

Chapter 7.04 NUISANCES GENERALLY

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7.04.010 Certain Matters Declared Nuisances.

The following sections designate matters that are nuisances.
(History: Ord. NU-99 Art. I §1 (part) 1961)

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7.04.020 Things Injurious or Annoying.

Every act done, occupation followed or thing kept or maintained by any person or persons, partnership or corporation so as to constitute an injury or annoyance to the public is a nuisance.

(History: Ord. NU-99 Art. I §1(a) 1961)

(See also: 11.28.095)

7.04.030 Nauseous Substances.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.040 Carcasses of Animals.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.050 Offensive Vegetable Matter.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.060 Refuse Matter.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.070 Privies Kept in Offensive Manner.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.080 Pool of Water.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.090 Clogging of Sewers and Septic Systems.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.100 Violation - Penalty.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.110 Order to Abate Nuisance or to Show Cause.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.120 Hearing and order.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.130 Abatement of Nuisance by City - Costs taxed.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.140 Unplatted Land.

Repealed.

(History: Ord. REP-1151 §1, 82; NU-99)

7.04.150 Title.

The title of Overland Park Municipal Code Sections 7.04.150 through 7.04.310, inclusive, shall be known as the Nuisance and Unsafe Structures Enforcement Act (NUSE Act).

(History: Ord. NU-1382 §1, 86)

7.04.160 Purpose and Findings.

- A. The purpose of the Nuisance and Unsafe Structures Enforcement Act is to provide reasonable controls restricting and prohibiting the allowance of nuisances and unsafe structures to exist on property within the City of Overland Park; to declare that certain conditions constitute public nuisances or unsafe structures, which are unsightly, are a menace and dangerous to health of the inhabitants of the City, or of any residential or commercial area and the residents thereof, and are offensive to the general public health, safety, and welfare of the community; to provide a method of enforcement of this Act; to provide procedures to notify property owners or those in control of real property that a violation exists and to allow for self-abatement by such person; to provide property owners or those in control of real property notification and an opportunity to be heard concerning violations of the Act; to provide administrative procedures to allow the City to direct the abatement of violations; to provide a method of assessment or collection of costs for abatement by the City; to declare that the existence of such violations are unlawful; and to provide penalties for enforcement through the Municipal Court system.
- B. The Governing Body of the City of Overland Park, Kansas, hereby finds that the allowance of nuisances and unsafe or dangerous structures, as defined herein, on private property or adjacent rights-of-way or easements are public nuisances which are unsightly, a menace dangerous to the health of the inhabitants of the City, or of the residential or commercial area and the residents thereof, and are offensive to the general public health, safety, and welfare of the community. Such nuisances or unsafe structures promote conditions which cause disease, pollution; proliferation of rats, vermin, mosquitoes, and snakes; the spread of fire; a harmful environment for transients and to the community as a result of transient use; harmful attractions for children; creates short and long-term impacts on the area including the diminution of property values and the integrity of the neighborhood; and interferes with the orderly development of property in the City.

(History: Ord. NU-1382 §1, 86)

7.04.170 Definitions.

For purposes of this Act, the following definitions shall apply:

- A. "City" shall mean the City of Overland Park, Kansas.
- B. "Property owner" shall mean the named property owner as indicated by the records of the Records and Tax Administration or Appraiser's Office in Johnson County, Kansas.
- C. "Drainageway" shall mean a man-made or natural conveyance that transports stormwater overland which is frequently referred to as a channel, swale, engineered swale, ditch, gully, stream, or watercourse. The **drainageway** includes all land inundated during the 1% design storm. A drainageway does not include areas where water flows in a non-concentrated or sheet flow condition.
- D. "Representative" shall mean any person or entity listed in the Johnson County, Kansas, Appraiser's Office or Treasurer's Office for the purposes of paying taxes; a registered agent with the Kansas Secretary of State's Office for corporate or partnership ownership; an agent or manager directed by the property owner, estate, or court order to represent the interests of the property or to otherwise control activities on the real property; or a corporate officer.
- E. "Person" shall mean any individual; individuals; partnership; corporation; unincorporated association; other business organization; committee; board; trustee; receiver; agent; or any representative who has charge, care or responsibility for maintenance of any property, lot or parcel of land regardless of status as owner, tenant or lessee, and regardless of whether such person has possession.
- F. "Tenant" shall mean any person who has a severable or nonseverable interest in the real property either by oral or written lease or covenant, or by other methods of conveying a limited interest in such lands; or any person who occupies or has possession of such real property.
- G. "Perennial violator" shall mean any person who shows an annual pattern of failing to comply with this Act which may be shown by repeated notices of abatement, notices of costs, or previous violations of this Act.
- H. "Nuisance" shall mean any condition which causes or creates an unreasonable interference with the rights of the general public and shall include, but not be limited to, graffiti, rank vegetation; rank or infested compost heaps; dense smoke; excessive dust, ash, or fine particles in the air; rank ponds or standing water including swimming pools, water receptacles, and undrained areas; cesspools creating on or rising to the surface; rank odors; unkempt trash, refuse, brush and limbs, debris or building materials; rank sewage or septic system; excessive accumulation of animal waste; exposed animal carcasses after death; sheds, garages, or other out-buildings allowing infestation of rodents or insects or left unsecured to allow entry of animals, humans, or the natural elements such as rain, hail and snow, or otherwise left unkempt or unsightly, except for outdoor dog or pet houses maintained in a clean and reasonable manner; trees, shrubs, or plants which are dead, diseased or infested which present a harmful or dangerous

