

03/10/2008

ORDINANCE NO.47-894

AN ORDINANCE AMENDING SECTIONS 8.01.010, 8.01.040, 8.01.050, 8.01.060, 8.01.070 AND 8.01.130, CREATING SECTIONS 8.01.052, 8.01.055, 8.01.065, 8.01.135 and 8.01.175 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND REPEALING THE ORIGINALS OF SECTIONS. 8.01.010, 8.01.040, 8.01.050, 8.01.060, 8.01.070, 8.01.080, 8.01.090. 8.01.130, 8.01.150, 8.01.160, 8.01.170 AND 8.01.180, OF THE CODE OF THE CITY OF WICHITA, KANSAS, ALL PERTAINING TO NUISANCES

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

SECTION 1. Section 8.01.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Purpose. The purpose of the Neighborhood Nuisance Enforcement Code is to promote the health, safety and welfare of the residents of the City of Wichita, Kansas, and to protect neighborhoods against physical, visual and economic deterioration. To that end, the city intends this code to prohibit nuisances that:

- (1) Contribute to or cause injury or endangerment to the health, safety or welfare of others;
- (2) Are contrary to community standards of decency;
- (3) Are offensive to the senses;

(4) Obstruct the free use of property so as to essentially interfere with the comfortable enjoyment of life and property by the public; or

(5) Damage or contribute to the deterioration of property or improvements in the community.”

SECTION 2. Section 8.01.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Violations not exclusive. Violations of this code are in addition to any other violation enumerated within the ordinances of the Code of the City of Wichita. This code in no way limits the penalties, actions or abatement procedures which may be taken by the city for a violation of this title which is also a violation of any other ordinance of the city or statute of the State of Kansas.”

SECTION 3. Section 8.01.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

‘Abandoned vehicle’ means a vehicle to which the last registered owner thereof has relinquished all further dominion and control of a vehicle that has remained on private property without the consent of the owner or person in control of the property for more than forty-eight hours.

'Accessory structure' means a structure, the use of which is incidental to that of the main building and which is attached thereto or located on the same premises.

'Apartment' means a residential building designed or used for three or more dwelling units, including hallways, laundry facilities, common use areas and means of ingress and egress to such dwelling or dwelling units.

'Basement' means that portion of a dwelling between floor and ceiling which is partly below and partly above grade.

'City' means Wichita, Sedgwick County, Kansas.

'City clerk' means the duly appointed city clerk of the City of Wichita, or his/her authorized representative.

'Control measures' means any chemical, structural, physical procedures or processes designed to eradicate, minimize, prevent or otherwise limit the reproduction and/or infestation of insects and rodents detrimental to public health.

'Dilapidation, Deterioration or Disrepair' means the condition or appearance of a building characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, excessive use or lack of maintenance.

'Director of public works' means the director of the department of public works of the City of Wichita, or his/her authorized representative.

'Dwelling' means any building, manufactured home or mobile home which is wholly or partly used or intended to be used for living or sleeping by human occupants.

'Extermination' means the control and elimination of insects, rodents or other pests and termites by eliminating their harborage places;

by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping or by any other recognized and approved pest elimination method.

‘Health officer’ means the director of the Wichita Department of Environmental Services or his/her authorized representative.

‘Human excreta’ means the body discharge (both feces and urine) of humans.

‘Infestation’ means the presence, within a structure, of any insects, rodents or other pests which may be harmful to the health or safety of the occupants or the soundness of the structure.

‘Inoperable’ means: A condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purposes for which it was originally constructed, or

1. The absence of a current valid registration plate upon such vehicle permitting that vehicle to be operated on the public streets and highways of the State of Kansas, unless the vehicle was manufactured or modified solely for non-highway use and a non-highway vehicle title has been issued solely because the vehicle was not manufactured for street use, or

2. The absence of one or more of the parts of the vehicle necessary for the lawful operation of the vehicle on the public streets and highways, unless the vehicle has a non-highway

title issued solely because the vehicle was not manufactured for street use, or

3. The placement of the vehicle or parts thereof upon jacks, blocks, chains or other supports.

‘Insects’ means the classes Insecta and Arachnida of the phylum Arthropoda including flies, mosquitoes, fleas, lice, cockroaches, bedbugs, plant bugs, mites, ticks, spiders, and scorpions.

