

CHAPTER I. ADMINISTRATION

- Article 1. General Provisions
- Article 2. Governing Body
- Article 3. Officers and Employees
- Article 4. Personnel Policy and Employee Benefits
- Article 5. Oaths and Bonds
- Article 6. Open Records
- Article 7. Investment of Idle Funds
- Article 8. Administrative Fees for Outside Collection
- Article 9. Economic Development Corporation

ARTICLE 1. GENERAL PROVISIONS

- 1-101. CODE DESIGNATED. The chapters, articles and sections herein shall constitute and be designated as "The Code of the City of Holyrood, Kansas," and may be so cited. The Code may also be cited as the "Holyrood City Code."
(Code 1997)
- 1-102. DEFINITIONS. In the construction of this code and of all ordinances of the city, the following definitions and rules shall be observed, unless such construction would be inconsistent with the manifest intent of the governing body or the context clearly requires otherwise:
- (a) City shall mean the City of Holyrood, Kansas.
 - (b) Code shall mean "The Code of the City of Holyrood, Kansas."
 - (c) Computation of Time. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be a Saturday, Sunday, or legal holiday, that day shall be excluded.
 - (d) County means the County of Ellsworth in the State of Kansas.
 - (e) Delegation of Authority. Whenever a provision appears requiring or authorizing the head of a department or officer of the city to do some act or perform some duty, it shall be construed to authorize such department head or officer to designate, delegate and authorize subordinates to do the required act or perform the required duty unless the terms of the provision designate otherwise.
 - (f) Gender. Words importing the masculine gender include the feminine and neuter.
 - (g) Governing Body shall be construed to mean the mayor and city council of the city, or those persons appointed to fill a vacancy in the office of mayor or the council as provided in this code.
 - (h) In the city shall mean and include all territory over which the city now has, or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.
 - (i) Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.
 - (j) Month shall mean a calendar month.

(k) Number. Words used in the singular include the plural and words used in the plural include the singular.

(l) Oath includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the word "swear" is equivalent to the word "affirm."

(m) Officers, departments, etc. Officers, departments, boards, commissions and employees referred to in this code shall mean officers, departments, boards, commissions and employees of the city, unless the context clearly indicates otherwise.

(n) Owner applied to a building or land, shall include not only the owner of the whole but any part owner, joint owner, tenant in common or joint tenant of the whole or a part of such building or land.

(o) Person includes a firm, partnership, association of persons, corporation, organization or any other group acting as a unit, as well as an individual.

(p) Property includes real, personal and mixed property.

(q) Real Property includes lands, tenements and hereditaments, and all rights thereto and interest therein, equitable as well as legal.

(r) Shall, may. "Shall" is mandatory and "may" is permissive.

(s) Sidewalk means any portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

(t) Signature, subscription includes a mark when the person cannot write, when his or her name is written near such mark and is witnessed by a person who writes his or her own name as a witness.

(u) State shall be construed to mean the State of Kansas.

(v) Street means and includes public streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the city.

(w) Tenant or occupant applied to a building or land, shall include any person holding a written or oral lease of, or who occupies the whole or a part of such building or land, whether alone or with others.

(x) Tenses. Words used in the past or present tense include the future as well as the past and present.

(y) Writing or written may include printing, engraving, lithography and any other mode of representing words and letters, except those cases where the written signature or the mark of any person is required by law.

(z) Year means a calendar year, except where otherwise provided.

(Code 1997)

1-103. EXISTING ORDINANCES. The provisions appearing in this code, so far as they are in substance the same as those of ordinances existing at the time of the effective date of this code, shall be considered as continuations thereof and not as new enactments. (Code 1997)

1-104. EFFECT OF REPEAL. The repeal of an ordinance shall not revive an ordinance previously repealed, nor shall such repeal affect any right which has accrued, any duty imposed, any penalty incurred or any proceeding commenced under or by virtue of the ordinance repealed, except as shall be expressly stated therein. (Code 1997)

- 1-105. CATCHLINES OF SECTIONS. The catchlines of the sections of this code printed in capital letters are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted.
(Code 1997)
- 1-106. PARENTHETICAL AND REFERENCE MATTER. The matter in parenthesis at the ends of sections is for information only and is not a part of the code. Citations indicate only the source and the text may or may not be changed by this code. This code is a new enactment under the provisions of K.S.A. 12-3014 and 12-3015. Reference matter not in parenthesis is for information only and is not a part of this code.
(Code 1997)
- 1-107. AMENDMENTS; REPEAL. Any portion of this code may be amended by specific reference to the section number as follows: "Section _____ of the code of the City of Holyrood is hereby amended to read as follows: (the new provisions shall then be set out in full). . ." A new section not heretofore existing in the code may be added as follows: "The code of the City of Holyrood is hereby amended by adding a section (or article or chapter) which reads as follows: . . .(the new provisions shall be set out in full). . ." All sections, or articles, or chapters to be repealed shall be repealed by specific reference as follows: "Section (or article or chapter) _____ of the code of the City of Holyrood is hereby repealed." (Code 1997)
- 1-108. ORDINANCES. The governing body shall have the care, management and control of the city and its finances, and shall pass all ordinances needed for the welfare of the city. All ordinances shall be valid when a majority of all the members-elect of the city council shall vote in favor. Where the number of favorable votes is one less than required, the mayor shall have power to cast the deciding vote in favor of the ordinance.
(K.S.A. 12-3002; Code 1997)
- 1-109. SAME; SUBJECT AND TITLE; AMENDMENT. No ordinance shall contain more than one subject, which shall be clearly expressed in its title; and no section or sections of an ordinance shall be amended unless the amending ordinance contains the entire section or sections as amended and the section or sections amended shall be repealed.
(K.S.A. 12-3004; Code 1997)
- 1-110. SAME; PUBLICATION. No ordinance, except those appropriating money, shall be in force until published in the official city newspaper by the city clerk. One publication of any such ordinance shall be sufficient unless additional publications are required by statute or ordinance. The publisher of the newspaper shall prefix such published ordinance by a line in brackets stating the month, day and year of such publication.
(K.S.A. 12-3007; Code 1997)
- 1-111. SAME; ORDINANCE BOOK. Following final passage and approval of each ordinance, the city clerk shall enter the same in the ordinance book of the city as provided by law. Each ordinance shall have appended thereto the manner in which the ordinance was passed, the date of passage, the page of the journal containing the record of the final vote on its passage, the name of the newspaper in which published and the date of publication.
(K.S.A. 12-3008; Code 1997)

- 1-112. RESOLUTIONS, MOTIONS. Except where a state statute or city ordinance specifically requires otherwise, all resolutions and motions shall be passed if voted upon favorably by a majority of a quorum of the city council.
(Code 1997)
- 1-113. CITY RECORDS. The city clerk or any other officer or employee having custody of city records and documents shall maintain such records and documents in accordance with K.S.A. 12-120 to 12-121 inclusive, which is incorporated by reference herein as if set out in full and as provided in the state open records act and the city policy regarding open public records.
(K.S.A. 12-120:121; Code 1997)
- 1-114. ALTERING CODE. It shall be unlawful for any person, firm or corporation to change or amend by additions or deletions, any part or portion of this code, or to insert or delete pages, or portions thereof, or to alter or tamper with such code in any manner whatsoever which will cause the law of the City of Holyrood to be misrepresented thereby. This restriction shall not apply to amendments or revisions of this code authorized by ordinance duly adopted by the governing body. (Code 1997)
- 1-115. SCOPE OF APPLICATION. Any person convicted of doing any of the acts or things prohibited, made unlawful, or the failing to do any of the things commanded to be done, as specified and set forth in this code, shall be deemed in violation of this code and punished in accordance with section 1-116. Each day any violation of this code continues shall constitute a separate offense.
(Code 1997)
- 1-116. GENERAL PENALTY. Whenever any offense is declared by any provision of this code, absent a specific or unique punishment prescribed, the offender shall be punished in accordance with this section.
(a) A fine of not more than \$1,000; or,
(b) Imprisonment in jail for not more than 179 days; or,
(c) Both such fine and imprisonment not to exceed (a) and (b) above.
(Code 1997)
- 1-117. SEVERABILITY. If for any reason any chapter, article, section, subsection, sentence, clause or phrase of this code or the application thereof to any person or circumstance, is declared to be unconstitutional or invalid or unenforceable, such decision shall not affect the validity of the remaining portions of this code.
(Code 1997)

ARTICLE 2. GOVERNING BODY

- 1-201. GOVERNING BODY. The governing body shall consist of a mayor and five councilmembers to be elected as set out in Chapter 6 of this code.
(Code 1997)
- 1-202. SAME; POWERS GENERALLY. All powers exercised by cities of the third class or which shall hereafter be conferred upon them shall be exercised by the governing body, subject to such limitations as prescribed by law. All executive and administrative authority granted or limited by law shall be vested in the mayor and council as governing body of the city.
(K.S.A. 12-103; Code 1997)
- 1-203. SAME; MEETINGS. (a) Regular meetings of the governing body shall be held on the first and third Mondays of each month at 6:30 p.m. In the event the regular meeting day shall fall on any legal holiday or any day observed as a holiday by the city offices, the governing body shall fix the succeeding day not observed as a holiday as a meeting day.
(b) Special meetings may be called by the mayor or acting mayor, on the written request of any three members of the council specifying the object and purpose of such meeting, which request shall be read at a meeting and entered at length on the journal.
(c) Regular or special meetings of the governing body may be adjourned for the completion of its business at such subsequent time and place as the governing body shall determine in its motion to adjourn.
(K.S.A. 15-106; Ord. 326; Code 1997)
- 1-204. SAME; QUORUM. In all cases, it shall require a majority of the councilmembers-elect to constitute a quorum to do business.
(K.S.A. 15-106; Code 1997)
- 1-205. POWERS OF THE MAYOR. The mayor shall preside at all meetings of the governing body. The mayor shall have the tie-breaking vote on all questions when the members present are equally divided. The mayor shall:
(a) Have the superintending control of all officers and affairs of the city;
(b) Take care that the ordinances of the city are complied with;
(c) Sign the commissions and appointments of all officers elected or appointed;
(d) Endorse the approval of the governing body on all official bonds;
(e) From time to time communicate to the city council such information and recommend such measures as he or she may deem advisable;
(f) Have the power to approve or veto any ordinance as the laws of the state shall prescribe;
(g) Sign all orders and drafts drawn upon the city treasury for money.
(K.S.A. 15-301:309; Code 1997)
- 1-206. PRESIDENT OF THE COUNCIL. The city council shall elect one of its own body as president of the council. The president of the council shall preside at all meetings of the council in the absence of the mayor. In the absence of both the mayor and the president of the council, the council shall elect one of its members as "acting president of the council." The president and acting president, when occupying the place of mayor, shall have the same privileges as other councilmembers but shall exercise no veto.
(K.S.A. 15-310; Code 1997)
- 1-207. ADMINISTRATIVE POWERS. The governing body may designate whether the administration of a policy or the carrying out of any order shall be performed by a

committee, an appointive officer, or the mayor. If no administrative authority is designated it shall be vested in the mayor.
(Code 1997)

- 1-208. VACANCIES IN GOVERNING BODY; HOW FILLED. In case of a vacancy in the office of mayor by reason of resignation, death or removal from office or from the city, the city council shall by a majority vote appoint the successor mayor until the next regular election for that office.
In case of a vacancy in the council occurring by reason of resignation, death, or removal from office or from the city, the mayor, by and with the advice and consent of the remaining councilmen shall appoint some suitable elector to fill the vacancy until the next election for that office. In case any person elected as a councilman neglects or refuses to qualify within 30 days after his election, he or she shall be deemed to have refused to accept such office and a vacancy shall be deemed to exist. Thereupon, the mayor, with the consent of the remaining councilmen shall appoint some suitable elector to fill said vacancy.
(C.O. No. 5, Sec. 3:4)
- 1-209. COMPENSATION. Members of the governing body shall receive as compensation such amounts as may be fixed by ordinance.
(Code 1997)
- 1-210. EXPENSES. Each member of the governing body shall receive for his or her services and as reimbursement for his or her expenses, compensation as follows:
(a) Mileage at the same rate as is established by law by the state of Kansas for state employees for each mile traveled by the shortest route upon the performance of duties assigned by the mayor and/or council.
(b) Reimbursement for actual food and lodging expenses upon the performance of duties assigned by the mayor and/or council, provided such expenses shall be documented by proper receipts.
(Code 1997)
- 1-211. INCORPORATING CODE OF PROCEDURE FOR KANSAS CITIES. There is hereby incorporated by reference for the purpose of establishing a code of procedure for the conduct of city council meetings of the City of Holyrood, Kansas, that certain code known as the "Code of Procedure for Kansas Cities," Edition of 2004, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of said Code of Procedure for Kansas Cities shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Holyrood, Kansas," 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 section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.
(Code 2005)
- 1-212. CODE OF ETHICS. (a) Declaration of Policy - The proper operation of our government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in the proper channels and that the public have confidence in the integrity of its government. In recognition of those goals, there is hereby established a Code of Ethics for all officials and employees, whether elected or appointed, paid or unpaid. The purpose of this code is to establish ethical standards by setting forth those acts or actions that are incompatible with the best interests of the city.
(b) Responsibilities of Public Office - Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to

uphold the Constitution of the United States and the Constitution of this State and to carry out impartially the laws of the nation, state, and city and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the long term public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach.

(c) Dedicated Service - All officials and employees of the city should be responsive to the political objectives expressed by the electorate and the programs developed to attain those objectives. Appointive officials and employees should adhere to the rule of work and performance established as the standard for their positions by the appropriate authority.

Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

(d) Fair and Equal Treatment - (1) Interest in Appointments. Canvassing of members of the city council, directly or indirectly, in order to obtain preferential consideration in connection with any appointment to the municipal service shall disqualify the candidate for appointment except with reference to positions filled by appointment by the city council.

(2) Use of Public Property - No official or employee shall request or permit the use of city-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as city policy for the use of such official or employee in the conduct of official business.

(3) Obligations to Citizens - No official or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

(e) Conflict of Interest - No elected or appointive city official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her duties in the public interest or would tend to impair his or her independence of judgment or action in the performance of his or her official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association.

Specific conflicts of interest are enumerated below for the guidance of officials and employees:

(1) Incompatible Employment - No elected or appointive city official or employee shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of his or her official duties.

(2) Disclosure of Confidential Information - No elected or appointive city official or employee, shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city. Nor shall he or she use such information to advance the financial or other private interest of himself, herself or others.

(3) Gifts and Favors. No elected or appointive city official or employee shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person, firm, or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the city; nor shall any such official or employee (a) accept any gift, favor or thing of value that may tend to influence him or her in the discharge of his or her duties or (b) grant in the discharge of his or her duties any improper favor, service, or thing of value. The prohibition against gifts or favors shall not apply to: (a) an occasional nonpecuniary gift, of only

nominal value or (b) an award publicly presented in recognition of public service or (c) any gift which would have been offered or given to him or her if not an official or employee.

(4) Representing Private Interest Before City Agencies or Courts - No elected or appointive city official or employee whose salary is paid in whole or in part by the city shall appear in behalf of private interest before any agency of this city. He or she shall not represent private interests in any action or proceeding against the interest of the city in any litigation to which the city is a party.
(Code 1997)

ARTICLE 3. OFFICERS AND EMPLOYEES

- 1-301. APPOINTMENT. At the first regular meeting in May of each year the mayor, by and with the consent of the council, shall appoint a city clerk and city treasurer, and may appoint a city attorney, municipal judge/clerk of the court, chief of police and such other officers as may be deemed necessary for the best interest of the city. Such officers shall hold their respective offices until their successors have been appointed and qualified. All such appointments shall be entered on the journal of proceedings of the governing body. The duties and salaries of all appointed officers shall be fixed by ordinance.
(K.S.A. 15-204; Code 1997)
- 1-302. EMPLOYEES. The mayor with the consent of the council shall have authority to hire all other employees, or such authority may be delegated to the respective department heads.
(Code 1997)
- 1-303. REMOVAL. (a) A majority of all members elect of the governing body may remove any appointed officer.
(b) For good cause, the mayor may suspend at any time any appointed officer.
(c) Employees, other than appointed officers, may be removed by the mayor upon recommendation of the respective department heads.
(d) No officer or employee shall be removed for any reason until he or she has been given notice and afforded the opportunity for a hearing.
(K.S.A. 15-204; Code 1997)
- 1-304. VACANCY IN OFFICE. Whenever a vacancy occurs in any appointive office for whatever reason, the vacancy shall be filled by the governing body. Any person appointed to fill such vacancy shall serve only until the next regular time for appointment.
(K.S.A. 15-209; Code 1997)
- 1-305. CITY CLERK. The city clerk shall:
(a) Be custodian of all city records, books, files, papers, documents and other personal effects belonging to the city and not properly pertaining to any other office;
(b) Carry on all official correspondence of the city;
(c) Attend and keep a record of the proceedings of all regular and special meetings of the governing body;
(d) Enter every appointment of office and the date thereof in the journal;
(e) Enter or place each ordinance of the city in the ordinance books after its passage;
(f) Publish all ordinances, except those appropriating money, and such resolutions, notices and proclamations as may be required by law or ordinance.
(Code 1997)

- 1-306. SAME; FISCAL RECORDS. The city clerk shall:
(a) Prepare and keep suitable fiscal records according to generally accepted accounting principles;
(b) Assist in preparing the annual budget;
(c) Audit all claims against the city for goods or services rendered for the consideration of the governing body. His or her accounts shall properly show the amounts paid from any fund of the city and the cash balance existing in each fund;
(d) Keep an accurate account of all bonds issued by the city;
(e) Keep a record of all special assessments.
(Code 1997)
- 1-307. SAME; SEAL; OATHS. The city clerk shall:
(a) Have custody of the corporate seal of the city and shall affix the same to the official copy of all ordinances, contracts, and other documents required to be authenticated;
(b) Have power to administer oaths for all purposes pertaining to the business and affairs of the city;
(c) Keep suitable files of all such oaths required to be deposited in his or her office.
(Code 1997)
- 1-308. SAME; WITHHOLDING AGENTS. The city clerk is designated as the withholding agent of the city for the purposes of the Federal Revenue (Income) Act, and shall perform the duties required of withholding agents by said act or any other act requiring withholding from the compensation of any city officer or employee. The clerk shall perform such other duties as may be prescribed by the governing body or the Kansas statutes.
(Code 1997)
- 1-309. ASSISTANT CITY CLERK. (a) The office of assistant city clerk is hereby established. The mayor shall appoint, by and with the consent of the city council, the assistant city clerk. The person so appointed and confirmed shall hold the office for a term of one year and until a successor is appointed and confirmed.
(b) The assistant city clerk shall perform those duties assigned to that office by the city clerk.
(c) Whenever a vacancy occurs in the position of city clerk and the city is without a person appointed, confirmed or qualified to hold that office, the assistant city clerk shall become the acting city clerk and fulfill the duties of that office.
(d) Compensation of the assistant city clerk shall be set by ordinance passed by the governing body.
(Code 1997)
- 1-310. CITY TREASURER. The city treasurer shall:
(a) Keep a full and accurate record of all money received and paid out in a ledger book provided by the governing body;
(b) Publish an annual financial statement;
(c) Deposit all public moneys and sign all checks of the city;
(d) Pay out city funds only upon orders or warrants properly signed by the mayor and city clerk;
(e) Perform such other duties as may be prescribed by the governing body or the Kansas statutes.
(K.S.A. 10-803; K.S.A. 12-1608; Code 1997)
- 1-311. CITY ATTORNEY; OFFICE; DUTIES. There is hereby established the office of city attorney. No person shall be eligible for the office of city attorney who is not an attorney at law admitted to practice in the Supreme Court of the State of Kansas. The

city attorney shall be charged with the general direction and supervision of the legal affairs of the city. The city attorney shall:

- (a) Attend meetings of the city council when so directed to attend by the governing body;
 - (b) Advise the city governing body and all officers of the city upon such legal questions affecting the city and its offices as may be submitted to him or her;
 - (c) When requested by the city governing body give opinions in writing upon any such questions;
 - (d) Draft such ordinances, contracts, leases, easements, conveyances and other instruments in writing as may be submitted to him or her in the regular transaction of affairs of the city;
 - (e) Approve all ordinances of the city as to form and legality;
 - (f) Attend planning commission and board of zoning appeals meetings when so directed by the boards;
 - (g) Appear and prosecute all violations of city ordinances in municipal court when his or her services shall be required;
 - (h) Perform such other duties as may be prescribed by the governing body and the Kansas statutes.
- (Code 1997)

1-312. CITY ENGINEER. The city engineer shall be a licensed professional engineer in the State of Kansas. He or she shall be responsible for:

- (a) The design and specifications for all city streets, sewers, water lines, public buildings and other public facilities;
 - (b) The inspection of all public works projects including streets, sewers, water lines and other public facilities;
 - (c) The general supervision of the maintenance and repair of all public facilities.
- (Code 1997)

1-313. APPOINTMENT OR EMPLOYMENT IN MORE THAN ONE POSITION. The same person may be appointed to more than one appointive office, or employed in more than one department, except that the same person shall not be appointed to incompatible offices. Salaries or wages of such persons shall be prorated between the proper funds of the several offices or departments.

(Code 1997)

1-314. CONFLICT OF INTEREST. (a) No city officer or employee shall be signatory upon, discuss in an official capacity, vote on any issue concerning or otherwise participate in his or her capacity as a public official or employee in the making of any contract with any person or business:

- (1) In which the officer or employee owns a legal or equitable interest exceeding \$5,000 or five percent, whichever is less, individually or collectively with his or her spouse; or
 - (2) From which the officer or employee receives, in the current or immediately preceding or succeeding calendar year, any salary, gratuity, other compensation or a contract for or promise or expectation of any such salary, gratuity or other compensation or remuneration having a dollar value of \$1,000 or more; or
 - (3) In which he or she shall hold the position of officer or director, irrespective of the amount of compensation received from or ownership held in the business.
- (b) The prohibitions contained in subsection (a) of this section shall not apply to the following:
- (1) Contracts let after competitive bidding has been solicited by published notice; and
 - (2) Contracts for property or services for which the price or rate is fixed by law.
- (K.S.A. 75-4301; Code 1997)

ARTICLE 4. PERSONNEL POLICY AND EMPLOYEE BENEFITS

1-401.

