

(First Published in the Times-Sentinel
on the ____ day of _____, 2021.)

THE CITY OF CLEARWATER, KANSAS

ORDINANCE NO. 1017

AN ORDINANCE AMENDING THE CITY OF
CLEARWATER CODE CHAPTER 16 DEFINING HEALTH
NUISANCE, JUNKED MOTOR VEHICLES, AND WEEDS
WITHIN THE LIMITS OF THE CITY OF CLEARWATER,
KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CLEARWATER,
SEDGWICK COUNTY, KANSAS, THAT:

Section 1. Amending Chapter 16 of the Code.

Chapter 16 of the Clearwater, Kansas, Municipal Code is hereby amended to
read as follows:

Article I – Health Nuisance

Sec. 16-1. - Nuisance Unlawful; Defined.

It is unlawful for any person to maintain or permit any nuisance within the city.

- 1) Unsheltered open storage of personalty, for a period of 30 days or more
(except in licensed salvage yards);
- 2) Filth, excrement, lumber, brush, rocks, dirt, cans, paper, trash, metal or any
other offensive or disagreeable thing or substance thrown, left or deposited
upon any street, avenue, alley, sidewalk, park, public or private enclosure or
lot whether vacant or occupied;
- 3) All dead animals not removed within 24 hours after death;
- 4) Any place or structure or substance which emits or causes any offensive,
disagreeable or nauseous odors;
- 5) All stagnant ponds or pools of water;
- 6) 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;
- 7) 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.

- 8) Combustible materials accumulation outside of and adjacent to any building or in any alley, sidewalk, street, or premises within 30 feet of any building.

Sec. 16-2. - Right of entry; investigation of premises.

Any police officer or other person designated by the City Administrator as an enforcing officer for the city has the right of access and entry upon private property at any reasonable time for routine inspection or for investigation upon receipt of a complaint of a suspected nuisance and to record any identification numbers visible on personalty.

Sec. 16-3. - Nuisance Unlawful; Penalty.

As an alternative to the nuisance abatement process found in K.S.A. 12-1617e, a complaint for violation of the provisions of article I of this code may be filed in the Clearwater Municipal Court by a Clearwater Police Officer or other person designated by the City Administrator as an enforcing officer for the city. Any person who commits an unlawful act pursuant to Section 16-1 shall, upon conviction thereof by the Clearwater Municipal Court, be required to pay a fine of not more than \$500 plus court costs for each violation. Each day of noncompliance constitutes a separate offense

Secs. 16-4–16-10. - Reserved.

Article II – Weeds

Sec. 16-11. - Definitions.

Weeds means any of the following:

- 1) Brush and woody vines;
- 2) Weeds and grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- 3) Weeds that 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;
- 4) Weeds and grasses on or about any property which, because of their height, have a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed eight inches in height.

Sec. 16-12. - Weeds to be removed.

It is 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 the premises or any area between the property lines of the 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 are hereby declared a nuisance and are subject to abatement as hereinafter provided.

Sec. 16-13. - Public Officer; notice to remove.

- 1) The city administrator shall designate a public officer to be charged with the administration and enforcement of this article. The public officer or authorized assistant shall give written notice to the owner, occupant, or agent of such property by certified mail, return receipt requested, or by personal service to cut or destroy weeds; provided, however, that if the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified, return receipt requested, to the last known address of the owner. Such notice shall only be given once per calendar year.
- 2) The notice to be given hereunder shall state:
 - 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 control of the property is ordered to cut or destroy the weeds within ten days of the receipt of the notice;
 - c. That the owner, occupant or agent in control of the property may request a hearing before the governing body or its designated representative within five days of the receipt of the notice or, if the owner is unknown or a nonresident, and there is no resident agent, 10 days after notice has been published by the city clerk in the official city newspaper;
 - d. That if the owner, occupant or agent in control of the property does not cut or destroy the weeds or fails to request a hearing within the allowed time the city or its authorized agent will cut or destroy the weeds and assess the cost of the cutting or destroying the weeds, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property;
 - e. That the owner, occupant or agent in control of the property will be given an opportunity to pay the assessment, and if it is not paid within 30 days of such notice, it will be added to the property tax as a special assessment;
 - f. That no further notice will be given during the current calendar year prior to the removal of weeds from the property; and,
 - g. That the public officer should be contacted if there are questions regarding the order.
- 3) 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 article.

Sec. 16-14. - Abatement; Assessment of costs.

- 1) If the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the allowed time period, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.
- 2) If the city abates or removes the nuisance pursuant to this section, the city shall give notice to the owner or his 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.
- 3) 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.

Sec. 16-15. - 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.

Sec. 16-16. - Unlawful Interference.

It is unlawful for any person to interfere with an attempt to prevent the public officer or public officer's authorized representative from entering upon such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute a violation of this provision which is a misdemeanor and, on conviction thereof, shall be punished as provided by section 1-14 of the Code of the City of Clearwater, Kansas.

