

ORDINANCE NO. 99-1

AN ORDINANCE DECLARING CERTAIN MATTERS AS MOTOR VEHICLE NUISANCE WITHIN THE CITY OF MULBERRY, KANSAS; PROVIDING FOR THE REMOVAL OR ABATEMENT OF MOTOR VEHICLE NUISANCES; AUTHORIZING THE ASSESSMENT OF COSTS AND PROVIDING FOR PENALTIES; AND REPEALING ALL OTHER ORDINANCES THAT ARE IN CONFLICT WITH THIS ORDINANCE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MULBERRY, KANSAS;

SECTION 1. FINDINGS OF GOVERNING BODY. The governing body finds that junked, wrecked, dismantled, inoperable vehicles affect the health, safety and general welfare of citizens of the because they:

- a) Service as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
- b) Are a danger to persons, 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 structure.

SECTION 2. DEFINITIONS. As used in this ordinance, 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 limitations, any automobile, truck, tractor, or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

SECTION 3. NUISANCES UNLAWFUL: DEFINED: EXCEPTION. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

- a) A 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 inoperable conditions. 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 and 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 places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of 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.

SECTION 4. PUBLIC OFFICER. The Mulberry City council shall designate all city law enforcement officers to be charged with the administration and enforcement of this article.

SECTION 5. COMPLAINTS; INQUIRY AND INSPECTION. Any city law enforcement 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, Sheriff's department, or the city fire chief. The officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making inquiry and inspection the officer shall make a written report on findings.

SECTION 6. RIGHT OF ENTRY. It shall be a violation of this ordinance to deny the officer the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

SECTION 7. NOTICE. Any person found by any city law enforcement officer to be in violation of Section 3 shall be served a notice of such violation. The notice shall be served by restricted mail, postage prepaid, return receipt requested; provided, that if the owner of his or her agent in charge of property is a resident of Crawford County, Kansas, the notice shall be personally served by the law enforcement officer.

SECTION 8. SAME CONTENTS. The notice shall state the condition(s) which is (are) in violation of Section 3. 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 3; or
- b) He, she or they have 10 days from the date of serving the notice to request a hearing before a governing body of the matter as provided by Section 10.

SECTION 9. FAILURE TO COMPLY; PENALTY. Any person who shall commit, or cause to be committed, or who shall cause or permit to exist, any nuisance declared or defined in a preceding section of this ordinance, shall be deemed guilty of creating a public nuisance, and shall, upon conviction, be fined not less than \$10.00 nor more than \$100.00, for the first offense, and not less than \$50.00 nor more than \$300.00 for each and every subsequent offense. Furthermore, each day that the nuisance is maintained beyond the 30 day notice period, set forth in the preceding section, shall constitute a separate offense and violation of this ordinance.

So as to prevent a hardship to any citizen of the city, caused by a motor vehicle which is inoperable, and which motor vehicle is under repair, the Mulberry City Council may grant such citizen up to a 90 day exclusion from all provisions of this ordinance while the motor vehicle is under repair. Such exclusion shall apply to only one motor vehicle, which is under repair, and under no circumstances shall an exclusion be granted for multiple motor vehicles.

SECTION 10. ABATEMENT. In addition, to or as an alternative to prosecution as provided in Section 9, the 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 7, has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time period specified in Section 8, the city law enforcement officer may present a resolution to the governing body for adoption authorizing the city law enforcement officer or other agent 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 13. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- a) Personal service upon the person in violation;
- b) Service by restricted mail, postage prepaid, return receipt requested; or
- c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the city law enforcement 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 conditions exist.

SECTION 11. DISPOSITION OF VEHICLE. Disposition of any motor vehicle removed and abated from private property pursuant to this ordinance shall be as provided by K.S.A. Supp.8-102, as amended.

SECTION 12. HEARING. If a hearing is requested within the 10 day period as provided in Section 8, such request shall be made in writing to 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 city law enforcement officer before the governing body. The hearing shall be held by the as soon as possible after the filing 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 provided in Section 10.

SECTION 13. COST ASSESSED. If the city abates the nuisance pursuant to Section 10, 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.

SECTION 14. REPEAL. All other ordinances and parts of this ordinance that are in conflict with this ordinance are hereby repealed.

SECTION 15. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its adoption and publication in the official city newspaper.

ADOPTED AND APPROVED by the Council, this 11th day of MAY, 1999.

Jerry Prettyman
Mayor

ATTEST:
Janice Gilbert
City Clerk

ORDINANCE NO. 99-2

AN ORDINANCE AMENDING ORDINANCE NO. 99-1 IN PART, SAID ORDINANCE NO. 99-1 PROVIDES FOR THE CONTROLL OF MOTOR VEHICLES NUISANCES WITHIN THE CITY OF MULBERRY, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MULBERRY, KANSAS;

SECTION 1 AMENDMENT.

SECTION 9. FAILURE TO COMPLY; PENALTY: of ordinance No. 99-1 is hereby deleted and in its place and stead shall be inserted the following language:

SECTION 9. FAILURE TO COMPLY; PENALTY. Any person who shall commit, or cause to be committed, or who shall cause or permit to exist, any nuisance declared or defined in a preceding section of this ordinance, shall be deemed guilty of creating a public nuisance, and shall, upon conviction, be fined not less than \$10.00 nor more than \$100.00, for the first offense, nor more than \$300.00 for each and every subsequent offense. Furthermore, each day that the nuisance is maintained beyond the 30 day notice period, set forth in the preceding section, shall constitute a separate offense and violation of this ordinance.

So as to prevent a hardship to any citizen of the city, caused by a motor vehicle which is inoperable, and which motor vehicle is under repair, the Mulberry City Council may grant such citizen up to a 90 day exclusion from all provisions of this ordinance while the motor vehicle is under repair. Such exclusion shall apply to only one motor vehicle, which is under repair, and under no circumstances shall an exclusion be granted for multiple motor vehicles.

SECTION 2. REAFFIRMATION.

ORDINANCE NO. 99-1 is hereby reaffirmed in all other respects.

SECTION 3. EFFECT.

This Ordinance shall take effect on its passage and publication one in the official City paper.

PASSED AND APPROVED at Mulberry, Kansas, this 10th day of June, 1999.

Jerry Prettyman
Mayor

ATTEST:
Janice Gilbert
City Clerk