‘Junk vehicle’ means any vehicle which is wrecked, scrapped, ruined, partially dismantled, inoperative, abandoned and/or without a valid automobile license tag.

‘Multifamily dwelling’ means a structure containing two, three or four dwelling units.

‘Nuisance’ means any condition which is injurious to health, or is a potential health hazard, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a majority of persons subjected to the condition, such condition being no less a nuisance because the extent of the annoyance or damage inflicted is unequal.

‘Occupant’ means any person, with or without the knowledge or consent of the owner, who has actual possession of a dwelling unit or rooming unit and who is living, sleeping, cooking or eating within the dwelling unit or rooming unit.

'Operator' means any person who has charge, care or control of a building, or part thereof, with or without the knowledge or consent of the owner, in which dwelling units or rooming units are let.

'Owner' means any person who is a holder of any legal or equitable interest in the premises, and alone or jointly or severally with others,

(a) Has record legal title to any dwelling or dwelling unit with or without accompanying actual possession thereof; or

(b) Has charge, care or control of any dwelling or dwelling unit which may include all persons who have an interest in a structure and any who are in possession or control thereof as owner or agent of the owner, contract purchaser, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner;

(c) Collects rent for a dwelling unit on behalf of or in place of the owner;

Any such person representing the owner shall be bound to comply with the provisions of this chapter to the same extent as if he/she were the owner, and upon failure to comply therewith shall be subject to the same penalties set out.

In the absence of substantial evidence to the contrary, records of the Sedgwick County Clerk's Office, Register of Deeds, certified copies of court records or judgments of any court, copies of lease agreements,

contracts for deed, mortgages, tax records, rental agreements and other financial documents related to the property shall be conclusive evidence of the ownership of the property.

‘Person’ means any individual, firm, association, company, syndicate, partnership, or other legal entity, or a natural person for the purposes of the occupancy standards hereof, a natural person or a legal entity such as, but not limited to, an individual, firm, associate, joint stock company, syndicate, partnership, or corporation.

‘Premises’ means a lot, plot or parcel of land including structures located thereon. Premises shall also mean any lot, plot or parcel of land without any structures thereon.

‘Property’ means any real property within the city which is not a street or highway.

‘Refuse’ means all putrescible and nonputrescible waste materials such as trash, debris, garbage, tree trimmings, grass cuttings, dead animals and solid industrial wastes but shall not include human or animal excrements.

‘Representative’ shall mean any person or entity listed in the Sedgwick County, Kansas appraiser’s office or treasurer’s office for the purpose of paying taxes; a registered agent with the Kansas Secretary of State’s office for corporate or partnership ownership; an agent or manager directed by the property owner, estate, or court order to represent the

interests of the property or to otherwise control activities on the real property; or a corporate officer.

‘Residential bulky waste’ means items of solid waste normally produced by persons in their dwellings or on their dwelling premises that are too large or too heavy to be placed in a thirty to thirty-five gallon container and includes household appliances, furniture, plumbing fixtures, playground equipment, yard appliances and equipment and similar materials but does not include vehicle major component parts, hazardous waste, demolition and construction waste or tree waste.

‘Rodents’ means the so-called domestic rats, *Rattus norvegicus*, and *rattus rattus*, and domestic mice, *Mus musculus* and wild native rodents associated with the transmission of disease or causing nuisance to man or other animals.

‘Safe and Sanitary’ for purposes of this chapter shall mean free from conditions that are dangerous or could cause injury and free from elements such as filth or bacteria that endanger health.

