINITIONS, (b) Person.** Delete as covered by general provisions in Chapter 1.

(12) Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this article.

(d) Release. - Means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon land, water or air, of any material.

(e) Threatened Release. - Means any imminent or impending event potentially causing but not resulting in a release, but causing the city to undertake an emergency action.
(Code 1993; Code 2008, § 8-801; Ord. 741, Sec. 1)

8-802. STRICT LIABILITY.

Any person causing or responsible for a release or threatened release resulting in an emergency action shall be strictly liable to the city for the recoverable expenses resulting from the emergency action. There shall be a rebuttable presumption that any person owning or controlling property causing a release or threatened release is responsible for such release or threatened release.

(Code 1993; Code 2008, § 8-801; Ord. 741, Sec. 2)

8-803. RECOVERY OF EXPENSES.

(a) Itemization of Recoverable Expenses. - City personnel and departments involved in an emergency action shall keep an itemized record of recoverable expenses resulting from an emergency action. Promptly after completion of an emergency action, the appropriate city department shall certify those expenses to the city clerk.

(b) Submission of Claim. - The city shall submit a written itemized claim for the total expenses incurred by the city for the emergency action to the responsible person and a written notice that unless the amounts are paid in full to the city within 30 days after the date of the mailing of the claim and notice, the city may file a civil action seeking recovery for the stated amount.

(c) Lien on Property. - The city may cause a lien in the amount of recoverable expenses to be placed on any real property located within the city owned by the person causing or responsible for the emergency action.

(d) Civil Suit. - The city may bring a civil action for recovery of the recoverable expenses against any and all persons causing or responsible for the emergency action.
(Code 1993; Code 2008, § 8-803; Ord. 741, Sec. 3)

8-804. CONFLICT; STATE LAWS.

Nothing in this article shall be construed to conflict with state or federal laws requiring persons causing or responsible for releases or threatened releases from engaging in remediation activities and/or paying the cost thereof.

(Code 1993; Code 2008, § 8-804; Ord.741, Sec. 4)

ARTICLE 9. FAIR HOUSING CODE

8-901. FAIR HOUSING.

(a) It shall be unlawful for any person to refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, real property to any person because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.

(b) It shall be unlawful for any person to discriminate against any person in the terms, conditions or privileges of sale or rental of real property, or in the provision of services or facilities in connection therewith, because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.

(c) It shall be unlawful for any person to make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status, or an intention to make any such preference, limitation, specification, or discrimination.

(d) It shall be unlawful for any person to represent to any person because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status that any real property is not available for inspection, sale or rental when such real property is in fact so available.

(e) It shall be unlawful for any person for profit, to induce or attempt to induce any person to sell or rent any real property by representative regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.

(f) It shall be unlawful for any person to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization or other service, organization or facility relating to the business of selling or renting real property, or to discriminate against him or her in the terms or conditions of such access, membership or participation, because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.

(g) It shall be unlawful for any person to discriminate against any person in his or her use or occupancy of real property because of the race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status of the people with whom such person associates.

(Code 2008, § 8-901; Ord. 756, Sec. 1; Ord. No. 1004, § 2(8-901), 10-10-2019)

8-902. SEXUAL ORIENTATION OR GENDER IDENTITY.

The provisions of Chapter 5, Article 10 of the City code (Prohibited Discrimination in Employment, Housing, or Public Accommodations as to Sexual Orientation or Gender Identity), as they relate to housing, are hereby incorporated herein by this reference.

(Ord. No. 1004, § 2(8-902), 10-10-2019)

8-903. ENFORCEMENT.

To the extent of state and federal legal processes to address allegations of discrimination based on race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status, the City may decline to accept a complaint under this article and defer to the appropriate state or federal agency in which such complaints may be filed.

(Ord. No. 1004, § 2(8-903), 10-10-2019)

8-904. DEFINITIONS.

Except to the extent they are in conflict with the definitions set forth in Chapter 5, Article 10 of the City code (Prohibited Discrimination in Employment, Housing, or Public Accommodations as to Sexual Orientation or Gender Identity), the definitions contained within the Kansas Acts Against Discrimination (K.S.A. 44-1001 et seq.), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.), and the Discrimination Against Military Personnel Act (K.S.A. 44-1125 et seq.), and amendments thereto, shall apply to this article.

(Ord. No. 1004, § 2(8-904), 10-10-2019)

ARTICLE 10. MINIMUM HOUSING CODE

8-1001. TITLE.

This article shall be known as the "Minimum Standard for Housing and Premises Code," and will be referred to herein as "this code."

(Code 2008, § 8-1001)

8-1002. GENERAL.

Buildings used in whole or in part as a home or residence of a single family or person and every building used in whole or in part as a home or residence of two or more persons or families living in separate apartments and all premises, either residential or non-residential, shall conform to the requirements of this code.

(Code 2008, § 8-1002)

8-1003. DECLARATION OF POLICY.

The governing body declares the purpose of this code is to protect, preserve, and promote the physical and mental health of the people, investigate and control communicable diseases, regulate privately and publicly-owned structures or dwellings, and all premises for the purpose of sanitation and public health, general appearance, and protect the safety of the people and promote the general welfare by legislation which shall be applicable to all dwellings, structures and premises now in existence or hereafter constructed or developed and which legislation:

- (a) Establishes minimum standards for basic equipment and facilities for light,

ventilation and heating, for safety from fire, for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance;

(b) Establishes standards concerning unsightly and blighted buildings and premises, both residential and non-residential structures.

(c) Determines the responsibilities of owners, operators and occupants.

(d) Provides for the administration and enforcement thereof.
(Code 2008, § 8-1003)

8-1004. DEFINITIONS.

The following definitions shall apply to the enforcement of this code:

(a) Basement - shall mean a portion of a building located partly underground, but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground.

(b) Cellar - shall mean a portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

(c) Dwelling - shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants: provided, that temporary housing hereinafter defined shall not be regarded as a dwelling.

(d) Dwelling Unit - shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or intended to be used for living, sleeping, cooking and eating.

(e) Habitable Dwelling - shall mean any structure or part thereof that shall be used as a home or place of abode by one or more persons.

(f) Habitable Room - shall mean a room designed to be used for living, sleeping, eating or cooking purposes, excluding bathrooms, toilet rooms, closets, halls and storage places, or other similar places, not used by persons for extended periods.

(g) Infestation - shall mean the presence, within or around a dwelling, of insects, rodents, or other pests.

(h) Multiple Dwelling - shall mean any dwelling containing more than two dwelling units.

(i) Occupant - shall mean any person, over one year of age, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.

(j) Operator - shall mean any person who has charge, care, owns, or has control of a premise or of a building or structure or part thereof, in which dwelling units or rooming units are let.

(k) Owner - shall mean any person, firm, or corporation, who jointly or severally along with others, shall be in actual possession of, or have charge, care and control of any structure or dwelling unit or premises within the city as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder, and such person shall be deemed and taken to be the owner or owner of such property within the true intent and meaning of this code and shall be bound to comply with the provisions of this article to the same extent as the record owner and notice to any such person shall be deemed and taken to be a good and sufficient notice as if such person or persons were actually the record owner or owner of such property.

~~(l) Person shall mean and include any individual, firm, corporation, association or partnership.~~ ²¹

(m) Plumbing - shall mean and include all of the following supplied facilities and equipment: gas or fuel pipes, gas or fuel burning equipment, water pipes, garbage disposal units, waste pipes, ~~water closets~~ flush toilets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents, heating, ventilation and air conditioning, and any other similar supplied fixtures, together with all connections to water, sewer, gas or fuel lines. ²²

(n) Premise - shall mean any lot or land area, either residential or non- residential, not covered by a structure and which is subject to a city tax in part or in whole.

(o) Public Officer - shall mean the Property Maintenance Official.

(p) Rooming House - shall mean any dwelling, or that part of a dwelling containing one or more rooming units in which space is let by the owner or operator to more than two (2) persons who are not husband and wife, son or daughter, mother or father, or sister or brother of the owner or operator.

(q) Rooming Unit - shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

(r) Refuse. - For the purpose of this article refuse shall include garbage, and trash.

(1) Garbage - shall mean any accumulation of animal, fruit or vegetable waste matter that attends the preparation of, use of, cooking of, delivering of, or storage of meats, fish, fowl, fruit or vegetable.

(2) Trash (Combustible). - For the purpose of this article combustible trash shall mean waste consisting of papers, cartons, boxes, barrels, wood and excelsior, tree branches, yard trimmings, wood furniture, bedding and leaves, or any other combustible materials.

²¹ **Legal analysis: 8-1004. DEFINITIONS, (l) Person.** Delete as covered by general provisions in Chapter 1.

²² **Legal analysis: 8-1004. DEFINITIONS, (m) Plumbing.** Revise to modernize language.

(3) Trash (Non-Combustible). - For the purpose of this article non- combustible trash shall mean waste consisting of metals, tin cans, glass, crockery, other mineral refuse and ashes and street rubbish and sweepings, dirt, sand, concrete scrap, or any other non-combustible material.

(s) Structure - shall mean anything constructed or erected on the ground or attached to something having a location on the ground.

(t) Supplied - shall mean paid for, furnished, or provided by or under the control of, the owner or operator.

(u) Temporary Housing - shall mean any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, house or building or another structure, or to any utilities system on the same premises for more than 30 consecutive days.

(v) Words - Meanings. - Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit," "premises," are used in this article, they shall be construed as though they were followed by the words "or any part thereof."
(Code 2008, § 8-1004)

8-1005. DUTY OF OCCUPANT OR OWNER OF OCCUPIED OR UNOCCUPIED BUILDING AND ITS PREMISES OR VACANT PREMISES.

(a) It shall be the duty of the owner of every occupied or unoccupied dwelling, building and premises or vacant premise, including all yards, lawns and courts to keep such property clean and free from any accumulation of filth, rubbish, garbage, or any similar matter as covered by sections 8-508 and 8-509.

(b) It shall be the duty of each occupant of a dwelling unit to keep in clean condition the portion of the property which he or she occupies and of which he or she has exclusive control, to comply with the rules and regulations, to place all garbage and refuse in proper containers. Where care of the premise is not the responsibility of the occupant then the owner is responsible for violations of this code applicable to the premise.

(c) If receptacles are not provided by the owner, then the occupant shall provide receptacles as may be necessary to contain all garbage and trash.

(d) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his or her dwelling unit is the unit primarily infested.

(e) Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a vermin- proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner and operator.

(f) Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units,

extermination thereof shall be the responsibility of the owner.
(Code 2008, § 8-1005)

8-1006. REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements. The following requirements are hereby declared essential to the health and safety of the occupants of such dwelling or dwelling unit:

- (a) **Basement or Cellar.** - The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation.
- (b) **Bathing Facilities.** - Every dwelling unit shall contain within a room which affords privacy to a person in the room, a bathtub or shower in good working condition and properly connected to an approved water and sewer system.
- (c) **Drainage.** - All courts, yards or other areas on the premises of any dwelling shall be so graded and drained that there is no pooling of the water thereon. Properly constructed wading and swimming pools and fish ponds are excepted from this section.
- (d) **Entrances.** (1) There shall be for each dwelling unit a normally used separate access either to a hallway, stairway, or street, which is safe and in good repair.

(2) A secondary exit to the ground shall be available in case of fire through windows, porch roofs, ladders or any combination that is free of hazard or egress.
- (e) **Floor Area.** - Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area, inside measurements. No floor space shall be included in determining habitable room area over which the ceiling is less than seven feet above the floor for the purpose of this subsection.
- (f) **Garbage and Trash Receptacles.** - Every dwelling and every dwelling unit shall be provided with such receptacles, **not exceeding 32 gallon capacity**, as may be necessary to contain all garbage and trash and such receptacles shall at all times be maintained in good repair.
- (g) **Heating.** - Every dwelling and every dwelling unit shall be so constructed, insulated, and maintained and be provided by owner or occupant with heating units so that it is capable of reaching an air temperature of 70 degrees Fahrenheit under ordinary winter conditions. The chimney of the dwelling or dwelling unit shall be maintained in good order, and the owner of the approved heating equipment shall maintain it in good order and repair.
- (h) **Kitchen Sink.** - In every dwelling unit containing two or more rooms, there shall be at least one kitchen sink with public water under pressure and connected to the public sewer, or if that sewer system is not available, to a sewage disposal system approved by

the city health department.