PERSONNEL POLICIES AND GUIDELINES. There is hereby incorporated by reference for the purpose of establishing employee personnel rules and regulations the document entitled "Uniform Personnel Policies and Guidelines for the City of Holyrood." No fewer than three copies of said document shall be marked or stamped "Official Copy as adopted by the Code of the City of Holyrood" and which there shall be attached a copy of this section. Said official copies shall be filed with the city clerk and shall be open to inspection and available to the public at all reasonable hours. All departments of the city shall be supplied with copies of such rules and regulations as may be deemed necessary.

(Code 1997)

ARTICLE 5. OATHS AND BONDS

- 1-501. OATH. All officers and employees of the city, whether elected or appointed, either under the laws of the State of Kansas or ordinances of the city, shall before entering upon the duties of their respective offices, take and subscribe an oath or affirmation as follows:
- Oath: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of Kansas and faithfully discharge the duties of _____ (here enter name of office or position). So help me God."
- Affirmation: " I do solemnly, sincerely and truly declare and affirm that I will support the Constitution of the United States and of the State of Kansas and faithfully discharge the duties of _____ (enter name of office or position). This I do under the pains and penalties of perjury.
(K.S.A. 75-4308, 54-104, 54-106; Code 2005)
- 1-502. OATHS FILED. All officers and employees required to take and subscribe or sign an oath or affirmation shall be supplied the forms for the purpose at the expense of the city and upon taking and subscribing or signing any such oath or affirmation, the same shall be filed by the city clerk.
(Code 1997)
- 1-503. BONDS REQUIRED. (a) The following city officers shall each, before entering upon the duties of his or her office, give a good and sufficient corporate surety bond to the city. The bond shall be in the following amount, to wit:
- (1) City treasurer - \$10,000;
 - (2) City clerk - \$10,000;
 - (3) Judge /clerk of municipal court - \$1,000.
- (b) The governing body may provide for the coverage by blanket bond of such officers and employees and in such amounts as the governing body may, by resolution, designate.
(Code 1997)
- 1-504. SAME; PREMIUMS. All premiums on surety bonds shall be paid by the city.
(K.S.A. 78-111; Code 1997)
- 1-505. CONDITION OF BONDS. Each of the bonds required in section 1-503 of this article shall be conditioned for the faithful performance of duty and all acts required by the laws of Kansas and of the city, and for the application and payment over to the proper persons of all moneys or property coming into the hands of each such officer by virtue of his or her office.
(Code 1997)
- 1-506. APPROVAL OF BONDS. All bonds given to the city shall be approved as to their form by the city attorney and as to surety and sufficiency by the governing body, unless otherwise provided by the laws of the State of Kansas.
(Code 1997)

ARTICLE 6. OPEN RECORDS

- 1-601. POLICY. (a) It is hereby declared to be the policy of the city that all public records which are made, maintained or kept by or are in the possession of the city, its officers and employees, shall be open for public inspection as provided by, and subject to the restrictions imposed by, the Kansas Open Records Act.
- (b) Any person, upon request, shall have access to such open public records for the purpose of inspecting, abstracting or copying such records while they are in the possession, custody and control of the appointed or designated record custodian thereof, or his or her designated representative.
- (Code 1997)
- 1-602. RECORD CUSTODIANS. (a) All city officers and employees appointed or designated as record custodians under this article shall: protect public records from damage and disorganization; prevent excessive disruption of the essential functions of the city; provide assistance and information upon request; insure efficient and timely action and response to all applications for inspection of public records; and shall carry out the procedures adopted by this city for inspecting and copying open public records.
- (b) The official custodian shall prominently display or distribute or otherwise make available to the public a brochure in the form prescribed by the Local Freedom of Information Officer that contains basic information about the rights of a requester, the responsibilities of a public agency, and the procedures for inspecting or obtaining a copy of public records under the Kansas Open Records Act. The official custodian shall display or distribute or otherwise make available to the public the brochure at one or more places in the administrative offices of the city where it is available to members of the public who request public information in person.
- (Code 2001)
- 1-603. LOCAL FREEDOM OF INFORMATION OFFICERS. The Local Freedom of Information Officer shall:
- (a) Prepare and provide educational materials and information concerning the Kansas Open Records Act;
- (b) be available to assist the city and members of the general public to resolve disputes relating the Kansas Open Records Act;
- (c) respond to inquiries relating to the Kansas Open Records Act;
- (d) establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise made available to the public under the Kansas Open Records Act. In establishing such requirements for the content of the brochure, the Local Freedom of Information Officer shall include plainly written basic information about the rights of a requester, the responsibilities of the city, and the procedures for inspecting and obtaining a copy of public records under the Act.
- (Code 2001)
- 1-604. PUBLIC REQUEST FOR ACCESS. All city offices keeping and maintaining open public records shall establish office hours during which any person may make a request for access to an open public record. Such hours shall be no fewer than the hours each business day the office is regularly open to the public. For any city office not open Monday through Friday, hours shall be established by the record custodian for each such day at which time any person may request access to an open public record.
- (Code 2001)
- 1-605. FACILITIES FOR PUBLIC INSPECTION. All city offices keeping and maintaining open public records shall provide suitable facilities to be used by any person desiring

to inspect and/or copy an open public record. The office of the city clerk, being the principal recordkeeper of the city, shall be used as the principal office for providing access to and providing copies of open records to the maximum extent practicable. Requesters of records shall be referred to the office of the city clerk except when the requested records are not in that office and are available in another city office. (Code 2001)

- 1-606. PROCEDURES FOR INSPECTION. Any person requesting access to an open public record for purposes of inspecting or copying such record, or obtaining a copy thereof, shall abide by the procedures adopted by the governing body for record inspection and copying, including those procedures established by record custodians as authorized by the governing body. Such procedures shall be posted in each city office keeping and maintaining open public records. (Code 2001)
- 1-607. APPOINTMENT OF OFFICIAL CUSTODIANS. The following city officers are hereby appointed as official custodians for purposes of the Kansas Open Records Act and are hereby charged with responsibility for compliance with that Act with respect to the hereinafter listed public records:
- (a) City Clerk - All public records kept and maintained in the city clerk's office and all other public records not provided for elsewhere in this section.
 - (b) City Treasurer - All public records not on file in the office of the city clerk and kept and maintained in the city treasurer's office.
 - (c) Chief of Police - All public records not on file in the office of the city clerk and kept and maintained in the city police department.
 - (d) Fire Chief - All public records not on file in the office of the city clerk and kept and maintained in the city fire department.
 - (e) City Attorney - All public records not on file in the office of the city clerk and kept and maintained in the city attorney's office.
 - (f) Clerk of the Municipal Court - All public records not on file in the office of the city clerk and kept and maintained in the municipal court.
- (Code 2001)
- 1-608. APPOINTMENT OF LOCAL FREEDOM OF INFORMATION OFFICER. The City Clerk is hereby appointed as the local freedom of information officer and charged with all of the duties as set forth in section 1-603. (Code 2005)
- 1-609. DESIGNATION OF ADDITIONAL RECORD CUSTODIANS. (a) Each of the official custodians appointed in section 1-606 is hereby authorized to designate any subordinate officers or employees to serve as record custodian. Such record custodians shall have such duties and powers as are set out in the Kansas Open Records Act.
- (b) Whenever an official custodian shall appoint another person as a record custodian he or she shall notify the city clerk of such designation and the city clerk shall maintain a register of all such designations. (Code 2001)
- 1-610. REQUESTS TO BE DIRECTED TO CUSTODIANS. (a) All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Kansas Open Records Act, shall address their requests to the custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.
- (b) Whenever any city officer or employee appointed or designated as a custodian under this article is presented with a request for access to, or copy of, a public record which record the custodian does not have in his or her possession and for which he or she has not been given responsibility to keep and maintain, the

custodian shall so advise the person requesting the record. Further, the person making the request shall be informed as to which custodian the request should be addressed to, if such is known by the custodian receiving the request.
(Code 2001)

1-611. FEE ADMINISTRATION. The city clerk is hereby authorized to provide the clerk's office, and the office of each record custodian, with sufficient cash to enable the making of change for record fee purposes. Each custodian shall transmit all record fee moneys collected to the city treasurer not less than monthly. Each custodian shall maintain duplicates of all records and copy request forms, completed as to the amount of fee charged and collected, which amounts shall be periodically audited by the clerk-finance officer and treasurer of the city.
(Code 2001)

1-612. INSPECTION FEE. (a) Where a request has been made for inspection of any open public record which is readily available to the record custodian, there shall be no inspection fee charged to the requester.
(b) In all cases not covered by subsection (a) of this section, a record inspection fee shall be charged at the rate of \$10.00 per hour per employee engaged in the record search. A minimum charge of \$10.00 shall be charged for each such request.
(Code 2001)

1-613. COPYING FEE. (a) A fee of \$.25 per page shall be charged for photocopying public records, such fee to cover the cost of labor, materials and equipment.
(b) For copying any public records which cannot be reproduced by the city's photocopying equipment, the requester shall be charged the actual cost to the city, including staff time, in reproducing such records.
(Code 2001)

1-614. PREPAYMENT OF FEES. (a) A record custodian may demand prepayment of the fees established by this article whenever he or she believes this to be in the best interest of the city. The prepayment amount shall be an estimate of the inspection and/or copying charges accrued in fulfilling the record request. Any overage or underage in the prepayment shall be settled prior to inspection of the requested record or delivery of the requested copies.
(b) Prepayment of inspection and/or copying fees shall be required whenever, in the best estimate of the record custodian, such fees are estimated to exceed \$5.00.
(c) Where prepayment has been demanded by the record custodian, no record shall be made available to the requester until such prepayment has been made.
(Code 2001)

1-615. PAYMENT. All fees charged under this article shall be paid to the custodian of the records inspected and/or copied unless the requester has established an account, for purposes of billing and payment, with the city.
(Code 2001)

ARTICLE 7. INVESTMENT OF IDLE FUNDS

1-701.

PURPOSE AND GOALS. It is the purpose of this statement to set forth the public policies of the city relating to the investment of public moneys, and establish procedural requirements as to investment management practice. The objective of the investment policy and program of the city shall be as follows:

(a) The safeguarding of all public moneys shall be of the highest priority. Public money shall not be invested or managed in any matter which would jeopardize the safety of the principal.

(b) Consistent with the requirement of safety, the objective of the investment program shall be to aggressively manage and invest all public moneys to maximize net earnings, consistent with the public responsibility to secure maximum, safe investment return possible from moneys assigned to its stewardship, to relieve demands on the property tax and to otherwise reduce the cost of public services.
(Code 1997)

1-702.

INVESTMENT OF IDLE FUNDS. Temporarily idle moneys of the city not currently needed, may in accordance with the procedure hereafter described be invested:

(a) In temporary notes or no-fund warrants issued by such investing governmental unit;

(b) In time deposit, open accounts or certificates of deposit with maturities of not more than two years:

(1) In commercial banks which have offices located in such investing governmental unit; or

(2) If the office of no commercial bank is located in such investing governmental unit, then in commercial banks which have offices in the county or counties in which all or part of such investing governmental unit is located;

(c) In time certificates of deposit with maturities of not more than two years:

(1) With state or federally chartered savings and loan associations or federally chartered savings banks which have offices located in such investing governmental unit; or

(2) If the office of no state or federally chartered savings and loan association or federally chartered savings bank is located in such governmental unit, then with state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the county or counties in which all or part of such investing governmental unit is located;

(d) In repurchase agreements with:

(1) Commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or

(2)(A) If the office of no commercial bank, state or federally chartered savings and loan association or federally chartered savings bank is located in such investing governmental unit; or

(B) If no commercial bank, state or federally chartered savings and loan association or federally chartered savings bank has an office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (I) of K.S.A. 75-4201, and amendments thereto, then such repurchase agreements may be entered into with commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the county or counties in which all or part of such investing governmental unit is located; or

(3) If no bank, state or federally chartered savings and loan association or federally chartered savings bank which has its office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (I) of K.S.A. 75-4201, and amendments thereto, then such repurchase agreements may be entered into with commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the State of Kansas;

(e) In United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with the following, which is doing business within the State of Kansas, any state or national bank, state or federally chartered savings and loan association, or federally chartered savings bank; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer which is registered in compliance with the requirements of section 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-1254, and amendments thereto;

(f) The municipal investment pool fund;

(g) The investments authorized and in accordance with the conditions prescribed in section 2 of the municipal investment pool fund act;

(h) The trust departments of commercial banks which have offices located in such investing governmental unit or with trust companies which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with commercial banks which have offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Investments of public moneys under this paragraph shall be limited to those investments authorized under subsection (b) of section 1 of the municipal investment pool fund act.

(i) The investments authorized in paragraphs (e), (f), (g) or (h) of this section shall be utilized only if the appropriate eligible commercial banks, which have offices located in the investing governmental unit or in the county or counties in which all or a part of such investing governmental unit is located if no such bank has an office which is located within such governmental unit, or the appropriate eligible state or federally chartered savings and loan associations or federally chartered savings banks, which have offices located in the investing governmental unit or in the county or counties in which all or a part of such investing governmental unit is located if no such state or federally chartered savings and loan association or federally chartered savings bank has an office which is located within such governmental unit, cannot or will not make the investments authorized in paragraphs (b) or (c) of this section available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (I) of K.S.A. 75-4201, and amendments thereto.

(K.S.A. 12-1675, as amended; Ord. 308, Sec. 1; Code 1997)

of time such amounts will be available for investment, and shall submit such recommendations as deemed necessary for the efficient and safe management of city finances. The recommendations of the city council finance committee chair shall provide for an investment program which shall so limit the amounts invested and shall schedule the maturities of investments so that the city will, at all times, have sufficient moneys available on demand deposit to assure prompt payment of all city obligations.

(Ord. 308, Sec. 2; Code 1997)

- 1-704. CUSTODY AND SAFEKEEPING. Securities purchased pursuant to this article shall be under the care of the city clerk, city treasurer and finance committee chair and shall be held in the custody of a state or national bank or trust company, or shall be kept by such officers in a safety deposit box of the city in a bank or trust company. Securities in the original or receipt form held in the custody of a bank or trust company shall be held in the name of the city, and their redemption, transfer, or withdrawal shall be permitted only upon the written instruction of the city officers. Securities not held in the custody of a bank or trust company shall be personally deposited by such officer in a safety deposit box in the name of the city in a bank or trust company, access to which shall be permitted only in the personal presence and under the signature of two of the abovementioned officers.

(Ord. 308, Sec. 3; Code 1997)

- 1-705. SALE OR TRANSFER. If, in order to maintain sufficient moneys on demand deposit in any fund as provided in section 1-703, it becomes necessary to transfer or sell any securities of such funds, the officers specified in section 1-704 may transfer said securities to any other fund or funds in which there are temporarily idle moneys, or shall sell such securities, and for such purpose they shall have authority to make any necessary written direction, endorsement or assignment for and on behalf of the city.

(Ord. 308, Sec. 4; Code 1997)

- 1-706. INTEREST ON TIME DEPOSITS. The city clerk shall deposit the interest earned on invested idle funds to the general fund, unless otherwise required or authorized by law.

(Code 1997)

Ref. See K.S.A. 12-1677, and amendments thereto.

ARTICLE 8. ADMINISTRATIVE FEES FOR OUTSIDE COLLECTION

- 1-801. ADMINISTRATIVE FEES FOR OUTSIDE COLLECTION. All bills which are determined to be a bad debt and turned over for outside collection, including the State of Kansas setoff program, shall be subject to a fee of 25 percent of the total of the delinquent amount. This bad debt administrative charge shall be applied prior to referral for collection.
(Ord. 562, Sec. 1)

ARTICLE 9. ECONOMIC DEVELOPMENT CORPORATION

- 1-901 JOINT BOARD. There is hereby created a cooperative agreement with the Smoky Hill Development Corporation, hereinafter referred to as the joint board.
(Ord. 450, Sec. 2)

- 1-902 APPOINTMENT – QUALIFICATIONS AND NUMBER OF MEMBERS. (a) The joint board shall consist of no less than nine and no more than 11 members appointed as follows:

(1) The mayor of each contributing city within Ellsworth County shall, with the consent of their governing body, appoint one member for a staggered three year term.

(2) The chairman of the board of county commissioners shall, with the consent of the county commissioners of Ellsworth County, Kansas shall appoint three members for staggered three year terms.

(3) The board of directors for Smoky Hill Development Corporation shall appoint one contributing member, as determined by the general membership, for a staggered three year term.

(4) The joint board may appoint an independent individual(s) to the board if they have some skill which is determined desirable by current board members.

(b) In case of death, incapacity, resignation or disqualification of any member, the board making the appointment shall appoint another member for the unexpired term of such deceased, incapacitated, resigned or disqualified member. Any person shall be eligible for appointment by any contributing governing body who resides in Ellsworth County. All members, including the chairman, shall have the right to take part in all discussions and to vote, except that any member who has a conflict of interest in regard to any proposal or matter under consideration by the joint board shall disqualify himself/herself from the discussion and from voting. Members of the joint board shall serve without compensation but may be reimbursed for expenses actually incurred in the performance of their duties.

(Ord. 450, Sec. 2)

- 1-903 ORGANIZATION AND MEETINGS. The joint board shall convene for its first meeting at such time and place as shall be fixed by the mayor of the contributing cities and the chairman of the board of county commissioners, and shall thereupon move to elect officers, adopt bylaws and fix and determine times and places of future meetings. Said joint board shall elect one member as president, one member as vice president and one member as treasurer for terms of one year and/or until their successors have been elected and qualified. Special meetings of the joint board may be called by the president, or, in his/her absence, by the vice president. A quorum shall consist of a simple majority of members. The joint board shall designate a

secretary who need not be a member of the joint board. The secretary shall cause a proper record to be kept of all of the proceedings of the joint board. The secretary may be an officer or employee of Ellsworth County or a contributing city.
(Ord. 450, Sec. 2)

1-904 **POWERS – DUTIES AND GENERAL PURPOSES.** It shall be the duty and function of the joint board to study, investigate and promote economic development within Ellsworth County, Kansas under the laws of the state of Kansas, and recommend the necessary expenditures and actions to accomplish these purposes.
(Ord. 450, Sec. 2)

1-905 **FINANCING.** (a)(1) In order to promote economic development as set forth in this article and to fund the activities of the joint board, the operations of the corporation will be financed through a combination of funding sources including but not limited to:

- A. The Ellsworth County board of commissioners;
- B. The cities within the boundaries of Ellsworth County; and
- C. The collection of membership dues from interested companies, corporations, individuals or groups from within or outside Ellsworth County.

(2) The corporation may accept gifts, donations and grants from any legal source to aid the corporation in carrying out its economic development program and/or corporation's goals.

(3) If said gifts, donations or grants include any limitations or requirements as to their use, board of directors approval shall be required before said gifts, donations or grants can be accepted. Upon approval of the board of directors, administrative fees may be charged and collected for services rendered by the corporation's staff.

(4) The corporation may with board of director's approval acquire financing necessary for its operation or accomplishment of its goals by grants, donations, or loans.

(b) Annual operating budgets shall be prepared by the officers or staff and approved by the joint board by January 1 of each year for the following calendar year. From time to time during the year, it may become necessary to adjust the budget. This can be done with the joint board's approval as an agenda item at any regular or special meeting.
(Ord. 450, Sec. 2)

CHAPTER II. ANIMAL CONTROL AND REGULATION

- Article 1. General Provisions
- Article 2. Dogs
- Article 3. Other Animals
- Article 4. Prohibited Animals
- Article 5. General Penalty for Violation of Chapter II

ARTICLE 1. GENERAL PROVISIONS

2-101. DEFINITIONS. For the purposes of this chapter, the following words and phrases shall mean:

(a) Abandon includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.

(b) Animals means all vertebrate and invertebrate animals such as but not limited to bovine cattle, horses and other equines, hogs, goats, dogs, cats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, bees or birds that have been tamed, domesticated or captivated.

(c) Animal Shelter means the facility or facilities operated by the city or its authorized agents for the purpose of impounding or caring for animals under the authority of this chapter or state law.

(d) At-large means to be outside of a fence or other enclosure which restrains the animals to a particular premise or not under the control, by leash or lead, of the owner or other authorized person capable of restraining the animal. Animals tethered to a stationary object within range of public thoroughfares are deemed to be at-large.

(e) Bite means any actual or suspected abrasion, scratch, puncture, tear, bruise, or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

(f) Cat means any member of the species felis catus, regardless of sex.

(g) Dangerous or Vicious Animal means any animal deemed to be dangerous or vicious per section 2-115.

(h) Dog means any member of the species canis familiaris, regardless of sex.

(i) Fowl means all animals that are included in the zoological class aves, which shall include, but not limited to, chickens, ducks, geese, turkeys, guineas and pigeons.

(j) Harbor means any person who shall allow any animals to habitually remain or lodge or to be fed within his or her home, store, yard, enclosure or place of business or any other premises where he or she resides or controls.

(k) Humane Live Animal Trap means any cage trap that upon activation encloses an animal without placing any physical restraint upon any part of the body of such animal.

(l) Humanely Euthanize means the proper injection of a substance that quickly and painlessly terminates the life of an animal, or any other method approved by the American Veterinary Medical Association or the American Humane Society.

(m) Immediate Control means the regulation and supervision by a competent person so that an animal is unable to run or get loose at will.