‘Salvage material’ means materials of some value that are obtained from the disassembly of various kinds of machinery, mechanical appliance, and/or the demolition of building or structures.

‘Single-family dwelling’ means a structure containing one dwelling unit.

‘Solid waste collector’ means any governmental agency or any person collecting, transporting and disposing of a solid waste, subject to the conditions of this chapter.

‘Storage’ means the keeping outside of an enclosed building for more than seventy-two consecutive hours.

‘Street’ or ‘highway’ means the entire width between property lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic. Where the word ‘highway’ or the word ‘street’ is used in this title, it means street, avenue, boulevard, thoroughfare, traffic way, alley and any other public way for vehicular travel by whatever name unless the context clearly indicates otherwise.

‘Tenant’ shall mean any person who has a severable or non-severable interest in the real property either by oral or written lease or covenant, or by other methods of conveying a limited interest in such lands; or any person who occupies or has possession of such real property.

‘Tree waste’ means all tree or shrub waste including tree stumps, but does not include leaves, tree trimmings or branches tied in bundles not more than four feet in length and not more than eighteen inches in diameter placed beside the solid waste storage containers, vegetation pruning or wood chips placed in such container, fireplace wood or other wood fuel.

‘Unsecured structure’ means:

Any building or structure, including but not limited to vacant houses or other residential structures, garages, sheds, barns, tool houses and vacant commercial structures that are:

(1) Readily open to entry by unauthorized persons without the consent of the owner or agent of the owner; or

(2) Inhabited, occupied or used without the consent of the owner or agent of the owner.

‘Vehicle’ means any automobile, truck, tractor, farm machinery, motorcycle, motorized bicycle or other device designed or used for transportation of persons or property which, as originally built, contained an engine, regardless of whether it contains an engine at any other time.

‘Visible’ means that the shape of a vehicle is recognizable as a vehicle even if it is covered.

‘Weeds’ are those plants defined as "noxious weeds" in K.S.A. 2-1314 and amendments thereto.”

SECTION 4. Section 8.01.052 of the Code of the City of Wichita, Kansas, shall read as follows:

‘Responsibility to Abate Nuisances. (a) It is unlawful for any property owner, representative, tenant or other such person with control, occupancy, or possession of real property to allow or maintain a

nuisance, as defined by this code, on any lot or parcel within the City, including sidewalks, alleys, easements and right-of-way.

(b) The property owner, representative, tenant, or other such person with control, occupancy, or possession of real property shall be responsible for the abatement of any nuisance.”

SECTION 5. Section 8.01.055 of the Code of the City of Wichita, Kansas, shall read as follows:

“Nuisances. It is unlawful to maintain or to permit to exist any nuisance as herein described. Every successor owner of property who, after proper notice of such nuisance, neglects to abate a continuing nuisance caused by a former owner or occupant, shall be responsible for such nuisance as provided for by this chapter. The following conditions or materials are declared to be injurious to the health and well being of citizens of the city and are declared to be nuisances together with those conditions not herein enumerated by coming under the definition of nuisance as described in Section 8.01.050.

(1) Open basement structures, excavations, storm cellars, or other excavations that create hazards to any persons, collect water or produce mosquitoes except those excavations authorized by a current building permit and those excavations in use as part of occupied premises if maintained with adequate drainage and fencing consisting of material recognized for the

purpose and having openings not larger than two inches in the least dimension;

(2) Growth of weeds, vines or unwanted, uncultivated, or unkempt vegetation that are over twelve inches in length or height on any premises and in streets and alleys in front of and abutting on any premises in the city;

(3) Refuse not stored or disposed of as provided for by Section 8.01.110 of the Code of the City of Wichita;

(4) Salvage material, junk, appliances or other materials on residential premises or vacant lots in residential areas except as provided for by Section 8.01.100 of the Code of the City of Wichita;

(5) Minor auxiliary or accessory buildings or structures such as privies, sheds, barns, garages, tool houses and vacant houses and commercial structures which have become so dilapidated and deteriorated as to be a potential accident hazard, rat harborage, attractive nuisance to children or to be offensive to the senses;

(6) Interior furniture stored, maintained or used on the exterior of a dwelling or dwelling unit which is so dilapidated and deteriorated as to be a potential accident hazard, a harborage for insects, rodents or vermin or which emits offensive odors.

