

Published in the official city newspaper, the Marion Record on the _____ day of _____, 2023

ORDINANCE NO. 1503

AN ORDINANCE AMENDING THE CODE OF THE CITY OF MARION, KANSAS, TO REPEAL AND REPLACE, IN ITS ENTIRETY, CHAPTER 8, ARTICLE III OF THE CODE OF THE CITY OF MARION, KANSAS, AS SET OUT IN THE CODE FOR THE CITY OF MARION, KANSAS, AND REPEALING ANY OTHER CURRENT ORDINANCES, OR PORTIONS THEREOF, IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MARION, KANSAS.

SECTION 1. That Chapter 8, Article III of the Code of the City of Marion, Kansas is hereby amended and shall read, in its entirety, as follows:

ARTICLE III HEALTH; WEED AND MOTOR VEHICLE NUISANCES.

8-301. Health Nuisances unlawful; definitions.

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

- (a) Filth, excrement, lumber, rocks, dirt piles, cans, paper, metal, trash, appliances, dead trees 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;
- (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 grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;

(f) Abandoned iceboxes or refrigerators kept on the premises under the control of any person, or deposited on the sanitary landfill, or any icebox or refrigerator not in actual use.

(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; or

(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.

(i) Trailers with flat tires or loaded with items mentioned in subsections (a), (b), (c) and/or (f).

(j) Vegetative compost that exceeds five cubic yards of material or Vegetative compost used in furtherance of a commercial enterprise.

8-302. Motor vehicle nuisances unlawful; findings of governing body; definitions; exceptions.

(a) 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:

(1) Serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents;

(2) Are dangerous to person, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;

(3) Are a ready source of fire and explosion;

(4) Encourage pilfering and theft;

(5) Constitute a blighting influence upon the area in which they are located;

(6) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

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

(1) 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;

(2) 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.

(c) It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the City.

(d) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 2-126 to 2-149 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 or does not have proof of liability insurance;

(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 to include flat tires.

(e) The provisions of this Section shall not apply to:

(1) Any motor vehicle which is enclosed in a garage or other building;

(2) To the parking or storage of an inoperable vehicle for a period of less than 30 consecutive days; provided, however, that such 30-day period shall not be abated by the moving of any such vehicle to another location where its parking or storage would similarly be a violation of this Section; or

(3) To any person 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;

Provided, however, that nothing herein shall be construed to authorize the maintenance of a public nuisance.

(Ord. 1252; Code 2014; Ord. 1444)

8-303. Complaints; inquiry and inspection.

The designated 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 in violation of Sections 8-301 and/or 8-302, and describing the same and where located, or upon being informed that a nuisance may exist by the 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 him or her to constitute such a nuisance condition. Upon making any inquiry and inspection, the Public Officer shall make a written report of findings.

(Ord. 1252; Code 2014)

8-304. Notice of violation.

(a) Any person found by the Public Safety Officers to be in violation of Sections 8-301 and/or 8-302 shall be served a notice of such. This violation notice shall be served upon such person and upon the owner of record of the lot or parcel of ground as to which such conditions exist by certified mail, return receipt requested, or by personal service. If property is unoccupied and the owner is a nonresident, then notice shall be sufficient if mailed to the owner by certified mail, return receipt requested, to the last known address of the owner.

(b) The notice shall state the conditions which are in violation of this article, and shall also inform the person:

(1) That such person has 10 days from the date of serving the notice to abate the violating conditions or to submit to the City Clerk a written request for a hearing before the Governing Body as provided by Section 8-305;

(2) That failure within the time allowed to either abate the violating conditions or to request a hearing may result in prosecution as provided by Section 8-306 and/or abatement of the conditions by the City as provided by Section 8-307; and

(3) That, if the notice is as to a weed nuisance violation, no further notice shall be given during the calendar year as to any subsequent weed nuisance violations as to the described property prior to the City taking action to abate such nuisance conditions.

(c) Failure to make a timely request for a hearing shall constitute a waiver of any right to contest the findings of the Public Officer.

8-305. Hearing.