(n) Kennel means any establishment, commercial or otherwise, maintained for breeding, rearing, grooming, boarding, or otherwise harboring in an enclosure in one location only, more than five dogs.

(o) Livestock includes, but is not limited to cattle, horses, goats, sheep or other animals commonly regarded or used as farm or ranch animals.

(p) Neutered means any male or female cat or dog that has been permanently rendered sterile.

(q) Own means and includes own, keep, harbor, shelter, manage, possess, or have a part interest in any animal. If a minor owns any such animal subject to the provisions of this chapter, the head of the household of which such minor is a member shall be deemed to own such animal for the purposes of this chapter.

(r) Owner means the one who owns, or his or her employee, agent, or other competent person into whose charge an animal has been placed by the actual owner as described in subsection (q) above.

(s) Vaccination means an injection of a vaccine, approved by the State Board of Public Health and administered by a licensed veterinarian for the purpose of immunizing an animal against rabies.

(t) Veterinarian means a doctor of veterinary medicine licensed by the State of Kansas.

(Code 1997)

2-102.

ANIMAL CONTROL OFFICER; DUTY TO IMPOUND; CITATION ALTERNATIVE.

(a) There is hereby created the position of animal control officer for the city and such officer shall be charged with the enforcement of this chapter. Any person employed by the city as an animal control officer and commissioned by the chief of police of the city shall have such powers and authority as allowed by law in the enforcement of this chapter. All animal control officers shall be subject to the supervision and direction of the chief of police of the city.

(b) Except as provided in subsection (c), it shall be the duty of the animal control officer to take up and impound all animals found in the city in violation of the provisions of this chapter.

(c) As an alternative to the provisions of subsection (b) of this section, any law enforcement officer or the animal control officer may issue a citation to the owner, harbinger or keeper of an animal in violation of this chapter, and the person receiving the citation shall, within 10 days, appear in the municipal court of the city to answer the charged violation of this chapter.

(Code 1997)

2-103.

SAME; CAPTURE/DESTRUCTION. When deemed necessary by law enforcement officers or the animal control officer for the health, safety and welfare of the residents of the city, such officers and/or their agents may:

(a) Place a humane trap on public or a requesting resident's property for the purpose of capturing any animal defined in this chapter as creating a nuisance in the city;

(b) Use any tranquilizer guns, humane traps, or other suitable devices to subdue and capture any animal that is deemed by the animal control officer, in his or her discretion, to be of a danger to itself or to the public health and safety.

(c) Use firearms or other suitable weapons to destroy any rabid animal, any vicious animal as defined in section 2-115, or any animal creating a nuisance as defined in section 2-111, where such animal is impossible or impractical to catch, capture or tranquilize.

(Code 1997)

2-104. SAME; RIGHT OF ENTRY; UNLAWFUL INTERFERENCE. (a) The animal control officer or any law enforcement officer shall have the right of entry upon any private unenclosed lots or lands for the purpose of collecting any animal whose presence thereupon is a violation of this chapter.

(b) It shall be unlawful for any person to interfere with the animal control officer in the exercise of his or her duties.

(Code 1997)

2-105. MUNICIPAL POUND ESTABLISHED. A municipal pound shall be established to carry out the provisions of this chapter. Such a pound may be operated by a contractor and all services required herein may be provided by a contractor. When so contracted, the pound shall have the following services and facilities as a minimum:

(a) Adequate pickup and impounding of all stray and ownerless dogs and cats and animals otherwise in violation of the provisions of this chapter.

(b) Group holding facilities for stray, ownerless and unvaccinated animals impounded for violation of the provisions of this chapter.

(c) Individual isolation facilities for sick, biting, rabid and suspected rabid animals.

(d) Facilities for the humane destruction of animals.

(Ord. 295, Sec. 6; Ord. 384, Sec. 6; Code 1997)

2-106. BREAKING POUND. (a) It shall be unlawful for any unauthorized person to open, unlock, break open or attempt to break open the pound, or to take or let out any animal placed therein, or take or attempt to take from an authorized officer of this city any animal taken up by him or her under the provisions of this chapter, or in any manner interfere with or hinder any authorized officer or employee of this city in catching, taking up, or impounding any animal.

(b) It shall be unlawful for any person or persons, other than those duly authorized, to care for, feed, attempt to feed, or interfere in any way with the care of impounded animals.

(Ord. 295, Sec. 6; Ord. 384, Sec. 6; Code 1997)

2-107. CRUELTY TO ANIMALS. It shall be unlawful for any person to:

(a) Willfully or maliciously kill, maim, disfigure, torture; beat with a stick, chain, club or other object; mutilate, poison, burn or scald with any substance; or otherwise cruelly set upon any animals, except that reasonable force may be employed to drive off vicious animals;

(b) Drive or work any animal cruelly or cruelly work any maimed, mutilated, infirm, sick or disabled animal, or cause, allow or permit the same to be done;

(c) Have, keep or harbor any animal which is infected with any dangerous or incurable and/or painfully crippling condition except as provided in section 2-108.

(d) Sell or offer for sale, barter, give away, or use as an advertising device or promotional display, living baby chicks, rabbits, ducklings or other fowl under two

months of age in any quantity less than 12; or to sell, offer for sale, barter, give away, or display animals or fowls as specified in this section which have been dyed, colored or otherwise treated so as to impart to them an artificial or unnatural color. This section shall not be construed to prohibit the sale of animals or fowls as specified in this subsection, in proper facilities, by hatcheries or persons engaged in raising and selling such animals and fowls for recognized animal husbandry purposes;

(e) Promote, stage, hold, manage, or in any way conduct any game, exhibition, contest or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal;

(f) Neglect or refuse to supply such animal with necessary and adequate care, food, drink, air, light, space, shelter or protection from the elements as necessary for health and well-being of such kind of animal.

(g) Abandon or leave any animal in any place without making provisions for its proper care;

(h) These provisions shall not apply to the exceptions sanctioned under section 2-108.

In addition to the penalties provided in section 1-116 of this code, the municipal court judge may order a person convicted of violation under this section to turn the animal involved over to a designated humane society. All such animals taken by the designated agency may be placed with another or more suitable person or destroyed humanely as soon thereafter as is conveniently possible.

(Code 1997)

2-108.

SAME; EXCEPTIONS. The provisions of section 2-107 shall not apply to:

(a) Normal or accepted veterinary or veterinary hospital practices or treatment of animals under active veterinary care;

(b) Bona fide experiments carried on by commonly recognized research facilities;

(c) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated;

(d) Rodeo practices accepted by the rodeo cowboys' association;

(e) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or by an authorized agent such as a licensed veterinarian, at the request of the owner;

(f) The humane killing of an animal by the animal control officer, a public health officer or a law enforcement officer in the performance of his or her official duty;

(g) The humane killing of an unclaimed animal after three full business days following the receipt of such animal at a municipal pound or an incorporated humane society shelter by the owner, operator or authorized agents of such establishments.

(Code 1997)

2-109.

KEEPING ANIMALS. It shall be unlawful for the owner, lessee, occupant or person in charge of any premises in the city to possess and maintain any animal or fowl within the city or permit to be maintained thereon any stable, shed, pen or other place where horses, mules, cattle, sheep, goats or swine, or undomesticated animals are kept. This provision shall not apply to:

(a) The maintaining of a stockyard or sales barn for the loading, unloading, temporary detention and sale of such livestock, if the location of such stockyard or sales barn does not otherwise violate the zoning ordinances of the city;

(b) The maintaining of dogs which are regulated by Article 2 of this chapter;

(c) The maintaining of non-poisonous and non-vicious animals and fowl which are commonly kept as household pets, such as cats, hamsters, rabbits, parakeets, and comparable animals, when kept as household pets and in a safe and sanitary manner in accordance with section 2-113 of this chapter;

(d) The transporting of animals through the city by ordinary and customary means;

(e) The maintaining of less than two cattle per acre or one cow-calf pair per acre or fraction thereof on the following described real estate in the city:

(f) The maintaining of less than two horses per acre or one horse-foal pair per acre or fraction thereof on the following described real estate in the city:

(1) All of Block 10, 11, 12, and 13, Church and Thomas Addition to the city.

(2) Beginning at the intersection of the east line of Charles Street extended and the south line of Nassau Avenue; thence southerly at an assumed bearing of south six degrees 30 minutes 54 seconds east and on an extension of the east line of Charles Street 668.89 feet to a point 1047 feet north of the south line of the SE/4 of Section 10, township 17 South, Range 10 west of the 6th P.M.; thence south 90 degrees 00 minutes 00 seconds west parallel to the south line of Section 10, 328.47 feet; thence north six degrees 30 minutes 54 seconds west 496.51 feet; thence north 83 degrees 29 minutes 15 seconds east 224.00 feet; thence north six degrees 30 minutes 54 seconds west 129.00 feet; thence north 83 degrees 29 minutes 15 seconds east 51.00 feet; thence south six degrees 30 minutes 54 seconds east 25.00 feet; thence north six degrees 30 minutes 54 seconds west 25.00 feet; thence north 83 degrees 29 minutes 15 seconds east 80.00 feet to the point of beginning, this parcel contains 4.968 acres more or less; and

(3) Fraction of the Southeast Quarter of Section 10, Township 17 South, Range Ten West, described as follows: Commencing at a point 1047 feet north and 50 feet east of the southwest corner of the SE/4 of Section 10, running east 627 feet parallel with the south line of the quarter section; thence south at right angles 69 ½ feet; thence west at right angles 627 feet; thence north at right angles 69 ½ feet to point of beginning. Also bounded on the north by the extended south line of Nassau Avenue; on the east by the extended west line of Frank Street; on the south by a line drawn parallel with and 1047 feet north of the south line of the quarter section; and on the west by a line drawn parallel with and 50 feet east of the west line of the quarter section; and also, beginning 60 feet south of the southwest corner of block 35, in the city and running southerly in a straight line with Frank Street in the city to a point within 1047 feet of the south line of Section 10; thence running west 80 feet; thence northerly to the west line of Frank Street; thence east 80 feet to the place of beginning.
(Ord. 401, Sec. 1; Code 1997)

2-110. ANIMAL TRAPS. It shall be unlawful for any person to use, place, set out, or deploy any animal trap aboveground, which makes use of a spring gun, spring jaws, clamping devices, cutting or stabbing mechanism or any other devices that will damage or severely injure any animal when caught or trapped by the device or trap; except that nothing herein contained shall prohibit the use of animal traps that are so designed to trap and hold animals without injuring the animals.
(Code 1997)

2-111. NUISANCE; ANIMAL ACTIVITIES PROHIBITED. It shall be unlawful for the owner of any animal to keep or maintain such animal in the city so as to constitute a nuisance. For the purpose of this section, nuisance is defined as any animal which:

- (a) Molests or interferes with persons in the public right-of-way;
- (b) Attacks or injures persons, or other domestic animals;
- (c) Damages public or private property other than that of its owner or harborer by its activities or with its excrement;
- (d) Scatters refuse that is bagged or otherwise contained;
- (e) Causes any condition which threatens or endangers the health or well-being of persons or other animals.

If a summons is issued charging violation of this provision, a subpoena shall also be issued to the complainant to testify to the nuisance under oath.
(Code 1997)

- 2-112. NOISY ANIMALS. The keeping, or harboring of any animal which by loud, frequent and habitual barking, howling, yelping, mewing, roaring or screeching shall disturb the peace of any neighborhood is hereby prohibited. It shall be the duty of any person harboring or keeping such loud or noisy animal or animals to abate the condition, and if he or she fails to do so, the city may abate it by taking up, impounding and/or disposing of the animal at the expense of the owner.
(Code 1997)
- 2-113. ANIMAL CONFINES; SHELTERS. (a) It shall be unlawful for any person to keep or maintain any animal in any yard, structure or area that is not clean, dry and sanitary, free from debris and offensive odors that annoy any neighbor, and devoid of rodents and vermin.
(b) Excrement shall be removed at least once each week from any animal shelter, pen or yard area where animals are kept, or more often if necessary to prevent or control odors, fly breeding, or rodent infestation. If excrement is stored on the premises by any animal owner, it shall be stored in adequate containers with fly-tight lids, and all such stored or accumulated wastes shall be disposed of at least once each week.
(c) All animal shelters, pens and yards shall be so located that adequate drainage is obtained, normal drying occurs, and standing water is not present.
(d) All animal shelters and board fences confining animals shall be maintained in good repair, and all animal shelters and board fences confining animals subject to residential and commercial classification shall be protected from deterioration by painting or comparable treatment.
(e) Barbed wire fences and electrically charged fences shall not be permitted for animal confines except on properties for which an agricultural classification permit is held or where the barbed wire fence or electrically charge fence is protected by an exterior fence.
(f) All premises on which animals are kept shall be subject to inspection by the animal control officer, duly authorized law enforcement officer, or public health official. If the officer or official determines from such inspection that the premises are not being maintained in a clean and sanitary manner, he or she shall notify the owner of the animals in writing to correct the sanitation deficiencies within 24 hours after notice is served on the owner. Any animal kept under any condition which could endanger the public or animal health or create a health nuisance may be impounded. Animals shall be released after fees are paid and cause for impoundment has been corrected.
(Code 1997)
- 2-114. DEATH OF ANIMALS. All dead animals shall be disposed of by the owner or keepers within 24 hours of the animal's death, by burial, incineration in a facility approved by the animal control officer, by rendering or by other lawful means approved by the animal control officer. No dead animal shall be dumped on any public or private property.
(Code 1997)
- 2-115. VICIOUS ANIMALS. (a) Prohibited: It shall be unlawful for any person to keep, possess or harbor a vicious animal within the city. Impoundment of animals whose owners have been cited for violation of this section shall be at the discretion of the animal control officer. If the animal presents a clear and present danger to the public health or safety, it shall be the duty of the animal control officer or his or her agent to impound such animal.
(b) Defined: For purposes of this chapter a vicious animal shall include:
(1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
(2) Any animal which attacks a human being or domestic animal without

provocation;

(3) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting;

(4) Any animal which is urged by its owner or harborer to attack, or whose owner or harborer threatens to provoke such animal to attack, any law enforcement officer while such officer is engaged in the performance of official duty.

(c) Complaint: Whenever a sworn complaint is filed in the municipal court against the owner of an animal alleging that such animal is vicious and in violation of this section, the municipal judge shall hold a hearing to determine whether or not the animal is vicious within the meaning of this section and thereby in violation of this section. The owner of the animal shall be notified in writing of the time and place of the hearing at least one week prior to the hearing. In making a determination, the municipal judge shall consider the following:

- (1) The seriousness of the attack or bite;
- (2) Past history of attacks or bites;
- (3) Likelihood of attacks or bites in the future;
- (4) The condition and circumstances under which the animal is kept or confined;
- (5) Other factors which may reasonably relate to the determination of whether or not the animal is vicious.

The municipal judge shall order the impoundment, the muzzling in accordance with subsection (d) and/or the confinement of the animal accused of being in violation of this section in a manner and location that will insure that it is no threat to persons or other animals pending the outcome of the hearing. If such impoundment, muzzling or otherwise safe confinement is not possible or if prior court orders to restrain such animal have gone unheeded, the municipal judge may order the animal immediately destroyed.

(d) Vicious Dogs to be Muzzled: It shall be the duty of every owner, keeper or harborer of any dog in the city, which dog is vicious or has been known to bite, chase, or run after any person or animal in the streets, alleys, or any public place in the city, to keep the same muzzled with a good and sufficient wire or leather muzzle, securely fastened so as to wholly prevent such dog from biting any animal or person until such time as a determination has been made by the court as to whether the dog is vicious or not. Any person owning, keeping or harboring any dog within the city limits contrary to this section shall be guilty of a violation of this code.

(e) Immediate Destruction: Nothing in this chapter shall be construed to prevent the animal control officer or any law enforcement officer from taking whatever action is reasonably necessary to protect himself or herself or members of the public from injury or danger, including immediate destruction of any vicious animal without notice to the owner.

(f) Release of: If a complaint has been filed in the municipal court against the owner of an impounded animal for a charge under this section, the animal shall not be released except on the order of the municipal judge, who may also direct the owner to pay all impounding fees in addition to any penalties for violation of this chapter. The municipal judge may, upon making a finding that an animal is vicious or that it represents a clear and present danger to the citizens or to other animals in the community, order the animal to be destroyed in a humane manner by the animal shelter. Surrender of an animal by the owner thereof to the animal control officer does not relieve or render the owner immune from the decision of the court, nor to the fees and fines which may result from a violation of this section.

(Code 1997)

2-116.

RUNNING AT LARGE. It shall be unlawful for any person to willfully allow any animal or fowl under his or her control to be or to run at large within the city. Any animal or fowl found at large shall be impounded as provided in section 2-117 or 2-207 (dogs).

(Code 1997)

- 2-117. IMPOUNDMENT; FEE; NOTICE; RECORD. (a) The animal control officer or law enforcement officer shall impound any animal or fowl found at large in the city or constituting a nuisance or otherwise in violation of this chapter in a suitable pound or enclosure provided or contracted for by the city. The impounding officer shall make diligent inquiry as to the owner of the animal and shall notify the owner thereof of such impoundment as soon as reasonably possible.
- (b) The city shall be entitled to receive from such owner an impoundment fee of \$70 plus the actual cost of feeding and maintaining the animal while impounded. (c) In case the identity of the owner of the impounded animal or fowl cannot be ascertained, the animal control officer or police officer shall, upon taking any such animal into custody and impounding the same, make a record thereof, with a description of the animal and the date and place taken into custody and the place of impounding, and shall thereupon immediately post a public notice stating that the animal, describing the same with the date and place of taking, has been taken up, and that unless the charges of impounding the same, together with any license fees due and unpaid, are paid within three business days from the date of the notice, that the animal will be disposed of as provided in this code.
(Ord. 295, Sec. 7; Ord. 384, Sec. 7; Code 1997)
- 2-118. REDEMPTION OF IMPOUNDED ANIMALS. At any time before the sale or destruction of any animal impounded under the provisions of this article, except for animals impounded under sections 2-115 (vicious) and 2-119 (rabid), the owner thereof may redeem the animal by paying the animal control officer or any person in charge, the impounding fee and all costs incurred as a result of such impoundment.

(Ord. 295, Sec. 11; Ord. 384, Sec. 11; Code 1997)
- 2-119. IMPOUNDMENT OF RABIES SUSPECTS. (a) Any law enforcement officer or local health officer may take up, upon private or public property, any animal which has bitten or scratched a person or other animal and impound the animal in the city pound, securely penned and separated from other animals, or in a veterinary hospital or animal care facility for a period of not more than 30 days during which time the local health officer shall determine whether or not such animal is suffering from a disease and, if not, the local health officer shall authorize the release of the animal upon payment by the owner of the boarding fee therefore. The health officer may authorize the keeping of any such animal on the owner's premises if the owner produces a rabies vaccination certificate showing that the animal has valid rabies vaccination protection. Impoundment costs shall be borne by the owner. If in the opinion of the local health officer symptoms develop justifying a microscopic examination, then the animal shall be killed and examination made by the state board of health.
- (b) In lieu of the provisions of subsection (a), the owner of any such animal may, at his or her own expense, take such animal to any duly qualified and licensed veterinarian in the city for observation. Such veterinarian shall report his or her findings in writing to the local health officer. If in the opinion of such veterinarian a microscopic examination is justified, then the animal shall be turned over to the animal control officer or any law enforcement officer to be killed and examination made by the state board of health.
- (c) Any animal desired for observation by the local health officer under this section shall be delivered to the animal control officer or any law enforcement officer upon demand and shall not be withheld, hidden or harbored. Any person violating this provision shall be guilty of a violation of this code. Upon refusal of any person to so deliver such animal, the municipal judge shall cause a warrant to be issued for the arrest of such person, which warrant shall also provide for the surrender of the animal and shall be lawful authority for the apprehending and forcible taking of such animal.

