

ORDINANCE NO. 4468

AN ORDINANCE REPEALING LIBERAL MUNICIPAL CODE CHAPTER 8, ARTICLES 2, 3 AND 6 AND REPLACING THE SAME WITH NEW ARTICLE 2 RELATING TO PUBLIC NUISANCES.

BE IT ORDAINED by the Governing Body of the City of Liberal, Kansas:

NEW ARTICLE 2. PUBLIC NUISANCE

NEW SECTION 8-201. LEGISLATIVE FINDINGS OF FACT. The governing body finds and declares that the City of Liberal has a history and reputation for well-kept properties and that the property values and the general welfare of the community are founded, in part, upon the appearance and maintenance of private properties. Notwithstanding, the governing body has found that there exist within the corporate limits of the city conditions which are injurious to the public health, safety and welfare of the residents of the City and which contribute substantially and increasingly to the deterioration of neighborhoods. The governing body finds and declares that, unless corrective measures are undertaken to alleviate such conditions, and assure the avoidance of future problems in this regard, the social and economic standards of the community will be depreciated, along with the public health, safety and general welfare. Thus, the governing body finds and declares that it is in the public interest to establish a noninclusive list of those activities, uses of property, and conditions of property which constitute public nuisances; to establish penalties for maintenance of public nuisances and to establish a summary abatement procedure for abating certain public nuisances, the cost of which abatement procedure may be both a special assessment against the parcel of real property upon which the nuisance was maintained and a personal obligation of the property owner or other person maintaining the nuisance.

NEW SECTION 2-202. PURPOSE. In accordance with the provisions of the Kansas Statutes Annotated (K.S.A. 12-1617e), it is the intent of the governing body, by repeal of Chapter 8, Articles 2, 3 and 6 and adoption of this substitute ordinance, to provide a procedure for abatement of public nuisances within the City in order to effectively combat hazards to the public health and welfare.

NEW SECTION 2-203. DEFINITIONS. For the purposes of this article, the following words and terms shall have the following meanings:

- (a) Abandoned Motor Vehicle - any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; parked in violation of the code; incapable of moving under its own power; or in a junked or wrecked condition.
- (b) Accessory Structure - a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.

- (c) Any part thereof - Whenever the words premises, structure, building or yard are used they shall be construed as though they were followed by the words "or any part thereof."
- (d) Building - any structure having a roof supported by columns or walls, used or intended for supporting or sheltering any use, occupancy or storage;
- (e) City - the City of Liberal, Kansas.
- (f) City Manager – the city manager or his/her designee
- (g) Code - the Code of the City of Liberal, Kansas.
- (h) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.
- (i) Dilapidation, Deterioration or Disrepair - shall mean any condition characterized by, but not limited to: holes, breaks, rot, decay, crumbling, cracking, peeling, or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.
- (j) Enforcement agency – the City of Liberal
- (k) Exterior - those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to: sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.
- (l) Garbage - without limitation any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.
- (m) Governing Body - the city commission of the City of Liberal, Kansas.
- (n) Owner – any person owning property, as shown on the last equalized assessment roll for City taxes, and/or the lessee, tenant or other person having control or possession of the property.
- (o) Person - any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.
- (p) Property and/or Premises - any lot, plot or parcel of land including the structures thereon. Property or premises shall also mean any lot, plot or parcel of land without any structures thereon. These terms include all real property, including land, tenements and hereditaments, including but not limited to, front yards, side yards, back yards, driveways, walkways and sidewalks and shall include any building located on such property.
- (q) Property
- (r) Refuse - garbage and trash.
- (s) Residential - used or intended to be used primarily for human habitation.
- (t) Structure - anything constructed or erected which requires location on the ground or is attached to something having a location on the ground including any appurtenances belonging thereto.
- (u) Trash - combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, or tree branches and non-combustible waste consisting of, but not limited to: metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers, tires, batteries, axles, tree stumps, appliances, or street rubbish and sweepings.
- (v) Vehicle – a device by which any person or property may be propelled, moved, or drawn upon a highway or street, excepting a device moved by human power or used exclusively upon stationary rails or tracks.

