

ORDINANCE NO. 3295

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 3 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS, BY AMENDING SECTIONS 4-303 THROUGH 4-307, AND ADOPTING NEW SECTIONS 4-308 THROUGH 4-312, ALL CONCERNING NUISANCES, AND REPEALING THE EXISTING SECTIONS 4-303 THROUGH 4-307

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

SECTION ONE. Section 4-303 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-303. UNLAWFUL ACTS. It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance in the City.

SECTION TWO. Section 4-304 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-304. NOTICE OF VIOLATION.

Whenever the City Health Officer determines there has been a violation of this Article or has grounds to believe that a violation has occurred, a written Notice of Violation and Order of Abatement ("Notice and Order") shall be given to the property owner, any known agent of the property owner, and any other person deemed responsible for the violation.

SECTION THREE. Section 4-305 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-305. ORDER OF ABATEMENT.

The Notice and Order of Abatement shall provide information sufficient to reasonably allow the recipient to determine the nature of the actions required to self-abate the violation and specify a reasonable time period for completion of the self-abatement. A reasonable time to abate the violation shall be presumed not to exceed ten days in accordance with K.S.A. 12-1617e(b), subject to extension upon the authority of the City Health Officer following a demonstration of due diligence in the self-abatement of the violation.

SECTION FOUR. Section 4-306 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-306. REQUEST FOR HEARING.

The recipient of the Notice and Order may request a hearing before the Building Standards Board ("Board"), pursuant to Section 4-310, by completing and filing a written "Request for Hearing" form in the office of the Community Development Director prior to the close of business on the date of the deadline for self-abatement of the violation as stated in the Notice and Order. The timely filing of a request for hearing shall stay the enforcement of the Notice and Order until the appeal can be heard and decided by the Board.

SECTION FIVE. Section 4-307 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-307. FORM.

The Notice and Order shall:

1. Include a description of the subject real estate sufficient for identification;
2. Include a statement of the nature of the violation and 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. Include an order of abatement allowing a reasonable time to take the actions required to self-abate the violation;
4. Inform the recipient of the Notice and Order of the right to a hearing if the recipient completes and files a written request for a hearing form in the office of the Community Development Director prior to the close of business on the date of the deadline for self-abatement of the violation;
5. Inform the recipient that failure to comply with the Notice and Order may result in the City abating the violation and recovering any costs not paid by the recipient within thirty days of a notice of costs by (a) assessing of any costs against the subject real estate or (b) filing suit seeking a personal judgment against the recipient; and
6. Inform the recipient that the violation is subject to prosecution.

SECTION SIX. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-308, which section shall read as follows:

4-308. SERVICE OF NOTICE AND ORDER. The Notice and Order shall be served either by certified mail, return receipt requested, or by personal service; provided, however, if the subject real estate is unoccupied and the owner is a non-resident, then by mailing the Order by certified mail, return receipt requested to the last known address of the owner. If a person to whom a Notice and Order is directed for service has failed to accept delivery or otherwise failed to effectuate receipt of a Notice and Order pursuant to this section during the preceding 24-month period, the City may provide notice of the issuance of any further Notice and Order by such other methods as door hangars, conspicuously posting notice of such order on the subject property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, the alternative means of notice provided by this section shall be given by telephone communication or first class mail. Destroying or tampering with any means of posting notice of such order on the subject property shall be a separate violation.

SECTION SEVEN. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-309, which section shall read as follows:

4-309. ABATEMENT BY CITY; ASSESSMENT AND COLLECTION OF COSTS.

(a). If the recipient of the Notice and Order fails to comply with the Order within the period of time designated in the Order, then the City may go onto the property to abate the violation in a reasonable manner. The City may use its own employees or contract for services to abate the violation. The City, or its agents, 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 violation(s).

(b). If the City takes action to abate the violation, it shall provide a notice of costs to the person responsible for the violation. 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 thirty days from the date of the notice of costs to make full payment. The notice of costs shall state:

1. The description of the subject real estate sufficient for identification;
2. The nature of the work performed to abate the violation;
3. The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
4. That the notice is a demand for payment within thirty days from the date of notice;
5. That failure to pay the entire amount within thirty days shall allow the City to file a tax lien against the property or to pursue a personal judgment for the recovery of the costs, or both;
6. That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest;
7. The payments shall be made by check or money order made payable to the City of Abilene, 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, unless a payment arrangement has been agreed to and approved in writing by the Community Development Director.

(c). If the payment of costs is not made within the thirty-day period, the City may levy a special assessment for such costs against the subject real estate. The City Clerk at the time of certifying other city taxes to the County Clerk shall certify such costs, and the County Clerk shall extend such costs on the tax roll of the county against the subject real estate, 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 district court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interest, court costs, attorneys' fees, and administrative costs, including but not limited to, investigative cost as well as the cost of providing notice, including any postage, have been paid in full.

(d). The abatement of a violation of this article by the City shall not be a defense or excuse to any person in violation of this article.

SECTION EIGHT. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-310, which section shall read as follows:

4-310. HEARING. If a hearing is requested before the deadline for self-abatement as provided in Section 4-306, such request shall be made in writing to the Community Development Director. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the Notice and Order. A request for hearing shall be based upon a claim that the true intent of this article or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Article do not fully apply, or the requirements of this Article are adequately satisfied by other means. The hearing shall be held by the Board 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 Board. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the Board shall record its determination of the matter in writing and serve a copy upon the person requesting the hearing. The decision of the Board shall be a final order of the City.

SECTION NINE. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-311, which section shall read as follows:

4-311. PENALTY.

- (a). In addition to or as an alternative to the remedy of abatement as provided under this Article, any person in violation of this Article may be prosecuted in municipal court and subject to:
1. a fine of not less than \$50 nor more than \$500;
 2. a sentence of not more than six months in jail;
 3. such other orders as the court deems just and consistent with the purpose and intent of this Article; or
 4. any combination thereof.
- (b). Prosecution of any offender under this Article does not limit the City's right to pursue assessment or collection of costs as stated in this Article, or by other laws.
- (c). Each day that any violation shall continue shall constitute a separate offense.
- (d). Any fines assessed under this Article shall be collected by the municipal court administration and paid over to the general fund, except for assessments of court costs.

SECTION TEN. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-312, which section shall read as follows:

4-312. ADDITIONAL REMEDIES. In addition to or as an alternative to the remedy of abatement or the penalties provided herein, the City Health Officer may cause to be instituted any appropriate proceeding at law or in equity to restrain, correct or abate any violation of the provisions of this Article or of any order or direction made pursuant thereto.

SECTION ELEVEN. Repealer. Existing Sections 4-303, 4-304, 4-305, 4-306, and 4-307 of the City Code of the City of Abilene, Kansas are hereby repealed.

SECTION TWELVE. Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication by summary in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of April, 2016.



ATTEST

Penny Spinkup, CMC
Penny Spinkup, CMC
City Clerk

CITY OF ABILENE, KANSAS

By: *S. Dee Marshall*
S. Dee Marshall, Mayor

APPROVED AS TO FORM:

A. O. Martin
Aaron O. Martin, City Attorney