

ORDINANCE NO. 428

AN ORDINANCE EMPOWERING THE GOVERNING BODY OF THE CITY OF WATHENA, KANSAS, TO CAUSE THE REPAIR OR REMOVAL OF UNSAFE OR DANGEROUS STRUCTURES WITHIN SAID CITY, PRESCRIBING A PROCEDURE FOR THE COMPLETION OF SUCH REPAIR OR REMOVAL, PROVIDING FOR A HEARING THEREON AND FOR A NOTICE THEREOF, AUTHORIZING THE CITY TO COMPLETE SUCH REMOVAL IN CERTAIN INSTANCES AND PROVIDING A PROCEDURE FOR THE FINANCING AND RECOVERY OF THE COST THEREOF, PROVIDING FOR THE IMMEDIATE REMOVAL WITHOUT PRIOR NOTICE OR HEARING OF STRUCTURES WHICH CONSTITUTE AN IMMEDIATE HAZARD AND REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES OF THE CITY OF WATHENA IN CONFLICT HEREWITH.

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

SECTION 1. POWERS OF GOVERNING BODY. The Governing Body of the City of Wathena, Kansas, shall have the power to cause the repair or removal of, or to remove, any structure located within the City which may have become unsafe or dangerous all in the manner in this Ordinance provided. (K.S.A. 12-1750 through 1765, as amended)

SECTION 2. DEFINITIONS. The following words and phrases when used in this Ordinance shall, for the purposes of this Ordinance, have the meanings respectively ascribed to them in this section:

(a) "Structure" shall mean and include any building, wall or other structure of any and every kind, type or description.

(b) "Enforcing officer" shall mean the duly appointed, qualified and acting Marshal - Chief of Police of the City of Wathena, Kansas, or his or her authorized representative.

(c) "Costs" shall mean all reasonable expenses incurred in the repair or removal of structures pursuant to this Ordinance and shall include without limitation through enumeration publication expenses, postage, administrative and clerical expenses, attorney fees, title search expenses, equipment and labor expenses.

SECTION 3. REMOVAL OR REPAIR OF STRUCTURES; FILING STATEMENT; NOTICE AND HEARING; REQUIREMENTS. (a) Whenever the Enforcing Officer shall file with the Governing Body of the City

of Wathena a statement in writing that any structure within said City, describing the same and where located, is unsafe or dangerous, said Governing Body shall by resolution fix a time and place at which the owner, his or her agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished.

(b) The resolution described in (a) above shall be published in the official City newspaper once each week for two consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication of such resolution and the date set for the hearing as provided for in such resolution.

(c) A copy of said resolution as published shall be mailed by certified mail within three (3) days after its first publication to each owner, agent, lienholder and occupant of the described premises upon which such alleged unsafe or dangerous structure is located and such mailings shall be marked "deliver to addressee only".

SECTION 4. FINDINGS AND ORDER BY RESOLUTION AND NOTICE THEREOF. (a) On the date fixed for hearing as provided in Section 3, or any adjournment thereof, the Governing Body shall hear all evidence submitted by the owner, his or her agent, lienholders of record, and occupants having an interest in the alleged unsafe or dangerous structure as well as evidence submitted by the Enforcing Officer filing the statement and shall make findings thereafter by resolution as provided in (b) or (c) next below, as the case may be.

(b) If the Governing Body finds that the structure complained of is neither unsafe nor dangerous, then the Governing Body shall dismiss the proceeding.

(c) If the Governing Body shall find that the structure complained of is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe and secure. Such resolution shall further fix a reasonable time within which the repair or removal of the unsafe or dangerous structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal thereof within the time stated or fails to diligently prosecute the same until the work is completed, then the

Governing Body will cause the structure to be razed and removed by the City of Wathena.

(d) If the resolution adopted by the Governing Body directs that the structure complained of be repaired or removed as provided for in (c) above then such resolution shall be published once in the official City paper and a copy thereof mailed to the owners, agents, lienholders of record and occupants of the condemned structure in the same manner as provided in Section 3(c) above.

SECTION 5. DUTIES OF OWNER AFTER REMOVAL OF STRUCTURE. The owner of any structure, upon removing the same, shall fill any basement or other excavation located on the premises and shall take any other action necessary to leave the premises from which such structure was removed in a safe condition.

SECTION 6. REMOVAL OF STRUCTURE BY CITY AND RECOVERY OF COST THEREOF. (a) If the owner of any structure condemned has failed to commence the repair or removal of such structure within the time stated in the resolution provided for in Section 4(c), or if such owner shall fail to diligently prosecute the same thereafter, then the City may proceed to raze and remove such structure in order to make the premises safe and secure. Such razing and removal by the City may be completed with City employees and equipment or the City may contract with a third party for such razing and removal.

(b) The City shall keep an account of the cost of such work and may sell the salvage from the structure removed and apply the proceeds or any necessary portion thereof to pay the cost of removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay the last aforesaid costs shall, after the payment of all such costs and the cost of publications of notice and any postage for mailing of notice, be paid to the owner of the premises upon which the structure was located.

(c) The City shall give notice to the owner of such structure by restricted mail of the total cost incurred by the City in removing such structure and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such costs is due and payable within 30 days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys received from the sale of salvage or from the proceeds from any insurance policy in which the City has

created a lien pursuant to K.S.A. 40-3901 et seq., and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. 1985 Supp. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against 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 costs and the County Clerk shall extend the same on the tax rolls of the county against such lot or parcel of land. The City may pursue collection both by levying a special assessment and in the manner provided in K.S.A. 1985 Supp. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

(d) If there is no salvageable material, or if the moneys received for the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 49-3901 et seq., and amendments thereto, are insufficient to pay the costs of the work and cost of providing notice, such costs or any portion thereof and excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued by the authority of this act the governing body of the City shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interests thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in Article 19 of Chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 1985 Supp. 12-1115, and amendments thereto, when and if paid, shall be placed in the general fund of the City.

(e) Whenever any structure shall be removed from any premises under the provisions of this section, the City Clerk shall certify to the County Assessor that such structure, describing the same, has been so removed and the date of such removal.


SECTION 7. REMOVAL OF STRUCTURES CONSTITUTING IMMEDIATE HAZARD. When, in the opinion of the Enforcing Officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the structure to be vacated, taken down, or repaired, shored up or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or a hearing of or for the owners, agents, lienholders and occupants which is otherwise provided for in Section 3 and 4 of the Ordinance. The cost of any action taken by the City of Wathena pursuant to this section shall be assessed against the property upon which such action was taken and shall be paid in the manner provided in Section 6.


SECTION 8. SCOPE OF ORDINANCE. Nothing in this ordinance shall be construed to abrogate or impair the powers of the courts or of any department of the City of Wathena 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 ordinance shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this ordinance shall be construed to impair or limit in any way the power of the City of Wathena 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 through 1756, as amended.

SECTION 9. REPEALER. All other ordinances and parts of ordinances of the City of Wathena in conflict herewith are hereby repealed.

SECTION 10. EFFECTIVE DATE. This Ordinance shall be in force and take effect from and after its passage and publication in the official City newspaper.

PASSED and APPROVED on the 19 day of Sept,
1989.


Mayor

ATTEST:

City Clerk