- (w) Weathered - deterioration caused by exposure to the elements.
- (x) Yard - the area of the premises not occupied by any structure.
- (y) Attractive Nuisance – this term means, but is not limited to, leaving a piece of equipment or other condition on property which would be attractive and dangerous to the safety of curious children. This would include, but is not limited to, Unguarded swimming pools, open pits, mounds of earth, piles of asphalt, brick, carbon, cement, abandoned personal and real property, refrigerators, and buildings which have been boarded up for longer than 60 days.

#### NEW SECTION 2-204. ENFORCEMENT OF ARTICLE

(a) Authority. Pursuant to Chapter 8 of the Liberal Municipal Code, persons who fail to comply with any requirements of the Liberal Municipal Code may be charged with an ordinance violation in the City of Liberal Municipal Court and/or may be subject to abatement.

(b) Responsibility For Enforcement – Department Head Defined. The city manager, or his or her designee shall have the principal responsibility of enforcing this chapter. Any provision of this chapter which refers to the city manager shall be interpreted to include a reference to a designee of the city manager.

(c) Discretion. Upon his or her determination that there exists a public nuisance upon private property, the city manager may commence any of the following proceedings to cause the abatement of the public nuisance:

- (1) Issue a complaint or notice to appear in Municipal Court; and/or,
- (2) Issue a notice and order, as provided in 2-207; and/or,
- (3) Proceed with an emergency abatement, as provided in 2-206; and/or,
- (4) Issue an administrative citation, as provided in 2-240; and/or,
- (5) Request that the city attorney institute legal action.

(d) Violations. Upon entry of second or subsequent civil or criminal judgment within a two-year period finding that an owner or property is responsible for the same or a similar condition, the court or the hearing officer may order the owner to pay treble the costs of abatement.

#### NEW SECTION 2-205. NUISANCE.

(a) Generally. It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this city, whether

commercial, industrial or residential, to maintain or use, or allow the maintenance or use of, such premises in such a manner in which any one or more of the conditions or activities described in the following subsections are found to exist:

(1) Any condition that is in violation of the City of Liberal's Building and Structure Code, as adopted in Liberal Municipal Code, Chapter 6. Reference to said code is not intended to, nor shall it reduce, supersede, diminish or otherwise affect enforcement through the provision of said Building and Structure Code, or any other code. Said Building and Structure Code provisions shall remain in full force and effect;

(2) Any building or structure which has been abandoned for a period in excess of two months, such that it constitutes an attractive nuisance or hazard to the public, or which has been so damaged by fire, wind, earthquake, flood, neglect or which has become so dilapidated or deteriorated as to (i) become an attractive nuisance to children; (ii) become a harbor for criminal person or persons appearing to engage in criminal activity; or (iii) which enables persons to resort thereto or utilize said property for the purpose of acts threatening safety of oneself, other persons, or the property;

(3) Gasoline service stations which are not in operation and are boarded up, abandoned, or have removed dirt and other materials from the ground and left open excavations, even if the open excavations have been fenced, for a period of sixty days, unless such station has sought and received remediation plans from a local, state or federal agency relative to the management of hazardous or toxic waste and said actions are pursuant to said remediation plan;

(4) Any building or structure which, because of obsolescence, dilapidated conditions, deterioration, damage, unsafe electrical wiring, unsafe gas connections, or other causes, is in such a condition as to constitute a fire hazard;

(5) Where there is any unauthorized accumulation of lumber, junk, garbage, trash, debris, or salvage materials over and above the required receptacles or other approved containers, or otherwise in violation of the Liberal Municipal Code and which are visible from public or private property when the observer is standing in a normal or customary place from which to observe the alleged nuisance or which is found when observed during an inspection pursuant to a warrant. Junk consists of any cast-off, damaged, discarded, junked, obsolete, salvaged, scrapped, stored, unusable, worn-out, or wrecked object, thing or material composed in whole or in part of asphalt, brick, carbon, cement, plastic or other synthetic substance, fiberglass, metal, paper, piles of earth, plaster, plaster of paris, rubber, terra cotta, wool, cotton, cloth, canvas, organic matter or other substance;