condition to the public; exposed refrigerators or freezers, or other appliances left unsecured; private streets on residential and commercial properties containing potholes or other conditions creating safety hazards for pedestrians or motor vehicles; encroachments in the public right-of-way for private purposes which create a safety hazard including, but not limited to, fixed basketball goals and masonry mailbox enclosures; surface discharge from sump pumps or other subsurface drainage lines in a manner that causes buildup of algae or ice that endangers pedestrian or vehicular traffic; and any other condition which is determined to present a dangerous or harmful condition to the public.

- I. "Unsafe structure" shall mean any structure or part of a structure which remains or is damaged to present a dangerous or unsafe condition to the public including, but not limited to, structures damaged by fire, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, missing boards or siding, unsecured doors, or unsecured openings which allow the harboring of animals, insects, transients, or create an attraction to children; structures which, due to the opinion of qualified experts or inspectors, including but not limited to, fire, engineering, or architectural experts, present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued, and any building permit has lapsed for more than 30 days; structures which remain unfinished, or without an occupancy permit, after 18 months from the date of the first building permit and where no inspection for newly completed work has been requested from the City within the last 45 days.
- J. "Qualified expert" shall mean a person who is regularly employed to conduct structural inspections to comply with life, safety, mechanical, health, and building codes or a licensed professional in the field of engineering or architecture.
- K. "Graffiti" shall mean any drawing, painting, writing, inscription, figure or mark, regardless of its content, of the type which is commonly known and referred to as "graffiti," which is written, drawn, painted, sprayed, scratched or otherwise placed or affixed, regardless of the nature of the material used, on any wall, window, rock, building or portion thereof, fence, gate, sign, other structure, tree or other real or personal property, either publicly or privately owned, and that is visible from any adjacent public or private property or public or private right-of-way. "Graffiti" shall not include any political sign as defined in Section 18.110.560 of the Unified Development Ordinance.

(History: Ord. EGD-2948 §1, 2012; NU-2877 §1, 2011; NU-2601 §1, 2006; NU-1719 § 1, 92; NU-1382 §1, 86)

7.04.180 Nuisances or Unsafe Structures Unlawful; Responsibility to Abate.

- A. It shall be unlawful for any property owner, representative, tenant, or other such person with control, occupancy, or possession of real property to allow or maintain a nuisance or unsafe structure to exist on any lot or parcel of land within the City, including any areas between the property lines of said lot or parcel and the center line of any adjacent street or alley including sidewalks, streets, alleys, easements and rights-of-way.

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- B. The property owner, representative, tenant or other such person with control, occupancy, or possession of real property shall be responsible for the abatement of any nuisance or unsafe structure.

