

ORDINANCE NO. 316

AN ORDINANCE DECLARING CERTAIN MATTERS AS NUISANCES WITHIN THE CITY OF MELVERN, KANSAS: PROVIDING FOR THE REMOVAL OR ABATEMENT OF NUISANCES; AUTHORIZING THE ASSESSMENT OF COSTS AND PROVIDING FOR PENALTIES.

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

SECTION 1. 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, cans, paper, trash, junk, 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;
- (c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
- (d) All grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;
- (e) Abandoned iceboxes or refrigerators kept on the premises under the control of any person, or any icebox or refrigerator not in actual use unless the door, opening or lid thereof is unhinged, or unfastened and removed therefrom;
- (f) 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
- (g) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public grounds so as to obstruct the same, except as permitted by the laws of the city.

SECTION 2. PUBLIC OFFICER. The City of Melvern's governing body shall designate a public officer to be charged with the administration and enforcement of this ordinance.

SECTION 3. 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 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.

SECTION 4. RIGHT OF ENTRY. It shall be a violation of this ordinance to deny the public officer the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

SECTION 5. NOTICE. Any person, corporation, partnership or association found by the public officer to be in violation of Section 1 shall be served a notice of such violation. The notice shall be served by restricted mail, postage prepaid, return receipt requested; provided, that if the owner or his or her agent in charge of the property is a resident of Osage County, Kansas, the notice shall be personally served by the public officer or a law enforcement officer.

SECTION 6. SAME; CONTENTS. The notice shall state the condition(s) which is (are) in violation of Section 1. The notice shall also inform the person, corporation, partnership or association, that:

- (a) He, she or they shall have 10 days from the date of serving the notice to abate the condition(s) in violation of Section 1; or
- (b) He, she or they shall have 10 days from the date of serving the notice to request a hearing before the governing body of the matter as provided in Section 9.
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 7 and/or abatement of the condition(s) by the city as provided by Section 8.

SECTION 7. FAILURE TO COMPLY; PENALTY. Should the person, corporation, partnership or association fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any violation of provisions of Section 1, be fined in an amount not to exceed \$100.00 or be imprisoned not to exceed 30 days or 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.

SECTION 8. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 7, 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 5 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 6, 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 10. 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 restricted mail, postage prepaid, 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.

SECTION 9. HEARING. If a hearing is requested within the 10 day period as provided in Section 6, 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 before the governing body. The hearing shall be held by the governing body as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five 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. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the manner provided in Section 8.

SECTION 10. COSTS ASSESSED. If the city abates the nuisance pursuant to Section 8, the costs of abatement shall be charged against the lot or parcel of ground on which the nuisance was located. 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.

SECTION 11. All other ordinances in conflict with this ordinance are hereby repealed.

SECTION 12. This ordinance shall be in full force and effect from and after its adoption and publication in the official city newspaper.

ADOPTED AND APPROVED by the Governing Body, this (5th) day of April, 1999.