(6) Where there is abandoned or unused furniture, appliances, sinks, toilets, cabinets or other fixtures, or equipment stored in a place and which is visible from public or private property when the observer is standing in a normal or customary place from which to observe, or which is found when observed during an inspection

pursuant to a warrant or other lawful means. This section does not prohibit authorized commercial storage and display of products and/or goods;

(7) Where there is an attractive nuisance to children, including but not limited to, appliances, equipment, machinery, unenclosed pools or ponds, vehicles, uncapped wells or excavations which may be hazardous to children;

(8) Property with dead, decayed, diseased or hazardous trees, weeds, overgrown vegetation, any of the items described herein by paragraphs (5), (6) or (7), which are likely to harbor snakes, rats, vermin, other pests or providing a breeding place for mosquitoes, or protrudes over or across a city street or sidewalk so as to substantially obstruct the clear passage of vehicles or pedestrians, or which impairs safe sight distances for the operation of motor vehicles, or otherwise constitutes a blight to the neighborhood;

(9) Vehicles which are parked upon or protrude over or across a city street, sidewalk, or right of way so as to substantially obstruct the clear passage of vehicles or pedestrians or impair safe sight distances for the operation of other vehicles;

(10) Any vehicle parked in violation of Liberal Municipal Code Chapter 14, Article 3.

(11) Where any pooled oil, hazardous or toxic waste substances, or processed water are stored or accumulated in any unapproved container or are in violation of any federal, state, county or city statute; or when any such substance heretofore mentioned is allowed to flow onto a public right-of-way, storm drain, or onto or into any public improvement; or where excessive accumulation of grease or oil on paved surfaces, buildings, walls, fences or other structures has occurred;

(12) Any unpermitted obstruction of or encroachment on public property, including, but not limited to, any public street, highway, sidewalk, curb, gutter, park, building or any other public improvement;

(13) Any motor vehicle that 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 constitute a rebuttable 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;

The provisions of this section 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;
- (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.

(14) Any building or structure that is marked or defaced with spray paint, dye, or like substance in a manner commonly described as "graffiti" consistent with the term "graffiti" as defined by Chapter 11, Article 6 of the Liberal Municipal Code, and which is visible from public or private property when the observer is standing in a normal or customary place from which to observe the alleged nuisance or which is found when observed during an inspection pursuant to a warrant. This ordinance is not the only regulation regarding the enforcement of anti-graffiti regulations in the City of Liberal. It shall supplement and be in addition to the other provisions of the Liberal Municipal City Code relating to "graffiti" and shall not reduce, supersede, diminish or otherwise affect enforcement of those provisions;

(15) Any building or structure that is maintained with broken or cracked exterior windows, or with exterior walls displaying flaking or chipped paint which are visible from public or private property when the observer is standing in a normal or customary place from which to observe the alleged nuisance or which is found when observed during an inspection pursuant to a warrant;

(16) Vacant lots not maintained free of weeds, trash, clutter, litter, junk, discarded vehicles or vehicle parts, or which have become a parking area resulting in dirt/mud tracking onto public right-of-way;

(17) The occurrence of excessive noise, as prohibited in Chapter 11, Article 4 of the Liberal Municipal Code;.

In addition, the following special noise regulations shall constitute nuisances whenever they occur between the hours of ten p.m. and seven a.m. the next morning. This limitation shall extend until eight a.m. on Sunday mornings.

