

Chapter 215

NUISANCES

ARTICLE I

In General

Section 215.010. Health Nuisance — Defined. [CC 1985 §7-301; Amended Ord. No. 927, 8-19-1991]

- A. It shall be unlawful for any person to maintain or permit any nuisance within the City as defined anywhere within the City Code and, without limitation, as follows:
1. Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown, placed or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure, lot; whether vacant or occupied;
 2. All dead animals not removed within twenty-four (24) hours after death;
 3. Any place, structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
 4. All stagnant ponds or pools of water;
 5. Iceboxes or refrigerators and the like, including but not limited to washers and dryers 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 unless the door, opening or lid thereof is unhinged, or unfastened and removed there from;
 6. Any fence, structure, thing or substance placed upon or being upon any street, way, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the City.

Section 215.020. Complaints — Inquiry and Inspection. [CC 1985 §7-302; Amended Ord. No. 927, 8-19-1991]

The Compliance Officer shall make inquiry and inspection of premises upon receiving a complaint or complaints 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 Compliance Officer may make such inquiry and inspection when he/she or a representative observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the Compliance Officer shall make a written report of findings.

Section 215.030. Right of Entry. [CC 1985 §7-303; Ord. No. 927, 8-19-1991]

It shall be a violation of this Article to deny the Compliance Officer or authorized representative the right to access and entry upon private property generally accessible to the public under the Plain View and Open Fields doctrines at any reasonable time for the purpose of making inquiry and inspection pursuant to this Article.

Section 215.040. Notice. [CC 1985 §7-304; Ord. No. 927, 8-19-1991]

- A. Any person, corporation, partnership or association found by the Compliance Officer to be in violation of Section 215.010 shall be served a notice of such violation. The notice shall be served by restricted mail, postage prepaid, return receipt requested; or by personal service.
- B. The notice shall state the conditions which are in violation of the City Code. The notice shall also inform the person, corporation, partnership or association that such person or entity:
 - 1. Shall have ten (10) days from the date of serving the notice to abate the conditions in violation of Section 215.010;
 - 2. Shall have ten (10) days from the date of serving the notice to request a hearing before the Governing Body regarding the matter;
 - 3. Failure to abate the conditions or to request a hearing within the time allowed may result in prosecution as provided by Section 215.050 and/or abatement of the nuisance conditions by the City.

Section 215.050. Failure to Comply — Penalty. [CC 1985 §7-305; Ord. No. 927, 8-19-1991]

- A. Should the person, corporation, partnership, association, or other entity fail to comply with the notice to abate the nuisance or request a hearing the Compliance 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 215.010, be fined in an amount not to exceed one hundred dollars (\$100.00), or be imprisoned not to exceed thirty (30) 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 and shall be punishable as such hereunder. For a subsequent offense, upon conviction, he/she shall be fined an amount not to exceed five hundred dollars (\$500.00), or be imprisoned not to exceed ninety (90) days, or by both such fine and imprisonment.
- B. In all such cases, as a condition of probation, parole or suspended sentence, upon conviction, the court shall order the defendant to clean up and/or otherwise remedy the conditions found to violate this Article in addition to any fine and/or imprisonment imposed.

Section 215.060. Abatement. [CC 1985 §7-306; Ord. No. 927, 8-19-1991]

- A. In addition to, or as an alternative to prosecution as provided in Section 215.050, the Compliance Officer may seek to remedy violations of Section 215.010 in the following manner:
1. If a person to whom a notice has been sent pursuant to Section 215.040 has neither alleviated the condition causing the alleged violation nor requested a hearing before the Governing Body within the time periods specified in Section 215.040, the Compliance Officer may present a resolution to the Governing Body for adoption authorizing the Compliance Officer or other agents of the City to abate the conditions causing the violation at the end of ten (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 215.070. 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 paid, return receipt requested; or
 - c. In the event the whereabouts of such persons are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the Compliance Officer and filed with the City Clerk, and the serving of the resolution shall be made by publishing the same once each week for three (3) consecutive weeks in the official City newspaper and by posting a copy of the resolution on the premises where such conditions exists.
- B. Refusal to accept service of any notice under this Article shall constitute sufficient service of such notice.

Section 215.070. Hearing. [CC 1985 §7-307; Ord. No. 927, 8-19-1991]

If a hearing is requested within the ten (10) day period as provided in Section 215.040, such request shall be made in writing to the Governing Body and delivered to the City Clerk. Failure to make a timely request for a hearing shall constitute a waiver of the right to contest the findings of the Compliance 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 (5) days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the City may offer 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 in the manner provided in Section 215.060.