- (i) Lavatory Facilities. - Every dwelling unit shall contain within its walls a lavatory basin in good working condition and properly connected to an approved water and sewer system and located in the same room as the required flush ~~water-closet~~ toilet or as near to the room as practicable. ²³
- (j) Lighting. - Every habitable room shall have a ceiling electric outlet and a duplex outlet in wall or floor, or at least two wall or floor outlets.
- (k) Lighting of Toilets and Bathrooms. - Every toilet and every bathroom in every dwelling shall have at least one electric light in either the ceiling or on the wall.
- (l) Plumbing. - All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good working order.
- (m) Privies. - All pit privies, privy vaults, "dry hopper" sewer-connected privies and frost-proof closets are hereby banned. Portable toilets used for special events are not included in this provision.
- (n) Toilet Facilities. - There shall be at least one flush ~~water-closet~~ toilet in good working condition for each dwelling unit, which flush ~~water-closet~~ toilet shall be located within the dwelling and in a room which affords privacy. ²⁴
- (o) Ventilation. - Every habitable room in a dwelling or dwelling unit shall contain a window or windows openable directly to the outside air and the total area of such window or windows shall be not less than five percent of the floor area of such room. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall be capable of providing not less than four air changes per hour, except that in toilet compartments such system shall provide a complete air change every five minutes and be automatically put in operation when the toilet compartment light is in the "on" position.
- (p) Water Heating Facilities. - Every dwelling shall have supplied water heating facilities which are installed in an approved manner and are maintained and operated in a safe and good working condition and are properly connected with the hot water lines to the kitchen sink, lavatory and bathtub or shower.
- (q) Windows and Doors. - Every window and exterior door shall be reasonably weather-tight, lockable, and rodent-proof and shall be kept in good working condition and good repair.
(Code 2008, § 8-1006)

8-1007. MAINTENANCE AND REPAIR; DWELLINGS.

²³ **Legal analysis: 8-1006. REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS, (i).** Revise to modernize language.

²⁴ **Legal analysis: 8-1006. REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS, (n).** Revise to modernize language.

Every dwelling and every part thereof shall be maintained in good repair by the owner or agent and be fit for human habitation. The roof shall be maintained so as not to leak and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, porches, windows, skylights, chimneys, toilets, sinks, walls, and ceilings shall be kept in good repair and usable condition.
(Code 2008, § 8-1007)

8-1008. DESIGNATION OF UNFIT DWELLINGS.

The designation of dwellings or dwelling units as unfit for human habitation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the following requirements:

- (a) The Public Officer may determine, or five citizens may petition in writing, that any dwelling unit is unfit for human use or habitation if he, she or they find that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the neighborhood, or which shall have a blighting influence on properties in the area.
- (b) Such Conditions may include the following without limitation:
 - (1) Defects therein increasing the hazards of fire, accident, or other calamities.
 - (2) Lack of:
 - (i) Adequate ventilation.
 - (ii) Light.
 - (iii) Cleanliness.
 - (iv) Sanitary facilities.
 - (3) Dilapidation.
 - (4) Disrepair.
 - (5) Structural defects.
 - (6) Overcrowding.
 - (7) Inadequate ingress and egress.
 - (8) Unsightly appearance that constitutes a blight to the adjoining property, the neighborhood or the city.
 - (9) Air Pollution.
- (c) Placarding - Order to Vacate. Any dwelling or dwelling unit condemned as unfit for

human habitation, and so designated and placarded by the public officer shall be vacated within a reasonable time as so ordered.

(d) Notice of Violation. Procedures as outlined in section 8-1012 are applicable hereto.

(e) Compliance Required before Reoccupancy. No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the public officer.

(1) The public officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.

(2) It shall be unlawful for anyone to let, lease, occupy or permit the occupancy, whether for a consideration or not, of any dwelling so posted, and any violation of this provision shall constitute a public offense within the meaning of this code.

(3) It shall be unlawful for any person to deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except the public officer as herein provided, and any violation of this provision shall constitute a public offense within the meaning of this code.

(Code 2008, § 8-1008)

8-1009. DESIGNATION OF BLIGHTED PREMISES (RESIDENTIAL AND NON-RESIDENTIAL).

The designation of unsightly and blighted premises and elimination thereof shall be carried out in compliance with the following requirements.

(a) The Public Officer may determine, or five citizens may petition in writing, that if the appearance of a premise is not commensurate with the character of the properties in the neighborhood or otherwise constitutes a blight to the adjoining property or the neighborhood or the city for such reasons as, but not limited to:

(1) Dead trees or other unsightly natural growth.

(2) Unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation, inadequate drainage.

(3) Violation of any other law or regulations relating to the use of land and the use and occupancy of the buildings and improvements.

(b) Notice of Violation. Procedures as outlined in section 8-1012 are applicable hereto. (Code 2008, § 8-1009)

8-1010. DESIGNATION OF BLIGHTED BUILDINGS AND PREMISES (NON-RESIDENTIAL).

(a) Certain Blighted Conditions covered in sections 8-1008 and 8-1009 concerning buildings and premises which are on the tax roll of the city are applicable to all non-

residential buildings and premises.

(b) Notice of Violation. Procedures of notification shall follow those prescribed in section 8-1012.

(Code 2008, § 8-1010)

8-1011. INSPECTION OF BUILDINGS AND STRUCTURES, AND PREMISES.

(a) For the Purpose of Determining Compliance with the provisions of this code, the public officer or his or her authorized representative is hereby authorized to make inspections to determine the condition, use, and occupancy of dwellings, dwelling units, rooming units, and the premises upon which the same are located. This requirement is applicable to existing dwellings or buildings.

(b) The Public Officer is not limited by the conditions in the above paragraph (a) where new construction or vacant premises are involved and may make such inspections at any appropriate time.

(c) The Owner, Operator, and Occupant of every dwelling, dwelling unit, and rooming unit shall give the public officer, or his or her authorized representative, during reasonable hours, free access to such dwelling, dwelling unit, and rooming unit, and its premises, for the purpose of such inspection, examination and survey after identification by proper credentials.

(d) Every Occupant of a dwelling shall give the owner thereof, or his or her authorized agent or employee, access to any part of such dwelling, or its premises, at all reasonable times, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this code or with any rule or regulation adopted and promulgated, or any order issued pursuant to the provisions of this code.

(Code 2008, § 8-1011)

8-1012. NOTICE OF VIOLATIONS; PROCEDURES.

(a) Informal Discussion. Whenever the public officer or his or her authorized representative determines that there has been a violation of any provision of this code, the public officer will attempt to arrange with the alleged violator an informal discussion of violations, and whether repair and correction is justified.

(b) Formal Hearing. If a satisfactory solution to the violations, either by correction, demolition or removal, is not forthcoming, then a legal notice of a formal hearing will be issued according to the following procedures:

(1) Shall be in writing.

(2) Shall list the violations alleged to exist or to have been committed.

(3) Shall provide a reasonable time, but not less than 30 days in any event for the correction of the violations particularized.

(4) Shall be addressed to and served upon the owner of the property, the operator of

the dwelling, and the occupant of the dwelling unit or the rooming unit concerned, if the occupant is or may be responsible for violation.

(5) If one or more persons whom the notice is addressed cannot be found or served after diligent effort to do so, service may be made upon such person or persons by posting a notice in a conspicuous place in or about the dwelling affected by the notice, in which event the public officer or his or her authorized representative shall include in the record a statement as to why such posting was necessary.

(6) Delivery shall be by certified mail, return receipt requested, or by personal service. If service is made by certified mail, the public officer or his or her authorized representative shall include in the record a verified statement giving details regarding the mailing. In the event other methods of service are unavailing, service may be made by posting or publication.
(Code 2008, § 8-1012)

8-1013. PUBLIC OFFICER: AUTHORITY.

For the purpose of protecting the city against unsightly or blighted premises, ~~also~~ and to protect the health, welfare, and safety of the inhabitants of dwellings or dwelling units, the public officer referred heretofore is hereby authorized, with the consent and prior knowledge of the governing body, to enforce provisions of this code and of other laws which regulate or set standards affecting buildings and premises. ²⁵
(Code 2008, § 8-1013)

8-1014. GOVERNING BODY; AUTHORITY.

The governing body is hereby authorized:

- (a) To Informally Review all alleged violations as provided in section 8- 1012(a) prior to notification prescribed in section 8-1012(b).
- (b) To Take Action as prescribed in section 8-1012(b).
- (c) To Hear Appeals where there is opposition to any order, requirement, decision or determination by the public officer in enforcement of this code as outlined in section 8-1018.
- (d) Discretionary Authority may be exercised in specific cases where variance from the terms of the code:
 - (1) Will not adversely affect the public health, safety or welfare of inhabitants of the city;
 - (2) Is in harmony with the spirit of this code;
 - (3) Where literal enforcement of the code will result in unnecessary hardship.

²⁵ **Legal analysis: 8-1013. PUBLIC OFFICER: AUTHORITY.** Revise for clarity.

(Code 2008, § 8-1014)

8-1015. ORDER TO CORRECT AND/OR REPAIR, REMOVE OR DEMOLISH.

At the time of the placarding and order to vacate specified by section 8-1008(c) hereof, the public officer shall also issue and cause to be served upon the owner a notice advising of the option of removal or demolition in lieu of correction and/or repair following the procedures as outlined in section 8-1012.

(Code 2008, § 8-1015)

8-1016. DEMOLITION BY PUBLIC OFFICER; PROCEDURE AND COSTS.

(a) Failure to Comply with the order under section 8-1015 hereof for the alteration or improvement of such structure, the public officer, with the consent and prior knowledge of the governing body, may cause such condemned structure to be removed or demolished and the premises improved to eliminate the conditions outlined in section 8-1009 of the code.

(b) The Cost of Demolition by a Public Officer shall be a lien upon the property upon which the cost was incurred and such lien, including as a part thereof an allowance of his or her costs and necessary attorney's fees, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property or shall be assessed as a special assessment upon the lot or parcel of land on which the structure was located and the city clerk at the time of certifying other city taxes, shall certify the unpaid portion of the aforesaid costs and the county clerk shall extend the same on the tax rolls against the lot or parcel of land.

(c) If the Structure is Removed or Demolished by the Public Officer he or she shall offer for bids and sell the structure or the materials of such structure. The proceeds of such sale shall be credited against the cost of the removal or demolition and, if there is any balance remaining, it shall be paid to the parties entitled thereto after deduction of costs or judicial proceedings, if any, including the necessary attorney's fees incurred therein, as determined by the court, if involved.

(Code 2008, § 8-1016)

8-1017. CONFLICT OF LAWS; EFFECT OR PARTIAL INVALIDITY. ²⁶

(a) Conflicts between the provisions of this code with a provision of any zoning, building, fire, safety, or health ordinance or code of the city, existing on the effective date of this article, the provision shall prevail which establishes the higher standard.

(b) Conflicts between this article with a provision of any other ordinance or code of the city existing on the effective date of this article which establishes a lower standard, the provisions of this article shall be deemed to prevail and such other laws or codes are hereby declared to be repealed to the extent that they may be found in conflict with this code.

²⁶ **Legal analysis: 8-1017. CONFLICT OF LAWS; EFFECT OR PARTIAL INVALIDITY.** Revise to include original effective date, or otherwise update for clarity.

(Code 2008, § 8-1017)

8-1018. GOVERNING BODY; APPEALS.

(a) Any person, firm, or corporation considering themselves aggrieved by the decision of the public officer and who desires to present a formal protest to the governing body shall in writing, request a hearing before the governing body within 10 days after receiving notice of the decision from the public officer, as provided in section 8-1012(b). Such protest and request for a hearing shall be filed with the office of the city clerk.

(b) Upon receipt of a protest and request for a hearing, the city clerk shall notify in writing the governing body of such appeal.

(c) The governing body shall, within 30 days of receipt of protest and request for a hearing, determine a date for the hearing.

(d) Notice of the date for the hearing shall be sent to the appellant at least 10 days before the hearing.

(e) Except where an immediate hazard exists as described in section 8- 1012 of this code, the filing of a protest and request for a hearing before the governing body as specified in subsection (a) shall operate as a stay of the enforcement of the public officer's order until such time as the governing body has reached a decision on the matter.

(Code 2008, § 8-1018)

8-1019. RIGHT OF PETITION.

After exhausting the remedy provided in section 8- 1018, any person aggrieved by an order issued by the public officer and approved by the governing body after a hearing on the matter, may within 30 days from the date which the order became final petition the district court of the county in which the property is located to restrain the public officer from carrying out the provisions of the order.

(Code 2008, § 8-1019)

ARTICLE 11. DANGEROUS AND UNFIT STRUCTURES

8-1101. PURPOSE.