(7) Dead, or diseased, or broken trees or branches thereof, which have become dangerous, or which are likely to become dangerous to the public safety, or to the occupants of or property on private premises.

(8) Unsecured structures.

(9) Inoperable or junk vehicles as prohibited by Section 8.01.140 of the Code of the City of Wichita.

(10) Tree waste, as prohibited by Section 8.01.130 of the Code of the City of Wichita.”

SECTION 6. Section 8.01.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Notice to Abate. (a) Whenever an officer, authorized to enforce violations of the provisions of this code, determines that there has been a violation of any provisions of this code, unless other notice requirements are set forth by the Code of the City of Wichita, he/she shall give notice to abate such violation to the person or persons responsible therefor, as herein provided.

(b) The notice of abatement shall state:

(1) A common or legal description of the property, or both;

(2) The nature of the violation, including relevant ordinances, with sufficient information that would reasonably

allow the recipient to determine the nature of the violation to allow for self-abatement;

(3) That the condition creating the violation shall be abated within a designated time period, not exceeding 30 days from the date of the notice, provided that an extension of one 10-day time period shall be granted if the owner or agent of the owner of the property demonstrates that due diligence is being exercised in abating the nuisance;

(4) That the recipient, upon written request, may obtain a hearing before a designated hearing officer, provided such request is received by the Superintendent of Central Inspection prior to the expiration of the designated waiting period.

(5) That failure to comply with the notice of abatement shall result in the City abating the violation with the assessment of costs made against the property or by filing for judgment against the recipient;

(6) That failure to pay such assessments within 30 days of the notice of costs shall result in the filing of a tax lien against the property; or the filing for judgment against the recipient, or both;

(7) That such violations are subject to criminal prosecution.

(c) Except as provided by subsection (d), the notice of abatement shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service, or if the same is unoccupied and the owner is a nonresident, then by mailing a notice of certified mail, return receipt requested, to the last known address of the owner.

(d) If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of an order sent pursuant to this Section during the preceding 24-month period, the City may provide notice of the issuance of any further orders to abate or remove a nuisance from such property in the manner provided by subsection (c) or as provided in this subsection. The City may provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(e) If the notice cannot be conveniently served as set forth in Subsections (b), (c) and (d) of this section, service of the notice is to be made upon such person or persons by at least one publication in the official newspaper of the City of Wichita, such publication to contain the conditions and reasons of the notice;

(f) If the recipient of the notice of abatement makes a written request for hearing within the waiting period, then the City shall schedule a hearing within ten business days before the Superintendent of Central Inspection or a designated hearing officer. The hearing officer shall receive evidence, review the investigation, and prepare a written order. The order shall be sent by certified mail to all relevant parties within 10 days of the hearing, unless otherwise stated at the hearing, and prior to the City taking any action to abate the violation. The order shall describe the relevant facts relied upon, state the specific Code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement, or orders as deemed necessary by the hearing officer.

(g) Any motor vehicle removed and abated from private property pursuant to this ordinance shall be disposed of as provided by K.S.A. 8-1002, *et seq.*, as amended.

(h) Owners or persons entitled to the lawful custody of impounded or abandoned motor vehicles who wish to contest the validity of the motor vehicle tow may request a hearing for such purposes, pursuant to Section 11.97.040 of the Code of the City of Wichita.

(i) If an officer authorized to enforce violations of this code, determines that a violation of this Act exists, he or she may issue a Notice to Appear in Municipal Court for such violation. No other procedures or notice are required as a prerequisite to the issuance of a Notice to Appear.”