Sec. 16-17. - Noxious Weeds

- 1) 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.
- 2) For the purpose of this article, the term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea repens*), hoary cress (*Cardaria draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), bur ragweed (*Ambrosia grayii*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans L.*), Johnson grass (*Sorghum halepense*) and sericea lespedeza (*Lespedeza cuneata*).

Secs. 16-18–16-25. - Reserved.

Article III - Abandoned and Inoperable Vehicles

Sec. 16-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Removal means the physical relocation of a vehicle to an authorized location.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a public roadway, excepting electric personal assistive mobility devices or devices moved by human power or used exclusively upon stationary rails or tracks.

Vehicle accessories means any part or parts of any vehicle.

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;

Sec. 16-27. - Motor Vehicle Nuisances Unlawful; Defined; Exceptions.

It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

- 1) 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 inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable;

- a. Absence of a current registration plate upon the vehicle;
 - b. Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
 - c. Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.
- 2) It is unlawful for any person, after notification to remove any vehicle or vehicle accessories from any private property has been given, to move the same to other private property upon which such storage is prohibited or other public property for purposes of storage.
- 3) The provisions of this article shall not apply to:
- a. Any motor vehicle which is enclosed in a garage or other building;
 - b. To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
 - c. 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.

Sec. 16-28. - Motor Vehicle Nuisance Unlawful; Penalty.

As an alternative to the nuisance abatement process found in K.S.A. 12-1617e, a complaint for violation of the provisions of Article III of this code may be filed in the Clearwater Municipal Court by a Clearwater Police Officer or other person designated by the City Administrator as an enforcing officer for the city. Any person who commits an unlawful act pursuant to Section 16-1 shall, upon conviction thereof by the Clearwater Municipal Court, be required to pay a fine of not more than \$500 plus court costs for each violation. Each day of noncompliance constitutes a separate offense.

Secs. 16-29–16-35. - Reserved.

Article IV – Smoking

Sec. 16-36. Applicability.

The provisions of this article shall not apply to:

- (1) The outdoor areas of any building or facility beyond the access points of such building or facility;
- (2) Private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530;
- (3) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20 percent;
- (4) The gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702;
- (5) That portion of an adult care home, as defined in K.S.A. 39-923, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to section 16-22 and that is fully enclosed and ventilated;
- (6) That portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to section 16-22 and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;
- (7) Tobacco shops;
- (8) A class A or class B club, as defined in K.S.A. 41-2601, that held a license pursuant to K.S.A. 41-2606 et seq. as of January 1, 2009, that has complied with the notice provisions of K.S.A. 21-6110;
- (9) A private club in designated areas where minors are prohibited;
- (10) Any benefit cigar dinner or other cigar dinner of a substantially similar nature that:
 - a. Is conducted specifically and exclusively for charitable purposes by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the Federal Internal Revenue Code of 1986;
 - b. Is conducted no more than once per calendar year by such organization;
 - c. Has been held during each of the previous three years prior to January 1, 2011; and

- (11) That portion of a medical or clinical research facility constituting a separately ventilated, secure smoking room dedicated and used solely and exclusively for clinical research activities conducted in accordance with federal or state regulatory authority as determined by the state director of alcoholic beverage control.

Sec. 16-37. Prohibited in certain areas.

It is unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

- (1) Public places;
- (2) Taxicabs and limousines;
- (3) Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
- (4) Restrooms, lobbies and other common areas in hotels and motels and in at least 80 percent of the sleeping quarters within a hotel or motel that may be rented to guests;
- (5) Access points of all buildings and facilities not exempted pursuant to section 16-19; and
- (6) Any place of employment.

Sec. 16-39. Smoke-free workplaces required; employer written policy.

Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

Sec. 16-40. Designated smoking areas permitted in adult care homes and long-term medical care facility units.

Notwithstanding any other provision of this article, K.S.A. 21-6111 or 21-6112, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

Section 2. Repeal of Ordinances 36, 231, 270, 592, 637b, 730, 747, 770, 828, 829, 899, 916, and 983.

City of Clearwater, Kansas, Ordinances 36, 231, 270, 592, 637b, 730, 747, 770, 828, 829, 899, 916, and 983 are hereby repealed.

Section 3. Repeal of Other Ordinances.

All other ordinances or parts of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

Section 4. Effective Date

This ordinance shall take effect and be in force from and after publication in the official City newspaper of the City of Clearwater, Kansas.

Passed by the City Council this 14th day of December 2021.

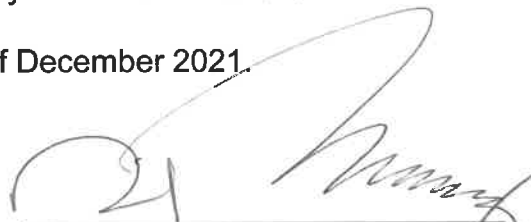
Approved by the Mayor this 14th day of December 2021.



SEAL

ATTEST:


Deputy City Clerk, Carol Reitberger


Mayor, Burt Ussey