The Governing Body may designate an individual or group of individuals to act in its stead at all such hearings required by this article. Further, if a timely request for a hearing is given to the City Clerk as provided in Section 8-304, the hearing shall be held by the Governing Body or it's Designee/Designees as soon as can be arranged after the filing of the request, and the person requesting the hearing shall be advised of the time and place of the hearing at least five days in advance thereof. At any such hearing, any interested party may be represented by counsel, and any interested party and the City may introduce such witnesses and evidence as is deemed necessary and proper by the Governing Body or it's Designee/Designees deem appropriate. Upon conclusion of the hearing, and if the Governing Body or it's Designee/Designees find that any violating

conditions are present, they shall issue written findings and orders specifying the violating conditions found to exist and the amount of time thereafter within which the conditions shall be removed or abated. A copy of the findings and orders shall be served in the same manner as set forth in Section 8-305, except that no publications thereof shall be required.

(Ord. 1252; Code 2014; Ord. 1391)

8-306. Failure to comply; penalty.

Should any person fail to either comply with the notice to abate the nuisance or request a hearing, or should any person following a requested hearing fail to comply with any abatement order which then is issued by the Governing Body within the time for abatement as prescribed by the Governing Body, the City Clerk, the chief of police or the Public Officer may file a complaint in the municipal court of the City against such person. Conviction of any violation of provisions of this article shall be punishable by a fine in an amount not to exceed \$100, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

(Ord. 1252; Code 2014)

8-307. Abatement.

(a) 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 section in the following manner. If a person to whom a notice has been sent 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 period specified, or if following a requested hearing there is a failure to comply with any abatement order which then is issued by the Governing Body within the time for abatement as prescribed by the Governing Body, the Public Officer may proceed to abate the conditions causing the violation .

(b) Disposition of any motor vehicle removed and abated from private property pursuant to this article shall be as provided by K.S.A. 2-1102, and any amendments thereto.

(Ord. 1252; Code 2014)

8-308. Costs assessed and collected.

If the City abates any nuisance condition pursuant to this article, the cost of abatement and all costs associated with giving notices as prescribed in this article may be assessed against the lot or parcel of ground as to which such nuisance condition existed in the following manner. The City Clerk shall give written notice in the same

manner as prescribed in Section 8-304 of the costs of such abatement and the costs of giving notices under these proceedings, including a statement that payment of such costs is due and payable within 30 days following receipt or deemed receipt of such notice. If such costs are not paid within such time, the City Clerk shall, at the time of certifying other taxes to the County Clerk, certify the costs as provided in this Section. The County Clerk shall extend the same on the tax roll and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. The governing body may also direct the collection of such costs against the owners of such lot or parcel of ground on which such nuisances were located in the manner as prescribed in K.S.A. 12- 1,115 and any amendments thereto.

8-309. Weed nuisances unlawful.

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.

8-310; Same; definitions

Weeds as used herein, means any of the following:

- (a) Brush and woody vines shall be classified as weeds;
- (b) Weeds and indigenous 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 indigenous 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, or grow over the curbing and/or grow in the paved street right-of-way.

8-311. Same; public officer; notice to remove.

The mayor with the consent of the council shall designate a public officer to be charged with the administration and enforcement of Section 8-311 *et seq.* The public officer or an authorized assistant shall notify in writing the owner, occupant or agent in charge of any premises in the city upon which weeds exist in violation of this article, by

mail, by personal service, or by posting in a reasonable manner upon the property once per calendar year. Such notice shall include the following:

(a) That the owner, occupant or agent in charge of the property is in violation of the city weed control law.

(b) That the owner, occupant, or agent in charge of the property is ordered to cut the weeds within 7 days of the receipt of notice.

(c) That the owner, occupant or agent in charge of the property may request a hearing before the governing body or its designated representative within five days of the receipt of notice.

(d) That if the owner, occupant or agent in charge of the property does not cut the weeds, the city or its authorized agent will cut the weeds and assess the cost of the cutting, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property.

(e) That the owner, occupant or agent in charge of the property will be given an opportunity to pay the assessment, and, if it is not paid, it will be added to the property tax as a special assessment.

(f) That no further notice shall be given prior to removal of weeds during the current calendar year.

(g) That the public officer should be contacted if there are any questions regarding the order.

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 section.

