

ORDINANCE NO. 518

AN ORDINANCE DECLARING CERTAIN MATTERS AS MOTOR VEHICLE NUISANCES WITHIN THE CITY OF WATHENA, KANSAS; PROVIDING FOR THE REMOVAL OR ABATEMENT OF MOTOR VEHICLE NUISANCES; AUTHORIZING THE ASSESSMENT OF COSTS AND PROVIDING FOR PENALTIES; AND REPEALING ORDINANCE NO. 295 OF THE CITY OF WATHENA, KANSAS, AND ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH.

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

Section 1. 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 of Wathena because they:

- (a) Serve 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 building and structures.

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 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.

Section 3. NUISANCE UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the City of Wathena.

- (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 inoperable 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. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.

Section 4. PUBLIC OFFICER. The Mayor shall designate a public officer to be charged with the administration and enforcement of this ordinance.

Section 5. COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint 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.

Section 6. RIGHT OF ENTRY. It shall be a violation of this ordinance to deny the public 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 the public 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 or his or her agent in charge of the property is a resident of Doniphan County, Kansas, the notice shall be personally served by the public officer or a 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 the Governing Body of the matter as provided by Section 12;
- (c) Failure to abate the condition(s) or to request a hearing within the time

allowed may result in prosecution as provided by Section 9 and/or abatement of the condition(s) by the City as provided by Section 10.

Section 9. 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 3, be fined in an amount not to exceed \$100 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.

Section 10. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 9, the public officer may seek to remedy violations of this Ordinance 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 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 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 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.

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. 8-1102, 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 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 10.

Section 13. COSTS 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. Ordinance No. 295 of the City of Wathena, Kansas, and other ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 15. 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 Governing Body, this 5th day of October, 1999.


James P. McAnerney, Mayor

ATTEST:


Karen Gilland, City Clerk