Section 215.080. Costs Assessed. [CC 1985 §7-308; Ord. No. 927, 8-19-1991]

If the City abates the nuisance pursuant to Section 215.060, the cost 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 enter 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 215.090. Severability. [CC 1985 §7-309; Ord. No. 927, 8-19-1991]

The provisions of this Article shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this ordinance is declared to be contrary to the Constitution of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this Article and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any part of this Article shall be held contrary to the Constitution of the State of Kansas, the ordinance shall remain in full force and effect as to all severable matters.

ARTICLE II

Wrecked, Junked, Dismantled and Abandoned Motor Vehicles

Section 215.100. Unlawful Acts. [CC 1985 §§7-301, 7-401; Amended Ord. No. 882, 10-2-1989; Amended Ord. No. 927, 8-19-1991; Ord. No. 1439 §1, 9-3-2014]

- A. It shall be unlawful to park, store, leave or permit the parking, storing or leaving of any motor vehicle of any kind which is in a wrecked, junked, dismantled, disabled, inoperative or abandoned condition, regardless of whether attended, for a period of time in excess of seventy-two (72) hours upon any private property without prior authorization of the City.
- B. A vehicle shall be presumed to be wrecked, junked, disabled, inoperative, or abandoned if any one of the following conditions apply:
 - 1. The vehicle does not have a current registration or tag as required by K.S.A. 8-126 to 8-149, inclusive, as amended;
 - 2. The vehicle is unable to move under its own power;
 - 3. The vehicle or any part thereof is placed upon jacks, blocks or other supports; or
 - 4. The vehicle is missing any one (1) or more parts necessary for the lawful operation of the vehicle upon a public way.
- C. The provisions of this Subsection shall not apply to:
 - 1. Any motor vehicle which is enclosed in a garage or other building; or
 - 2. Any person conducting a business enterprise in compliance with existing 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 or an attractive nuisance.

Section 215.110. Nuisances. [CC 1985 §7-402; Amended Ord. No. 882, 10-2-1989]

Any motor vehicle parked, stored, left or permitted to be left, stored or parked in violation of the provisions of Section 215.100 hereof shall constitute rubbish, pollution, noxious debris and a nuisance detrimental to the public health, safety and general welfare. It shall be the duty of the registered or other owner of such a motor vehicle and the private property, if any, upon which the motor vehicle is located to either remove the same from the City limits or to have the same stored in such a manner that it will not be visible from the street, alley, highway or other private property.

Section 215.120. Notification. [CC 1985 §7-403; Amended Ord. No. 882, 10-2-1989]

- A. It shall be the duty of the Police Department to give written notice to the registered or other owner of any motor vehicle or the occupant of the property upon which such motor vehicle is located that the subject vehicle, property of location and owners of the said vehicle and property of location is/are in violation of this Article and requiring that the said vehicle be removed from the premises within seventy-two (72) hours of the date of the said notice. The notice required hereinabove shall further state that the registered or other owner of the subject vehicle or property of location or occupant of such property may within seventy-two (72) hours of service of the above described notice remove and store said vehicle in such a manner that the said vehicle is not visible from any public way or adjoining private property.
- B. A notice required hereunder shall be by certified mail, return receipt requested or by hand delivery to the occupant or owner of the subject property and/or to the registered or other owner of the said vehicle. Any refusal to accept such notice shall constitute perfection of service of the notice required hereinabove.

Section 215.130. Failure to Comply. [CC 1985 §7-404; Amended Ord. No. 882, 10-2-1989]

When notice required in Section 215.120 is given and the person so notified shall fail or refuse to meet the requirements of said notice, the person notified shall be in violation of this Article.

Section 215.140. Impoundment and Disposition. [CC 1985 §7-405; Amended Ord. No. 882, 10-2-1989]

Notwithstanding the other provisions of this Article and without regard to whether any prosecution for violation of this Article has been instituted, the Chief of Police, after giving the notice required by Section 215.120 hereof, is authorized, upon the expiration of the aforesaid seventy-two (72) hour period, to cause the said vehicle(s) to be removed to a suitable place for storage and/or impoundment; the location of which is to be designated by the Chief of Police.

Section 215.150. Release From Impoundment. [CC 1985 §7-407; Ord. No. 399, 4-20-1970]

After any vehicle is impounded and stored, as aforesaid, the same shall not be released until all charges connected with the removal, towing and storage of such vehicle have been paid.