The governing body has found that there may exist within the corporate limits of the city structures which are unfit for human use or habitation because of dilapidation, defects increasing the hazards of fire or accidents, structural defects or other conditions which render such structures unsafe, unsanitary or otherwise inimical to the general welfare of the city, or conditions which provide a general blight upon the neighborhood or surrounding properties. It is hereby deemed necessary by the governing body to require or cause the repair, closing or demolition or removal of such structures as provided in this article.

(Code 1993, 4-301; Code 2008, § 8-1101)

(K.S.A. 12-1751)

8-1102. DEFINITIONS.

For the purpose of this article, the following words and terms shall have the following meanings:

- (a) Enforcing officer - means the city building official or his or her authorized representative.
- (b) Structure - shall include any building, wall, superstructure or other structure which requires location on the ground, or is attached to something having a location on the ground.
(Code 1993, 4-302)
(K.S.A. 12-1750)

8-1103. ENFORCING OFFICER; DUTIES.

The enforcing officer is hereby authorized to exercise such powers as may be necessary to carry out the purposes of this article, including the following:

- (a) Inspect any structure which appears to be unsafe, dangerous or unfit for human habitation;
- (b) Have authority to enter upon premises at reasonable hours for the purpose of making such inspections. Entry shall be made so as to cause the least possible inconvenience to any person in possession of the structure. If entry is denied, the enforcing officer may seek an order for this purpose from a court of competent jurisdiction;
- (c) Report all structures which he or she believes to be dangerous, unsafe or unfit for human habitation to **the governing body**;
- (d) Receive petitions as provided in this article.
(Code 1993, 4-303; Code 2008, § 8-1103)

8-1104. PROCEDURE; PETITION.

Whenever a petition is filed with the enforcing officer by at least five residents charging that any structure is dangerous, unsafe or unfit for human habitation, or whenever it appears to the enforcing officer on his or her own motion that any structure is dangerous, unsafe or unfit for human habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, report such findings to the **governing body**.
(Code 1993, 4-304; Code 2008, § 8-1104)

8-1105. SAME; NOTICE.

The governing body upon receiving a report as provided in this chapter, shall by resolution fix a time and place at which the owner, the owner's agent, any lien holder of records and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished.
(Code 1993, 4-305; Code 2008, § 8-1105)
(K.S.A. 12-1752)

8-1106. SAME; PUBLICATION.

(a) The resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing.

(b) A copy of the resolution shall be mailed by certified mail within three days after its first publication to each owner, agent, lien holder and occupant at the last known place of residence and shall be marked "deliver to addressee only."

(Code 1993, 4-306; Code 2008, § 8-1106)

(K.S.A. 12-1752)

8-1107. SAME; HEARING, ORDER.

(a) If, after notice and hearing, the governing body determines that the structure under consideration is dangerous, unsafe or unfit for human use or habitation, it shall state in writing its findings of fact in support of such determination and shall cause the resolution to be published once in the official city newspaper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be razed and removed.

(b) If the repair, alteration, or improvement of the structure can be made at a cost which shall not exceed 50 percent of the fair market value of the structure, the owner of the property shall, within the time specified in the order, repair, alter or improve the structure to render it safe and fit for use or human habitation, or shall vacate and close the structure until such time as he has complied with the order.

(c) If the repair, alteration or improvement of the structure cannot be made at a cost of 50 percent or less of its fair market value, the owner shall, within the time specified in the order, remove or demolish the structure.

(Code 1993, 4-307; Code 2008, § 8-1107)

8-1108. DUTY OF OWNER.

Whenever any structure within the city shall be found to be dangerous, unsafe or unfit for human use or habitation, it shall be the duty and obligation of the owner of the property to render the same secure and safe or to remove the same.

(Code 1993, 4-308; Code 2008, § 8-1108)

8-1109. SAME; FAILURE TO COMPLY.

(a) If, within the time specified in the order, the owner fails to comply with the order to repair, alter, improve or vacate the structure, the enforcing officer may cause the structure to be repaired, altered, improved, or to be vacated and closed.

(b) If, within the time specified in the order, the owner fails to comply with the order to remove or demolish the structure, the enforcing officer may cause the structure to be removed and demolished.

(Code 1993, 4-309; Code 2008, § 8-1109)

8-1110. SAME; MAKE SITE SAFE.

Upon removal of any structure, the owner shall fill any basement or other excavation located upon the premises and take any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the enforcing officer may proceed to make the site safe.

(Code 1993, 4-310; Code 2008, § 8-1110)

8-1111. ASSESSMENT OF COSTS.

(a) The cost to the city of any repairs, alterations, improvements, vacating, removal or demolition by the enforcing officer, including making the site safe, shall be reported to the city clerk.

(b) The city shall give notice to the owner of the structure by restricted mail of the cost of removing the structure and making the premises safe and secure. The notice shall also state that payment of the cost is due and payable within 30 days following receipt of the notice.

(c) If the costs remain unpaid after 30 days following receipt of notice, the city clerk may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the site safe. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the premises upon which the structure was located.

(d) If the proceeds of the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901—3910 and amendments thereto, are insufficient to recover the above stated costs, or if there is no salvage, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments against the lot or parcel of land on which the structure 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 who 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.

(e) If there is no salvage material, or if the monies received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901—3910 and amendments thereto, are insufficient to pay the costs of the work and the costs of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants.

(Code 2008, § 8-1111)

(K.S.A. 12-1755)

8-1112. IMMEDIATE HAZARD.

When in the opinion of the governing body any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, the governing body may direct the enforcing officer to erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay. Such action may be taken without prior notice to or hearing of the owners, agents, lien holders and occupants. The cost of any action under this section shall be assessed against the property as provided in section 4-611.

(Code 1993, 4-312; Code 2008, § 8-1112)

(K.S.A. 12-1756)

8-1113. APPEALS FROM ORDER.

Any person affected by an order issued by the governing body under this article may, within 30 days following service of the order, petition the district court of the county in which the structure is located for an injunction restraining the enforcing officer from carrying out the provisions of the order pending final disposition of the case.

(Code 1993, 4-313; Code 2008, § 8-1113)

8-1114. SCOPE OF ARTICLE.

Nothing in this article 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 charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this article shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise or to exercise those powers granted specifically by K.S.A. 12-1750 through 12-1756.

(Code 1993, 4-314; Code 2008, § 8-1114)

ARTICLE 12. MINIMUM PROPERTY PRESERVATION CODE

8-1201. PURPOSE.

The general purpose of this article is to protect the public health, safety and the general welfare of the people of the City. These general objectives include, among others, the following specific purposes:

- (a) To protect the character and stability of residential and commercial areas within the City by legislation which shall be applicable to all dwellings and buildings now in existence or here after constructed.
- (b) To provide minimum standards for the maintenance of EXTERIORS OF ALL existing

buildings, and to thus prevent the creation of blight. **27**

(c) To provide minimum standards for the maintenance of the interiors of all rented or leased dwelling units.

(d) To preserve the property value of land and buildings throughout the City.

(e) To provide determinable minimum maintenance standards for dwellings and non-residential structures and to thus facilitate private enforcement of legal rights and remedies.

(f) To provide mechanisms for the enforcement and administration of the code to ensure that the above purposes are accomplished.

(Code 2008, § 8-1201; Ord. 792, Sec. 4-40)

8-1202. DEFINITIONS.

For the purpose of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:

(a) Accessory Structure - A subordinate structure located on the same lot as the main structure, or a portion of the main structure the use of which is clearly incidental to, and customarily found in connection with, the main structure or principal use of the land.

(b) Building - Any structure used or intended for supporting or sheltering any use or occupancy.

(c) Commercial Area - Any area, whether or not zoned in a non-residential zone, which is occupied primarily by such non-residential uses as retail, office, warehouse, wholesaling, or manufacturing businesses.

(d) Building Code - The building code of the city of Westwood currently in use.

(e) Deterioration - The condition of a building or part thereof, characterized by evidence of physical decay or neglect, excessive use, or lack of maintenance.

(f) Dwelling - Any building or portion thereof containing one (1) or more dwelling units, but not including motels, hotels, rooming or boarding houses, institutions, or convalescent or nursing homes.

(g) Dwelling Unit - A building or portion of a building which is exclusively arranged, occupied, or intended to be occupied as living quarters for one family; a separate, independent living quarter consisting of one or more connected rooms with Permanently installed bathroom and kitchen facilities.

(h) Enforcement Official - The official designated herein or otherwise charged with the

27 Legal analysis: 8-1201. PURPOSE, (b). Please confirm that the phrase "exteriors of all" is intended to remain in all caps.

responsibilities of administering this article or his authorized representatives.

(i) Exterior Appurtenance - Objects which are added to a structure for aesthetic or functional purposes. These include but are not limited to screens, awnings, trellises, television antennae, storm windows and storm doors.

(j) Extermination - The control and elimination of insects, rodents or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the enforcement officials of this City.

(k) Family - Any number of people occupying a single dwelling unit living together as a single housekeeping unit, related by blood, marriage or formal adoption plus not more than two (2) additional people not so related, except that foster children shall be considered as formally adopted. A family may also include up to but not more than three (3) unrelated people. In excess of three (3) unrelated people living together shall not be considered a family. However, nothing herein shall preclude or prohibit any living arrangement otherwise protected by or provided for by state or federal law.

(l) Fence - An independent structure forming a barrier at grade between lots, between a lot and street or an alley, or between portions of a lot or lots. A barrier includes a wall or latticework screen but excludes a hedge or natural growth, or a barrier less than eighteen (18) inches in height which is used to protect plant growth.

(m) Garbage - Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

(n) Gutter - A trough attached to an eave to carry off water.

(o) Habitable Building - Any structure OR part thereof that shall be used as a home or place of abode by one (1) or more persons.

(p) Habitable Room - Every room in any building in which persons sleep, eat or carry on their usual domestic or social vocations or avocations. It shall not include private laundries, bathrooms, toilet rooms, water closet compartments, pantries, storerooms, foyers, closets, corridors, rooms for mechanical equipment for services in the building, or other similar spaces not used by persons frequently or during extended periods.

(q) Harborage Places for Insects, Pests or Rodents - Any place where insects, pests or rodents can live, nest or seek shelter.

(r) Interior Maintenance Standards - Standards of maintenance of the inside elements and occupancy of rented or leased dwelling units only where the owner does not reside.

(s) Minimum Standards - The least quality admissible by this article.

(t) Multiple-family Dwelling - A building or portion thereof designed or altered for occupancy by two (2) or more families living independently of each other in separate dwelling units.

(u) Occupant - Any person living and sleeping in a dwelling unit or having actual possession of said dwelling or rooming unit.

(v) Openable Area - That part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

(w) Operator - Any person who has charge, care or control of a building, or part thereof, which is let or offered for occupancy.

(y) Owner - Any person who, alone, jointly or severally with others, is in actual possession of, or has charge, care or control of, any building, dwelling or dwelling unit within the City as owner, employee or agent of the owner, or as trustee or guardian of the estate or person of the title holder; and such person shall be bound to comply with the provisions of this article to the same extent as the owner.

(z) Person - A corporation, firm, partnership, association, organization and any other group acting as a unit as well as any individual. It shall also include an executor, administrator, trustee, receiver or other representative appointed according to law. Whenever the word "person" is used in any section of this article prescribing a penalty or fine, as to Partnerships or associations, the word shall include the partners or members thereof, and as to corporations shall include the officers, agents or members thereof who are responsible for any violation of such section.

(aa) Premises - A lot, plot or parcel of land or any part thereof, including the buildings or structures thereon.

(bb) Provided - Any material furnished, supplied, paid for or under the control of the owner.

(cc) Public Hall - A hall, corridor or passageway for egress from a dwelling not within the exclusive control of one (1) family or dwelling unit.

(dd) Public Nuisance - Includes the following:

(1) The physical condition or use of any premises regarded as a public nuisance at common law or by other provisions in the Westwood Municipal Code; or

(2) Any physical condition, use or occupancy of any premises or its appurtenances, considered an attractive nuisance to children, including but not limited to abandoned wells, swimming pools, shafts, basements, excavations, unsafe fences or structures, etc., or

(3) Any premises designated as unsafe for human habitation or use; or

(4) Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or un-secure as to endanger life, limb or property; or

(5) Any premises which are unsanitary, or which are littered with rubbish or garbage, or which have an uncontrolled growth of weeds; or

(6) Any structure or building that is in a state of dilapidation, deterioration or decay; faulty construction; open, vacant or abandoned; damaged by fire to the extent as to not provide shelter, in danger of collapse or failure and is dangerous to anyone on or near the premises.