(Code 1997)

- 2-119A. **IMPOUNDMENT OF RABIES SUSPECTS.** Any law enforcement officer or local health officer may take up, upon private or public property, any animal which has bitten or scratched a person or other animal and impound the animal in a veterinary hospital or animal care facility for a period of not more than 30 days during which time the local health officer shall determine whether or not such animal is suffering from a disease and, if not, the local health officer shall authorize the release of the animal upon payment by the owner of the boarding fee therefore. The health officer may authorize the keeping of any such animal on the owner's premises if the owner produces a rabies vaccination certificate showing that the animal has valid rabies vaccination protection. Impoundment costs shall be borne by the owner.
(Code 1997)
- 2-120. **ANIMALS BITTEN BY RABID ANIMALS.** Whenever a dog, cat or other animal is bitten by a rabid animal or an animal later proved to have been rabid, it shall be the duty of the owner of the animal that is bitten, to report that fact to the local health officer and/or the police department. It shall also be the duty of the owner of the bitten animal to either destroy or have his or her bitten animal destroyed unless:
- (a) The animal which was bitten had been vaccinated against rabies at least three weeks before being bitten and has a current vaccination; and
 - (b) If the bitten animal has a current vaccination, it shall be confined for 90 days; and
 - (c) The bitten animal shall be released from confinement only upon written order from the local health officer, who declares the animal to be free of rabies; and
 - (d) If the animal is found to have contracted rabies during confinement, it shall be properly disposed of.
- (Code 1997)
- 2-121. **VEHICULAR ACCIDENTS INVOLVING ANIMALS.** Any person who as the operator of a motor vehicle strikes any animal shall stop at once and shall immediately report such injury or death to the owner of such animal, or in the event that the owner cannot be ascertained, and located, the operator shall at once report the accident to the animal control officer or any law enforcement officer.
(Code 1997)
- 2-122. **EMERGENCY; PROCLAMATION.** The mayor with the consent of the council is hereby authorized whenever in his or her opinion the danger to the public safety from rabid animals is made imminent to issue a proclamation ordering all persons owning any animal in the city to confine the animal in a good and sufficient

enclosure from which the animal cannot escape, or fasten such animal by means of a chain on the premises where the owner may reside, for such time as may be specified in such proclamation. Any animal not confined during such time may be disposed of wherever found by any police officer, or the animal control officer of the city. The owner of such animal shall be prosecuted for such violation thereof. (Code 1997)

- 2-123. KENNELS PROHIBITED. No person or household shall own or harbor more than five dogs of six months of age or older or more than one litter of pups, or more than five cats of more than six months of age or more than one litter of kittens, or more than a total of five dogs and cats more than six months of age in any combination, or engage in the commercial business of breeding, buying, selling, trading, training, or boarding cats or dogs or both cats and dogs in the city. (Code 1997)

ARTICLE 2. DOGS

- 2-201. REGISTRATION AND VACCINATION REQUIRED; FEE. (a) Every owner of any dog over six months of age shall annually register with the city clerk his or her name and address with the name, sex and description of each dog owned and kept within the city. It shall be unlawful for the owner of any newly acquired dog or any dog brought into the city to fail to register such animal within 30 days from acquisition or bringing the dog into the city. It shall be unlawful for the owner of any previously registered dog to fail to maintain current registration of such dog.
- (b) Upon registration, the owner shall present a current, completed certificate of immunization against rabies. No registration shall follow without evidence of this document, and it shall be unlawful for the owner of any dog over six months of age to fail to maintain effective rabies immunization of such dog.
- (c) The owner or harbinger of any dog shall, at the time of registering such dog, present to the city clerk a certificate from an accredited veterinarian showing that a male dog has been neutered or a female dog has been spayed, if the dog has been neutered or spayed.
- (d) The city clerk shall collect an annual registration fee of \$2.50 for each neutered male dog and for each spayed female dog, and \$5.00 for each un-neutered male dog and for each un-spayed female dog.
- (e) The registration year shall be from January 1st through December 31st of each year. The fee shall be payable before March 1st of each year without penalty. Registration fees as enumerated above may be prorated for newly acquired dogs or for dogs owned by a person or persons moving to and establishing a home in the city during a calendar year. Every owner or harbinger of dog or dogs who shall fail to register the same prior to the 1st day of March of each year shall pay in addition to the registration fee herein provided a penalty fee for late registration of \$.50.00. (Ord. 295, Sec. 3; Code 1997)

- 2-202. DOG TAGS. It shall be the duty of the city clerk or designated agent, upon a showing of current rabies immunization and receipt of the registration fee hereinbefore required, to keep in a book suitable for the registration of dogs, the

time of the registration, the name of the owner or keeper, the number of the registration and the amount paid therefor, and shall deliver to the owner or keeper of the dog a certificate in writing, stating that the person has registered the dog and the number by which the dog is registered, and shall also deliver to the owner or keeper of the dog a tag with the registration number and the registration year thereon, which shall be, by the owner or keeper, attached to the collar to be used on the dog so registered. When any tag has become lost during a registration period, the owner of the dog may request a duplicate tag for the remainder of the registration period. When so requested, the city clerk shall, upon presentation of the registration certificate, issue a duplicate of such tag upon the payment of a \$.25 fee. It shall be unlawful for any person to take off or remove the city registration tag from any dog belonging to another, or remove the strap or collar on which the same is fastened.

(Ord. 295, Sec. 5; Code 1997)

2-203. SAME; COUNTERFEIT TAG. It shall be unlawful for any person to place on any dog a tag issued for any other dog or to make or use any false, forged or counterfeited tag or imitation thereof.

(Code 1997)

2-204. EVIDENCE OF VACCINATION. It shall be unlawful for the owner of any dog kept within the city to fail to display a current certificate of immunization against rabies issued by an accredited veterinarian evidencing the vaccination of such dog within two years, when requested by the animal control officer or any law enforcement officer.

(Code 1997)

2-205. VISITING DOGS. The provisions of this article with respect to registration shall not apply to any dog owned by any person visiting or temporarily remaining within the city for less than 30 days. However, such dogs shall be kept under restraint by the owner thereof at all times.

(Code 1997)

2-206. RUNNING AT LARGE; FINE. (a) It shall be unlawful for the owner or harbinger of any dog to permit such dog to run at large within the city at any time;

(b) Any dog running at large within the city shall be impounded as set out in section 2-207;

(c) Any dog running at large without a tag required by section 2-202 shall provide proof of a registration receipt before the dog shall be released pursuant to section 2-207;

(d) The owner of any dog impounded for running at large shall pay the cost of the board bill and pay a fine of \$50.00 for the first offense. For a second offense, the owner or harbinger shall pay a fine of \$100.00 plus the board bill. For a third and all subsequent offenses the owner or harbinger shall pay a fine of \$200.00 plus the cost of the board bill.

(Ord. 570, Sec. 1)

2-207.

IMPOUNDMENT; RECORD; NOTICE; REDEMPTION; MINIMUM FEE. (a) Any dog found in violation of the provisions of this article shall be subject to impoundment by the city.

(b) A record of all dogs impounded shall be kept by the city containing the following information: color, sex, weight, height, identifying marks, registration number (if any) and the date of impoundment.

(c) No dog impounded under this section shall be disposed of until after expiration of a minimum of three full business days of custody during which the public has clear access to inspect and recover the dog through time periods ordinarily accepted as usual business hours. During such time of custody, the city shall attempt to notify the owner or custodian of any dog impounded by such facility if the owner or custodian is known or reasonably ascertainable. Such dog may at any time be released to the legal owner, moved to a veterinary hospital for treatment or observation, released in any manner, if such dog was a gift to the animal shelter, or euthanized by a licensed veterinarian if it appears to the veterinarian that the dog is diseased or disabled beyond recovery. If within three full business days the owner does not appear to claim the dog, then the dog may be sold, euthanized or otherwise disposed of.

(d) If at any time before the sale or destruction of any dog impounded under the provisions of this article, the owner of an impounded dog does appear and redeem the dog, it shall be turned over to the person claiming it upon payment of any impoundment fees or penalties plus the actual costs of impoundment, and shall not apply to any dog alleged as being vicious under section 2-115 or suspected of rabies under section 2-119 of this code.

(e) Any dog impounded may not be released until all boarding fees and all other fees incidental to the impoundment are paid.

(f) Any dog impounded may not be released without a current rabies vaccination.

(g) Impoundment hereunder shall not preclude any court from imposing and executing any fine which might otherwise be levied under this article for violation of any of the provisions thereof; nor shall impoundment be a defense in any prosecution commenced hereunder.

(h) The redemption of any dog impounded for a violation of any provision of this chapter shall be prima facie evidence of the violation of such provision by the person redeeming the dog.

(Code 2005)

2-208.

DISPOSITION OF UNCLAIMED DOGS. If any dog is not redeemed by its owner or harbinger within the time allowed for redemption as specified in section 2-207 thereof, the animal control officer, any authorized law enforcement officer, any authorized veterinarian or any duly authorized pound personnel may destroy such dog or sell the same for the costs of impoundment and keeping, plus any registration fee due for the current year.

(Ord. 295, Sec. 11; Code 1997)

2-208A

DISPOSITION OF UNCLAIMED DOGS. (a) If any dog is not redeemed by its owner or harbinger within the time allowed for redemption as specified in section 2-207 thereof, any authorized veterinarian or any duly authorized pound personnel may destroy such dog; or the animal control officer may deliver, or request that the dog be delivered to a humane society willing to accept the dog; or sell the same for the costs of impoundment and keeping, plus any registration fee due for the current year.

(b) No dog may be transferred to the permanent custody of a prospective owner unless:

(1) Such dog has been surgically spayed or neutered before the physical transfer

of the dog occurs; or

(2) the prospective owner signs an agreement to have the dog spayed or neutered and deposits with the city not less than the lowest nor more than the highest cost of spaying or neutering in the community as determined by the city. Any funds deposited pursuant to such an agreement shall be refunded to such person upon presentation of a written statement signed by a licensed veterinarian that the dog has been spayed or neutered. If such person does not reclaim the deposit within six months after receiving custody of the dog, the city shall keep the deposit and may reclaim the unspayed or unneutered dog.

(c) Nothing in this section shall be construed to require sterilization of a dog which is being held by the city and which may be claimed by its rightful owner within the holding period established in section 2-207.

(Code 2005)

2-209.

CONFINEMENT OF DOGS IN HEAT. Any unspayed female dog in the stage of estrus (heat) shall be confined during such period of time in a house, building or secure enclosure, and the area of enclosure shall be so constructed that no other dog or dogs may gain voluntary access to the confined animal except for purposes of planned breeding. Any animal that is in the state of estrus (heat) and that is not properly confined, or any such animal that is creating a neighborhood nuisances, shall be removed to a boarding kennel, to a veterinary hospital or to the animal shelter. All expenses incurred as a result of the confinement shall be paid by the owner. The owner of animals removed to the animal shelter shall be charged at the rate established from time to time by the animal shelter for routine confinement. (Ord. 295, Sec. 13; Code 1997)

2-210.

MUZZLING. Whenever the mayor shall deem it necessary for the protection and welfare of the inhabitants of the city, he or she shall issue an order requiring all dogs kept within the city to be effectively muzzled for such length of time as may be specified in the order, to prevent them from biting or injuring persons or animals. Such order shall be published in the official newspaper of the city for such period of time as the mayor may deem necessary.

(Code 1997)

ARTICLE 3. OTHER ANIMALS

2-301.

EXOTIC ANIMALS. (a) It shall be unlawful for any person, firm or corporation to keep, maintain or have in his or her possession or under his or her control within the city any poisonous reptile or any other dangerous wild animal or reptile, any vicious or dangerous animal or any other animal or reptile of wild, vicious or dangerous propensities.

(b) It shall be unlawful for any person to keep, maintain or have in his or her possession or under his or her control within the city any of the following animals:

- (1) All poisonous animals including rear-fang snakes.
- (2) Apes: Chimpanzees; gibbons; gorillas, orangutans; and saimangs.
- (3) Baboons.
- (4) Badgers.
- (5) Bears.
- (6) Bison.
- (7) Bobcats.
- (8) Cheetahs.
- (9) Crocadians, 30 inches in length or more.
- (10) Constrictor snakes, six feet in length or more.
- (11) Coyotes.
- (12) Deer; includes all members of the deer family, for example, white-tailed deer, elk, antelope and moose.
- (13) Elephants.
- (14) Game cocks and other fighting birds.
- (15) Hippopotami.
- (16) Hyenas.
- (17) Jaguars.
- (18) Leopards.
- (19) Lions.
- (20) Lynxes.
- (21) Monkeys.
- (22) Ostriches.
- (23) Pumas; also known as cougars, mountain lions and panthers.
- (24) Raccoons.
- (25) Rhinoceroses.
- (26) Skunks.
- (27) Tigers.
- (28) Wolves.

(c) The prohibitions of this section shall not apply to bona fide pet shops, zoos, circuses, carnivals, educational institutions, or medical institutions, if:

- (1) Their location conforms to the provisions of the zoning ordinance of the city.
- (2) All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors.
- (3) Animals are maintained in quarters so constructed as to prevent their escape.

(d) The municipal judge shall have the authority to order any animal deemed vicious confined, destroyed or removed from the city.
(Code 1997)

ARTICLE 4. PROHIBITED ANIMALS

- 2-401. PROHIBITED ANIMALS. It is unlawful to keep, harbor, own, or in any way possess within the corporate limits of the city:
- (a) Any warm-blooded, carnivorous or omnivorous, wild or exotic animal (including, but not limited to nonhuman primates, raccoons, skunks, foxes, rats, mice, and wild and exotic cats);
 - (b) Any animal having poisonous bites.
- (Ord. 570, Sec. 2)

ARTICLE 5. GENERAL PENALTY FOR VIOLATION OF CHAPTER II

- 2-501. GENERAL PENALTY FOR VIOLATION OF CHAPTER II. Whenever any offense is declared by any provision of Chapter II, Animal Control and Regulation, absent a specific or unique punishment prescribed, the offender shall be punished in accordance with the following:
- (a) A fine of \$50.00 for a first offense;
 - (b) A fine of \$100.00 for a second offense;
 - (c) A fine of \$200.00 for a third or subsequent offense.
- (Ord. 570, Sec. 3)

CHAPTER III. BEVERAGES

Article 1.	General Provisions
Article 2.	Cereal Malt Beverages
Article 3.	Alcoholic Liquor
Article 4.	Private Clubs
Article 5.	Drinking Establishments
Article 6.	Caterers
Article 7.	Temporary Permits

ARTICLE 1. GENERAL PROVISIONS

3-101.

DEFINITIONS. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section.

(a) Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) Alcoholic Liquor means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) Caterer means an individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit selling alcoholic liquor in accordance with the terms of such permit.

(d) Cereal Malt Beverage means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

(e) Class A Club means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the State of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

(f) Class B Club means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(g) Club means a Class A or Class B club.

(h) Drinking Establishment means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

(i) General Retailer means a person who has a license to sell cereal malt beverages at retail.

(j) Limited Retailer means a person who has a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

(k) Place of Business. Any place at which cereal malt beverages or alcoholic beverages or both are sold.

(l) Temporary Permit means a permit, issued in accordance with the laws of the State of Kansas, which allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public.

(m) Wholesaler or distributor. Any individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, co-partnerships, corporations and associations authorized by this chapter to sell cereal malt beverages at retail.
(Code 1997)

3-102. RESTRICTION ON LOCATION. (a) No alcoholic liquor shall be sold or served by a person holding a license or permit from the city whose place of business or other premises are located within 200 feet of any church, school, nursing home, library, or hospital said distance to be measured from the nearest property line of such church, school, nursing home, library, or hospital to the nearest portion of the building occupied by the premises.

(b) The distance location of subsection (a) above shall not apply to a club, drinking establishment, caterer or temporary permit holder when the license or permit applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body shall grant such a waiver only following public notice and hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety.

(c) No license or permit shall be issued for the sale of alcoholic liquor if the building or use does not meet the zoning ordinance requirements of the city or conflicts with other city laws, including building and health codes.
(Code 1997)

3-103. MINORS ON PREMISES. (a) It shall be unlawful for any person under the age of 21 years to remain on any premises where the sale of alcoholic liquor is licensed for on-premises consumption, or where a caterer or temporary permit holder is serving alcoholic liquor.

(b) It shall be unlawful for the operator, person in charge or licensee of any premises licensed for on-premises consumption of alcoholic liquor or a caterer or temporary permit holder who is serving alcoholic liquor to permit any person under the age of 21 years to remain on the premises.

(c) This section shall not apply if the person under the age of 21 years is accompanied by his or her parent or guardian, or if the licensed or permitted premises derives not more than 30 percent of its gross receipts in each calendar year from the sale of alcoholic liquor for on-premises consumption.
(Code 1997)

3-104. CONSUMPTION ON PUBLIC PROPERTY. No person shall drink or consume any alcoholic liquor on city owned public property.
(K.S.A. Supp. 41-719; Ord. 353, Sec. 1; Code 1997)

3-105. PUBLIC SALE; CONSUMPTION. (a) It shall be unlawful for any person to sell, serve or dispense any cereal malt beverage or alcoholic beverage in any public place not licensed to sell, serve or dispense such beverage at such public place within or under the jurisdiction of the city.

(b) It shall be unlawful for any person to drink or consume any cereal malt beverage or alcoholic beverage in any public place not licensed to sell and serve such beverage for public consumption at such public place within or under the jurisdiction of the city.

(c) For purposes of this section, the term "public place" shall include upon any street, public thoroughfare, public parking lot or any privately owned parking area made available to the public generally, within any parked or driven motor vehicle situated in any of the aforesaid places or upon any property owned by the state or any governmental subdivision thereof unless such property is leased to others under K.S.A. 12-1740 et seq. if the property is being used for hotel or motel purposes or purposes incidental thereto or is owned or operated by an airport authority created pursuant to

Chapter 27 of the Kansas Statutes Annotated.
(K.S.A. 41-719; Code 1997)

- 3-106. OPEN CONTAINER. (a) It shall be unlawful for any person to transport in any vehicle upon a highway or street any cereal malt beverage or alcoholic beverage unless such beverage is:
- (1) In the original, unopened package or container, the seal of which has not been broken and from which the original cap or cork or other means of closure has not been removed;
 - (2) In the locked, rear trunk or rear compartment or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion or;
 - (3) In the exclusive possession of a passenger in a vehicle which is a recreational vehicle as defined by K.S.A. 75-1212 or a bus as defined by K.S.A. 8-1406, who is not in the driving compartment of such vehicle or who is in a portion of such vehicle from which the driver is not directly accessible.
- (b) As used in this section highway and street have meanings provided by K.S.A. 8-1424 and K.S.A. 8-1473 and amendments thereto.
(K.S.A. 8-1599; Ord. 352, Sec. 1; Code 2001)
- 3-107. CONSUMPTION WHILE DRIVING. It shall be unlawful for any person to consume any cereal malt beverage or alcoholic beverage while operating any vehicle upon any street or highway.
(K.S.A. 41-719, 41-2720; Code 1997)
- 3-108. IDENTIFICATION CARD. (a) It shall be unlawful for any person to:
- (1) Display, cause or permit to be displayed, or have in possession, any fictitious, fraudulently altered, or fraudulently obtained identification card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
 - (2) Display or represent any identification card not issued to such person as being his or her card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
 - (3) Permit any unlawful use of an identification card issued to a person for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
 - (4) Photograph, photostat, duplicate or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card or display or have in possession any such photograph, photostat, duplicate, reproduction or facsimile for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
- (b) It shall be unlawful for any person to:
- (1) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any alcoholic liquor.
 - (2) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any cereal malt beverage.
- (Code 1997)
- 3-109. UNDERAGE PURCHASER. (a) It shall be unlawful for any person under 21 years of age to purchase or attempt to purchase any cereal malt beverage.
- (b) It shall be unlawful for any person under 21 years of age to purchase or attempt to purchase any alcoholic liquor.
(K.S.A. Supp. 41-727; Code 1997)

ARTICLE 2. CEREAL MALT BEVERAGES

- 3-201. LICENSE REQUIRED OF RETAILERS. (a) It shall be unlawful for any person to sell any cereal malt beverage at retail without a license for each place of business where cereal malt beverages are to be sold at retail.
- (b) It shall be unlawful for any person, having a license to sell cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any cereal malt beverage in any other manner. (K.S.A. 41-2702; Code 1997)
- 3-202. APPLICATION. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain:
- (a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;
- (b) The particular place for which a license is desired;
- (c) The name of the owner of the premises upon which the place of business is located;
- (d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.
- (e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;
- (f) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of chapter 8 of this code.
- (g) Each application for a general retailer's license must be accompanied by a certificate from the city fire chief certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of chapter 7 of this code.
- The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the city for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The chief shall report to the mayor not later than five working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements. (Ord. 331, Sec. 2; Code 1997)
- 3-202A. LICENSE APPLICATION PROCEDURES. (a) All applications for a new and renewed cereal malt beverage license shall be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.
- (b) The city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.
- (c) The clerk's office shall provide copies of all applications to the police department, to the fire department, and to the city-county health department, when they are received. The police department will run a records check on all applicants and

the fire department and health department will inspect the premises in accord with chapters 7 and 8 of this code. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.

(d) The governing body will not consider any application for a new or renewed license that has not been submitted 10 days in advance and been reviewed by the above city departments.

(e) An applicant who has not had a cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

(Code 1997)

3-203. LICENSE GRANTED; DENIED. (a) The journal of the governing body shall show the action taken on the application.

(b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.

(c) No license shall be transferred to another licensee.

(d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

(Ord. 331, Sec. 2; Code 1997)

3-204. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

(Ord. 331, Sec. 2; Code 1997)

3-205. LICENSE, DISQUALIFICATION. No license shall be issued to:

(a) A person who has not been a resident in good faith of the state of Kansas for at least one year immediately preceding application and a resident of Ellsworth County for at least six months prior to filing of such application.

(b) A person who is not a citizen of the United States.

(c) A person who is not of good character and reputation in the community in which he or she resides.

(d) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.

(e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.

(f) A corporation if any manager, officer or director thereof or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than non-residence within the city or county.

(g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.

(h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.

(i) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, retailer residency requirements or age, except that

this subsection (i) shall not apply in determining eligibility for a renewal license.
(Ord. 331, Sec. 3; Code 1997)

- 3-206. **RESTRICTION UPON LOCATION.** (a) No license shall be issued for the sale at retail of any cereal malt beverage on premises which are located in areas not zoned for such purpose.
 (b) It shall be unlawful to sell or dispense at retail any cereal malt beverage at any place within the city limits that is within a 500-foot radius of any church, school or library.
 (c) Provisions of this section shall not apply to any establishment holding a private club license issued by the State of Kansas.
 (d) The distance limitation of subsection (b) above shall not apply to any establishment holding a cereal malt beverage license issued by the city when the licensee has petitioned for and received a waiver of the distance limitation. The governing body shall grant such a waiver only following public notice and hearing.
(K.S.A. 41-2704; Ord. 331, Sec. 5; Code 1997)
- 3-207. **LICENSE FEE.** The rules and regulations regarding license fees shall be as follows:
 (a) General Retailer -- for each place of business selling cereal malt beverages at retail, \$50.00 per calendar year.
 (b) Limited Retailer -- for each place of business selling only at retail cereal malt beverages in original and unopened containers and not for consumption on the premises, \$50.00 per calendar year.
 Full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued.