Section 215.160. Penalties. [CC 1985 §7-408; Ord. No. 679, 11-2-1981; Ord. No. 882, 10-2-1989]

Any person violating the provisions of this Article shall, upon conviction thereof, be punished by a fine of not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the County Jail for a term of not less than five (5) nor more than fifteen (15) days, or by both such fine and imprisonment. Upon a second (2nd) conviction, the maximum penalties shall be five hundred dollars (\$500.00) and one hundred eighty (180) days in Jail, or both.

Section 215.170. Request for Variance. [CC 1985 §7-409; Ord. No. 882, 10-2-1989]

Upon notification of non-compliance as outlined above, the registered owner of such motor vehicle may request suspension of enforcement from the City Council of this Article. The City Council may grant suspension of enforcement of this Article for a specified duration of time and for good cause shown. Whenever any order of the City Council is granted as stated herein and the violation exists upon expiration of the period of suspension of enforcement, said violation shall be prosecuted forthwith. Successive suspensions of enforcement shall not be granted.

Section 215.180. Definitions. [CC 1985 §7-410; Ord. No. 882, 10-2-1989]

In construing this Article, the terms defined in the Mulvane City Code shall apply in addition to the definitions enumerated below:

NUISANCE —% Any motor vehicle: not currently registered; parked in violation of City ordinance(s); incapable of moving under its own power; or, in a junked, wrecked, disabled, inoperable condition; or, an abandoned condition. —% Absence of current registration plate displayed, placement of a vehicle or part(s) thereof on blocks for greater than seventy-two (72) hours except as otherwise permitted under this Article; or the absence of one or more parts of the vehicle necessary for the lawful operation of the said vehicle upon any public way shall be deemed prima facie evidence of violation of the prohibitions of this Article.

COMPLAINTS, INQUIRY AND INSPECTION —% The Police Chief, Compliance Officer or other designated representative of the Police Department shall make inquiry and inspection of premises as such matters shall come to the attention of the City. The officers designated for enforcement of this Article may make such inquiry and inspection whenever apparent violations of this Article may come to the attention of such enforcement officials. Upon completion of any such inquiry and inspection the Compliance Officer shall make a written report of findings.

RIGHT OF ENTRY —% The officials responsible for enforcement of this Article shall have the right of access to any apparent violation of this Article which may be detected from a public place under the Plain View doctrine and/or the Open Fields doctrine. It

shall be a violation of this Article to prevent, oppose or interfere with City Officers investigating and/or enforcing this Article.

ARTICLE III

Weeds

Section 215.190. Weeds to Be Removed. [CC 1985 §7-501; Ord. No. 888, 11-6-1989]

It shall be unlawful for any owner, agent, lessee, 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 ways, and all other areas, public or private. All weeds defined herein are hereby declared a nuisance and are subject to abatement as herein provided.

Section 215.200. Definitions. [CC 1985 §7-501; Amended Ord. No. 888, 11-6-1989]

WEEDS — As used herein, means the following:

1. Brush and woody vines shall be classified as weeds;
2. Wild vegetation indigenous grasses which may attain growth over such area as to become when dry a fire menace to adjacent improved property;
3. Plants which bear or may bear seeds of a downy or wingy nature;
4. Plants which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which may constitute a menace to public health, safety or welfare;
5. Weeds and indigenous grasses on or about residential property which, because of height have a blighting influence on the neighborhood; and
6. For purposes of this Article, the term "*weeds*" shall include Kudzu (*pueraria loabata*), Field Bindweed (*condvolnulus arnensis*), Russian Knapweed (*centaurea picnis*), Hoary Cress (*lepidium draba*), Canada Thistle (*cirsium arnednse*), Quackgrass (*agropyron repens*), Leafy Spurge (*euphorbiaesula*), Burrageed (*franseria tomentosa* and *discolor*), Pignut (*hoffmannseggia densiflors*), Musk (nodding), Thistle (*carduus nutans L.*), and Johnson Grass (*sarghum halepense*) and any other vegetation designated by Sedgwick and Sumner Counties as noxious weeds.
7. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed twelve (12) inches in height. The term "*weeds*" shall include but not be limited to noxious weeds.