(ee) Repair - To restore to a sound and acceptable state of operation, serviceability. Repairs shall be expected to last approximately as long as would be the replacement by new items.

(ff) Replace - To remove an existing item or portion of a system and to construct or install a new item of similar or improved quality as the existing item when new. Replacement will ordinarily take place when the item is beyond repair.

(gg) Rubbish - Non-putrescible solid wastes consisting of both combustible and noncombustible wastes.

(hh) Smoke Detector - A device which detects visible or invisible particles of combustion and shall be either the ionization chamber or the photoelectric type device.

(ii) Structure - Anything constructed or erected with a fixed location on the ground, or attached to something with a fixed location on the ground. Structures include, but are not limited to buildings, walls, fences, poster panels, above ground storage tanks, and similar uses. Excluded are sidewalks, pavement and public improvements such as utility poles, street light fixtures, and street signs.

(jj) Substandard - All structures which do not conform to the minimum standards established by this article or any other ordinance.

(kk) Supplied - Paid for, installed, furnished or provided by or under the control of the owner operator.

(ll) Workmanlike - Whenever the words "workmanlike state of maintenance and repair" or "workmanlike state of manner" are used in this code, they shall mean that such maintenance and repair shall be made in a reasonably skillful manner.

(mm) Yard - An open space at grade on the same lot(s) as a building or structure located between the main building and the adjoining lot line and/or street line. The measurement of a yard shall be the minimum horizontal distance between the lot line and the building or structure.

(Code 2008, § 8-1202; Ord. 792, Sec. 4-40.1)

8-1203. APPLICABILITY.

Every building or premises shall conform to the requirements of this article, irrespective of when such building or premises shall have been constructed altered or repaired. But nothing in this article shall be construed to require existing buildings or premises to comply with the requirements of the current building code, electrical code, plumbing code, or mechanical code; provided, however, that, after the effective date of the ordinance from which this article was derived, repairing, reconditioning or remodeling of existing

buildings shall be completed as required by this article. **28**

(a) Landlord-Tenant Relations. - Nothing in this ordinance or its enforcement shall be construed in any way to affect landlord-tenant relations nor shall relieve the tenant of any express or implied contractual obligations with the landlord. Further, should the enforcement official order the maintenance or repair of an element of a structure, the property owner shall not remove said element unless the enforcement official has first determined that the removal of said element would not increase the rate of deterioration of said structure.

(Code 2008, § 8-1203; Ord. 792, Sec. 4-40.2)

8-1204. INTERPRETATION.

(a) Scope - This article establishes minimum standards for principal buildings and accessory buildings and does not replace or modify standards otherwise established for the construction, replacement or repair of buildings except such as are in conflict with the provisions of this article. In any case where a provision of this article is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the City existing on the effective date of this article, the provision which establishes the higher standard for the promotion and protection of the safety and health of the people shall prevail. It is not the intention of this article to require reconstruction or replacement of existing facilities or structures in sound condition of repair in order to meet specific requirements of any of the above-mentioned codes unless there is an existing or probable health or safety hazard to the occupants or any residents of the City. **29**

~~(b) Severability - If any section, subsection, paragraph, sentence, clause or phrase of this article should be declared invalid for any reason whatsoever, such decisions shall not affect the remaining portions of this article, which shall remain in full force and effect. **30**~~
(Code 2008, § 8-1204; Ord. 792, Sec. 4-40.3)

8-1205. MINIMUM STANDARDS FOR EXTERIORS OF ALL BUILDINGS.

(a) Applicability - It shall be unlawful for any person to occupy as owner- occupant or to let or hold out to another for occupancy any building for the purpose of carrying on a business, living, sleeping, cooking or eating which is not safe, sanitary and fit for human occupancy and which does not comply with the particular requirements of the following paragraphs of this section.

(b) Foundation, Exterior Walls and Roofs - The foundation, exterior walls and roof shall be substantially watertight and weather-tight as can be determined from a ground level inspection, and protected against rodents, and shall be kept in sound condition and repair. The foundation elements shall adequately support the building at all points. Every exterior wall shall be maintained in a sound condition of repair and shall be free of any other

²⁸ **Legal analysis: 8-1203. APPLICABILITY.** For language regarding effective date of ordinance, either remove as no longer needed, or provide ordinance date to include in this provision.

²⁹ **Legal analysis: 8-1204. INTERPRETATION, (a) Scope.** Again, include date of ordinance or revise language to clarify.

³⁰ **Legal analysis: 8-1204. INTERPRETATION, (b) Severability.** Delete as covered by general provisions in Chapter 1.

condition which admits rain or excessive dampness to the interior portions of the building. All exterior surface materials must be treated, painted in a workmanlike manner, or otherwise maintained in a sound condition. Peeling paint, damaged or deteriorating exterior surfaces shall be repaired as soon as Possible. Building debris and excess paint shall be removed within thirty (30) days from initiating any construction or painting. Any person requiring additional time to conclude construction or painting may make application to the Property Maintenance Officer for an extension of time. Roofs shall be adequate to prevent rainwater from causing excessive dampness in the walls. All cornices, rustications, quoins, moldings belt courses, lintels, sills, oriel windows, pediments, gutters and similar projections shall be kept in good repair and free from defects which make them hazardous and dangerous.

(c) Windows, Doors, and Hatchways - Every window, door and basement hatchway shall be kept in sound condition and repair. Every window shall be fully supplied with window panes which are without dangerous cracks or holes. Every window sash shall be in good condition and fit reasonably tight within its frame. Every window, other than a fixed window, shall be capable of being easily opened and shall be held in position by window hardware and shall be equipped with window screens. Every door, door hinge and door latch shall be in functional condition. Knobs and/or handles shall be properly installed on all doors. Every door, when closed, shall fit reasonably well within its frame. All sliding doors shall have guides to prevent falling out of track. Every window, exterior door guides and frames shall be constricted and maintained in such relation to the adjacent wall construction as to completely exclude rain and excessive dampness substantially to exclude wind from entering the dwelling. Every basement hatchway and window shall be so constructed, screened or maintained as to prevent the entrance of rodents, insects, rain and surface drainage water into the building.

(d) **Exterior Appurtenances** - Exterior appurtenances, including but not limited to screens, awnings, trellises, television antennae, chimneys, storm windows, gutters, eaves, storm doors, fences, and retaining walls shall be installed in a safe and secure manner, and shall be maintained in good repair and must meet the requirements of all other portions of the City's code.

(e) Stairways and Porches. - Every stairway outside of the building or dwelling and every porch shall be kept in safe condition and sound repair. Every flight of stairs and every porch floor shall be free of deterioration. Every stairwell and every flight of stairs which is four (4) or more risers high and every porch which is four (4) or more risers high shall have handrails or railings located on one

(1) side of same. Every rail and balustrade shall be firmly fastened and maintained in good condition. No flight of stairs shall have settled or have pulled away from supporting or adjacent structures so as to create a safety hazard. No flight of stairs shall have rotting, loose or deteriorating supports. The treads and risers of every flight of stairs shall be uniform in width and height. Every porch shall have a sound floor. No porch shall have rotting, loose or deteriorating supports.

(f) Driveways, Sidewalks, and Patios - Driveways, sidewalks and patios shall be maintained in good repair and free of safety hazards. Cracks in concrete or asphalt surfaces causing a vertical off-set in excess of one inch shall be repaired or replaced so as to prevent accident or injury. All driveways, sidewalks, and patios shall be made of

concrete, asphalt, brick or other dust-free, hard surface.

(g) Yards - All areas which are not covered by lawn or vegetation shall be treated to prevent dust or the blowing or scattering of dust particles into the air. All trees, bushes or vegetation located on private property which overhang a public thoroughfare shall be properly trimmed to a minimum under clearance of eight feet over sidewalks or **twelve** feet over streets to avoid obstruction of the view and movement of vehicles and pedestrians. Hazardous trees and shrubs shall be promptly removed or trimmed to remove the hazard. All dead and diseased trees and shrubs shall be promptly removed. As part of the removal of any growth or vegetation all stumps shall be removed or ground to at least six inches below grade.

(h) Infestation - Each building and dwelling and all exterior appurtenances on the premises shall be adequately protected against insects, rats, mice, entrance of insects, rats, mice, termites and other infestation. Building defects which permit the entrance of insects, rats, mice, termites and other infestation shall be corrected by the owner.

(i) Plantings - No tree shall be planted less than three feet from any foundation or building line. No bush or shrub shall be planted or permitted to grow in such a fashion that it shall touch or come in contact with any building or part thereof. Further, no tree shall be permitted to grow along fence lines. However, any tree having a height of over five feet as of the date of enactment of this ordinance which has been planted within three feet from any foundation or building line shall be permitted to remain, but upon removal of the tree for any reason, no replanting may take place except in conformity with this article. **31**

(j) Address Numbers - Each building shall display approved address numbers in a position to be clearly visible from the street. Numbers shall be a minimum of four (4) inches high.

(Code 2008, § 8-1205; Ord. 792, Sec. 4-41)

8-1206. MINIMUM STANDARDS FOR INTERIORS OF RENTED OR LEASED DWELLING UNITS.

(a) Applicability - It shall be unlawful, in addition to the Preceding section, for any person to rent, lease, or hold out to another for occupancy for the purpose of living, sleeping cooking or eating any dwelling unit which is not safe, sanitary and fit for human occupancy and which does not comply with the particular requirements of the following paragraphs of this Section.

(b) Interior Cellars, etc., to be Maintained Free From Dampness. - In every rented or leased dwelling unit, cellars, basements and crawl spaces shall be maintained reasonably free from dampness to prevent conditions conducive to decay or deterioration of the structure.

(c) Interior Structural Members. - The supporting structural members of every rented

³¹ **Legal analysis: 8-1205. MINIMUM STANDARDS FOR EXTERIORS OF ALL BUILDINGS, (i).** Revise to include ordinance date, or otherwise update language.

or leased dwelling unit shall be maintained structurally sound, showing no evidence of deterioration which would render them incapable of carrying the imposed loads in accordance with the provisions of the building code.

(d) Interior Stairs - All interior stairs of every rented or leased dwelling unit shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or are broken, warped or loose. Every inside stair shall be so constructed and maintained as to be safe to use and capable of supporting a load as required by the provisions of the building code.

(e) Interior Handrails - Every inside staircase or stairway in a rented or leased dwelling unit consisting of five (5) or more steps shall be equipped with a handrail which shall be kept in sound conditions and good repair.

(f) Bathroom and Kitchen Floors - Every toilet, bathroom and kitchen floor surface in a rented or leased dwelling unit shall be constructed and maintained with a material approved for the location and maintained so as to permit such floor to be easily kept in a clean and sanitary condition.

(g) Interior Sanitation - The interior of every rented or leased dwelling or dwelling unit shall be maintained in a clean and sanitary condition free from any accumulation of rubbish or garbage as specified in this division. Trash, garbage and other refuse shall be property kept inside temporary storage facilities as required in the Code of the City of Westwood.

(h) Interior Insect and Rodent Harborage - Rented or leased dwellings or dwelling units shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health, as specified in this division. After extermination, property precautions shall be taken to prevent re-infestations.

(i) Interior Walls, Ceilings and Floors. - Every rented or leased dwelling or dwelling unit floor, interior wall and ceiling shall be kept in sound condition and good repair; and constructed of a building material recognized for that purpose.

(j) Interior Sanitary Facilities - The following minimum sanitary facilities in all rented or leased dwelling units shall be supplied and maintained in sanitary, safe working condition:

(1) Toilet - Every dwelling unit, except, as otherwise permitted by subsection (3) of this section shall contain a room, separate from the other habitable rooms of the dwelling unit, which affords privacy to a person within such room, and which is equipped with a flush toilet and a lavatory basin: Provided that, such lavatory basin may be located outside such room if it is convenient to such room.

(2) Bathtub or Shower - Every dwelling unit, except as otherwise permitted by subsection (3) of this section shall contain a room; separate from the other habitable rooms of the dwelling unit, which affords privacy to a person within such room and which is equipped with a bathtub or shower.

(3) Shared Toilet, Lavatory Basin, Bathtub, or Shower - The occupants of two (2)

dwelling units in the same dwelling may share a single flush toilet, a single lavatory basin and a single bathtub or shower if:

(i) Neither of the two (2) dwelling units contains more than three (3) rooms: Provided that, for the purposes of this subsection, a kitchenette or an efficiency kitchen with not more than sixty (6) square feet of floor area shall not be counted as a room: and that ³²

(ii) The habitable area of each such dwelling unit shall equal not more than three hundred fifty (350) square feet of floor area: and that

(iii) Such flush toilet, lavatory basin, and bathtub or shower is located so that the occupants of neither dwelling unit are required to pass through any rooms of the other dwelling unit to reach the facilities: and that

(iv) Such dwelling units are in the same dwelling and are arranged so that the occupants of neither dwelling unit are required to go out of doors to reach the facilities.