(K.S.A. 41-2702; Ord. 331, Sec. 1; Code 1997)
- 3-208. **SUSPENSION OF LICENSE.** The chief of police, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this chapter or other laws pertaining to cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven days from the date of such order.
(Code 1997)
- 3-209. **LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY.** The governing body of the city, upon five days' written notice, to a person holding a license to sell cereal malt beverages shall permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:
 (a) If a licensee has fraudulently obtained the license by giving false information in the application therefor;
 (b) If the licensee has violated any of the provisions of this article or has become ineligible to obtain a license under this article;
 (c) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling cereal malt beverages;
 (d) The sale of cereal malt beverages to any person under 21 years of age;
 (e) For permitting any gambling in or upon any premises licensed under this article;
 (f) For permitting any person to mix drinks with materials purchased in any premises licensed under this article or brought into the premises for this purpose;
 (g) For the employment of any person under the age established by the State of

Kansas for employment involving dispensing cereal malt beverages;

(h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;

(i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed under this article;

(j) The nonpayment of any license fees;

(k) If the licensee has become ineligible to obtain a license under this chapter;

(l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.

(K.S.A. 41-2708; Ord. 331, Sec. 6; Code 1997)

3-210. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Ellsworth County and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken under this section shall not suspend the order of revocation of the license of any licensee, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

(K.S.A. 41-2708; Code 2005)

3-211. CHANGE OF LOCATION. If a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee. (Code 1997)

3-212. WHOLESALERS AND/OR DISTRIBUTORS. It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver cereal malt beverages within the city, to persons authorized under this article to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales.

(K.S.A. 41-307:307a; Ord. 331, Sec. 7; Code 1997)

3-213. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations.

(a) The place of business licensed and operating under this article shall at all times have a front and rear exit unlocked when open for business.

(b) The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to the inspection of the police and health officers of the city, county and state.

(c) Except as provided by subsection (d), no cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:30 a.m., and 6:00 a.m., or on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30 percent of its gross receipts from the sale of food for consumption on the licensed premises; closing hours for clubs shall conform to K.S.A. 41-2614 and any amendments thereto.

(d) Cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2701 *et seq.*, and licensed as a club by the State Director of Alcoholic Beverage Control.

(e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police

and not to the public.

(f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

(g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.

(h) No licensee or agent or employee of the licensee shall sell or permit the sale of cereal malt beverage to any person under 21 years of age.

(i) No licensee or agent or employee of the licensee shall permit any gambling in the place of business for which such license has been issued.

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

(k) No licensee or agent or employee of the licensee shall employ any person under 21 years of age in dispensing cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

(Ord. 387, Sec. 1; Code 1997)

3-214.

PROHIBITED CONDUCT ON PREMISES. The following conduct by a cereal malt beverage licensee, manager or employee of any licensed cereal malt beverage establishment is deemed contrary to public welfare and is prohibited:

(a) Remaining or permitting any person to remain in or upon the premises who exposes to view any portion of the female breasts below the top of the areola or any portion of males/females pubic hair, anus, buttocks or genitals;

(b) Permitting any employee on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva or genitals of any other employee or any patron;

(c) Encouraging or permitting any patron on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva, or genitals of any employee;

(d) Performing or permitting any person to perform on the licensed premises acts of or acts which simulate:

(1) Sexual intercourse, masturbation, sodomy, or any other sexual act which is prohibited by law; or

(2) Touching, caressing or fondling such persons' breasts, buttocks, anus or genitals.

(e) Using or permitting any person to use on the licensed premises, any artificial devices or inanimate objects to depict any of the acts prohibited by paragraph (d) of this section.

(f) Showing or permitting any person to show on the licensed premises any motion picture, film, photograph, electronic reproduction, or other visual reproduction depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, or any sexual act which is prohibited by law;

(2) The touching, caressing or fondling of the buttocks, anus, genitals or the female breasts;

(3) Scenes in which a person displays the buttocks, anus, genitals or the female breasts.

(g) As used in this section, the term premises means the premises licensed by the city as a cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

(Code 1997)

3-215.

SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and

employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste

material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee. (Code 1997)

3-216. MINORS ON PREMISES. (a) It shall be unlawful for any person under 21 years of age to remain on any premises where the sale of cereal malt beverages is licensed for on-premises consumption.

(b) This section shall not apply if the person under 21 years of age is an employee of the licensed establishment, or is accompanied by his or her parent or guardian, or if the licensed establishment derives not more than 30 percent of its gross receipts in each calendar year from the sale of cereal malt beverages for on-premises consumption. (Code 1997)

3-217. SPECIAL EVENT CEREAL MALT BEVERAGE PERMIT. (a) Permit required. It shall be unlawful for any person to sell or serve any cereal malt beverage at any special event within the city without first obtaining a local special event permit from the city clerk.

(b) Permit fee.

(1) There is hereby levied a special event permit fee in the amount of \$25.00 on each group or individual, which fee shall be paid before the event begins. Such fee shall be in addition to the \$25.00 fee to be remitted to the division of alcohol beverage control.

(2) Every special event permit holder shall cause the permit receipt to be placed in plain view on any premises within the city where the holder of the special event permit is serving cereal malt beverage for consumption on the premises.

(c) City special event permit.

(1) It shall be unlawful for any person to serve cereal malt beverage at a special event without first applying for a local special event permit at least 14 days before the event. Written application for the local special event permit shall be made to the city clerk on the form used for annual cereal malt beverage sales as directed by the city clerk. In addition to any other information required, the applicant shall provide the following:

- (A) Name of the applicant;
- (B) Group for which the event is planned;
- (C) Location of the event;
- (D) Date and time of the event;
- (E) Any anticipated need for police, fire or other municipal services.

(2) Upon meeting the requirements to obtain a special event permit, the city clerk shall issue a local special event permit to the applicant if there are no conflicts with any zoning or other ordinances of the city.

(3) The city clerk shall notify the chief of police whenever a special event permit has been issued and forward a copy of the permit and application to the chief of police.

(d) Permit regulations.

(1) No special event permit holder shall allow the serving of cereal malt beverage between the hours of 12:00 a.m. and 6:00 a.m. at any event for which a special event permit has been issued.

(2) No cereal malt beverage shall be given, sold or traded to any person under 21 years of age.

(3) No more than four special event permits may be issued in a calendar year to the same applicant.

(4) No special event permit issued hereunder may be transferred or assigned to any other vendor.

(5) All local ordinances and state statutes for the sale and consumption of cereal malt beverage apply to holders of special event permits.
(Ord. 574, Secs. 1-4)

ARTICLE 3. ALCOHOLIC LIQUOR

3-301. STATE LICENSE REQUIRED. (a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined by the "Kansas liquor control act" without first having obtained a state license to do so.

(b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the state director of alcoholic beverage control shall present such license to the city clerk when applying to pay the occupation tax levied in section 3-302 and the tax shall be received and a receipt shall be issued for the period covered by the state license.

(Code 1997)

3-302. OCCUPATIONAL TAX. There is hereby levied an annual occupation tax of \$100.00 on any person holding a license issued by the state director of alcoholic beverage control for the retail sale within the city of alcoholic liquors for consumption off the premises. Such tax shall be paid by the retailer to the city clerk before business is begun under an original state license and shall be paid within five days after any renewal of a state license.

(Code 2001)

3-303. POSTING OF RECEIPT. Every licensee under this article shall cause the city alcoholic liquor retailer's occupation tax receipt to be placed in plain view, next to or below the state license in a conspicuous place on the licensed premises.

(Code 1997)

3-304. HOURS OF SALE. No person shall sell at retail any alcoholic liquor:

- (a) On any Sunday;
- (b) On Decoration Day or Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day;
- (c) Before 9:00 a.m. or after 11:00 p.m. on any day when the sale thereof is permitted.

(K.S.A. 41-712; Code 1997)

3-305. BUSINESS REGULATIONS. It shall be unlawful for a retailer of alcoholic liquor to:

- (a) Permit any person to mix drinks in or on the licensed premises;
- (b) Employ any person under the age of 21 years in connection with the operation of the retail establishment;
- (c) Employ any person in connection with the operation of the retail establishment who has been adjudged guilty of a felony;

(d) Furnish any entertainment in his or her premises or permit any pinball machine or game of skill or chance to be located in or on the premises; or

(e) Have in his or her possession for sale at retail any bottles, cask, or other containers containing alcoholic liquor, except in the original package.

(f) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person under 21 years of age.
(Code 1997)

3-306.

RESTRICTIONS ON LOCATION. No person shall knowingly or unknowingly sell, give away, furnish, dispose of, procure, exchange or deliver, or permit the selling, giving away, furnishing, disposing of, procuring, exchanging or delivering of any alcoholic beverage in any building, structure or premises, for consumption in such building or upon such premises if such consumption is within 200 feet from the nearest property line of any existing hospital, school, church or library.
(K.S.A. 41-710; Code 1997)

ARTICLE 4. PRIVATE CLUBS

- 3-401. LICENSE REQUIRED. It shall be unlawful for any person granted a private club license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk.
(Code 1997)
- 3-402. LICENSE FEE. (a) There is hereby levied an annual license fee on each private club located in the city which has a private club license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license. The city license fee for a Class A club shall be \$100.00 and the city license fee for a Class B club shall be \$100.00.
(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.
(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.
(d) Every licensee shall cause the city club license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.
(Code 2001)
- 3-403. BUSINESS REGULATIONS. (a) No club licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.
(b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverages for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.
(c) No club membership shall be sold to any person under 21 years of age, nor shall alcoholic beverages or cereal malt beverages be given, sold or traded to any person under 21 years of age.
(K.S.A. Supp. 41-2614; Code 1997)

ARTICLE 5. DRINKING ESTABLISHMENTS

- 3-501. LICENSE REQUIRED. It shall be unlawful for any person granted a drinking establishment license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a city license from the city clerk.
(Code 1997)
- 3-502. LICENSE FEE. (a) There is hereby levied an annual license fee in the amount of \$100.00 on each drinking establishment located in the city which has a drinking establishment license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license.
(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.
(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.
(d) Every licensee shall cause the city drinking establishment license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.
(Code 2001)
- 3-503. BUSINESS REGULATIONS. (a) No drinking establishment licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.
(b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverage for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.
(c) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under 21 years of age.
(K.S.A. Supp. 41-2614; Code 1997)

ARTICLE 6. CATERERS

- 3-601. LICENSE REQUIRED. It shall be unlawful for any person licensed by the State of Kansas as a caterer to sell alcoholic liquor by the drink, to sell or serve any liquor by the drink within the city without obtaining a local caterer's license from the city clerk.

(Code 1997)
- 3-602. LICENSE FEE. (a) There is hereby levied an annual license fee in the amount of \$50.00 on each caterer doing business in the city who has a caterer's license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license.

(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.

(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

(d) Every licensee shall cause the caterer license to be placed in plain view on any premises within the city where the caterer is serving or mixing alcoholic liquor for consumption on the premises.

(Code 1997)
- 3-603. BUSINESS REGULATIONS. (a) No caterer licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day.

(b) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under 21 years of age.

(K.S.A. Supp. 41-2614; Code 1997)
- 3-604. NOTICE TO CHIEF OF POLICE. Prior to any event at which a caterer will sell or serve alcoholic liquor by the individual drink, the caterer shall provide written notice to the chief of police at least 14 days prior to the event if the event will take place within the city. The notice shall contain the location, name of the group sponsoring the event, and the exact date and times the caterer will be serving. (Code 1997)

ARTICLE 7. TEMPORARY PERMITS

- 3-701. PERMIT REQUIRED. It shall be unlawful for any person granted a temporary permit by the State of Kansas to sell or serve any alcoholic liquor within the city without first obtaining a local temporary permit from the city clerk.
(Code 1997)
- 3-702. PERMIT FEE. (a) There is hereby levied a temporary permit fee in the amount of \$10.00 per day on each group or individual holding a temporary permit issued by the state director of alcoholic beverage control authorizing sales within the city, which fee shall be paid before the event is begun under the state permit.
(b) Every temporary permit holder shall cause the temporary permit receipt to be placed in plain view on any premises within the city where the holder of the temporary permit is serving or mixing alcoholic liquor for consumption on the premises.

(Code 1997)
- 3-703. CITY TEMPORARY PERMIT. (a) It shall be unlawful for any person to conduct an event under a state issued temporary permit without first applying for a local temporary permit at least 14 days before the event. Written application for the local temporary permit shall be made to the city clerk and shall clearly state:
(1) the name of the applicant;
(2) the group for which the event is planned;
(3) the location of the event;
(4) the date and time of the event;
(5) any anticipated need for police, fire or other municipal services.
(b) Upon presentation of a state temporary permit, payment of the city's temporary permit fee and a written application as provided for in subsection (a), the city clerk shall issue a local temporary permit to the applicant if there are no conflicts with any zoning or other ordinances of the city.
(c) The city clerk shall notify the chief of police whenever a temporary permit has been issued and forward a copy of the permit and application to the chief of police.
(Code 1997)
- 3-704. PERMIT REGULATIONS. (a) No temporary permit holder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. at any event for which a temporary permit has been issued.
(b) No alcoholic beverages shall be given, sold or traded to any person under 21 years of age.
(Code 1997)

CHAPTER IV. BUILDINGS AND CONSTRUCTION

- Article 1. Moving Buildings
- Article 2. Dangerous and Unfit Structures
- Article 3. Heating and Cooling Standards
- Article 4. Numbering Buildings

ARTICLE 1. MOVING BUILDINGS

- 4-101. BUILDING OFFICIAL; AUTHORITY. The utilities superintendent or his or her authorized designee shall be responsible for the administration and enforcement of this article.
(Code 1997)
- 4-102. PERMIT REQUIRED. No person, firm or corporation shall move, haul, or transport any house, building, derrick, or other structure of the height when loaded for movement of 16 feet or more from the surface of the highway, road, street or alley, or a width of eight feet or more or which cannot be moved at a speed of four miles per hour or faster, upon, across or over any street, alley or sidewalk in this city without first obtaining a permit therefor.
(K.S.A. 17-1914; Code 1997)
- 4-103. SAME: APPLICATION FOR PERMIT. All applications for permits required under the provisions of this article shall be made in writing to the city clerk specifying the day and hour said moving is to commence and the route through the city's streets over which the house, building, derrick or other structure shall be moved and stating whether it will be necessary to cut and move, raise, or in any way interfere with any wires, cables or other aerial equipment of any public or municipally-owned utility, and if so, the application shall also state the name of the public or municipally-owned utility, and the time and location that the applicant's moving operations shall necessitate the cutting, moving, raising or otherwise interfering with such aerial facilities.
(K.S.A. 17-1915; Code 1997)
- 4-104. SAME; BOND, INSURANCE REQUIRED. (a) It shall be the duty of any person at the time of making application for a permit as provided in this article to give a good and sufficient surety bond to the city, to be approved by the governing body, indemnifying the city against any loss or damage resulting from the failure of any such person to comply with the provisions of this article or for any damage or injury caused in moving any such house or structure. The bond herein shall be in the sum of \$5,000, or cash may be deposited in lieu of such surety bond.
(b) A public liability insurance policy issued by an insurance company authorized to do business in the State of Kansas, in the amount of \$100,000 per

person, \$300,000 per accident as to personal injury, and \$50,000 property damage may be permitted in lieu of a bond.

(Code 1997)

4-105. SAME; FEE. Before any permit to move any house or structure is given under the provisions of this article, the applicant shall pay a fee of not less than \$5 to the city clerk; plus the additional cost for the time for any city crews involved in such moving. (Code 1997)

4-106. RESERVED.

4-107. ROUTE; DUTIES OF BUILDING OFFICIAL. The city clerk shall, upon filing of the above application, refer the same to the chief building official or his or her authorized designee to check the proposed route and determine if it is practical to move such house or other structure over the route proposed. If it shall appear that such route is not practical and another route may be used equally well with less danger to street and travel, then he or she may designate such other route as the one to be used and shall notify the applicant of the same. The building official may also require the planking of any street, bridge or culvert or any part thereof to prevent damage thereto. It shall also be the duty of the chief building official or his or her authorized designee to inspect the progress of moving any house or other structure to see that the same is being moved in accordance with the provisions of this article.
(Code 1997)

4-108. NOTICE TO OWNERS. (a) Upon issuance of a moving permit the applicant shall give not less than 15 days written notice to any person owning or operating any wires, cables or other aerial equipment along the proposed route of the intent to move the structure, giving the time and location that the applicants moving operation shall necessitate the cutting, moving, raising or interfering of any wires, cables or other aerial equipment.

(b) The notice provision of subsection (a) shall not apply where the person owning or operating any wires, cables or other aerial equipment has waived their right to advance notice.

(c) Should the moving operation be delayed, the applicant shall give the owner or his or her agent not less than 24 hours advance notice of the actual operation.

(K.S.A. 17-1916; Code 1997)

4-109. DUTY OF OWNERS. (a) It shall be the duty of the person or the city owning or operating such poles or wires after service of notice as provided herein, to furnish competent lineman or workmen to remove such poles, or raise or cut such wires as will be necessary to facilitate the moving of such house or structure. The necessary expense which is incurred thereby shall be paid by the holder of the moving permit.

(b) The owner of any wires, cables or other aerial equipment, after service of notice as provided in section 4-108, shall be liable to the permit holder for damages in an amount not to exceed \$100 per day for each day the owner shall fail or refuse to accommodate the permit holder's moving operations.

(K.S.A. 17-1917; Code 1997)

4-110. INTERFERING WITH POLES; WIRES. It shall be unlawful for any person engaged in moving any house or other structure to raise, cut or in any way interfere with any wires or poles bearing wires or any other aerial equipment.
(K.S.A. 17-1918; Code 1997)

4-111. DISPLAY OF LANTERNS. It shall be the duty of any person moving any of the structures mentioned in this article upon or across any street, alley or sidewalk or other public place, in this city, to display red lanterns thereon in such a manner as to show the extreme height and width thereof from sunset to sunrise.
(Code 1997)

ARTICLE 2. DANGEROUS AND UNFIT STRUCTURES

4-201. PURPOSE. The governing body has found that there 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.
(K.S.A. 12-1751; Code 1997)

4-202. DEFINITIONS. For the purpose of this article, the following words and terms shall have the following meanings:

(a) Enforcing officer means the utilities superintendent 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.

(K.S.A. 12-1750; Ord. 416; Code 2001)

4-203. 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 1997)

- 4-204. 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 1997)
- 4-205. SAME; NOTICE. The governing body upon receiving a report as provided in section 4-204 shall by resolution fix a time and place at which the owner, the owner's agent, any lienholder 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.
(K.S.A. 12-1752; Code 1997)
- 4-206. 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, lienholder and occupant at the last known place of residence and shall be marked "deliver to addressee only."
(K.S.A. 12-1752; Code 1997)
- 4-207. SAME; HEARING, ORDER. 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.
(Code 2001)
- 4-208. 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 1997)
- 4-209. 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 1997)

- 4-210. 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 1997)
- 4-211. 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 is insufficient to recover the cost, or if there is no salvage, the city clerk shall, at the time of certifying other city taxes, certify the unpaid portion of the costs to the county clerk who shall extend the same on the tax roll of the county. (K.S.A. 12-1755; Code 1997)
- 4-212. 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, lienholders and occupants. The cost of any action under this section shall be assessed against the property as provided in section 4-211. (K.S.A. 12-1756; Code 1997)
- 4-213. 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 1997)
- 4-214. 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. 12-1750:1756. (Code 1997)

ARTICLE 3. HEATING AND COOLING STANDARDS

4-301. HEATING AND COOLING CERTIFICATE OF COMPLIANCE. Before connection or attachment of service to a new residential dwelling or commercial building, the utility shall require a certificate from the owner that the structure meets the standards set forth herein. Further, the owner will attach supporting statements from the architect and contractor, if either or both such persons were employed in the design and construction of the new residential dwelling or commercial buildings. Compliance with such certification is required for permanent utility service. (Ord. 339, Sec. 1)

4-302. SAME; STANDARDS. (a) A new residential dwelling must be equipped with storm windows and storm doors or other satisfactory window and door thermal treatment. Total heat loss, based on the ASHRAE Handbook of Fundamentals, of a new residential dwelling shall not exceed 35 BTU's per square foot per hour of floor area of heated finished living space at a design temperature differential of 80 degrees Fahrenheit with a maximum of 1 ½ air changes per hour.

(b) New commercial buildings must be constructed so heat transmission loss of heated areas, based on the ASHRAE Handbook of fundamentals, does not exceed 35 BTU's per square foot per hour of floor area based on a design temperature differential of 80 degrees Fahrenheit.

(c) All installed air conditioning systems shall have an energy efficiency ration of 7.0 BTU's or more of cooling capacity per watt hours of input based on the current ARI Standards. All heat pump systems, on and after August 1, 1978, shall have an energy efficiency ratio of 6.7 BTU's or more of cooling capacity per watt hours of input based on current ARI Standards.

(d) All installed air conditioning systems shall have an energy efficiency ratio of 8.0 BTU's or more of cooling capacity per watt hours of input based on the current ARI Standards. All heat pump systems, on and after November 1, 1979, shall have an energy efficiency ratio of 7.5 BTU's or more of cooling capacity per watt hours of input based on current ARI Standards.