SECTION 7. Section 8.01.065 of the Code of the City of Wichita, Kansas, shall read as follows:

“Abatement of Nuisance by City; Notice of Costs; Assessment and Collection. (a) If the recipient of the notice of abatement fails to comply with the notice within the period of time designated in the notice, or fails to comply with the notice after a hearing on the matter, then the City may go onto the property to abate the violation in a reasonable manner. The City shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violations. The City may use its own employees or contract for services to abate the violations of the Code.

(b) If the City takes action to abate the violation, it shall provide a Notice of Costs to the property owner, representative, or tenant. The Notice of Costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the Notice of Costs shall also be posted on the property in a reasonable manner. The recipient shall have 30 days from the date of the Notice to make full payment. The Notice of Cost shall state:

- (1) The common or legal description of the property, or both;
- (2) The nature of the violation, including relevant ordinances;

(3) The nature of the work performed to abate the violation;

(4) The costs incurred for the abatement of the violations in either a lump sum or in itemized form;

(5) That the notice is a demand for payment within 30 days from the date of notice;

(6) That failure to pay the entire amount within 30 days shall allow the City to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;

(7) That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest;

(8) That payment shall be made by check or money order made payable to the City of Wichita, Kansas, with no post-dating of the check, and sent to the address as stated within the notice with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments.

(c) If the payment of costs is not made within the 30-day period, the City may levy a special assessment for such costs against the lot or piece of land. The City Clerk at the time of certifying other City taxes to the County Clerk shall certify the aforesaid costs, and the County

Clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the City as other City taxes are collected and paid. Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorneys' fees, and administrative costs have been paid in full.”

SECTION 8. Section 8.01.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Insects, rodents and other vermin. (a) Every owner or tenant of a single-family dwelling shall be responsible for the extermination of any insects or rodents, other vermin therein or on the premises. Wherever two or more units are in the same building, the owner or operator of the building shall be responsible for such extermination. If the infestation is caused primarily by improper housekeeping, it shall be the joint responsibility of the owner and occupants to effect such extermination.

(b) All buildings shall be maintained free of conditions that encourage or permit any necessary breeding of insects that are annoying or dangerous to residents of the city. Exterior windows and doors used for ventilation of all dwellings shall be screened in a manner adequate to exclude insects.”

SECTION 9. Section 8.01.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Weeds or Other Vegetation as a Nuisance. (a) Unless authorized by the Director of Environmental Services pursuant to Section 7.40.060(c) of the Code of the City of Wichita, uncultivated or unkept grass, weeds, vines or other vegetation over twelve inches in height or length upon any lot or piece of land or upon the streets and alleys in front of and abutting is unlawful for the owner of any such lot or piece of land to permit uncultivated or unkept grass, weeds or other vegetation in excess of twelve inches in height or length to exist and remain on said owner's land or upon the streets and alleys in front of and abutting upon any such lot or piece of land owned by said owner.

(b) Upon a determination by any officer authorized to enforce the provisions of this title, that a nuisance such as is described in subsection (a) of this section exists and such nuisance has not been abated following a notice of violation pursuant to Section 8.01.060, such officer shall proceed to abate the nuisance.

(c) In lieu of giving notice as provided by Section 8.01.060 of the Code of the City of Wichita, the officer authorized to enforce this code, for the initial notice or any subsequent notice, may send a one-time yearly written notification by mail or personal service. Such notice shall include the same information required above. In addition, such notice shall include a statement that no further notice shall be given prior to removal

of weeds. If such a one-time notice is sent pursuant to this subsection, no additional notices are required to be sent prior to removal of weeds for one calendar year from the date of that notice.”