Section 215.210. Compliance Officer. [CC 1985 §7-502; Ord. No. 888, 11-6-1989; Ord. No. 1313 §§1 — 2, 8-18-2008]

- A. The Chief of Police shall designate a Compliance Officer to be charged with the administration and enforcement of this Article. The Compliance Officer or an

authorized assistant shall notify the owner or agent in charge of any premises in the City upon which weeds exist in violation of this Article, by restricted mail or by personal service. Such notice shall include the following:

1. That the owner or his/her agent in charge of the property is in violation of the City weed control law;
 2. That the owner or agent (the person in charge of the property) is ordered to cut the weeds within five (5) days of the receipt of notice;
 3. That the owner or agent in charge of the property may request a hearing before the Compliance Officer or designated representative within five (5) days of the receipt of notice;
 4. That if the owner or his/her agent in charge of the property does not cut the weeds the City will cut the weeds and assess the cost of the cutting including a reasonable administrative cost against the owner or his/her agent in charge of the party;
 5. That the owner or his/her agent in charge of the property will be given an opportunity to pass the assessment, and if it is not paid, it will be added to the property tax as a special assessment.
 5. The owner shall have the right to appeal the special assessment to the City Council within twenty (20) days of receipt thereof; and
 6. That the Compliance Officer should be contacted if there are any questions regarding the order.
- B. If the owner is unknown or is a non-resident and there is no resident agent, service may be made by publishing notice one (1) time in the official City newspaper. If notice is made by publication, the owner will be ordered to cut the weeds within ten (10) days from the date of publication.
- C. In lieu of giving notice as provided in Subsections (A) or (B) above, the Compliance Officer or an authorized agent may, for initial notice or any subsequent notice, send a one-time yearly written notification by mail or personal service to the owner, his/her agent or occupant. Such notice shall include the same information required in Subsection (A) above. In addition, such notice shall include a statement that no further notice shall be given prior to removal of weeds. If such a one-time notice is sent pursuant to this Subsection, no additional notices are required to be sent prior to removal of weeds for one (1) calendar year from the date of that notice. In the event there is a change of ownership in the premises during that calendar year, the City may not recover any costs or levy an assessment for the costs incurred by cutting, destroying and/or removing the weeds on such premises unless and until the new owner is provided notice as required by this Section.

Section 215.220. Abatement — Assessment of Costs. [CC 1985 §7-503; Ord. No. 888, 11-6-1989; Ord. No. 1313 §1, 8-18-2008]

- A. In the event that the owner or his/her agent in charge of the premises shall neglect or fail to comply with the requirements of Section 215.190, and upon the expiration of five (5) days after receipt of notice pursuant to Subsection (A) of Section 215.210, or ten (10) days after publication of notice pursuant to Subsection (B) of Section 215.210, or immediately if notice has been made pursuant to Subsection (C) of Section 215.210, the Compliance Officer or an authorized agent shall cause to be cut, destroyed and/or removed all such weeds, thus abating the nuisance created thereby.
- B. The Compliance Officer or an assistant shall give notice, to the owner or his/her agent in charge of such property by restricted mail of the costs of abatement of the nuisance. The notice shall state that payment of the cost is due and payable within thirty (30) days following receipt of the notice.
- C. If the costs remain unpaid after thirty (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 and taxed as a special assessment against the particular real property on which such weeds were cut or removed, and against such other real property 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.
- D. The charge for such cutting shall be one hundred ten dollars (\$110.00) per hour with a minimum charge of one hundred ten dollars (\$110.00) per lot.

Section 215.230. Right of Entry. [CC 1985 §7-504; Ord. No. 888, 11-6-1989]

The Compliance 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 and destroying and/or removing such weeds in a manner consistent with this Article.

Section 215.240. Unlawful Interference. [CC 1985 §7-505; Ord. No. 888, 11-6-1989]

It shall be unlawful for any person to interfere with or to attempt to prevent the Compliance Officer or his/her 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 ordinance violation.

Section 215.250. Noxious Weeds. [CC 1985 §7-506; Ord. No. 888, 11-6-1989]

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.

Section 215.260. Penalties. [CC 1985 §7-507; Ord. No. 888, 11-6-1989]

Violation of this Article is a misdemeanor. Upon conviction, the Court shall impose a fine of not less than twenty-five dollars (\$25.00) or more than two hundred fifty dollars

(\$250.00). For enforcement purposes, each day any real property continues in non-compliance with the provisions of this Article from and after service of notice as required herein shall constitute a separate violation. In addition to the above, the Court may make such further orders as deemed necessary to abate the nuisance condition leading to prosecution.