(4) Kitchen Sink - Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to an approved water and sewer system.

(5) Stove and Refrigerator - Every dwelling unit shall contain proper and safe connections for the installation of a stove and refrigerator.

(6) Shelf and Storage Space for Food - Every room which is used partially or exclusively for cooking shall contain adequate shelf and storage space for the preparation and storage of food.

(k) Interior Water and Sewer System - Every kitchen sink, lavatory basin, bathtub or shower and toilet required under the provisions of this Article shall be properly connected to either a public water and sewer system. All sinks, lavatories, bathtubs and showers shall be supplied with hot and cold running water. ³³

(l) Interior Water Heating Facilities - Every rented or leased dwelling unit shall be supplied with water heating facilities which are installed in an approved manner, properly maintained, and properly connected with hot water lines to the fixtures required to be supplied with hot water under the provisions of this Article. Water heating facilities shall be capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub, shower, and laundry facility or other similar units, at a temperature of not less than one hundred thirty (130) degrees Fahrenheit at any time needed.

(m) Interior Heating Facilities - Every rented or leased dwelling unit shall be served with

³² **Legal analysis: 8-1206. MINIMUM STANDARDS FOR INTERIORS OF RENTED OR LEASED DWELLING UNITS, (j)(3)(i).** Please confirm that the intended square footage was to be sixty and not six. Revise accordingly.

³³ **Legal analysis: 8-1206. MINIMUM STANDARDS FOR INTERIORS OF RENTED OR LEASED DWELLING UNITS, (k).** There appears to be some missing language after the phrase "...to either a public water and sewer system." Please advise and revise accordingly.

heating facilities which are installed in an approved manner, are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms; bathrooms, and toilet rooms located therein to a temperature of at least seventy (70) degrees Fahrenheit at a distance of three (3) feet above floor level; under ordinary winter conditions.

- (n) Interior Trash Storage Facilities - Every rented or leased dwelling unit shall have adequate trash storage facilities whose type and location are in accordance with § 8-501 et seq. of the Code of the City of Westwood.
- (o) Interior Garbage Storage or Disposal Facilities - Every rented or leased dwelling or dwelling unit shall be supplied with a garbage disposal facility which meets the city standards, which may be any adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit for the use of the occupants of each dwelling unit, or an approved garbage can or cans or approved garbage bags.
- (p) Interior Functioning, and Maintenance of Facilities and Equipment - Every supplied facility, piece of equipment or utility which is required under this Article shall be so constructed and installed that it will function safely and effectively and shall be maintained in satisfactory working condition.
- (q) Interior Plumbing Systems and Fixtures - In rented or leased dwelling units, water lines, plumbing fixtures, vents, drains, plumbing stack and waste and sewer lines shall be properly installed, connected and maintained in working order and shall be kept free from obstructions, leaks, and defects and capable of performing the function for which they are designed. All repairs and installations shall be made in accordance with the provisions of the Building Code or Plumbing Code of the City.
- (r) Interior Heating Equipment - Every heating, cooking, and water heating device located in a rented or leased dwelling unit shall be properly installed, connected and maintained, and shall be capable of performing the function for which it was designed in accordance with the provisions of the Building Code.
- (s) Interior Ceiling Heights - Minimum - At least one-half of the floor area of each habitable room of each rented or leased dwelling unit shall have a ceiling heights of seven (7) feet or more; and the floor area of that part of any room where the ceiling height is five (5) feet or less, shall not be deemed as part of the floor area in computing the total area of that room for the purposes of this article.
- (t) Interior Ceiling Heights - Public Halls and Stairways - Every public hall or stairway shall have a minimum vertical clearance of six (6) feet eight (8) inches at all places; provided that the enforcement officer may waive this requirement if the construction of the dwelling is such as to make this requirement impractical. Where a waiver is granted the owner or operator shall post a written warning of low clearance which shall be easily visible, and which shall be approved by the enforcement officer.
- (u) Interior Required Space in Dwelling Units - Every rented or leased dwelling unit shall contain one hundred fifty (150) square feet or more, of floor space for the first occupant thereof and at least one hundred (100) square feet of additional floor space for each additional occupant thereof. The floor space shall be calculated on the basis of total

habitable room area. Provided that, an infant under the age of twelve (12) months shall not be deemed an occupant for the purposes of this Section. This Section is not applicable to rooming houses.

(v) Interior Occupancy of Dwelling Units Below Grade - No rented or leased dwelling unit Partially below grade shall be used for living purposes unless: Floors and walls are watertight; total window area, total openable area, and ceiling height are in accordance with this article, provided that, this provision can be waived by the enforcement officer; required minimum window area of every habitable room is entirely above the grade of the ground adjoining such window area, Provided this provisions can be waived by the enforcement officer; and no basement or cellar, or part thereof, shall be used or leased for human occupancy or habitation if subject to flooding. For the purposes of this Article, a basement or cellar shall be deemed to be subject to flooding if at any time there has been more than one-inch of water over the floor, and if the condition or conditions which caused the flooding to occur have not be subsequently corrected.

(w) Interior Natural Light in Habitable Rooms in Rented or Leased Dwelling Units - (1) Every habitable room shall have at least one window of approved size facing directly to the outdoors or to a court or other methods and devices that will provide the equivalent minimum performance requirements

(2) The minimum total window area, measured between stops, for every habitable room shall be eight (8) percent of the floor area of such room. In a basement or cellar a three (3) square foot window area shall be deemed sufficient. Whenever walls or other portions of a structure face a window of any room and such obstructions are located less than three (3) feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a court, and shall not be included as contributing to the required minimum total window area for the room.

(3) In the application of this Article the standard for light for all habitable rooms shall be based on two hundred fifty (250) foot candles of illumination on the vertical plan adjacent to the exterior of the light transmitting device and shall be adequate to provide an average illumination of six (5) foot candles over the area of the room at a height of thirty (30) inches above the floor level.

(x) Interior Light in Non-habitable work Space - Every laundry, furnace room, and all similar non-habitable work spaces located in a rented or leased dwelling unit shall have one supplied electric light fixture available at all times.

(y) Interior Light in Common Halls and Stairways - Every inside stairway in every rented or leased dwelling, other than one-family and two-family dwellings shall be adequately lighted at all times with an illumination of at least five (5) candlepower per square foot in the darkest portion of the normally traveled stairs and passageways.

(z) Every rented or leased dwelling shall be serviced by electricity. Further, every electrical outlet and fixture, and all electrical wiring required by this Section shall be properly installed, maintained in good and safe working condition, and shall be connected to the source of electricity in a safe manner. Every electrical outlet and fixture shall be installed, maintained and connected to the source of electric power in accordance with the

provisions of the building code or electrical code of the city. For the purposes of this Section, a two (2) plug electric convenience outlet shall be deemed to be a single outlet. Every dwelling, unless otherwise specified, shall be electrically equipped as follows:

- (1) Every habitable room shall contain two (2) or more wall-type electric convenience outlets or one or more wall-type electric convenience outlets and one (1) electric ceiling or wall light fixture.
- (2) Every toilet room, bathroom, laundry room, and furnace room shall contain one or more ceiling or wall-type electric light fixtures.
- (3) Every public hall, public stairway, basement and porch in an apartment house shall contain sufficient ceiling or wall-type electric light fixtures to comply with the Code of the City of Westwood.
- (4) A separate electrical circuit shall be required as set forth in the building and electrical codes and requirements of the City of Westwood for every eight (8) electrical convenience outlets for alterations, repairs and additions.
- (5) In dwellings utilizing electric heat and/or an electric cooling unit in which the source of heat is wholly or partially operated by a centrally located electrical unit, a separate electrical circuit will be required for each device.
- (6) All electrical wiring shall be according to the codes of the City of Westwood.
 - (aa) Correction of Interior Defective Electric System - Where it is found, in the opinion of the enforcement officer, that the electrical system in a rented or leased dwelling constitutes a hazard to the occupants of the building by reason of inadequate service, improper fusing, insufficient outlets, improper wiring or installation, deterioration or damage, it shall be corrected to eliminate the hazard.
 - (bb) Adequate Interior Ventilation - Every room in every rented or leased dwelling shall have at least one window which can be easily opened or such other device as will adequately ventilate the room. The total openable window area in every room shall be equal to at least forty-five (45) per cent of the minimum window area size required in the Code of the City of Westwood, except that no openable window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system.
 - (cc) Interior Ventilation and Light in Bathroom and Toilet - Every bathroom and toilet compartment in every rented or leased dwelling unit shall comply with the light and ventilation requirements for habitable rooms as required by the Code of the City of Westwood except that no window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system. The enforcement officer may waive this requirement if the construction or use of the dwelling is such as to make this requirement impractical.
 - (dd) Interior Storage of Flammable Liquids Prohibited - No rented or leased dwelling, dwelling unit or rooming unit shall be located within a building containing any establishment handling, dispensing or storing flammable liquids with a flash point of one hundred ten (110) degrees Fahrenheit or lower.

(ee) Interior Cooking and Heating Equipment - All cooking and heating equipment, components, and accessories in every heating, cooking and water heating device shall be maintained free from leaks and obstructions and kept functioning properly so as to be free from fire, health and accident hazards. All installations and repairs shall be made in accordance with the provisions of the Building Code or other laws or ordinances of the City applicable thereto.

(ff) Interior Maintenance of Private Areas - Every occupant of a rented or leased dwelling shall maintain in a clean and sanitary condition that part of the dwelling and its premises which he or she occupies and controls. The occupant shall keep such premises free of litter, trash, garbage, salvage material, junk and building materials, unless properly stored. The occupant shall keep such premises reasonable free of breeding, harboring and feeding places for rodents and insects. The occupant shall also keep such premises free of noxious weeds.

(gg) Disposal of Trash - Every occupant of a rented or leased dwelling shall dispose of his or her trash in a clean and sanitary manner by placing it in trash containers. Every dwelling shall have adequate trash storage facilities in accordance with § 8-501 et seq. of the Code of the City of Westwood.

(hh) Disposal of Garbage - Every occupant of a rented or leased dwelling shall dispose of his or her garbage in a clean and sanitary manner by placing it in garbage disposal facilities or garbage storage containers; provided that, if garbage disposal facilities are not supplied, it shall be the responsibility of the owner to supply proper garbage storage containers which may include garbage bags, for all units in rooming houses and apartment houses. Every dwelling unit offered for rent shall have adequate storage facilities, which shall be constructed to repel animals, for the deposit of garbage bags until the date of pickup. The type and location of these containers must conform to § 8-501 of the Code of the City of Westwood. It shall be the responsibility of the owner or his agent to see that garbage bags are deposited at curbside as required in said Code.

(ii) Interior Use and Operation of Supplied Plumbing Fixtures - Every occupant of a rented or leased dwelling or part thereof shall keep the supplied plumbing fixtures therein clean and sanitary and shall be responsible for the exercise of reasonable care in their proper use and operation.

(jj) Extermination of Interior Pests.

(1) Generally - Buildings shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

(2) Extermination From Buildings - Every owner of a dwelling or apartment shall be responsible for the extermination of insects, rodents, vermin or other pests whenever infestation exists in two (2) or more of the dwelling units or in the shared or public parts of the structure.

(3) Extermination from Dwelling Units - The occupant of a dwelling unit in a dwelling or

apartment shall be responsible for such extermination within the unit occupied by him whenever his dwelling unit is the only unit in the building that is infested.

(kk) Smoke Detectors, Fire Extinguishers - Operable working smoke detectors shall be installed in each sleeping room and one outside each sleeping room in the immediate vicinity and on each additional story of the dwelling. A fire extinguisher shall be kept in the kitchen.

(ll) The exterior of each leased dwelling shall comply with the requirements of section 8-1205, herein, and leased dwellings shall not be in violation of any other ordinance.

(mm) Occupancy Permit Required in Rented or Leased Dwelling Units Where Compliance With This Ordinance is Not Achieved.

(1) Applicability - This section shall apply only to occupancy of rented or leased dwelling units which have been found to be in noncompliance with this ordinance and when the work ordered pursuant to this ordinance has not been performed.