(A) Noise from Construction Activities. It is unlawful for any person within five hundred feet from any occupied residence to operate equipment or perform any out of doors construction or repair work on any building, structure or other building or repair project;

(B) Noise from Commercial Activities. It is unlawful for any person within five hundred feet from any occupied residence to operate equipment, including, but not limited to parking lot cleaning and sweeping machines, leaf blowers, and mowing machines. This section does not prohibit the loading or unloading of commercial vehicles;

(18) Excessive direct lighting, as defined herein, occurs or is allowed to occur. Excessive direct lighting is that light emanating from any property which is bright, unusual, or unnecessary and which disturbs the peace or quiet of nearby property or which would cause annoyance or discomfort to a reasonable person of normal sensitivity in the area. Excessive direct lighting does not include diffused light which is shielded or directed away from adjoining property and, therefore, does not shine directly onto another property;

(19) Any condition recognized in law or in equity constituting a public nuisance;

(20) Any violation of the City's zoning ordinance;

(21) Any conduct or condition as described in Chapters: 2 (Public nuisance—Animals); 4 (Buildings and Construction—Dangerous and Unfit Structures); 6 (Building and Structure Codes—violation of any provisions); 7 (Fire—violation of any provisions); 8 (Health and Welfare—violation of any provisions); 11 (Public Offenses—Unreasonable Noise, Graffiti) 13 (Streets and Sidewalks—Obstructing sidewalks with goods)

Reference to said code sections are not intended to, nor shall they reduce, supersede, diminish or otherwise affect enforcement through the provision of said Code sections, or any other code. The provisions of said Code sections shall remain in full force and effect.

(b) Declaration of Public Nuisance. Any property found to be maintained, used or allowed to be maintained or used in violation of the foregoing section is declared to be a public nuisance and shall be abated by rehabilitation, removal, demolition or repair pursuant to the procedures set forth herein. The declaration of a nuisance and the procedures for abatement set forth here shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or abating public nuisances in any other manner provided by law.

(c) Right of Entry for Enforcement Officer.

(1) Whenever an enforcement officer has reason to believe that a nuisance exists or that an inspection is necessary to enforce any provision of this chapter, the officer may enter the premises at a reasonable time to perform the

inspection or any other duty imposed by this chapter.

(2) The enforcement officer shall present proper identification, state the purpose of the visit, and request permission of the owner or responsible person to enter the premises. If entry is refused, the enforcement officer shall have recourse to every remedy provided by law to secure entry. However, an inspection/abatement warrant is not necessary if the private property owner consents to the inspection and/or abatement of nuisances on his or her property or if the nuisances or code violations are in the inspector's plain view as long as the inspector is in a place where he or she lawfully has the right to be.

(3) When the enforcement officer has first obtained a property inspection warrant or other remedy provided by law to secure entry, no owner or responsible person shall fail, refuse, or neglect, after proper request is made as provided in this chapter, to promptly permit entry therein by the enforcement officer for the purpose of inspection and examination pursuant to this chapter.

(d) Interference with Abatement. Any person who obstructs, impedes, or interferes with any officer, employee, contractor, or authorized representative of the City, or with any person who owns or holds any estate or interest in any premises on which a nuisance exists and which must be abated under the provisions of this Code, whenever such officer, employee, contractor or authorized representative of the City, or person having an interest or estate in such premises is engaged in the work of abating any nuisance as required by the provisions of this Code, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this code is guilty of an ordinance violation. The maximum penalty prescribed for such a violation is \$2500.00 or one (1) year in the County jail, or both fine and imprisonment.

#### NEW SECTION 2-206. EMERGENCY ABATEMENT

(a) Emergency Abatements. Notwithstanding any other provision of this Code, whenever the department head or enforcement agency determines that a condition poses an immediate threat to life, limb, health, property, safety or welfare of anyone, they may act to immediately notify the owner of the real property involved that the condition must be abated immediately. If, after making a good faith effort, the enforcement agency is unable to contact the owner within a reasonable period of time, or after contact and failure to comply, the department head or the enforcement agency may cause the abatement of the condition which poses an immediate threat.

(b) Approval of City Attorney Required. No action shall be taken under subparagraph (a) above unless it shall first be approved by the city attorney or his or her authorized representative.

(c) Cost Recovery. The costs of any emergency abatement shall be charged and collected in accordance with the provisions of this Article.



NEW SECTION 2-207. ABATEMENT, GENERALLY.

(a) Commencement of Proceedings. Any person found by the city manager to be in violation of this Article shall be provided notice of such violation by the city manager. The notice shall be in conformity with (c) below.