(History: Ord. NU-1382 §1, 86)

7.04.190 Enforcement Against Nuisances; Designation of Officer; Order of Abatement; Hearing; Notice to Appear.

- A. The Governing Body hereby delegates to the City Manager the authority to designate a public officer to be charged with the administration and enforcement of this Act as it concerns nuisances. The public officer shall authorize the investigation of violations of the Act. If it is determined that a violation of this Act exists, then the officer shall file a written report with the City Clerk and direct that an order of abatement be sent to the property owner, representative, or tenant. The Governing Body, by resolution, also may make such determination;
- B. Except as provided by Subsection C, the order of abatement shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service, or if the same is unoccupied and the owner is a nonresident, then by mailing a notice by certified mail, return receipt requested, to the last known address of the owner.
- C. If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of an order sent pursuant to this Section during the preceding 24-month period, the City may provide notice of the issuance of any further orders to abate or remove a nuisance from such property in the manner provided by Subsection B or as provided in this Subsection. Except as specifically provided in this Subsection, the City may may 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.
- D. The order of abatement shall state:
1. A common or legal description of the property, or both;
 2. That the property is in violation of the Act;
 3. The nature of the violation, including relevant ordinances, with sufficient information that would reasonably allow the recipient to determine the nature of the violation to allow for self-abatement;
 4. That the condition creating the violation shall be abated within a designated time period, not exceeding 10 days from the date of the notice, provided that extensions of such 10-day time period shall be granted if the owner or agent of the owner of the property demonstrates that due diligence is being exercised in abating the nuisance;
 5. That the recipient, upon written request, may obtain a hearing before a designated hearing officer, provided such request is received by the City Clerk prior to the expiration of the designated waiting period;

6. That failure to comply with the order of abatement shall result in the City abating the violation with the assessment of costs made against the property or by filing for judgment against the recipient;
 7. That failure to pay such assessments within 30 days of the notice of costs shall result in the filing of a tax lien against the property, or the filing for judgment against the recipient, or both;
 8. That such violations are subject to prosecution.
- E. If the recipient of the order of abatement makes a written request for hearing within the waiting period, then the City shall immediately schedule a hearing before a designated hearing officer. The hearing officer shall receive evidence, review the investigation, and prepare a written order. The order shall be sent by certified mail to all relevant parties within 10 days of the hearing, unless otherwise stated at the hearing, and prior to the City taking any action to abate the violation. The order shall describe the relevant facts relied upon, state the specific Code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement, or orders as deemed necessary by the hearing officer.
- F. If an authorized public officer determines that a violation of this Act exists, he or she may issue a Notice to Appear in Municipal Court for such violation. No other procedures are required as a prerequisite to the issuance of a Notice to Appear.

(History: Ord. NU-2601 § 2, 2006; NU-2299 §1, 2001; NU-1382 §1, 86)

7.04.200 Abatement of Nuisance by City; Notice of Costs; Assessment and Collection.

- A. If the recipient of the order of abatement fails to comply with the order within the period of time designated in the order, or fails to comply with the order after a hearing on the matter, then the City may go onto the property to abate the violation in a reasonable manner. 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 the Act.
- B. If the City takes action to abate the violation, it shall provide a Notice of Costs to the property owner, representative, or tenant. The Notice of Costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the Notice of Costs shall also be posted on the property in a reasonable manner. The recipient shall have 30 days from the date of the Notice to make full payment. The Notice of Costs shall state:
1. The common or legal description of the property, or both;
 2. The nature of the violation, including relevant ordinances;
 3. The nature of the work performed to abate the violation;
 4. The costs incurred for the abatement of the violations in either a lump sum or in itemized form;

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5. That the notice is a demand for payment within 30 days from the date of notice;
 6. That failure to pay the entire amount within 30 days shall allow the City to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;
 7. That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest;
 8. That payments shall be made by check or money order made payable to the City of Overland Park, Kansas, with no post-dating of the check, and sent to the address as stated within the notice with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments.
- C. If the payment of costs is not made within the 30-day period, the City may levy a special assessment for such costs against the lot or piece of land. The City Clerk at the time of certifying other City taxes to the County Clerk shall certify the aforesaid costs, and the County Clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the City as other City taxes are collected and paid. Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorneys' fees, and administrative costs have been paid in full. (Ref. K.S.A. 12-1617e, as amended).

(History: Ord. NU-2601 § 3, 2006; NU-1382 §1, 86)

7.04.210 Enforcement Against Unsafe Structures; Designation of Officer; Notice to Appear; Hearing; Resolution.

Repealed. See 16.190.110.1.1

(History: Ord. BC-2237 §10, 2001; NU-1382 §1, 86)

7.04.220 Excavation Fill.

It shall be the duty of the property owner, representative or the tenant, upon removal of a structure, to fill any basement or other excavation located upon the premises and take any other action necessary to leave such premises in a safe condition including the grading and seeding or sodding of the area, removal of dirt or mud from roads, streets, alleys, or sidewalks, to allow for proper drainage of the site, and to remove any and all refuse, trash, debris, brush and limbs, or materials from the site.