(2) Scope - Except as otherwise provided, it shall be unlawful for any person or family to occupy or for any owner or agent thereof to permit the occupancy of any rented or leased dwelling, dwelling unit or addition thereof, or part thereof, for any purpose unless compliance with the ordinance is achieved and until an occupancy permit has been issued by the enforcement official. The occupancy permit shall not be issued until all violations of this Article have been brought into compliance except as provided in paragraph (d) hereof. The occupancy permit so issued shall state that the occupancy complies with all of the provisions of this Article.

(3) Fee - The fee for such occupancy permit, including inspection fee shall be twenty-five dollars (\$25.00) for each single-family residence and twenty-five dollars (\$25.00) for apartments for each dwelling unit occupied. The twenty-five dollar (\$25.00) fee shall also cover the first reinspection in the event a reinspection is necessary following the initial inspection. In the event further re-inspections are necessary to secure an occupancy permit or to comply with the terms of a conditional occupancy permit, each such reinspection after the first re-inspections shall require an additional fee of twenty-five dollars (\$25.00) per reinspection. **34**

(4) Conditional Occupancy Permit - A conditional occupancy permit may be issued by the enforcement official if, in **his** judgment, any deficiencies in structures covered by this Article would not seriously endanger the health or safety of the occupants or the community, and provided that in the case of an owner-non-occupant an affidavit stating that the owner will correct deficiencies within a specified time and thus bring the structure into compliance with the provisions of this Article has been provided. The renter or lessee occupant may occupy the dwelling while repairs are being made, so long as no part of the repair process poses a health or safety risk to said renter or lessee occupant. At such time as the dwelling complies with all the provisions of this Article an occupancy permit will be

³⁴ **Legal analysis: (mm) Occupancy Permit Required, (3) Fees.** Please review the occupancy permit fee (\$25.00) and advise as to any changes.

issued as provided above, not to exceed the time limit stated in the affidavit. ³⁵

(5) Notice of Requirement of Occupancy Permit to be Posted - The enforcement official shall post in a conspicuous place on every noncomplying rented or leased dwelling, a sign specifying that an occupancy permit is required to be issued prior to the occupation or continued occupation of any dwelling unit. Said notice shall remain on the dwelling unit or dwelling until compliance with the Code is achieved as determined by the enforcement official.

(Code 2008, § 8-1206; Ord. 792, Sec. 4-41)

8-1207. ACCESSORY STRUCTURES.

Accessory structures shall not obstruct light and air of doors and windows of any building or dwelling unit, or obstruct a safe means of access to any dwelling unit, or create fire and safety hazards, or provide rat or insect harborage. Accessory structures shall be securely anchored.

(Code 2008, § 8-1207; Ord. 792, Sec. 4-41.1)

8-1208. EGRESS.

(a) General Egress - Every building and dwelling unit shall have a safe and unobstructed means of egress leading to safe and open space outside at the ground level. Passage through such exit shall not lead through any other building or dwelling unit.

(b) Structures With Two and One-Half or More Stories - All buildings or habitable structures of two and one-half (2-1/2) or more stories with dwelling units occupying the higher story shall be provided with two (2) separate usable unobstructed means of egress for each dwelling unit located above the second story.

(Code 2008, § 8-1208; Ord. 792, Sec. 4-41.1)

8-1209. ENFORCEMENT. ³⁶

(a) Property Maintenance Official. It shall be the duty and responsibility of the Property Maintenance Official and his delegated representatives to enforce the provisions of this article. No order for correction of any violation under this article shall be issued without the approval of the Property Maintenance Official or his delegated representatives. The Property Maintenance Official may grant an extension or extensions of time to correct any violation of this article in an initial amount not to exceed thirty (30) days. No extension of time shall be granted unless the Property Maintenance Official is satisfied that an extension is justified based upon such factors as type and extent of violations, extent to which health and safety to persons or property may be jeopardized due to said violation or violations, weather conditions, and any other extenuating circumstances shall be used in determining any length of time to correct a violation of this article.

³⁵ **Legal analysis: (mm) Occupancy Permit Required, (4) Conditional Occupancy Permit.** Revise to avoid potential liability issues.

³⁶ **Legal analysis: 8-1209. ENFORCEMENT.** Please advise whether the Property Maintenance Official, the public officer, and the enforcement officer as used in this chapter are all the same individual/department. If so, revise to either define as such, or select one title to use throughout the chapter for consistency.

(b) Inspection - Inspections shall be initiated under the following circumstances:

(1) Where there is extensive deterioration of a building or dwelling;

(2) When, on the basis of a complaint or personal observation, the enforcement official reasonably suspects that a building or dwelling has code violations and as such constitutes a health and/or safety hazard;

(3) Where an inspection is a requirement of a specific building or dwelling improvement for which a building permit has been issued the enforcement official is authorized and directed to make inspections to determine whether buildings, dwellings or accessory structures and premises located within the City conform to the requirements of this article. For the purpose of making such inspections, the enforcement official is authorized, at reasonable times, with the consent of the owner thereof, to enter, examine and survey all building, dwellings, and accessory structures and premises;

(4) On an annual basis;

(5) Inspections may also take place by obtaining an administrative warrant as provided by law.

(c) Access for Purposes of Inspections - The Property Maintenance Official is authorized to conduct inspections to determine the conditions of all structures and premises governed by this Article in order to safeguard the safety, health and welfare of the public under the provisions of this Article. The Property Maintenance Official is authorized to enter any structure or premises at any reasonable time for the purpose of performing the duties under this Article. The owner, occupant or operator of every structure or premises governed by this Article, or the person in charge thereof shall give the enforcement official free access thereto and to all parts hereof and to the premises on which it is located at all reasonable times for the purpose of such inspection, examination and survey. In the event the owner, operator or occupant shall refuse access to any structure or premises, the enforcement officer may make application to the District Court for a search warrant.

(d) Remedy of Defects - The owner of any building shall remedy the condition specified in such notice within the time designated therein; however, the Property Maintenance Official may, at his discretion, extend the time for compliance with any such notice, in accordance with this Article. Nothing herein, however, shall require the Property Maintenance Official to grant a notice or undertake any administrative action prior to a complaint issuing in the Municipal Court of Westwood, Kansas. It shall not be a defense to any such complaint that the owner of any building has undertaken to remedy the condition specified.

(e) Reinspection - At the time when the defects have allegedly been brought into compliance, the enforcement official shall reinspect the building, dwelling, or accessory structure and its premises. At this time, he shall make a reinspection, taking particular notice whether the violations previously noted have been brought into compliance and whether any hazardous conditions have come into existence in the time which has elapsed since the first inspection.

(f) Noncompliance With Article; Notice To Be Given. - Whenever the enforcement official or his delegated representative finds evidence of a violation of any provisions of this article, he shall declare a code violation and give notice of same to the person or persons responsible hereunder. Such notice shall be in writing and shall include a statement of each of the provisions of this article being violated together with a statement of the corrective action required to cure such violation. Such notice shall specify the period of time within which such remedial action shall be taken, which time shall be a reasonable period of time under all of the circumstances. In the event that the predicated items are not completed in the specified time, such notice shall specify that the owner or his agent has the right to appeal the decision of the enforcement official to the Governing Body within thirty (30) calendar days. Such notice shall be served by delivering a copy to the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in such building as shown by the Land Records ~~Division of the Office of Records and Tax Administration~~ of Johnson County, or, if any such person cannot be found, by sending a copy of the notice by registered or certified mail with return receipt requested, or if same cannot be delivered, by posting a copy of such notice in a conspicuous place in or about the building affected by the notice. The notice shall be deemed served on the date served or received, or ten (10) days after posting as herein provided. **37**

(1) Nothing herein shall preclude or limit the filing of a complaint alleging a violation of this ordinance in Municipal Court, nor shall any administrative action be necessary prior to issuance of such a complaint.

(g) Hearing - In the event the City shall undertake to abate or remedy any violation hereunder, and upon failure to commence the work of reconditioning or demolition within the time specified or upon failure to proceed with the work without unnecessary delay, the enforcement official shall notify the Governing Body, which shall call and have a full and adequate hearing upon the matter, giving at least twenty-one (21) days written notice of the time, place and purpose of the hearing. At that hearing, any party may be represented by counsel, and all parties shall have an opportunity to be heard. After the hearing, if the evidence supports a finding that the building or structure is a code violation or detrimental to the health or safety of any residents of the city, the Board shall issue an order making specific findings of fact, based upon competent and substantial evidence, which shows the building or structure to be a code violation and detrimental to the health or safety of any residents of the City, and ordering the building or structure to be demolished and removed, or repaired. If the evidence does not support a finding that the building or structure is a code violation or detrimental to the health or safety of any residents of the City, no order shall be issued. Notice of any post hearing orders shall be given in the same manner as notice of a noncompliance.

(h) Performance of Work by City; Special Tax Bill - If any order of the Governing body is not obeyed within the time specified by the Board which shall be no less than thirty (30) calendar days, and if appeal of such order is not made as herein authorized, the Enforcement Officer may cause such building or structure to be repaired, vacated or demolished as provided in his Post-hearing order. The Enforcement Officer shall certify the

³⁷ **Legal analysis: 8-1209. ENFORCEMENT, (f) Noncompliance/Notice.** According to the Johnson County website, it appears this department is now called the Land Records Division. Revise accordingly.

costs for such repair, vacation or demolition to the City Clerk, who shall cause all such costs to be placed on the tax rolls of the property

(i) Appeal - The decision of the. Governing Body may be appealed within thirty (30) days by a party aggrieved thereby to the District Court of Johnson County.
(Code 2008, § 8-1209; Ord. 792, Sec. 4-42)

8-1210. BUILDINGS UNFIT FOR HUMAN HABITATION.

(a) Placard on Building. The designation of buildings or dwellings as unfit for human habitation and the procedure for such declaration and placarding of such unfit buildings or dwellings shall be carried out in compliance with the following requirements. Any buildings or dwellings which shall be declared unfit for human habitation and shall be so designated and placarded by the enforcement official when the person responsible has failed to correct the condition set forth in a notice issued in accordance with this ordinance: One which is so damaged, decayed, dilapidated, unsanitary, unsafe, insect infested or rodent infested that it creates a serious hazard to the health or safety of the occupants or the public.

(b) Building to be Vacated - Any building or dwelling condemned as unfit for human habitation and so designated and placarded by the enforcement official, shall be vacated within a reasonable time as ordered by the enforcement official.

(c) Reoccupation of building - No building or dwelling which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from and such placard removed by the enforcement official. The enforcement official shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.

(d) Unlawful to Remove Placard - No person shall deface or remove the placard from any building or dwelling which has been condemned as unfit for human habitation and placarded. as such, except as provided in subsection (c).

(e) Vacated Buildings to Be Made Secure - The owner of every building or dwelling which is condemned as unfit for human habitation for continued occupancy shall make the dwelling or building safe and secure so that it shall not be dangerous to human life and shall not constitute a fire hazard or public nuisance. Any such vacant building or dwelling open at doors or windows, if unguarded, shall be deemed to be dangerous to human life as a fire hazard and public nuisance within the meaning of this provision.

(Code 2008, § 8-1210; Ord. 792, Sec. 4-43)

8-1211. BROKEN GLASS AND BOARDING UP.

(a) Applicability - Every window, glazed exterior door, exterior transom, or exterior sidelight shall be provided with properly installed glass or other approved glazing material. In the event of breakage, the owner shall cause the simultaneous removal of broken glass from the premises and shall temporarily board up the affected openings with suitable material to provide protection from the elements, and to prevent entry of birds or animals, and to provide security to occupants or contents of the building. Within ten (10) days after the boarding up, the owner shall cause the boarding material to be removed,

and all affected openings shall be immediately re-glazed by the owner.

(b) Enforcement - Whenever any exterior openings are found boarded up in an occupied building or dwelling it shall be the duty of the enforcement official to notify the owner or the agent of the above requirement giving him a period of not more than ten (10) working days in which to properly replace the broken glass or cause the building or dwelling to be vacated. If necessary materials are not available within this period, the enforcement official may grant an extension of time at his discretion.

(c) Specifications - All boarding up of exterior openings shall be accomplished in a neat, workmanlike manner with not less than unpainted three- eighths inch thick, weather resistant plywood cut to fit within the openings, fastened in place as securely as possible. The Property Maintenance Official is authorized to notify the owner or agent of any boarded up building or dwelling not complying with the above requirement of the necessity of immediate compliance, and to order him to ~~replace~~ complete the replacement within ten (10) working days. **38**
(Code 2008, § 8-1211; Ord. 792, Sec. 4-44.1)

8-1212. PROSECUTION OF VIOLATION.