(b) Voluntary Abatement of Nuisance. The owner or tenant of any building, structure or property found to be a nuisance under the provisions of this Article, may abate the nuisance at any time within the abatement period by rehabilitation, repair, removal or demolition. The City department initiating the action shall inspect the premises to insure that the nuisance has in fact been abated.

(c) Preliminary Notice. Except as otherwise provided herein, the city manager shall issue a preliminary notice directed to the record owner of the premises. The preliminary notice shall be posted on the property and sent first class mail, postage prepaid, addressed to the person who is named as the owner on the latest equalized assessment roll of the county using such address as may be shown by such assessment roll or such other address as may be known by the city manager. The failure of any owner to receive the preliminary notice shall not affect in any manner the validity of any proceedings thereafter taken. The preliminary notice shall contain:

(1) The street address and such other description as is required to identify the premises;

(2) A statement that the city manager has found the premises to be a public nuisance, with a specific citation to the applicable section hereof, and to other sections of the Liberal Municipal Code if applicable, and a description of the conditions which constitute the public nuisance;

(3) An order to abate the nuisance by taking certain action as determined by the city manager. In the event abatement of the nuisance requires rehabilitation of housing, the order shall require the owner to abate the nuisance in a manner which does not require eviction of the residents who are not contributing to the condition of property identified as a nuisance;

(4) The time allowed for abatement which shall be a reasonable time in the judgment of the city manager;

(5) A statement requiring the owner, within seven calendar days, to meet with or communicate with the city manager for discussion of the abatement of the nuisance.

(d) Resolution to Governing Body. Whenever the city manager has given written preliminary notice to the owner as set forth in subdivision (c) of this section, he or she shall, when the owner has failed to comply with the notice or otherwise to respond or when it appears that discussion with the owner to voluntarily abate the nuisance are unsuccessful or not proceeding satisfactorily, present a resolution to the governing body for adoption, authorizing the city manager to issue an order requiring the owner to remove and abate from the property the thing or things therein described as a nuisance within ten (10) days (the "waiting period") following passage of the resolution. The order shall state that, before the expiration of the ten (10) day waiting period, the owner may request a hearing before the governing body or its designated representative. The order shall be served on the owner or agent of such property by certified mail, return receipt requested or by personal service. If the property is unoccupied and the owner is a nonresident, then the order shall be served by mailing the order by certified mail, return receipt requested, to the last known address of the owner. If the owner or agent requests a hearing, notice of the same shall be served, as hereinafter provided, not less than ten calendar days prior to the hearing date.

(e) Administrative Hearing Notice--Contents. The Hearing Notice shall direct the owner of the premises to appear before the City Commission or its designated representative at a stated time and stated place and show cause why such premises should not be declared a public nuisance and the nuisance abated in accordance with this code. The notice shall be headed "NOTICE OF HEARING TO ABATE NUISANCE" in letters of not less than one-half inch in height and shall be substantially in the following form:

NOTICE OF ADMINISTRATIVE HEARING  
TO DETERMINE THE EXISTENCE OF PUBLIC NUISANCE  
AND TO ABATE IN WHOLE OR PART

Notice is hereby given that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Commission or its designated representative will hold a hearing at \_\_\_\_\_ to ascertain whether certain premises situated in the City of Liberal, State of Kansas, known and designated as \_\_\_\_\_ constitute a public nuisance subject to abatement by rehabilitation, repair, or demolition of such premises, buildings, or structures situated thereon. If said premises, in whole or part, are found to constitute a public nuisance, as defined by Sections \_\_\_\_\_ and \_\_\_\_\_ of the Liberal Municipal Code, and if the same are not promptly abated by the owner, such nuisances may be abated by municipal authorities, in which case the cost of

such rehabilitation, repair or demolition will be assessed upon such premises and such cost will constitute a lien upon such land until paid.

Said alleged violations consist of the following:

\_\_\_\_\_

Said methods of abatement available are:

\_\_\_\_\_

All persons having any objection to, or interest in, said matters are hereby notified to attend a hearing before the City Commission or its designated representative to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_ when their testimony and evidence will be heard and given due consideration.