(History: Ord. NU-1382 §1, 86)

7.04.230 Removal of unsafe structures; salvage, sale; assessment and collection of costs; procedure.

- A. If the owner of any structure has failed to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the City may proceed to raze and remove such structure, make the premises safe and secure, or let the same to contract. The City shall keep an account of the cost of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the cost of removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay such costs, after the payment of all costs, shall be paid to the owner of the premises upon which the structure was located.
- B. The City shall give notice to the owner of such structure by certified mail, return receipt requested, of the total cost incurred by the City in removing such structure and making the premises safe and secure. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. If the cost is not paid within the 30-day period and if there is no salvageable material or if moneys 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 et seq., and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. 12-1,115, as amended, or shall be assessed as a special assessment 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 and the County Clerk shall extend the same on the tax rolls of the county against such lot or parcel of land. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, as amended, but only until the full cost and any applicable interest has been paid in full.

Whenever any structure is removed from any premises under the provisions of this act, the City Clerk shall certify to the county appraiser that such structure, describing the same, has been removed.

- C. If there is no salvageable material, or if the moneys 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 et seq., and amendments thereto, are insufficient to pay the costs of the work, 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. Whenever no-fund warrants are issued under the authority of this act, the Governing Body of such City shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in article 19

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of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 12-1,115, as amended, when and if paid, shall be placed in the general fund of the City.

(History: Ord. NU-1382 §1, 86)

7.04.240 Damage by Fire or Explosion; Insurance Proceeds.

Repealed. See 16.190.108.7

(History: Ord. BC-2237 §10, 2001; NU-1382,A §1, 87; NU-1382 §1, 86)

7.04.250 Proof of Repairing or Rebuilding.

Repealed. See 16.190.108.7

(History: Ord. BC-2237 §10, 2001; NU-1382,A §2, 87; NU-1382 §1, 86)

7.04.260 City Not Party to Insurance Contract.

Repealed. See 16.190.108.7

(History: Ord. BC-2237 §10, 2001; NU-1382,A §3, 87; NU-1382 §1, 86)

7.04.270 Failure to Pay Insurance Proceeds or to Obtain a Certificate in Lieu of Payment of Proceeds.

Repealed.

(History: Ord. BC-2237 §11, 2001; NU-1382,A §4, 87; NU-1382 §1, 86)

7.04.280 Immediate Hazards.

In the event the public officer authorized under this Act determines that a nuisance or unsafe structure exists which creates an immediate hazard, then the City shall proceed, without delay, to take steps to abate the situation and without prior notice to or hearing of the owner, representative, or tenant. The cost of such action shall be assessed as set forth in Chapter 7.28 of this Code, or pursuant to K.S.A. 12-1,115, as amended, or both.

(History: Ord. NU-1382 §1, 86)

7.04.290 Right of Entry; Unlawful Interference; Penalty.

- A. Any authorized officer or agent of the City, pursuant to this Act, shall be allowed to enter onto any land within the City limits to investigate violations of this Act or for the abatement of violations pursuant to this Act.
- B. It shall be unlawful for any person to interfere with a public officer or agent of the City in performing his or her duties pursuant to this Act whether investigating or abating violations.
- C. Any person who interferes with an officer or agent of the City pursuant to this Act shall be punished as provided in Section 1.12.010 of this Code.

(History: Ord. NU-1382 §1, 86)

7.04.300 Penalty.

- A. Any property owner, representative, tenant, or person found in violation of this Act shall be subject to prosecution in the Overland Park Municipal Court. Any such person found guilty of violating the provisions of this Act shall be subject to a fine of not less than \$50 nor more than \$500 and not more than 10 days in jail, or both a fine and jail sentence. Any person found guilty of this Act two or more times within any one-year period, or determined by the Municipal Court to be a perennial violator, shall be fined not less than \$250 nor more than \$500 and shall be subject to a sentence not to exceed 30 days in jail, or both a fine and a jail sentence.
- B. Prosecution of any offender under this Act does not limit the City's right to pursue assessment or collection of costs as stated in this Act, or by other laws.
- C. Each day that any violation shall continue shall constitute a separate offense.
- D. Any fines assessed under this Act shall be collected by the Municipal Court administration and paid over to the general fund, except for assessments of court costs.

(History: Ord. ROCR-2245 §9, 2001; NU-1382 §1, 86)

7.04.310 Severability.

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.

(History: Ord. NU-1382 §1, 86)

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