(a) Prosecution. In case any violation of this article is not remedied within the prescribed time period designated by the enforcement official, he shall request the legal representative of the City to institute an appropriate action or proceeding at law against the person or firm responsible for the failure to comply:

- (1) To restrain, correct or remove the violation or refrain from any further execution of work; building;
- (2) To restrain or correct erection, installation or alteration of such;
- (3) To require the removal of work in violation;
- (4) To prevent the occupation or use of the building, structure or part thereof, erected, constructed, installed or altered in violation of or not in compliance with the provisions of this article or in violation of a plan or specification under which an approval, permit or certificate was issued; and
- (5) To enforce the penalty provision of this article.

(b) Penalty for Violations - Any person who shall violate any provision of this article shall, upon conviction thereof, be subject to the penalties provided for herein. Every day that a violation continues after due notice has been served, in accordance with the terms and provisions hereof, shall be deemed a separate offense.

(c) Remedies Not Exclusive - The authority of the city and its rights and remedies herein shall be in addition to and not to the exclusion of, all other authority, rights, or

³⁸ **Legal analysis: 8-1211. BROKEN GLASS AND BOARDING UP, (c) Specifications.** Revise for clarity.

remedies.

(Code 2008, § 8-1212; Ord. 792, Sec. 4-44.2)

8-1213. EMERGENCY MEASURES.

(a) When any dwelling unit has become so damaged by fire, wind or other causes, or has become so unsafe, unhealthful or unsanitary that in the opinion of the enforcement official, life or health is immediately endangered by the occupation of the dwelling unit, the enforcement official is hereby authorized and empowered to revoke without notice any occupancy permit for such dwelling unit and to order and require the occupants to vacate the same forthwith and to order the owner or agent to proceed immediately with the corrective work and repairs required to make the dwelling unit safe and fit for human habitation, whether or not a notice of violation has been given as described in this article and whether or not legal procedures described by City ordinances have been instituted.

(b) In the event the enforcement official determines that there is an immediate danger to the health, safety or welfare of any person, he may take emergency measure to vacate and repair the structure or otherwise remove the imminent danger.

(c) Written notice shall be given to the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in such building or structure as promptly as possible. The cost of any such emergency work shall be collected in the same manner as herein above provided. Notice by posting said notice on the door of the building in question or in any other conspicuous fashion shall be sufficient in the event the owner, occupant, lessee, mortgagee, agent or other person or persons having an interest in such building or structure cannot be located.

(Code 2008, § 8-1213; Ord. 792, Sec. 4-44.3)

8-1213. SERIOUS PERSONAL FINANCE EXEMPTION.

In cases concerning appeals to the Governing Body by any person subject to the requirements of this article where it is claimed strict compliance with the minimum standards contained herein would result in serious personal financial hardship to the applicant for exemption, the Governing Body after hearing may grant, in its sound discretion, an appropriate personal financial exemption or deferment from strict compliance with the provisions of this article. In reaching a decision under this section the Governing Body shall consider the age, size of family, extraordinary debts resulting from catastrophe or illness, lack of employment, source of income, and gross income of the person seeking the serious personal financial exemption, as well as any potential health and safety risk to occupants that may occur should said exemption be granted. ³⁹

(Code 2008, § 8-1213; Ord. 792, Sec. 4-44.4)

8-1214. JUDICIAL REVIEW OF GOVERNING BODY DECISIONS.

For any decision of the Governing Body upon an order or action taken pursuant to this ordinance, the method of judicial review shall be by a duly verified petition presented to

³⁹ **Legal analysis: 8-1213. SERIOUS PERSONAL FINANCE EXEMPTION.** Revise to avoid potential liability issues or the appearance to unsafe practices by the city.

the District Court of Johnson County. Such petition shall be filed with the court within thirty (30) days after the filing of the Governing Body's decision. Such petition shall set forth with Particularity the ground for such review. Any person or persons jointly or severally aggrieved by any decision of the Governing Body shall be entitled to petition for such review.

(Code 2008, § 8-1214; Ord. 792, Sec. 4-44.5)

8-1215. PENALTIES.

(a) Any person convicted of a violation of this article shall be punished for that violation by a fine of not less than twenty-five dollars (\$25.00), but not more than five hundred dollars (\$500.00) or by imprisonment of not more than one hundred eighty (180) days or by both such fine and imprisonment.

(b) Every day that a violation continues shall be considered a separate offense, for which the violator may be arrested, tried and convicted without necessity of further notice.

(c) Whenever the penalty is to be a fine or a fine and imprisonment, the fine shall be no less than the minimum amount set out in the following schedule:

First Offense \$ 250.00

Second Offense \$ 350.00

Third Offense \$ 500.00

Fourth Offense \$ 500.00, plus seven (7) days in jail

In determining the applicable minimum fine, an offense shall be considered a recurring offense only if the defendant has previously pleaded, or been found, guilty of violating the same minimum standard at the same location. ⁴⁰

(Code 2008, § 8-1215; Ord. 792, Sec. 4-44.6)

ARTICLE 13. RAT CONTROL

8-1301. DEFINITIONS.

For the purposes of this article, the following words and phrases shall have the following meanings:

(a) Building. - Any structure, whether public or private, that is adapted for occupancy as a residence, the transaction of business, the rendering of professional services, amusement, the display, sale or storage of goods, wares or merchandise or the performance of work or labor, including office buildings, public buildings, stores, theaters,

⁴⁰ **Legal analysis: 8-1215. PENALTIES.** Subsection (a) provides a minimum fine of \$25.00. Subsection (c) states the minimum fine for first offense is \$250.00. Please clarify and revise accordingly. Also, please clarify whether there is a distinction between the separate offense of subsection (b) and the recurring offense of subsection (c).

markets, restaurants, workshops and all other houses, sheds and other structures on the premises used for business purposes.

(b) Occupant. The person that has the use of, controls or occupies any business building or any portion thereof, whether owner or tenant. In the case of vacant business buildings or any vacant portion of a business building, the owner, agent or other person having custody of the building shall have the responsibilities of an occupant of a building.

(c) Owner. - The owner of any building or structure, whether individual, firm, partnership or corporation.

(d) Rat harborage. - Any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside a structure of any kind.

(e) Rat-stoppage. - A form of rat-proofing to prevent the ingress of rats into buildings from the exterior or from one building to another, consisting essentially of the closing of all openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat-gnawing.

(Code 2008, § 8-1301)

8-1302. BUILDING MAINTENANCE.

All buildings and structures located within the present or future boundaries of the city shall be rat-stopped, freed of rats and maintained in a rat-stopped and rat-free condition. (Code 2008, § 8-1302)

8-1303. NOTICE TO RAT-STOP.

Upon receipt of written notice from the city, the owner of any building or structure specified therein shall take immediate measures for the rat-stoppage of such building or structure. The work shall be completed in the time specified in the written notice, which shall be within 15 days, or within the time of any written extension thereof that may have been granted by the city.

(Code 2008, § 8-1303)

8-1304. FAILURE TO COMPLY.

If the owner fails to comply with such written notice or extension, then the city is authorized to take such action as may be necessary to completely rat-stop the building or structure at the expense of the owner, and the city clerk shall submit bills for the expense thereof to the owner of the building or structure. If the bills are not paid within 60 days, the city clerk shall certify the amount due to the city treasurer and the charge shall result in a tax levy against the property where the work has been done. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for rat-stoppage.

(Code 2008, § 8-1304)

8-1305. REPLACE RAT-STOPPAGE.

It shall be unlawful for any occupant, owner, contractor, public utility company, plumber or any other person to remove the rat- stoppage from any building or structure for any purpose and fail to restore the same in a satisfactory condition or to make any new openings that are not closed or sealed against the entrance of rats.
(Code 2008, § 8-1305)

8-1306. NOTICE TO ERADICATE RATS.

Whenever the city notifies in writing the owner of any building or structure theretofore rat-stopped as hereinabove defined, that there is evidence of rat infestation of the building or structure, the owner shall immediately institute appropriate measures for freeing the premises so occupied of all rats. Unless suitable measures for freeing the building or structure of rats are instituted within five days after the receipt of notice, and unless continually maintained in a satisfactory manner, the city is hereby authorized to free the building or structure of rats at the expense of the owner thereof, and the city clerk shall submit bills for the expense thereof to the owner of the building or structure and if the same are not paid, the city clerk shall certify the amount due from the owner to the city treasurer, and the owner shall be promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for the eradication measures.
(Code 2008, § 8-1306)

8-1307. CONDITIONS CONDUCIVE TO HARBORAGE OF RATS.

(a) All food and feed kept within the city for feeding animals shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-stopped building.

(b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.

(c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and which are rat harborages, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.

(d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication.

(e) All bird feed and grass seed shall be kept and stored in rat-free and rat- proof containers. Spillage from bird feeders shall be policed daily.
(Code 2008, § 8-1307)

8-1308. INSPECTIONS.

The Property Maintenance Official is empowered to make such inspections and re-inspections of the interior and exterior of any building or structure as in his or her opinion may be necessary to determine full compliance with this article.
(Code 2008, § 8-1308)

ARTICLE 14. INSURANCE PROCEEDS FUND**8-1401. SCOPE AND APPLICATION.** ⁴¹

The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 — 3910, whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, ~~arising out of any fire, explosion, or windstorm,~~ where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this article.
(Code 2008, § 8-1401; Ord. 776, Sec. 1, 4-401)

8-1402. LIEN CREATED. ⁴²

The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, ~~caused by or arising out of any fire, explosion, or windstorm,~~ where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.
(Code 2008, § 8-1402; Ord. 776, Sec. 1, 4-406)

8-1403. SAME; ENCUMBRANCES.

Prior to final settlement on any claim covered by section 8-1402, the insurer or insurers shall contact the county treasurer, Johnson County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Johnson County, Kansas.
(Code 2008, § 8-1403)

8-1404. SAME; PRO RATA BASIS.

⁴¹ **Legal analysis: 8-1401. SCOPE AND APPLICATION.** Conform to K.S.A. 40-3902, as 2016 amendments removed the “fire, explosion, or windstorm” language.

⁴² **Legal analysis: 8-1402. LIEN CREATED.** *Id.*

Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

(Code 2008, § 8-1404)

8-1405. PROCEDURE.

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city treasurer in an amount equal to the sum of 15 percent of the covered claim payment, unless the chief building inspector of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the chief building inspector shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article.

(Code 2008, § 8-1405; Ord. 776, Sec. 1, 4-402)

8-1406. FUND CREATED; DEPOSIT OF MONIES.

The city treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All monies received by the city treasurer as provided for by this article shall be placed in said fund and deposited in an interest-bearing account.

(Code 2008, § 8-1406; Ord. 776, Sec. 1, 4-403)

8-1407. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of monies as provided for by this article, the city treasurer shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.

(b) Within 20 days of the receipt of said monies, the chief building inspector shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended.

(c) Prior to the expiration of the 20 days established by subsection (b) of this section, the chief building inspector shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended.

(d) If the chief building inspector has determined that proceedings under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the monies by the city treasurer.

(e) Upon notification to the city treasurer by the chief building inspector that no proceedings shall be initiated under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended, the city treasurer shall return all such monies received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the monies from the insurance company or companies.
(Code 2008, § 8-1407; Ord. 776, Sec. 1, 4-404)

8-1408. REMOVAL OF STRUCTURE; EXCESS MONIES.

If the chief building inspector has proceeded under the provisions of K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended, all monies in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.
(Code 2008, § 8-1408; Ord. 776, Sec. 1, 4-405)

8-1409. SAME; DISPOSITION OF FUNDS. ⁴³

If the chief building inspector, with regard to a building or other structure damaged by ~~fire, explosion, or windstorm,~~ determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city treasurer under the authority of section 8-1405(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the chief building inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city treasurer under section 8-1405(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.
(Code 2008, § 8-1409)

8-1410. EFFECT UPON INSURANCE POLICIES.

This article shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.
(Code 2008, § 8-1410; Ord. 776, Sec. 1, 4-407)

8-1411. INSURERS; LIABILITY.

⁴³ **Legal analysis: 8-1409. SAME; DISPOSITION OF FUNDS.** Conform to K.S.A. 40-3902, as 2016 amendments removed the "fire, explosion, or windstorm" language.

Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article.

(Code 2008, § 8-1411; Ord. 776, Sec. 1, 4-408)

ARTICLE 15. ENVIRONMENTAL CODE

8-1501. TITLE.

This article shall be known as the "Environmental Code."