DATED: This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Manager or Authorized Designee

(f) Administrative Hearing Notice--To Whom Served. The hearing notice, and any amended or supplemental notice, shall be served upon the record owner or agent in the same manner as set forth in subdivision (c) of this section, and posted on the property, and one copy thereof shall be served on each of the following persons or entity, if known to the city manager or disclosed from official records: The holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate of legal interest of record in the premises. The failure of the city manager to provide service to any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served to relieve any such person duly served from any duty or obligation imposed on him by the provisions of this article.

(g) Administrative Hearing Notice--Proof of Service. Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card

returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the city manager.

(h) Hearings--By City Commission or its designated representative.

(1) At the time and place fixed in the notice, the City Commission or its designated representative shall hear all testimony and consider all relevant evidence, objections, or protests, and shall receive the testimony of such other witnesses, of the owner, city personnel, and other interested persons who have relevant interest in such alleged public nuisance and to proposed abatement measures. The Planning Commission may grant continuances from time to time for good cause shown or upon its own motion.

(2) The hearing is an administrative process to which the formal rules of evidence do not apply.

(3) The proceedings at the hearing shall be recorded by a tape recorder. If requested by any party thereto, a stenographic report shall also report the hearing, with the costs thereof to be borne by the person making such request. The city manager may require a deposit from the person making the request to assure payment of such costs.

(4) A copy of the tape recording, or a transcript of the proceedings shall be made available to any party upon request and upon payment of the cost of preparation thereof. Such fees and deposits may be established by the city manager, but shall in no event be greater than the actual or estimated cost involved.

(5) Each party shall have these rights, among others:

(A) To call and examine witnesses on any matter relevant to the issues of the hearing;

(B) To introduce documentary and physical evidence;

(C) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

(D) To impeach any witness regardless of which party first called him/her to testify;

(E) To rebut the evidence against him/her;

(F) To represent himself/herself or to be represented by anyone of his/her choice.

(6) The City Commission or its designated representative may inspect the premises involved in the hearing prior to, during, or after the hearing, provided, that:

(A) Notice of such inspection shall be given to the parties a minimum of twenty-four hours before the inspection is made;

(B) The parties are given an opportunity to be present during the inspection; and

(C) The City Commission or its designated representative shall summarize the property inspection upon completion of the inspection, and stating the relevant facts observed and the conclusions drawn therefrom either orally or by written statement after the hearing, for inclusion in the hearing record.

Each party then shall have a right to rebut or explain the matter so stated by the governing body or its designated representative either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

(i) Decision of the City Commission or its designated representative.

Following the hearing, the City Commission or its designated representative shall consider all evidence and determine whether the premises, or any part of the premises, constitutes a public nuisance as alleged. If the City Commission or its designated representative finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, City Commission or its designated representative shall make a written order setting forth the findings and ordering the owner or other person having charge or control of the premises to abate the nuisance by rehabilitation, repair, or demolition in the manner and by the means specifically set forth in the City Commission's or its designated representative's order. The order shall set forth the times within which the work shall be commenced and completed.

(j) Abatement Order--Posting and Mailing--Filing Affidavits. Upon issuance of the order, the city manager shall post a copy thereof conspicuously on the premises involved, file with the County Register of Deeds, and mail a copy to the persons entitled to the hearing notice under subsection (c), of this section following the procedures therein set forth. The city manager shall thereafter file affidavits of such posting and mailing with the Planning Commission.

(k) Continuing Nuisances. The removal or resolution from the property of the thing or things described as a nuisance shall be subject to the approval of the city

manager. No nuisance shall be allowed to be relocated to other property, thereby creating another nuisance. Should the owner or tenant relocate the nuisance to other property, the City is not required to commence a new, separate action. Rather, the proceeding will be deemed a continuation of the original proceeding.