SECTION 10. Section 8.01.135 of the Code of the City of Wichita, Kansas, shall read as follows:

“Public notice of act. The city clerk shall cause a general public notice to be placed in the official city newspaper once each year during the month of April. The notice shall read substantially as follows:

PUBLIC NOTICE

CITY OF WICHITA, KANSAS

WEED AND VEGETATION ENFORCEMENT

Notice is hereby given to all property owners, representatives and tenants of property located within the city limits of Wichita, Kansas, that it is unlawful to allow the excessive growth of weeds, grass, and uncultivated plants. Excessive growth means more than twelve inches in height. Violators will be subject to prosecution and assessment of costs for abatement of such violations. The weeds abatement ordinances are located in Chapters 7.40 and 8.01 of the Wichita Municipal Code. Members of the public are welcome to review these laws during regular business hours at the Wichita City Hall, 455 N. Main, Wichita, Kansas.”

SECTION 11. Section 8.01.175 of the Code of the City of Wichita, Kansas, shall read as follows:

“Hearings--Right of person aggrieved by service of abatement notices.

(a) Any person affected by any notice which has been issued in connection with the abatement of any nuisance as defined by this chapter, or of any rule or regulation adopted pursuant thereto, who is aggrieved thereby, and who believes the same to be contrary to the policies or regulations of the city, may request and shall be granted an informal hearing on the matter before the Superintendent of Central Inspection or his designated representative; provided that such person shall file in the office of the Superintendent of Central Inspection a written petition requesting such informal hearing and setting forth a brief statement of the grounds therefor, within ten days after the day notice was served. Failure to make a timely request for a hearing shall constitute a waiver of the person’s right to contest the order of abatement. Upon receipt of such petition, the Superintendent of Central Inspection shall set a time and place for such informal hearing and shall give the petitioner written notice thereof. At such informal hearing, the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The informal hearing shall be commenced not later than ten days after the day on which the petition was filed; provided that upon application of the petitioner, the Superintendent of Central Inspection or

his/her designee may postpone the date of the informal hearing for a reasonable time beyond such ten day period, if in his/her judgment the petitioner has submitted a good and sufficient reason for such postponement.

(b) After such informal hearing as provided for in subsection (a), the Superintendent of Central Inspection or his designated representative may sustain, modify or withdraw the notice, depending upon his findings as to whether the provisions of this chapter and of the rules and regulations adopted pursuant thereto have been complied with. If the health officer or his designated representative sustains or modifies such notice, it shall be deemed to be an order.

(c) Any person affected by a determination of the Superintendent of Central Inspection may appeal such determination to the municipal court. Such appeal shall be taken within ten days of the issuance of the order by the health officer.

(d) An appeal to the municipal court shall be a *de novo* administrative hearing from which further appeal may be taken to the district court.”

SECTION 12. Section 8.01.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Violation is a misdemeanor. Any person who shall be convicted in the municipal court of violating any provisions of this chapter, except Section 8.40.043, shall be deemed guilty of a misdemeanor and shall be punished by the following:

(1) Upon a first conviction, a fine of not more than one thousand dollars;

(2) Upon a second conviction, a fine of not less than one hundred dollars nor more than one thousand dollars;

(3) Upon a third or subsequent conviction, a fine of not less than two hundred fifty dollars nor more than one thousand dollars;

In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed twelve months, or by both such fines and imprisonment.

The imposition of the fines established herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that the court may order that the defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section:

(1) conviction includes being convicted of a violation of this section, and it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(2) conviction includes being convicted of a violation of this chapter or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(3) any convictions occurring during the three years prior to the date of the occurrence shall be taken into account when determining the sentence to be imposed.

Each day that any violation to this chapter occurs, it shall constitute a separate offense and shall be punishable hereinafter as a separate violation. Provided, however, that if upon trial of any person found guilty of a misdemeanor herein under it shall appear to the court that the nuisance complained of as proscribed in this chapter is continuing, the court shall enter such order as it shall deem appropriate to cause the nuisance to be abated.”

SECTION 13. The originals of Sections 8.01.010, 8.01.040, 8.01.050, 8.01.060, 8.01.070, 8.01.080, 8.01.090, 8.01.130, 8.01.150, 8.01.160, 8.01.170 and 8.01.180 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 14. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 20th day of
May, 2008.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law