(Code 2008, § 8-1501)

8-1502. LEGISLATIVE FINDINGS OF FACT.

The governing body has found that there exist 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, grocery carts, 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.

(Code 2008, § 8-1502)

8-1503. PURPOSE.

The purpose of this article 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.

(Code 2008, § 8-1503)

8-1504. RULES OF CONSTRUCTION. ⁴⁴

For the purpose of this article, the following rules of construction shall apply:

(a) 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."

⁴⁴ **Legal analysis: 8-1504. RULES OF CONSTRUCTION, (b), (c), (d), and (e).** Delete as covered by general provisions in Chapter 1.

~~(b) Gender Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.~~

~~(c) Number Words of number shall be construed to mean singular or plural, as may be applicable.~~

~~(d) Tense Words of tense shall be construed to mean present or future, as may be applicable.~~

~~(e) Shall The word shall is mandatory and not permissive.
(Code 2008, § 8-1504)~~

8-1505. DEFINITIONS.

The words and phrases listed below when used in this article shall have the following meanings:

(a) 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.

(b) 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.

(c) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

- (i) Refuse - garbage and trash.
- (j) Residential - used or intended to be used primarily for human habitation.
- (k) 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.
- (l) Trash - combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, wood, pallets, excelsior, furniture, bedding, rags, cigarettes, cigarette butts, cigars, cigar butts, 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, and broken or damaged shopping carts.
- (m) Weathered - deterioration caused by exposure to the elements.
- (n) Yard - the area of the premises not occupied by any structure.
(Code 2008, § 8-1505)

8-1506. PUBLIC OFFICER.

The Property Maintenance Official, or designee, is the public officer to be charged with the administration and enforcement of this article.
(Code 2008, § 8-1506)

8-1507. ENFORCEMENT STANDARDS. ⁴⁵

No person shall be found in violation of this article 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 ~~8-1608~~ 8-1508 but shall not include conditions which are not readily visible from any public place or from any surrounding private property.
(Code 2008, § 8-1507)

8-1508. 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

⁴⁵ **Legal analysis: 8-1507. ENFORCEMENT STANDARDS.** Revised to cite to 8-1608. Please advise if this assumption was incorrect.

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, trash, or refuse;

(2) abandoned motor vehicles; or

(3) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, toilets, bathtubs, showers, interior plumbing, mannequins, and plumbing or construction materials not affixed or used in connection with the property, 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.
(Code 2008, § 8-1508)

8-1509. ORDER OF VIOLATION.

(a) The city shall serve upon the owner, any agent of the owner of the property, tenant, or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-1508 an order stating the violation. The order shall be served on the owner, agent or tenant of such property by certified mail, return receipt requested, or by personal service. If the 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.

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such 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 property, personal notification, telephone communication or first class mail. If the 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 order shall state:

(1) The condition which has caused the violation of this article; and

(2) That the person in violation shall have:

(A) 10 days from the receipt of the order to alleviate the exterior conditions (yard)

violation; and/or;

(B) 45 days from the receipt of the order to alleviate the exterior conditions (structure) violation; or in the alternative to subsections (1) and (2) above, **46**

(C) 10 days from the receipt of the order, plus any additional time granted under subsection (c), to request, as provided in section 8-1512 a hearing before the governing body or its designated representative on the matter; and; **47**

(c) Provided, however, that the governing body [or its designee ~~named herein~~] shall grant one or more extensions to the time periods stated in subsections (2) and (3), above, if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions which have caused the violation of this article; and, **48 49**

(d) That failure to alleviate the condition or to request a hearing may result in prosecution under section 8-1510 and/or abatement of the condition by the city according to section 8-1511 with the costs assessed against the property under section 8-1514.

(Code 2008, § 8-1509)

(K.S.A. 12-1617e)

8-1510. PENALTY.

The public officer may file a complaint in the municipal court against any person found to be in violation of section 8-1508, provided however, that such person shall first have been sent a notice as provided in section 8-1509 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 8-1509. Upon such complaint in the municipal court, any person found to be in violation of section 8-1508 shall upon conviction be punished by a fine of not more than \$500.00, or by imprisonment, for not more than 180 days, or by both such fine and imprisonment, for each offense. For the purposes of this article, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

(Code 2008, § 8-1510)

8-1511. ABATEMENT.

In addition to, or as an alternative to prosecution as provided in section 8-1510, the public officer may seek to remedy violations of this article in the following manner. If a

46 Legal analysis: 8-1509. ORDER OF VIOLATION, (b)(2)(B). Please clarify what "subsections (1) and (2) above" are intended to reference, and revise accordingly.

47 Legal analysis: 8-1509. ORDER OF VIOLATION, (b)(2)(C). It appears that there may be some language missing after this subsection, or if the following (c) is intended to be a continuation of this group of provisions. Please advise and revise accordingly.

48 Legal analysis: 8-1509. ORDER OF VIOLATION, (c). Delete "named herein" language. In the alternative, name the designee in this section or article.

49 Legal analysis: 8-1509. ORDER OF VIOLATION, (c). Please clarify which subsections (2) and (3) are being referred to here; revise accordingly. It appears it may be referring to (b)(2).

person to whom an order has been served pursuant to section 8-1509 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-1509, 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 10 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 8-1514.

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) 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 condition exists.
- (d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such 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 property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail
(Code 2008, § 8-1511)

8-1512. HEARING.

If a hearing is requested within the 10 day period as provided in section 8-1509 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. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefor, 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 or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in section 8- 1611.
(Code 2008, § 8-1512)

8-1513. APPEALS.

Any person affected by any determination of the governing body under sections 8-1511–1512 may appeal such determination in the manner provided by K.S.A. 60-2101. (Code 2008, § 8-1513)

8-1514. COSTS ASSESSED.

If the city abates or removes the nuisance pursuant to section 8-1511, 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 30 days following receipt of the notice. The city also may 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 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 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.

(Code 2008, § 8-1514)

8-1515. CONSTRUCTION.

Nothing in this article 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 article shall be in addition to and supplemental to the powers conferred by the Kansas Constitution, by any other law or by ordinance.

(Code 2008, § 8-1515)

ARTICLE 16. ENVIRONMENTAL SANITARY CODE

8-1601. INCORPORATION OF JOHNSON COUNTY ENVIRONMENTAL SANITARY CODE. ⁵⁰

There is hereby incorporated by reference for the purpose of regulating certain environmental and sanitary issues within the corporate limits of the City of Westwood, Kansas, that certain body of regulations known as the "Johnson County Environmental Sanitary Code," as adopted by the Board of County Commissioners of Johnson County,

⁵⁰ **Legal analysis: 8-1601. INCORPORATION OF JOHNSON COUNTY ENVIRONMENTAL SANITARY CODE.** Per 2007 amendment of K.S.A. 12-3010, only one copy is required to be kept on file with the city clerk. Please advise whether the city would like to update this section accordingly.

Kansas on January 29, 2004 by Resolution 008-04, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of the Johnson County Environmental Sanitary Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 850", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such Omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge, and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Johnson County Environmental Sanitary Code similarly marked, as may be deemed expedient.
(Code 2008, § 8-1601; Ord. 850, Sec. 1)

8-1602. PENALTY SCHEDULED FINES.

The penalty for a violation of any provision of the Johnson County Environmental Sanitary Code shall be a fine not to exceed \$500.00, and/or a definite term of confinement in the county jail, not to exceed 180 days.
(Code 2008, § 8-1602; Ord. 850, Sec. 2)

ARTICLE 17. SMOKING REGULATIONS

8-1701. PURPOSE.

It is the purpose of this Article that the City promotes public health by decreasing citizens' exposure to secondhand smoke and creates smoke free environments for workers and citizens through regulation in the work place and all public places.
(Code 2008, § 8-1701; Ord. 883, Sec. 1)

8-1702. DEFINITIONS.

For the purposes of this Article, the following words shall have the meanings respectively ascribed to them by this paragraph:

- (a) Employee - Any person who performs services for an employer, with or without compensation.
- (b) Employer - A person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.
- (c) Enclosed - A space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and halls.
- (d) Open Office Areas - Indoor areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.

(e) Place of Employment - Any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, hotel or motel sleeping rooms, private rooms in nursing homes, private meeting/conference rooms and halls not open to the general public while being used for private functions or located within private clubs and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

(f) Public Place - Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

(g) Service Line - Any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(h) Smoking - Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco or nicotine product. **51**

(i) Sports Arena - Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(Code 2008, § 8-1702; Ord. 883, Sec. 1)

8-1703. PROHIBITION OF SMOKING IN BUILDINGS WHICH ARE PLACES OF EMPLOYMENT AND ALL ENCLOSED PUBLIC BUILDINGS.

(a) Smoking shall be prohibited in all enclosed buildings which are places of employment within the City.

(b) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

Each employer having any enclosed building which is a place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed buildings within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed buildings.

⁵¹ **Legal analysis: 8-1702. DEFINITIONS, (h) smoking.** Conform to K.S.A. 79-3301(bb), which specifies that cigarettes are not tobacco products. Also, vaping and e-cigarettes are often considered a nicotine product. Please advise whether the city would like to include language to specify use of these devices as either included or exempted from this definition.

- (c) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this Article.
- (d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- (e) Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:
 - (1) Any vehicle of public transportation, including but not limited to buses and taxicabs, but not limousines for hire.
 - (2) Elevators.
 - (3) Restrooms.
 - (4) Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries.
 - (5) Any health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors offices and dentists offices.
 - (6) Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools.
 - (7) Service lines.
 - (8) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; provided, however, that smoking may take place on stage during live theatrical performances, where smoking is integral to the plot or storyline and prior notice is given to the audience.
 - (9) Shopping malls.
 - (10) Sports arenas, including enclosed places in outdoor arenas.
 - (11) Bars.
 - (12) Restaurants.
 - (13) Convention facilities.
 - (14) All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities.
 - (15) Any other area used by the public or serving as a place of work, including open office areas.

(16) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to joint committees, or agencies of the City or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.

(17) All enclosed buildings owned by the City.

(18) Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.

(19) Within 25 feet of any public entrance to a public place; provided, however, that this prohibition shall not apply to the following: any portion of the public right of way that may be within 25 feet of said entrance, and the outdoor seating area of a restaurant or drinking establishment where smoking is allowed. With respect to said outdoor seating area, smoking may be allowed only if reasonable efforts are made to minimize the chance of smoke affecting the inside occupants of the establishment.

(Code 2008, § 8-1703; Ord. 883, Sec. 1)

8-1704. WHERE SMOKING IS NOT REGULATED.

Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article:

(a) Private residences, not serving as enclosed places of employment or an enclosed public place. Further, smoking shall be regulated in private residences used as a childcare, adult day care or health care facility.

(b) An existing retail establishment whose primary business is the sale of tobacco products and new retail establishments whose primary business is the sale of tobacco products which are located in a stand-alone building not attached to or the part of any building devoted to other uses.

(Code 2008, § 8-1704; Ord. 883, Sec. 1)

8-1705. RESPONSIBILITIES OF PROPRIETORS, OWNERS AND MANAGERS.

The person having control of a place, business, office or other establishment or activity subject to this Article shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in that place and shall take all necessary steps to prevent or stop another person from smoking in violation of this Article. "Necessary steps" means to take all reasonable actions to prevent smoking in violation of this Article by employees, patrons and visitors in the place, business, office or establishment, including:

Posting no-smoking signs and removing all ashtrays; verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws. If the employee, patron or visitor smoking in violation of this Article is hard of hearing, the communications with that person may be written, in

sign language or other effective means of communication.
(Code 2008, § 8-1705; Ord. 883, Sec. 1)

8-1706. PENALTY FOR VIOLATION.

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a public offense, punishable by a fine not exceeding fifty dollars (\$50.00).
- (b) A person having control of a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of a public offense, punishable by:
 - (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation.
 - (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year.
 - (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation within one (1) year.
- (c) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.
- (d) In addition to the fines established by this Section, violation of this Article by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
(Code 2008, § 8-1706; Ord. 883, Sec. 1)

~~8-1707. SEVERABILITY.~~ ⁵²

~~If any section, subsection, paragraph, sentence, clause or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.
(Code 2008, § 8-1707; Ord. 883, Sec. 1)~~

8-1708. BURNING OF GARBAGE.

This article shall not apply to any other regulations or ordinances of the City pertaining to the burning of garbage, trash or similar substances.
(Code 2008, § 8-1708; Ord. 883, Sec. 1)

⁵² **Legal analysis: 8-1707. SEVERABILITY.** Delete as covered by general provisions in Chapter 1.