(Ord. 339, Sec. 1)

ARTICLE 4. NUMBERING BUILDINGS

- 4-401. NUMBERING BUILDINGS. All houses or business buildings fronting or facing any of the public avenues or streets of the city shall be numbered in conformity with the following provisions. (Ord. 303, Sec. 1)
- 4-402. SAME. For the purpose of this article the city is hereby divided into an east and west side, and Main Street is hereby declared the dividing line, and a north and south side, and Santa Fe Avenue is hereby declared the dividing line. The numbers to be designated any house or building, fronting on any street running east and west shall be ascertained by commencing at Main Street with the number 100 and numbering thence east and west allowing 100 for each block or fraction thereof, placing even numbers on the north side of the street and odd numbers on the corresponding south side of the street. The numbers to be given any house or building fronting on any streets running north and south shall be ascertained by commencing on Santa Fe Avenue with number 100 and thence north and south allowing 100 numbers for each block or fraction thereof, placing even numbers on the west side of the street and odd numbers on the corresponding east side of the street. (Ord. 303, Sec. 2)
- 4-403. BUSINESS DISTRICT. In the business district from the corner of each block nearest its respective base line, each 25 feet of frontage shall be designated a number. (Ord. 303, Sec. 3)
- 4-404. RESIDENCE DISTRICT. In the residence district, comprising all of the municipality outside of the business district, from the corner of each block net to its respective base line, each platted lot of frontage will be designated a number. Where two dwellings are located on the same lot and the second dwelling has street frontage each dwelling shall have a designated number. Where two dwellings are located on the same lot and the second dwelling does not have a street frontage, the second dwelling shall have the same number as the first dwelling with the number $\frac{1}{2}$ added. Each unplatted ownership containing 50 feet or less of frontage shall constitute a number, a number will be designated for each 50 feet of frontage or for each dwelling. (Ord. 303, Sec. 4)
- 4-405. APARTMENTS, MOBILE HOMES. Each apartment house shall have a number and each apartment therein shall be designated by the same number, with an alphabetical letter assigned to each apartment. Mobile home courts shall have a number and each space therein shall have the same number with an alphabetical letter assigned to each space. (Ord. 303, Sec. 5)
- 4-406. CITY CLERK TO ASSIGN NUMBERS. The plat of each lot shall be on file at the office of the city clerk. In case of doubt or where a question arises as to the proper number to be assigned to any lot or building, the city clerk shall decide the question and fix the number. All buildings now or hereafter erected or fronting on any street or avenue shall have a designated number, as provided by this article. (Ord. 303, Sec. 6)

CHAPTER V. BUSINESS REGULATIONS

Article 1. Pool Halls

ARTICLE 1. POOL HALLS

- 5-101. DEFINITIONS. (a) Closed — All doors and windows locked and no persons inside of the place of business except the owner or operator or an employee of the owner or operator.
- (b) Minor — Any person under 18 years of age.
- (c) Pool Hall License — A permit to operate a pool hall, issued by the city and no person or persons shall operate a pool hall without a pool hall license as hereinafter provided.
- (d) Pool Halls — Any place open to the public where snooker, pool, billiards or any other type of game is played with pool balls or a snooker or pool table where cereal malt beverage is sold for consumption on the premises.
(Ord. 329A, Sec. 1; Ord. 332)
- 5-102. POOL HALL LICENSE FEE. The pool hall license fee for each place of business for one year shall be \$25.00 per calendar year. The full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar for which the license is issued. Application for the license shall be made to the city governing body not less than 10 days before opening the pool hall or not less than 10 days before the 1st of the year for which the license is to be issued. The required license fee shall accompany the application for a pool hall license. The license shall not be transferable and shall state the calendar year for which it is issued. The license shall be kept posted in a conspicuous place in the place of business licensed. No pool hall license shall be issued to a person under 21 years of age.
(Ord. 329A, Sec. 2)
- 5-103. MINORS. No person under 18 years of age shall be permitted to be in any of the licensed pool halls or any places selling cereal malt beverage for consumption on the premises, or any combination of businesses thereof, within the city unless the person has a permit signed by his or her parent or legal guardian, duly notarized, in their possession.
(Ord. 329A, Sec. 3)
- 5-104. REGULATIONS. (a) It shall be the duty of the licensed operator of such pool hall to provide the permit required in section 5-103, the permit to be a form to be designated by the governing body of the city.
- (b) It shall be unlawful for the owner or operator or an employee of the owner or operator of the places of business to allow any person under 18 years of age to remain in the place of business unless such person has a permit, as described in section 5-103 in their possession.

(c) It shall be unlawful for the owner or operator or an employee of the owner or operator of the places to allow any person under 18 years of age to buy or consume any cereal malt beverage in the place of business.

(d) No person over 18 years of age shall knowingly or unknowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any cereal malt beverage to or for any minor under 18 years of age.

(e) Any person appearing to be under 18 years of age in the places of business shall provide proof of his or her age, by means of a driver's license or any other positive method of identification, to the owner or operator or an employee of the owner or operator of the place of business or to any police officer upon demand.

(f) Any person appearing to be under 18 years of age, who is in the place of business and who refuses to provide proof of age as required in section 5-108 shall be required to leave the place of business.

(Ord. 329A, Secs. 4:7, 9:10)

5-105. BUSINESS HOURS. All pool halls, billiard halls, or any place selling cereal malt beverage for consumption on the premises or any combination of business thereof shall be closed from the hours of 12:00 midnight until 6:00 a.m. and all day on Sunday.

(Ord. 358, Sec. 2)

5-106. INSPECTION. The places of business shall be open to the public at all times during business hours and subject to inspection or investigation by any police officer at any time of the day or night.

(Ord. 329A, Sec. 8)

CHAPTER VI. ELECTIONS

Article 1. City Elections

ARTICLE 1. CITY ELECTIONS

- 6-101. CONDUCT OF ELECTION. The election of city officials shall be conducted in all respects as provided by the laws of Kansas governing the holding of city elections. (K.S.A. 25-2101 et seq.; Code 1997)
- 6-102. HOURS OF VOTING. At all city elections the polls shall be open at 7:00 a.m. and close at 7:00 p.m., unless different hours are set and publicly announced by the county election officer. (K.S.A. 25-2111, 26-206; Code 1997)
- 6-103. TERMS; VACANCIES. (a) On the first Tuesday in April, 1991, there shall be elected a mayor and five councilmen. At said election, the mayor and the two candidates for councilmen receiving the highest number of votes shall be declared elected for a term of four years. The candidates for councilmen receiving the next three highest numbers of votes shall be elected for a term of two years. Succeeding elections for all such officers shall be for four year terms or until the successors to such officers are qualified.
- (b) In case of a vacancy in the office of mayor by reason of resignation, death or removal from office or from the city, the city council shall by a majority vote appoint the successor mayor until the next regular election for that office.
- (c) In case of a vacancy in the council occurring by reason of resignation, death, or removal from office or from the city, the mayor, by and with the advice and consent of the remaining councilmen shall appoint some suitable elector to fill the vacancy until the next election for that office. In case any person elected as a councilman neglects or refuses to qualify within 30 days after his election, he or she shall be deemed to have refused to accept such office and a vacancy shall be deemed to exist. Thereupon, the mayor, with the consent of the remaining councilmen shall appoint some suitable elector to fill said vacancy.
- (d) There shall be no primary election for city offices.
(C.O. No. 5)

CHAPTER VII. FIRE

- Article 1. Fire Department
- Article 2. Fire Prevention
- Article 3. Fireworks

ARTICLE 1. FIRE DEPARTMENT

- 7-101. CITY FIRE DEPARTMENT ESTABLISHED. The fire department of the city is hereby established and the department shall be organized to consist of a fire chief, an assistant fire chief and not less than 10 nor more than 25 firefighters. The assistant fire chief and members of the fire department shall be appointed by the fire chief.
(Code 1997)
- 7-102. MEMBERSHIP; FIRE DRILL. Members of the fire department shall all be volunteers. They shall meet at least once each month for practice and drill. The chief of the fire department shall keep a record of attendance of such meetings. Any member who shall fail to attend six consecutive meetings shall automatically become expelled from membership.
(Code 1997)
- 7-103. SUPERVISION OF DEPARTMENT. The chief of the fire department shall be under the supervision of the mayor and shall have immediate superintendency and control over and be responsible for the care and condition of the fire apparatus and equipment. It shall be the chief's duty to see that all such apparatus and equipment is ready at all times for immediate use. It shall also be the chief's duty to submit a written report as to the condition of all fire apparatus and equipment to the governing body at their first meeting in October of each year.
(Code 1997)
- 7-104. FIRE CHIEF; POWERS. (a) The fire chief shall be responsible for the discipline of the members and is hereby given authority to suspend or expel any member for refusal to obey orders or for misconduct or failure to do his or her duty at a fire.
(b) The chief shall also have the right to summon any and all persons present to aid in extinguishing a fire or to aid in removing personal property from any building on fire or in danger thereof and in guarding the same.
(c) At fires the chief shall have full power, control and command of all persons present and shall direct the use of the fire apparatus and equipment, and command the fire fighters in the discharge of their duties. He or she shall take such measures as he or she shall deem proper and necessary in the preservation and protection of property and extinguishing of fires.
(Code 1997)
- 7-105. SAME; RECORDS. The chief of the fire department shall keep in convenient form a complete record of all fires. Such information shall include the time and location, construction of building, owner, occupancy, how extinguished, value of building and contents, loss on building and contents, insurance on building and contents, members responding to the alarm, and any other information deemed advisable. (Code 1997)
- 7-106. ASSISTANT CHIEF. In the absence of the chief, the assistant fire chief shall perform all the duties and have all the authority and responsibility of the chief as

conferred by this chapter.
(Code 1997)

- 7-107. PRIVATE USE OF FIRE EQUIPMENT. It shall be unlawful for any person or persons to take away or use any fire apparatus or equipment for any private purpose or for any person willfully and without proper authority to remove, take away, keep or conceal any tool, appliance, equipment or other article used in any way by the fire department.
(Code 1997)
- 7-108. FIRE EQUIPMENT; EMERGENCY RIGHT-OF-WAY AND USE. (a) All fire apparatus and equipment is hereby given and granted the exclusive right-of-way over and through all streets, avenues, alleys and public thoroughfares in the city while en route to fires or in response to any alarm, and it shall be unlawful for any person or persons to in any manner obstruct or hinder the apparatus or equipment.
(b) All emergency vehicles of the fire department, while proceeding on official business, shall be operated in strict accordance with the requirements of the Kansas Statutes regarding the operation of emergency vehicles, and each departmental member assigned to the operation of emergency vehicles shall familiarize himself or herself with the requirements of the law and govern himself or herself accordingly. Any operator violating the provisions of the state law shall be liable for disciplinary action.
(Code 1997)
- 7-109. SAME; FIRE HOSE. It shall be unlawful for any person or persons to drive any vehicle over any fire hose laid on any street, alley or lot. This section shall not apply to any apparatus or vehicle being driven by members of the fire department. (Code 1997)
- 7-110. OBSTRUCTION OF FIRE HYDRANT. It shall be unlawful for any person to place or cause to be placed upon or about any fire hydrant any rubbish, building material, fence or other obstruction of any character, or in any manner obstruct, hinder, or delay the fire department in the performance of its duties in case of fire. Nor shall any person fasten to any fire hydrant any guy rope or brace, nor stand any vehicle within 15 feet of any such hydrant.
(Code 1997)
- 7-111. FALSE ALARM. It shall be unlawful for any person to knowingly make or sound or cause to be made or sounded, or by any other means, any false alarm. (Code 1997)

ARTICLE 2. FIRE PREVENTION

7-201. Reserved.

7-202. Reserved.

7-203. Reserved.

7-204. OPEN BURNING. It shall be unlawful for any person or persons to accumulate any leaves, grass or other combustible materials in the city limits and burn them without first contacting an official of the city fire department, including a chief, assistant chiefs, or captains. This may be done either by phone call or in person. The fire department has the right to refuse the burning of any materials for any reason because of weather, climate, location of buildings, amount of smoke given by such materials, or for any other reason that would cause problems with neighbors or their adjacent buildings. The fire must be attended by the person burning at all times until the fire is extinguished. In addition to the city fire department, the person or persons shall also contact the Ellsworth County sheriff's department prior to the burn and after the burn is complete. The permission to burn will only be good for 24 hours.
(Ord. 552, Sec. 1)

7-205. ACCUMULATION OF RUBBISH AND TRASH. It shall be unlawful for any person to allow to accumulate or to keep in any part of any building or outside of and adjacent to any building or in any alley, sidewalk, street or premises within 30 feet of any building any rubbish, trash, waste paper, excelsior, empty boxes, barrels or other combustibles which shall constitute a fire hazard.
(Code 1997)

7-206. STACKING OF HAY OR STRAW. It shall be unlawful for any person to deposit, stack or store any hay or straw within 500 feet of any building located inside the fire limits of the city.
(Code 1997)

7-207. KEEPING OF PACKING MATERIALS. It shall be unlawful to keep excelsior or other packing material in any other than metal or wood metal line boxes or bins having selfclosing or automatic covers. All refuse and trash from rooms where packing or unpacking is done shall be removed daily.
(Code 1997)

7-208. STORAGE OF ASHES. It shall be unlawful to store ashes inside of any nonfireproof building unless they are stored in a noncombustible container or receptacle, and a clearance of at least five feet shall be maintained between such container or receptacle and any combustible materials not placed therein. Ashes shall not be stored outside of any building in wooden, plastic, or paper product receptacles or dumped in contact with or in close proximity to any combustible materials.
(Code 1997)

- 7-209. FILLING GASOLINE TANKS OF MOTOR VEHICLES. The engines of motor vehicles shall be stopped when the gasoline tanks of such vehicles are being filled with gasoline at service stations or other places where gasoline is supplied to motor vehicles. The driver or person in control of such vehicle when the gasoline tank of same is being filled who refuses, neglects or fails to stop the engine of such vehicle shall likewise be guilty of a violation of this code.
(Code 1997)
- 7-210. FIRE HAZARDS GENERALLY. It is unlawful for any person to cause or create anywhere within the city, or to permit on any premises under his or her control, any situation or condition that is conducive to or likely to cause or permit the outbreak of fire or the spreading of fire. Any situation or condition conducive to the outbreak of or spreading of fire, is declared to be a fire hazard. The violation of or failure to comply with any law pertaining to the storage, handling or use of inflammable oils, explosives, liquefied petroleum gases, or fertilizers and all wires and other conductors charged with electricity, is declared to be a fire hazard. The placing of stools, chairs or any other obstruction in the aisles, hallways, doorway, or exit of any theater, public hall, auditorium, church or other place of indoor public assemblage, or the failure to provide any such place of public assemblage with sufficient, accessible and unobstructed fire exits and escapes is also declared to be a fire hazard. The obstruction of any street, avenue, alley, fire hydrant or any other condition that might delay the fire department in fighting fire is declared to be unlawful.
(Code 1997)
- 7-211. SAME; INSPECTIONS TO DISCOVER. It shall be the duty of the fire chief to inspect or cause to be inspected by fire department officers or members, as often as may be necessary all buildings, particularly all mercantile buildings, manufacturing plants, warehouses, garages, hotels, boarding houses, rooming houses, theaters, auditoriums and all places of public assemblage, for the purpose of discovering the violation of any fire preventive law or any fire hazard and ascertaining and causing to be corrected any conditions liable to cause fires and to see that all places of public assemblage, hotels and rooming houses have sufficient and unobstructed facilities for escape therefrom in case of fire.
(Code 1997)
- 7-212. ABATEMENT OF FIRE HAZARDS; ISSUING ORDER. Whenever any officer or member of the fire department shall find or discover any fire hazard or shall find in any building or upon any premises combustible or explosive material or dangerous accumulation of rubbish or unnecessary accumulation of paper, boxes, shavings or any other inflammable material, so situated as to endanger property by the probability of fire, or shall find or discover any violation of this chapter or any other law hazardous to public safety from fires, the fire chief shall order the fire hazard or danger from the fire forthwith abated and remedied and such order shall be complied with immediately by the owner or occupant of such buildings or premises. If the hazard or condition ordered abated and remedied is a violation of, or a failure to comply with any law, the fire chief shall report the matter to the city attorney and he or she shall, if he or she deems it advisable, prosecute the offender. (Code 1997)

7-213. SAME; SERVICE OF ORDER; RECORDS. Any order made under section 7-212 shall be in writing and may be served personally upon the owner or occupant of the premises or by leaving it with any person in charge of the premises or if the premises are unoccupied and the owner is a nonresident of the city, then by mailing a copy to the owner's last known post-office address. One notice to either the occupant or owner shall be sufficient. The fire chief shall keep a record of and copies of all such orders and notices and shall follow up such notices at the expiration of the time for compliance therewith and when complied with make proper entry, and if not complied with, file complaint with the municipal court against the property owner and/or occupant.
(Code 1997)

ARTICLE 3. FIREWORKS

7-301. FIREWORKS DEFINED. For purposes of this article, the term fireworks shall mean those items as defined by the rules and regulations of the Kansas state fire marshal, and shall include but not be limited to: firecrackers, torpedoes, sparklers, Roman candles, sky rockets, pin wheels, cap or toy pistols (except such pistols or any like device designed to discharge paper caps containing not more than .25 grains of explosive mixture), canes, bombs, cannons or other like devices and all classes of fireworks that may be shot into the air or propelled over the ground by explosive discharges or any device using blank cartridges.
(Code 1997)

7-302. FIREWORKS PROHIBITED. (a) Except as provided in sections 7-303:305; it shall be unlawful for any person to keep, store, display for sale, fire, discharge or explode any fireworks.
(b) Nothing in this article shall be construed as applying to:
(1) Toy paper caps containing not more than .25 of a grain of explosive composition per cap;
(2) The manufacture, storage, sale or authorized use of signals necessary for the safe operation of railroads or other classes of public or private transportation;
(3) The military or naval forces of the United States or of this state while in the performance of official duty;
(4) Law enforcement officers while in the performance of official duty; or
(5) The sale or use of blank cartridges for ceremonial, theatrical or athletic events.
(Code 1997)

7-303. SAME: EXCEPTIONS; DISCHARGES. Section 7-302 of this article shall not apply to the firing or discharge of fireworks in the city:
(a) Between the hours of 8:00 a.m. and midnight on July 1st through July 4th of each year;
(b) Any other times and under other conditions as specifically designated by the governing body;
(c) The governing body in its discretion may grant permission at any time for the public display of fireworks by responsible individuals or organization when such display shall be of such character and so located, discharged and fired as shall not be a fire hazard or endanger persons or surrounding property.
(Ord. 579, Sec. 1)

- 7-304. SAME: EXCEPTION; SALE OF FIREWORKS. Any person who has first obtained a valid permit to sell fireworks within the city may do so between the hours of 8:00 a.m. and 12:00 midnight commencing June 27th and through July 4th of each year.
(Ord. 423, Sec. 1; Code 2005)
- 7-305. PERMIT FOR PUBLIC FIREWORKS DISPLAY REQUIRED. (a) It shall be unlawful for any person to give or provide a fireworks display for the public or for organized groups without first obtaining a permit to do so by making application at least 30 days in advance of the desired display. Approval of the permit shall be by the governing body. No permit shall be approved unless the applicant furnishes a certificate of public liability insurance for the display in a minimum amount of \$_____, written by an insurance carrier licensed to do business in Kansas, conditioned as being non-cancellable except by giving 10 days advance written notice to the city clerk. In the event of cancellation of the insurance prior to the display, the permit shall automatically be revoked and void. The application for the permit shall clearly state:
- (1) The name of the applicant.
 - (2) The group for which the display is planned.
 - (3) The location of the display.
 - (4) The date and time of the display.
 - (5) The nature or kind of fireworks to be used.
 - (6) The name of the person, firm or corporation that will make the actual discharge of the fireworks.
 - (7) Anticipated need for police, fire or other municipal services.
- (b) No permit shall be issued if the location, nature of the fireworks or other relevant factor is such as to create an undue hazard or risk of harm or damage to persons or property.
(Code 1997)
- 7-306. APPROVED FIREWORKS; BOTTLE ROCKETS PROHIBITED. (a) All fireworks offered for sale and discharged within the city shall be of a type that has been tested and approved for sale and use within the state by the state fire marshal.
- (b) Bottle rockets and other similar self-propelled firework or fireworks devices consisting of a tube and attached guiding stock or rod shall not be sold or discharged in the city.
(Code 1997)
- 7-307. HIGH FIRE DANGER DECLARATION; VIOLATION AND PENALTIES. (a) At such time as the governing body of the city determines that a high fire danger exists, they shall declare the existence of a high fire danger and the terms of same. The declaration of a high fire danger shall be passed on to the city clerk who shall cause the declaration to be published at city hall. The city clerk shall also cause notice to be given to those parties who have received a permit to sell fireworks in that calendar year.
- (b) Discharge of fireworks in violation of a high fire danger declaration is prohibited. A violation of this section is a class C violation.
(Ord. 579, Sec. 1)

- 7-308. THROWING PROHIBITED. It shall be unlawful for any person to throw, cast or propel fireworks of any kind in the direction of or into the path of any animal, person or group of persons, or from, in the direction of or into any vehicle of any kind. (Code 1997)
- 7-309. SALE OF FIREWORKS; WHERE PROHIBITED. (a) It shall be unlawful for fireworks to be stored, sold or displayed for sale in a place of business where paint, oils, varnishes, turpentine or gasoline or other flammable substances are kept, unless such fireworks are in a separate and distinct section or department of the premises.
 (b) Where the fire chief deems there is a fire hazard, he or she is hereby authorized to have such hazard abated.
(Code 1997)
- 7-310. RETAIL DISPLAY OF FIREWORKS. (a) All retailers are forbidden to expose fireworks where the sun shines through glass on the merchandise displayed, except where such fireworks are in the original package.
 (b) All fireworks displayed for sale must remain in original packages, except where an attendant is on constant duty at all times where such fireworks are on display; provided, that fireworks in open stock may be kept in show cases or counters out of the reach of the public without an attendant being on duty.
 (c) Signs reading "Fireworks for Sale--No Smoking Allowed" shall be displayed in the section of a store or premises set aside for the sale of fireworks.
(Code 1997)
- 7-311. FIRE EXTINGUISHES REQUIRED. (a) Two functioning and approved fire extinguishes must be provided and kept in close proximity to the stock of fireworks in all permanent buildings where fireworks are stored, sold or displayed for sale.
 (b) Small stands, temporarily erected to be used as a place for storing and selling fireworks only, shall have one such fire extinguisher, or in lieu of the fire extinguisher, a pressurized water hose with nozzle end within five feet of the fireworks stand.
(Code 1997)
- 7-312. RESTRICTIONS AS TO GASOLINE INSTALLATIONS. It shall be unlawful to store, keep, sell, display for sale or discharge any fireworks within 50 feet of any gasoline pump, gasoline filling station, gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only. (Code 1997)
- 7-313. AUTHORITY OF FIRE CHIEF. The chief of the fire department is authorized to seize and confiscate all fireworks which may be kept, stored or used in violation of any section of this article, and all of the rules of the state fire marshal. He or she shall dispose of all such fireworks as may be directed by the governing body. (Code 1997)
- 7-314 PENALTIES. Any violation of this article shall be punishable by up to \$300.00 in fines and/or up to 30 days in jail. The Holyrood municipal police department, or its designee, may seize any fireworks prohibited by this article.
(Ord. 579, Sec. 1)

CHAPTER VIII. HEALTH AND WELFARE

- Article 1. Reserved
- Article 2. Health Nuisances
- Article 2A. Environmental Code
- Article 3. Junked Motor Vehicles on Private Property
- Article 4. Weeds
- Article 5. Minimum Housing Code
- Article 6. Rodent Control
- Article 7. Insurance Proceeds Fund
- Article 8. Flammable Liquids and Propane Tanks
- Article 9. Floodplain Management
- Article 10. Excessive Noise

ARTICLE 1. RESERVED

ARTICLE 2. HEALTH NUISANCES

- 8-201. 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;
 - (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 unless the door, opening or lid thereof is unhinged, or 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.
 - (i) Any pool or pond not having fencing designed to keep children out.
(K.S.A. 21-4106:4107; Ord. 383, Sec. 1; Code 2005)
- 8-202. PUBLIC OFFICER. The mayor, with the consent of the council, shall designate a public officer to be charged with the administration and enforcement of this article. (Code 2005)

- 8-203. 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.
(Code 2005)
- 8-204. RIGHT OF ENTRY. The public officer has 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. (Code 2005)
- 8-205. ORDER OF VIOLATION. (a) The governing body 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 8-201 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.
(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.
(K.S.A. 12-1617e; Code 2005)
- 8-206. SAME; CONTENTS. The order shall state the condition(s) which is (are) in violation of section 8-201. 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 8-201; provided, however, that the governing body [or its designee named in section 8-205] shall grant one or more extensions of the 10 day 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 8-201; 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 8-209;
(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-207 and/or abatement of the condition(s) by the city as provided by section 8-208.
(Code 2005)

8-207. FAILURE TO COMPLY; PENALTY. Should the person, corporation, partnership or association 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 or association and upon conviction of any violation of provisions of section 8-201, be fined in an amount not to exceed \$100.00 or be imprisoned not to exceed 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.
(Code 2005)

8-208. ABATEMENT. In addition to, or as an alternative to prosecution as provided in section 8-207, 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 8-205 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-206, 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 8-210. 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 2005)

8-209. HEARING. If a hearing is requested within the 10 day period as provided in section 8-206, 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 8-208.