8-312. Abatement of Weed nuisances by City; generally.

If the owner, representative, tenant or other person occupying or in charge of the property fails or neglects to request a hearing and to abate the violations within the notice period, then the public officer or an authorized assistant may enter onto the property and may cause to be cut, destroyed and/or removed all such weeds and may abate the nuisance created thereby. The city shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violations. The city may use its own employees or contract for services to abate violations of this article. Any authorized officer or agent of the city shall be allowed to relocate or remove any trash, debris, limbs, or brush, building materials or other items if such relocation or removal is reasonably necessary to abate the violation.

8-313. Same; procedure; assessment of costs.

(a) Upon the expiration of seven (7) days after receipt of the notice required by Section 8-311, and in the event that any owner, occupant or agent in charge of the premises shall neglect or fail to comply with the requirements of Section 8-312, the public officer or an authorized agent shall cause to be cut, destroyed and/or removed all such weeds and indigenous grasses and abate the nuisance created thereby at any time during the current calendar year.

(b) The public officer or an authorized assistant shall give notice to the owner, occupant or agent in charge of the premises by certified mail of the costs of abatement of the nuisance. The notice shall state that payment of the costs is due and payable within 30 days following receipt of the notice.

(c) The cost of such abatement by the City shall include a reasonable administrative fee, assessed against the owner, occupant and/or agent in charge of the property. The rate of such work charged by the City shall be \$150.00 per hour, with a one-hour minimum charge.

(c) If the costs of removal or abatement remain unpaid after 30 days following receipt of notice, a record of the costs of cutting and destruction and/or removal shall be certified to the city clerk who shall cause such costs to be assessed against the particular lot or piece of land on which such weeds were so removed, and against such lots or pieces of land in front of or abutting on such street or alley on which such weeds were so removed. The city clerk shall certify the assessment to the county clerk at the time other special assessments are certified for spreading on the tax rolls of the county.

8-314. 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 property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds in a manner not inconsistent with this article.

8-315. 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 a code violation.

8-316. 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, relating to the control and eradication of certain noxious weeds.

(b) For the purpose of this section, 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.), and Johnson grass (*Sorghum halepense*).

8-317. Agricultural exception to the limit on heights of grasses and weeds.

(a) Any person who requests to be excepted from the provisions of this article shall make a written application to the City of Marion to be excepted from the application of such ordinance. Such application shall include the following: the name of the owner; the name of the person in possession of the property, if different than the owner; the reason for the requested exception

(b) All grants of exception shall be automatically renewed each year unless a complaint is filed with the governing body. Upon such occurrence, there shall be a hearing conducted by the governing body to determine if the exception should be continued.

(c) Upon receipt of a request to be excepted, the City Administrator and/or the City Inspector shall view the property to make a determination as to the plausibility of such exception. In determining the plausibility, the inspector shall determine how an exception would impact the character of the neighborhood, the neighborhood property values, and any other relevant impact it may have on the City as a whole.

(d) All noxious weeds must be controlled at all times. If noxious weeds are uncontrolled, the exemption granted herein may be withdrawn.

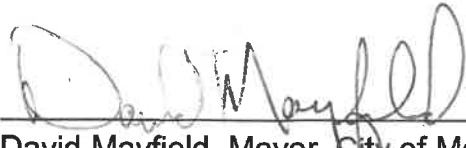
(e) The final decision as to whether or not to grant an exception shall lie with the City Council.

SECTION 2. Other ordinances, or portions thereof in conflict herewith, are hereby repealed.

SECTION 3. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

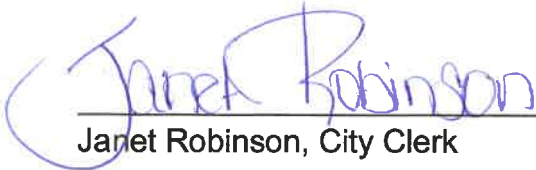
PASSED AND ADOPTED by the Governing Body of the City of Marion, Kansas, this 15th day of May, 2023.

Signed by the Mayor this 15th day of May, 2023.



David Mayfield, Mayor, City of Marion, Kansas

ATTEST:



Janet Robinson, City Clerk

SEAL