(Code 2005)

8-210.

COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-208, 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 2005)

ARTICLE 2A. ENVIRONMENTAL CODE

- 8-2A01. TITLE. This article shall be known as the "Environmental Code."
(Code 2005)
- 8-2A02. LEGISLATIVE FINDING 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, 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 2005)
- 8-2A03. 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 2005)
- 8-2A04. RULES OF CONSTRUCTION. For the purpose of this article, the following rules of construction shall apply:
- (1) 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."
 - (2) Gender - Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.
 - (3) Number - Words of number shall be construed to mean singular or plural, as may be applicable.
 - (4) Tense - Words of tense shall be construed to mean present or future, as may be applicable.
 - (5) Shall - The word shall is mandatory and not permissive.
- (Code 2005)
- 8-2A05. DEFINITIONS. The words and phrases listed below when used in this article shall have the following meanings:
- (1) 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.
 - (2) 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.
 - (3) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.
 - (4) 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.
 - (5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) Refuse - garbage and trash.

(10) Residential - used or intended to be used primarily for human habitation.

(11) 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.

(12) Trash - combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, 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.

(13) Weathered - deterioration caused by exposure to the elements.

(14) Yard - the area of the premises not occupied by any structure.

(Code 2005)

8-2A06. PUBLIC OFFICER. The mayor, with the consent of the council, shall designate a public officer to be charged with the administration and enforcement of this article. (Code 2005)

8-2A07. ENFORCEMENT STANDARDS. 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 8-2A08 but shall not include conditions which are not readily visible from any public place or from any surrounding private property. (Code 2005)

8-2A08. 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 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 or refuse;

(2) abandoned motor vehicles; or

(3) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, 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 2005)

8-2A09.

ORDER OF VIOLATION. (a) The governing body 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 8-2A09 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.

(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,

(C) 10 days from the receipt of the order, plus any additional time granted under subsection (c), to request, as provided in section 8-2A12 a hearing before the governing body or its designated representative on the matter; and;

(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,

(d) That failure to alleviate the condition or to request a hearing may result in prosecution under section 8-2A10 and/or abatement of the condition by the city according to section 8-2A11 with the costs assessed against the property under section 8-2A14.

(K.S.A. 12-1617e; Code 2005)

8-2A10.

PENALTY. The public officer may file a complaint in the municipal court against any person found to be in violation of section 8-2A08, provided however, that such person shall first have been sent a notice as provided in section 8-2A09 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 8-2A09. Upon such complaint in the municipal court, any person found to be in violation of section 8-2A08 shall upon conviction be punished by a fine of not less than \$50 nor more than \$100.00, or by imprisonment, for not more than 30 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 2005)

8-2A11.

ABATEMENT. In addition to, or as an alternative to prosecution as provided in section 8-2A10, 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 8-2A09 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-2A09, 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 8-2A14.

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 2005)

8-2A12.

HEARING. If a hearing is requested within the 10 day period as provided in section 8-2A09 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 8-2A11.

(Code 2005)

8-2A13.

APPEALS. Any person affected by any determination of the governing body under sections 8-2A11:2A12 may appeal such determination in the manner provided by K.S.A. 60-2101.

(Code 2005)

8-2A14.

COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-2A11, 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 2005)

- 8-2A15. 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 2005)

ARTICLE 3. JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

- 8-301. 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) Service 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 1997)

- 8-302. 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 1997)

- 8-303. 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 inoperative 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.

(b) 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 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 1997)

8-304. PUBLIC OFFICER. The mayor with the consent of the council shall designate a public officer to be charged with the administration and enforcement of this article.
(Code 1997)

8-305. 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.
(Code 1997)

8-306. RIGHT OF ENTRY. The public officer has 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.
(Code 2001)

8-307. NOTICE. Any person found by the public officer to be in violation of section 8-303 shall be served a notice of such violation. The notice shall be served by certified mail, return receipt requested; provided, that if the owner or his or her agent in charge of the property is a resident of Ellsworth County, Kansas, the notice shall be personally served by the public officer or a law enforcement officer.
(Code 2001)

8-308. SAME; CONTENTS. The notice shall state the condition(s) which is (are) in violation of section 8-303. The notice shall also inform the person 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 8-303; or
- (b) He, she or they have 10 days from the date of serving the notice to request a hearing before the governing body of the matter as provided by section 8-312;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-309 and/or abatement of the condition(s) by the city as provided by section 8-310.

(Code 1997)

- 8-309. 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 such person and upon conviction of any violation of provisions of section 8-303, be fined in an amount not to exceed \$100.00 or be imprisoned not to exceed 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.
(Code 1997)
- 8-310. ABATEMENT. In addition to, or as an alternative to prosecution as provided in section 8-309, the public officer may seek to remedy violations of this article in the following manner. If a person to whom a notice has been sent pursuant to section 8-307 has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in section 8-308, 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 8-313. 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.
(Code 2001)
- 8-311. DISPOSITION OF VEHICLE. 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.
(Code 1997)
- 8-312. HEARING. If a hearing is requested within the 10 day period as provided in section 8-308, 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 matter provided in section 8-310.
(Code 1997)
- 8-313. COSTS ASSESSED. If the city abates the nuisance pursuant to section 8-310, 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 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.
(Code 1997)

ARTICLE 4. WEEDS

- 8-401. WEEDS 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 1997)
- 8-402. DEFINITIONS. Weeds as used herein, means any of the following:
- (a) Brush and woody vines shall be classified as weeds;
 - (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 12 inches in height.
(Code 2001)
- 8-403. 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 this ordinance. 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 ordinance, by certified mail, return receipt requested, or by personal service, 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 10 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.

(Code 2001)

8-404. ABATEMENT; ASSESSMENT OF COSTS. (a) Upon the expiration of 10 days after receipt of the notice required by section 8-403, and in the event that the owner, occupant or agent in charge of the premises shall neglect or fail to comply with the requirements of section 8-401, the public officer or an authorized assistant shall cause to be cut, destroyed and/or removed all such weeds 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, return receipt requested, 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) 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.

(K.S.A. 12-1617f; Code 2001)

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

(Code 1997)

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 a code violation.

(Code 1997)

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, 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*).

(K.S.A. 2-1314; Code 1997)

ARTICLE 5. MINIMUM HOUSING CODE

8-501. 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 1997)

- 8-502. 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 1997)
- 8-503. 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 1997)
- 8-504. 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.

(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, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes- washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer, gas or fuel lines.

(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 utilities superintendent.

(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 three or more 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.

(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, except when located in a mobile home court duly licensed under laws of the city.

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

(Code 1997)

8-505.

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 8-508:509.

(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 reasonable 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 1997)

8-506.

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) Attached Garages or Non-dwelling Areas. All non-dwelling occupancies shall be separated from the dwelling unit by a fire resistant wall and if the dwelling and garage are covered by a common or connecting roof, then the ceiling also must have a fire resistance rating of not less than one hour as defined in the building code.

(b) Basement or Cellar. The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation.

(c) Basement Dwelling Units. The use of basements or cellars for dwelling units is prohibited unless they comply with section 8-506(r) governing ventilation, provided however, if occupied at the time of the passage of this code and if it complies with all other provisions of this code, the public officer may approve less than the required windows, if in his or her opinion, the window area is not detrimental to the occupants.

(d) 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.

(e) Boarding and Rooming Houses. No room shall be used for sleeping purposes unless the ceiling height is at least seven feet and there are at least 400 cubic feet of air space for each occupant over six years of age. For sleeping rooms with sloping ceilings, the ceiling height shall be at least seven feet over at least 50 percent of the floor area.

(1) Bathing facilities shall be provided in the form of a tub or shower for each eight occupants. Separate facilities shall be provided for each sex and plainly marked.

(2) A flush water closet shall be provided for each six occupants and shall be separated with the separate access from bathing facilities if more than four occupants are served by each. Separate facilities shall be provided for each sex and shall be plainly marked.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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 or as near to the room as practicable.

(m) 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.

(n) 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.

(o) Plumbing. All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good working order.

(p) Privies. All pit privies, privy vaults, "dry hopper" sewer-connected privies and frost-proof closets are hereby declared to be a public nuisance.

(q) Toilet Facilities. There shall be at least one flush water closet in good working condition for each dwelling unit, which flush water closet shall be located within the dwelling and in a room which affords privacy.

(r) 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.

(s) 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.

(t) 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 1997)

8-507. MAINTENANCE AND REPAIR; DWELLINGS. 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 1997)

8-508. 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 constitute 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 8-512 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 1997)

8-509. 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 8-512 are applicable hereto.

(Code 1997)

8-510. DESIGNATION OF BLIGHTED BUILDINGS AND PREMISES (NON-RESIDENTIAL). (a) Certain Blighted Conditions covered in sections 8-508:509 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 8-512.

(Code 1997)

8-511. 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 1997)

8-512. 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 arrange with the alleged violator for 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.

(Code 2001)

8-513. PUBLIC OFFICER: AUTHORITY. For the purpose of protecting the city against unsightly or blighted premises, also 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.
(Code 1997)

8-514. GOVERNING BODY; AUTHORITY. The governing body is hereby authorized:

- (a) To Informally Review all alleged violations as provided in section 8-512(a) prior to notification prescribed in section 8-512(b).
- (b) To Take Action as prescribed in section 8-512(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 8-518.
- (d) Discretionary Authority may be exercised in specific cases where variance from the terms of the code as:
 - (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.

(Code 1997)

8-515. ORDER TO CORRECT AND/OR REPAIR, REMOVE OR DEMOLISH. At the time of the placarding and order to vacate specified by section 8-508(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 8-512.
(Code 1997)

8-516. DEMOLITION BY PUBLIC OFFICER; PROCEDURE AND COSTS. (a) Failure to Comply with the order under section 8-515 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 8-509 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 1997)

8-517. CONFLICT OF LAWS; EFFECT OR PARTIAL INVALIDITY. (a) Conflicts between the provisions of this code and 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.
(Code 1997)

8-518. 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 8-512(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 8-612 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 1997)

8-519. RIGHT OF PETITION. After exhausting the remedy provided in section 8-518, 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 1997)

ARTICLE 6. RODENT CONTROL

- 8-601. 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, 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 1997)
- 8-602. 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 1997)
- 8-603. NOTICE TO RAT-STOP; WHEN CITY TO DO WORK. Upon receipt of written notice from the governing body, 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 governing body.
(Code 1997)
- 8-604. FAILURE TO COMPLY. If the owner fails to comply with such written notice or extension, then the governing body 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 be a lien against the property where the work has been done, 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 rat-stoppage. (Code 1997)
- 8-605. 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 1997)

8-606. NOTICE TO ERADICATE RATS. Whenever the governing body 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 1997)

8-607. 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.
(Code 1997)

8-608. INSPECTIONS. The utilities superintendent 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 1997)

ARTICLE 7. INSURANCE PROCEEDS FUND

- 8-701. SCOPE AND APPLICATION. The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., 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 1997)
- 8-702. LIEN CREATED. 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 1997)
- 8-703. SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by section 8-702, the insurer or insurers shall contact the county treasurer, Ellsworth 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, Ellsworth County, Kansas.
(Code 1997)
- 8-704. SAME; PRO RATA BASIS. Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.
(Code 1997)
- 8-705. 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 2001)

8-706. FUND CREATED; DEPOSIT OF MONEYS. The city treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys 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 1997)

8-707. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE. (a) Upon receipt of moneys 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 moneys, the chief building inspector shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of 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. 12-1750 et seq., as amended.

(d) If the chief building inspector has determined that proceedings under 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 moneys 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. 12-1750 et seq., as amended, the city treasurer shall return all such moneys 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 moneys from the insurance company or companies.

(Code 1997)

8-708. REMOVAL OF STRUCTURE; EXCESS MONEYS. If the chief building inspector has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys 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 1997)

8-709. SAME; DISPOSITION OF FUNDS. 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 8-705(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 8-705(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 1997)

8-710. 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 1997)

8-711.

INSURERS; LIABILITY. 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 1997)

ARTICLE 8. FLAMMABLE LIQUIDS AND PROPANE TANKS

- 8-801. DEFINITIONS. (a) Flammable Liquids, shall mean any liquid having a flash point below 200 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees Fahrenheit.
- (b) Liquefied Petroleum Gases (L-P Gases) shall mean any material which is composed predominately of any of the following hydrocarbons, or mixtures of them: propane, propylene, butane (normal or iso-butane) and butylene.
- (c) Flash Point, shall mean the minimum temperature in degrees Fahrenheit at which a flammable liquid will give off flammable vapor as determined by appropriate test procedure and apparatus as specified below:
- (1) The flash point of flammable liquids having a flash point below 175 degrees Fahrenheit. (79 degrees Centigrade) shall be determined in accordance with the standard method of test for flash point by means of the tag closed tester.
- (2) The flash point of flammable liquids having a flash point of 175 degrees Fahrenheit or higher shall be determined in accordance with the standard method of test point by means of the Pensky-Martens Closed Tester.
(Ord. 436, Sec. 1; Code 2005)
- 8-802. CLASSES OF FLAMMABLE LIQUIDS. Flammable liquids shall be divided into three classes as follows:
- (a) Class I shall include those having flash points at or below 20 degrees Fahrenheit.
- (b) Class II shall include those having flash points above 20 degrees Fahrenheit but at or below 70 degrees Fahrenheit.
- (c) Class III shall include those having flash points above 70 degrees Fahrenheit.
- The volatility of flammable liquids is increased when artificially heated to temperatures equal to or higher than their flash points. When so heated, Class II and III liquids shall be subject to the applicable requirements for Class I or II liquids. These regulations may also be applied to high flash point liquids when so heated even though these same liquids when not heated are outside of their scope.
(Ord. 436, Sec. 2; Code 2005)
- 8-803. STORAGE; CLASS I OR CLASS II LIQUIDS. No person, firm or corporation shall keep or store in any noncommercial building in the city any Class I or Class II flammable liquids in excess of five and one-half gallons, except flammable liquids contained:
- (a) In fuel tanks or automobiles or other self-propelled vehicles; or
- (b) In unbroken metallic containers of not over one gallon capacity each or in approved, nonmetallic containers of not more than one quart capacity each.
(Ord. 436, Sec. 3; Code 2005)
- 8-804. SAME; CLASS III LIQUIDS. No person, firm or corporation shall keep or store, or cause to be kept stored, in any building in the city any Class III flammable liquid in excess of 55 gallons. This restriction shall be subject to an exception for factory made used oil burning heaters.
(Ord. 436, Sec. 4; Code 2005)
- 8-805. BULK OIL STATIONS, SERVICE STATIONS AND FARM COOPERATIVES; RULES AND REGULATIONS. The storage, handling and use of flammable liquids, and the design, construction and installation of containers and equipment for the storage and handling of flammable liquids, at bulk oil stations, service stations and farm cooperatives within the city, shall be in compliance with the rules and regulations of the State Fire Marshal's office, as filed with the Revisor of Statutes, and the rules and regulations are hereby incorporated by references provided by law and made a part of

this article as if the same had been set out in full herein.
(Ord. 436, Sec. 5; Code 2005)

- 8-806. **PROPANE TANK RESTRICTIONS.** All propane tanks and the use thereof are prohibited within the corporate limits of the city. This restriction shall be subject to the following exceptions:
- (a) Standard 20 pound tank or smaller, to be used as a heat source for a standard BBQ grill;
 - (b) Standard 20, 30 or 40 pound tanks to be used at a heat source for recreational vehicles;
 - (c) propane currently being used in propane-powered vehicles; or
 - (d) standard size heating tanks for use by construction companies and contractors for temporary installation on a building site. This temporary installation may initially be granted for one term, not to exceed 60 days in length and must be approved by the governing body. Additional terms may be allowed with the approval of the governing body for a period not to exceed 60 days for each term.
- (Ord. 436, Sec. 6; Code 2005)

- 8-807. **PROHIBITED.** It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a violation of this ordinance. As an alternative to the remedy of abatement as provided in this ordinance, any such person may be prosecuted in municipal court and be punished by:
- (a) An order to abate the nuisance;
 - (b) An order authorizing the city to abate the nuisance and assessing the costs thereof;
 - (c) A fine of not more than one hundred dollars (\$100.00);
 - (d) Imprisonment for a period of not exceeding 30 days; or
 - (e) Any combination of the above.
- Each day any violation of this section continues shall constitute a separate offense.
(Ord. 436, Sec. 7; Code 2005)

- 8-808. **VIOLATION ORDER.** Whenever a violation of this ordinance is found to exist within the city, the public officer shall, on behalf of the city clerk, give a written violation order to the property owner or agent of such property stating the grounds upon which such violation exists. The violation order issued under the provisions of this chapter shall contain:
- (a) An order requiring that the property owner or agent of such property remove and abate the object or objects therein described as a violation within a time to be specified in the order, not exceeding ten (10) days;
 - (b) The location of the violation;
 - (c) A description of what constitutes the violation;
 - (d) A statement of acts necessary to abate the violation;
 - (e) That before the expiration of the time period to abate the violation, the recipient thereof may request a hearing before the governing body;
 - (f) A statement that if the violation is not abated as directed and no request for hearing is made within the prescribed time, the city will abate the object or objects in violation and the cost of such abatement shall be assessed and charged against the lot or parcel of ground on which the object was located. In addition to or in lieu of the city abating the nuisance the city prosecutor may file charges in municipal court.
- (Ord. 436, Sec. 8; Code 2005)

- 8-809. **SERVICE OF NOTICE.** (a) The violation order shall be served on the property owner or his agent by certified mail, return receipt requested or by personal service. If the property owner is a nonresident, then by mailing the order by certified mail, return receipt requested to the last known address of the owner of the property.

(b) If the property owner or his agent has failed to accept delivery or otherwise failed to effectuate receipt of an order sent pursuant to this section during the preceding twenty-four month period, the governing body 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 (a) or as provided in this subsection. Except as specifically provided in this subsection, the governing body 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 owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. (Ord. 436, Sec. 9; Code 2005)

8-810.

HEARING. If a hearing is requested within the time specified in the order, such request shall be made to the governing body in writing and delivered to the office of the city clerk. Failure to make a timely request for a hearing shall constitute a waiver of the right to contest the finding 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 and the property owner or agent of such property 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 property owner or agent of such property may be represented by counsel, and the property owner, tenant or agent of such property and the city may introduce such witnesses and evidence as it deems necessary and proper by the governing body. The hearing need not be conducted according to the formal rules of evidence. Upon the conclusion of the hearing, if the governing body determines that the violation order is without sufficient basis, the order shall be rescinded.

If the violation order is determined to have sufficient basis the recipient shall be allowed 10 days to voluntarily abate the nuisance and comply with the statement of acts necessary to abate the nuisance as specified in the violation order. The waiting period shall commence with the date of the governing body's determination, and in default thereof, the city may take any necessary action to abate the nuisance. (Ord. 436, Sec. 10; Code 2005)

- 8-811. 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 article in the following manner. If a person, corporation, partnership or association to whom a notice has been sent pursuant to Sections 8 and 9, has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in the violation order, the city may proceed to have the things described in the order removed or abated. The abatement of the object or objects by the city shall not be a defense or excuse to the property owner in violation of this chapter. The public officer shall take all necessary measures, as described in the corrective action section of the violation order, to cause the removal and abating of all violations under this chapter and he/she may do or cause to be done whatsoever in his/her judgment shall be necessary to carrying out such measures.
(Ord. 436, Sec. 11; Code 2005)
- 8-812. ASSESSMENT OF CITY'S COSTS. If the city abates or removes the nuisance, the city shall give notice to the property owner as set out in Section 9. Such notice shall state that payment of such costs is due and payable within thirty (30) days following receipt of such notice. The city may also recover investigative cost as well as the cost of providing notice, including any postage, required by this section. If the cost of such removal or abatement and notice is not paid within the thirty-day period, the cost shall be assessed and 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. Additionally, the total costs may be collected on as a personal debt of the property owner in the manner provided by Kansas law.
(Ord. 436, Sec. 12; Code 2005)
- 8-813. VALIDITY. If any section or part of section or paragraph of this ordinance is declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of a section or paragraph of this ordinance.
(Ord. 436, Sec. 13; Code 2005)

ARTICLE 9. FLOODPLAIN MANAGEMENT

STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSES

- 8-901. STATUTORY AUTHORIZATION. (a) Approval of draft ordinance by Kansas Chief Engineer prior to adoption. The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on April 23, 2009.
- (b) Kansas Statutory Authorization. The Legislature of the State of Kansas has in K.S.A. 12-741 et seq., and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the city council ordains as follows.
(Ord. 561)
- 8-902. FINDINGS OF FACT. (a) Flood losses resulting from periodic inundation. The special flood hazard areas of the city are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.
- (b) General causes of the flood losses. These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.
(Ord. 561)
- 8-903. STATEMENT OF PURPOSE. It is the purpose of this article to promote the public health, safety, and general welfare; to minimize those losses described in section 8-902(b); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(b) and K.A.R. 5-44-4 by applying the provisions of this article to:
- (a) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
- (b) Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
- (c) Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.
(Ord. 561)

GENERAL PROVISIONS

- 8-904. LANDS TO WHICH ARTICLE APPLIES. This article shall apply to all lands within the jurisdiction of the city identified as unnumbered A zones on the index map dated August 18, 2009 of the flood insurance rate map (FIRM) as amended and any future revisions thereto. In all areas covered by this article, no development shall be permitted, except through the issuance of a floodplain development permit, granted by

the city council or its duly designated representative under such safeguards and restrictions as the city council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in sections 8-914 through 8-917.
(Ord. 561)

8-905. COMPLIANCE. No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this article and other applicable regulations.
(Ord. 561)

8-906. ABROGATION AND GREATER RESTRICTIONS. It is not intended by this article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. All other ordinances inconsistent with this article are hereby repealed to the extent of the inconsistency only.
(Ord. 561)

8-907. INTERPRETATION. In their interpretation and application, the provisions of this article shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.
(Ord. 561)

8-908. WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare. This article shall not create a liability on the part of the city or any officer or employee thereof, for any flood damages that may result from reliance on this article or any administrative decision lawfully made there under.
(Ord. 561)

8-909. SEVERABILITY. If any section; clause; provision; or portion of this article is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this article shall not be affected thereby.
(Ord. 561)

ADMINISTRATION

8-910. FLOODPLAIN DEVELOPMENT PERMIT. A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in section 8-904. No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.
(Ord. 561)

8-911. DESIGNATION OF FLOODPLAIN ADMINISTRATOR. The city clerk is hereby appointed to administer and implement the provisions of this article as the floodplain administrator.
(Ord. 561)

8-912.

DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR. Duties of the floodplain administrator shall include, but not be limited to:

(a) Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this article have been satisfied;

(b) Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from federal, state, or local governmental agencies from which prior approval is required by federal, state, or local law;

(c) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;

(d) Issue floodplain development permits for all approved applications;

(e) Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);

(f) Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse;

(g) Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;

(h) Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed; and

(i) When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

(Ord. 561)

8-913.

APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT. To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

(a) Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed building or work;

(b) Identify and describe the work to be covered by the floodplain development permit;

(c) Indicate the use or occupancy for which the proposed work is intended;

(d) Indicate the assessed value of the structure and the fair market value of the improvement;

(e) Identify the existing base flood elevation and the elevation of the proposed development;

(f) Give such other information as reasonably may be required by the floodplain administrator;

(g) Be accompanied by plans and specifications for proposed construction; and

(h) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

(Ord. 561)

PROVISIONS FOR FLOOD HAZARD REDUCTION

8-914.

GENERAL STANDARDS. (a) No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes, within any unnumbered A zone unless the conditions of this section are satisfied.

(b) All areas identified as unnumbered A zones on the flood insurance rate map (FIRM) or flood hazard boundary map (FHBM) are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this article. If the flood insurance study is not available; the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from state, federal and other sources.

(c) All new construction, subdivision proposals, substantial-improvements, prefabricated buildings, placement of manufactured homes, and other developments shall require:

(1) Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) Construction with materials resistant to flood damage;

(3) Utilization of methods and practices that minimize flood damages;

(4) All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination from them during flooding; and

(6) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:

(A) All such proposals are consistent with the need to minimize flood damage;

(B) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;

(C) Adequate drainage is provided so as to reduce exposure to flood hazards; and

(D) All proposals for development, including proposals for manufactured home parks and subdivisions, of five acres or 50 lots, whichever is lesser, include within such proposals base flood elevation data.

(d) Storage, material, and equipment.

(1) The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.

(2) Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

(e) Nonconforming use. A structure, or the use of a structure or premises that was lawful before the passage or amendment of the article, but which is not in conformity with the provisions of this article, may be continued subject to the following conditions:

(1) If such structure, use, or utility service is discontinued for six consecutive months, any future use of the building shall conform to this article.

(2) If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

(f) Agricultural structures. Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, wholesale, or manufacturing use included in the structure; a variance has been granted from the floodplain management requirements of this article; and a floodplain development permit has been issued.

(g) Accessory structures. Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; a variance has been granted from the standard floodplain management requirements of this article; and a floodplain development permit has been issued.

(h) Critical facilities.

(1) All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated above the .2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be floodproofed so that below the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in section 8-912(g) through (i).

(2) All critical facilities shall have access routes that are above the elevation of the 500-year flood.

(3) No critical facilities shall be constructed in any designated floodway.

(i) Hazardous materials. All hazardous material storage and handling sites shall be located out of the special flood hazard area.

(j) Cumulative improvement. A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last five calendar years does not exceed 50 percent of the structure's current market value. If the cumulative value of the improvement exceeds 50 percent of the structure's current market value, the structure

must be brought into compliance with section 8-915(a) which requires elevation of residential structures to or above the base flood elevation or the elevation/floodproofing of non-residential structures to or above the base flood elevation.
(Ord. 561)

8-915.

SPECIFIC STANDARDS. (a) In all areas of special flood hazard, once base flood elevation data is obtained, as set forth in section 8-914(b), the following provisions are required:

(1) Residential construction. New construction or substantial-improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to a minimum of one foot above base flood level. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

(2) Non-residential construction. New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed to a minimum of one foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the floodplain administrator as set forth in section 8-912(g) through (i).

(3) Require for all new construction and substantial-improvements, that fully enclosed areas below the lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(A) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; and

(B) The bottom of all opening shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(b) In all areas of special flood hazard, once floodway data is obtained, as set forth in section 8-914(b), the following provisions are required:

(1) The designated floodway shall be based on the standard that the area chosen for the floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation more than one foot at any point; and

(2) The community shall prohibit any encroachments, including fill, new construction, substantial-improvements, and other development within the designated regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(Ord. 561)

- 8-916. MANUFACTURED HOMES. (a) All manufactured homes to be placed within special flood hazard areas shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- (b) Require manufactured homes that are placed or substantially improved within unnumbered A zones on the community's FIRM or FHBM on sites:
- (1) Outside of a manufactured home park or subdivision;
 - (2) In a new manufactured home park or subdivision;
 - (3) In an expansion to an existing manufactured home park or subdivision; or
 - (4) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial-damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to a minimum of one foot above the base flood level and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.
- (c) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within unnumbered A zones on the community's FIRM or FHBM, that are not subject to the provisions of subsection (b) of this section, be elevated so that either:
- (1) The lowest floor of the manufactured home is a minimum of one foot above the base flood level; or
 - (2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.
- (Ord. 561)

- 8-917. RECREATIONAL VEHICLES. Require that recreational vehicles placed on sites within unnumbered A zones on the community's FIRM or FHBM either:
- (a) Be on the site for fewer than 180 consecutive days, or
 - (b) Be fully licensed and ready for highway use*; or
 - (c) Meet the permitting, elevating, and the anchoring requirements for manufactured homes of this article.
- *A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.
- (Ord. 561)

FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

- 8-918. ESTABLISHMENT OF APPEAL BOARD. The city council, appeal board, as established by the city shall hear and decide appeals and requests for variances from the floodplain management requirements of this article.
- (Ord. 561)

- 8-919. RESPONSIBILITY OF APPEAL BOARD. (a) Where an application for a floodplain development permit is denied by the floodplain administrator, the applicant may apply for such floodplain development permit directly to the appeal board, as defined in section 8-918.
- (b) The appeal board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this article.
(Ord. 561)
- 8-920. FURTHER APPEALS. Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the district court of the county as provided in K.S.A. 12-759 and 12-760.
(Ord. 561)
- 8-921. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA. In passing upon such applications for variances, the appeal board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this article, and the following criteria:
- (a) Danger to life and property due to flood damage;
 - (b) Danger that materials may be swept onto other lands to the injury of others;
 - (c) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) Importance of the services provided by the proposed facility to the community;
 - (e) Necessity to the facility of a waterfront location, where applicable;
 - (f) Availability of alternative locations, not subject to flood damage, for the proposed use;
 - (g) Compatibility of the proposed use with existing and anticipated development;
 - (h) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) Safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
 - (k) Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.
- (Ord. 561)
- 8-922. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES.
- (a) Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing subsections (b) through (f) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (b) Variances may be issued for the reconstruction, repair, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provided the proposed activity will not preclude the structure's continued historic

designation and the variance is the minimum necessary to preserve the historic character and design of the structure.

(c) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(e) Variances shall only be issued upon: (1) showing of good and sufficient cause, (2) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(f) A community shall notify the applicant in writing over the signature of a community official that: (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this article.

(Ord. 561)

8-923.

CONDITIONS FOR APPROVING VARIANCES FOR AGRICULTURAL STRUCTURES. (a) Any variance granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in sections 8-921 and 8-922.

(b) In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for agricultural structures that are constructed at-grade and wet-floodproofed.

(1) All agricultural structures considered for a variance from the floodplain management regulations of this article shall demonstrate that the varied structure is located in wide, expansive floodplain areas and no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farmhouses, cannot be considered agricultural structures.

(2) Use of the varied structures must be limited to agricultural purposes in zone A only as identified on the community's flood insurance rate map (FIRM) or flood hazard boundary map (FHBM).

(3) For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with section 8-914(c)(2).

(4) The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with section 8-914(c)(1). All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.

(5) Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with section 8-914(c)(4).

(6) The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with section 8-915(a)(3).

(7) The agricultural structures must comply with the floodplain management floodway encroachment provisions of section 8-915(b)(2). No variances may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.

(8) Major equipment, machinery, or other contents must be protected from any flood damage.

(9) No disaster relief assistance under any program administered by any federal agency shall be paid for any repair or restoration costs of the agricultural structures.

(10) A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this article.

(11) Wet-floodproofing construction techniques must be reviewed and approved by the community and a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

(Ord. 561)

8-924.

CONDITIONS FOR APPROVING VARIANCES FOR ACCESSORY STRUCTURES. (a) Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in sections 8-921 and 8-922.

(b) In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-floodproofed.

(1) Use of the accessory structures must be solely for parking and limited storage purposes in zone A only as identified on the community's flood insurance rate map (FIRM) or flood hazard boundary map (FHBM).

(2) For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with section 8-914(c)(2).

(3) The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with section 8-914(c)(1). All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.

(4) Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with section 8-914(c)(4).

(5) The accessory structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with section 8-915(a)(3).

(6) The accessory structures must comply with the floodplain management floodway encroachment provisions of section 8-915(b)(2). No variances may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.

(7) Equipment, machinery, or other contents must be protected from any flood damage.

(8) No disaster relief assistance under any program administered by any federal agency shall be paid for any repair or restoration costs of the accessory structures.

(9) A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this article.

(10) Wet-floodproofing construction techniques must be reviewed and approved by the community and registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

(Ord. 561)

8-925.

CONDITIONS FOR APPROVING VARIANCES FOR TEMPORARY STRUCTURES. Any variance granted for a temporary structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in sections 8-921 and 8-922.

(a) A temporary structure may be considered for location within the one percent annual chance flood event, also referred to as the 100-year floodplain only when all of the following criteria are met:

(1) Use of the temporary structure is unique to the land to be developed and cannot be located outside of the floodplain nor meet the NFIP design standards;

(2) Denial of the temporary structure permit will create an undue hardship on the property owner;

(3) Community has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and,

(4) Community has sufficient staff to monitor the placement, use, and removal of the temporary structure throughout the duration of the permit.

(b) Once all of the above conditions are met, an application for a special use permit must be made to the city council. The city council shall consider all applications for special use permits for a temporary structure based on the following criteria:

(1) The placement of any temporary structure within the special flood hazard areas as shown on the community's adopted FEMA/NFIP map shall require an approved special use permit. The special use permit shall be valid for a period not to exceed 180 days.

(2) Special use permits applications, for a temporary structure to be located in special flood hazard areas, shall conform to the standard public hearing process prior to any community action on the permit request.

(3) An emergency plan for the removal of the temporary structure that includes specific removal criteria and time frames from the agency or firm responsible for providing the manpower, equipment, and the relocation and disconnection of all utilities shall be required as part of the special use permit application for the placement of any temporary structure.

(4) On or before the expiration of the end of the 180 day special use permit period, the temporary structure shall be removed from the site. All utilities, including water, sewer, communication, and electrical services shall be disconnected.

(5) To ensure the continuous mobility of the temporary structure for the duration of the permit, the temporary structure shall retain its wheels and tires, licenses, and towing appurtenance on the structures at all times.

(6) Under emergency flooding conditions, the temporary structure shall be removed immediately or as directed by the community and as specified in the emergency removal plan.

(7) Location of any temporary structure within the regulatory floodway requires the provision of a "no-rise" certificate by a registered professional engineer.

(8) Violation of or non-compliance with any of the stated conditions of the special use permit during the term thereof, shall make the permit subject to revocation by resolution of the governing body of the community. Issuance of permit revocation notice shall be made to the landowner, the occupant of the land, and to the general public.

(9) Any deviation from the approved site plan shall be deemed a violation of the special use permit approval and the uses allowed shall automatically be revoked. The subsequent use of the land shall be as it was prior to the special permit approval. In event of any violation, all permitted special uses shall be deemed a violation of this article and shall be illegal, non-conforming uses and shall be summarily removed and abated.

(10) If the temporary structure is to be returned to its previously occupied site, the process for issuing a special use permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

(Ord. 561)

8-926.

PENALTIES FOR VIOLATION. Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$ 25.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the city or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. 561)

8-927.

AMENDMENTS. The regulations, restrictions, and boundaries set forth in this article may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the city. At least 20 days shall elapse between the

date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this article are in compliance with the NFIP regulations.
(Ord. 561)

8-928.

DEFINITIONS. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the same meaning they have in common usage and to give this article its most reasonable application.

- (1) 100-year flood see base flood.
- (2) Accessory structure means the same as appurtenant structure.
- (3) Actuarial rates see risk premium rates.
- (4) Administrator means the Federal Insurance Administrator.
- (5) Agency means the Federal Emergency Management Agency (FEMA).
- (6) Agricultural commodities means agricultural products and livestock.
- (7) Agricultural structure means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.
- (8) Appeal means a request for review of the floodplain administrator's interpretation of any provision of this article or a request for a variance.
- (9) Appurtenant structure means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.
- (10) Area of special flood hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.
- (11) Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.
- (12) Basement means any area of the building having its floor subgrade (below ground level) on all sides.
- (13) Building see structure.
- (14) Chief engineer means the chief engineer of the division of water resources, Kansas Department of Agriculture.
- (15) Chief executive officer or chief elected official means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.
- (16) Community means any state or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
- (17) Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- (18) Elevated building means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.
- (19) Eligible community or participating community means a community for which the administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).
- (20) Existing construction means for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. Existing construction may also be referred to as existing structures.

(21) Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pad(s) is completed before the effective date of the floodplain management regulations adopted by a community.

(22) Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(23) Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

(24) Flood hazard boundary map (FHBM) means an official map of a community, issued by the administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

(25) Flood hazard map means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

(26) Flood insurance rate map (FIRM) means an official map of a community, on which the administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

(27) Flood insurance study (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

(28) Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see flooding).

(29) Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

(30) Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

(31) Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

(32) Floodway or regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(33) Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

(34) Functionally dependent use means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

(35) Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(36) Historic structure means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

(37) Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this article.

(38) Manufactured home means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term manufactured home does not include a recreational vehicle.

(39) Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(40) Map means the flood hazard boundary map (FHBM) or the flood insurance rate map (FIRM) for a community issued by the Federal Emergency Management Agency (FEMA).

(41) Market value or fair market value means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

(42) Mean sea level means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map (FIRM) are referenced.

(43) New construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the "start of construction" commenced

on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

(44) New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

(45) NFIP means the National Flood Insurance Program (NFIP).

(46) Participating community also known as an eligible community, means a community in which the administrator has authorized the sale of flood insurance.

(47) Permit means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

(48) Person includes any individual or group of individuals, corporation, partnership, association, or any other entity, including federal, state, and local governments and agencies.

(49) Principally above ground means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

(50) Recreational vehicle means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently towable by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(51) Remedy a violation means to bring the structure or other development into compliance with federal, state, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

(52) Risk premium rates means those rates established by the administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. Risk premium rates include provisions for operating costs and allowances.

(53) Special flood hazard area see area of special flood hazard.

(54) Special hazard area means an area having special flood hazards and shown on a FIRM or FHBM as zones (unnumbered or numbered) A, AO, AE, or AH.

(55) Start of construction includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural

part of a building, whether or not that alteration affects the external dimensions of the building.

(56) State coordinating agency means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the administrator to assist in the implementation of the NFIP in the State of Kansas.

(57) Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation, or a travel trailer, without wheels on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

(58) Substantial-damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(59) Substantial-improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred substantial-damage, regardless of the actual repair work performed. The term does not, however, include either (1) any project or improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

(60) Temporary structure means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until permanent facilities can be constructed, but at no time shall it include manufactured homes used as residences.

(61) Variance means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

(62) Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this article is presumed to be in violation until such time as that documentation is provided.

(63) Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

(Ord. 561)

ARTICLE 10. EXCESSIVE NOISE

- 8-1001. NOISE – GENERAL PROHIBITION. It is unlawful for any person to make or cause or permit to be made or caused upon any premises occupied by them, or in or upon any public street, alley, thoroughfare or public park in the city, any loud and unnecessary noise or sound which is physically annoying to persons or which is so harsh or so prolonged in its use, time and place as to occasion physical discomfort, or which is injurious to the health, peace, comfort, privacy and tranquility of the inhabitants of the city or to any of them.
(Ord. 594, Sec. 1)
- 8-1002. STATEMENT OF INTENT. No provision of sections 8-1003 or 8-1004 shall be construed to limit or abridge the rights of any person to speak, peacefully assemble and express opinion at a reasonable hour. It is the purpose of this article to protect individuals from unreasonable intrusions caused by excessive, unnecessary or unusually loud noises, especially during the hours of 10:00 p.m. through 7:00 a.m. Sunday through Thursday and 12:00 a.m. through 7:00 a.m. Friday through Saturday.
(Ord. 594, Sec. 2)
- 8-1003. DISTURBING THE PEACE. (a) It is unlawful for any person to make, continue, maintain or cause to be made or continue an excessive, unreasonable or unusually loud noise which disturbs, injures and endangers the repose, health, peace or safety of other people of ordinary sensitivity within the vicinity of the noise.
(b) It is unlawful for any person to use, operate or permit the use or operation of any electronic device, radio, receiving set, television, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet or repose of the neighboring inhabitants of ordinary sensitivity.
(c) No person shall participate in or be in any party or gathering of people from which sound emanates at a sufficient volume so as to disturb the peace, quiet or repose of the neighboring inhabitants of ordinary sensitivity. A police officer may order all such persons present at any party or gathering to immediately disperse from the vicinity of any such party or gathering in lieu of being charged under this article; provided, however, owners or tenants are not required to leave their own dwelling unit. Owners or tenants residing in the dwelling unit where the party or gathering occurs shall, upon request of a police officer, cooperate fully in abating the disturbance and failing to do so shall be in violation of this article.
(d) For the purpose of this article the term neighboring inhabitants includes those persons in single or multiple-family dwellings within the vicinity of the noise.
(Ord. 594, Sec. 3)
- 8-1004. EXEMPTIONS. The requirements of sections 8-1002 and 8-1003 shall not apply to the following provided that all equipment is in repair and operating properly:
(a) Emergency work necessary to restore property to a safe condition or to protect a person and property from eminent danger;
(b) Emergency vehicles;
(c) Alarm systems;
(d) Trash and waste pickup operations;
(e) Aircraft;
(f) Noise resulting from activities of a temporary duration planned by school, governmental or community groups;

- (g) Air conditioners;
 - (h) Church bells and campanile chimes;
 - (i) Businesses in normal operations;
 - (j) Farm operations or farm equipment;
 - (k) Or exemptions to this article given to anyone who requests in writing or in person to the city council for approval at least one week prior to an event.
- (Ord. 594, Sec. 4)

8-1005. PENALTY. A violation of this is a class B misdemeanor violation as defined by the Uniform Public Offense Code.
(Ord. 594, Sec. 5)