**NEW SECTION 2-208. APPEALS FROM DECISION OF THE CITY COMMISSION.** Any appellant having objections to any proceedings taken by the City Commission in sustaining or modifying a decision of the Planning Commission must bring an action in a court of competent jurisdiction within thirty days after the action by the City Commission in such matter, otherwise all objections will be deemed waived. Notice of the finding will be given as provided in Article 2.207(j) and work will commence within five working days following expiration of the appeal period.

**NEW SECTION 2-209. FAILURE TO COMPLY; PENALTY** Should the person, corporation, partnership or association fail to comply with the order to abate the nuisance or request a hearing, the city manager may file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any nuisance violation, be fined in the amount not to exceed \$2500.00 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Additionally, the city may recover, through the municipal prosecution, any costs incurred by the city in abating the property. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

**NEW SECTION 2-210. STORAGE AND DISPOSAL OF PROPERTY.** Whenever the city manager is authorized to abate the conditions causing a violation, as provided in this Article, the following procedure shall be observed:

- (a) Items confiscated which have no practical value to the person in violation shall be disposed of by the city;
- (b) Items confiscated which might reasonable be of some value to the person in violation shall be placed in storage by the city.

The persons in violation shall be informed by certified mail, postage prepaid, return receipt requested, of the disposition or storage of any items confiscated. In the case of items stored, the person in violation shall be further informed that such items shall be stored for a period of 30 days, and further that those items may be claimed by the person upon payment to the city for expenses incurred, as provided for in this Article. If the items are not claimed within the 30 day period, then the city may sell the items and deduct its expenses, returning the amount in excess of expenses, if any, to the person.

[Sections 2-211 through 2-219 reserved for future use]

NEW SECTION 2-220. WEED CONTROL. Notwithstanding any of the foregoing provisions of this Article, the city manager is authorized to address property on which there are weeds and/or overgrown vegetation as provided in this subsection.

- (a) Duty to Cut Weeds and/or Overgrown Vegetation. The owner, occupant or person in charge of any lot or piece of land and the parkings in front thereof, and alleyways behind thereof, shall keep the lot or piece of land free and clear of all weeds and obnoxious vegetation growths and shall cut such weeds and obnoxious vegetation growths before the same blossoms or matures or attains a size sufficient to interfere in any manner with the health, convenience or pleasure of persons living near or adjacent to such premises or of persons using the streets, alleys or sidewalks and shall not permit the seeds therefrom to be scattered upon the same or adjacent property.
  
- (b) Public Officer; Notice to Remove. The City Manager shall notify in writing or by public notice, the owner, occupant or agent in charge of any premises in the city upon which weeds exist in violation of this article.
  
- (c) City May Cut. If the occupant or owner or agent in charge of any lot or piece of land shall fail or neglect or refuse to cut and remove any weeds or overgrown vegetation from such lots or pieces of land, or the parkings in front thereof and alleyways behind thereof, within the city, after five (5) days' notice, or in cases where the owner is unknown or a nonresident and there is no resident owner, 10 days after notice has been published by the city clerk in the official city paper, the city shall provide for the cutting and removal of such weeds and overgrown vegetation from such lots, pieces or parcels of land and the parkings in front thereof and alleyways behind thereof. Notice shall be given by certified mail, return receipt requested or by personal service. Only one such notice is required in any calendar year. Cutting and removal, when undertaken by the city pursuant to this section, shall be performed by the city or its authorized agent, including private persons or companies when designated to do so by the city manager. Weeds and vegetation growths in excess of a height of twelve inches (12") are hereby declared to be a nuisance and the city or its authorized agent shall forthwith, without notice, cut the same, the cost thereof to be collected as

hereinafter provided in this article. The authority of the city to cut, destroy and/or remove weeds or obnoxious vegetation growth shall not extend to property zoned under the laws of the city for agricultural use, unless such weeds or obnoxious vegetation growth lies within 150 feet of any occupied residential structure other than a structure wherein resides the owner or lessee of the property upon which the subject weeds and obnoxious vegetation growth lie.

(d) Assessment of Costs. The city manager shall keep an accurate record of the costs of cutting and destruction and/or removal of the weeds and overgrown vegetation. Such record shall show costs incurred on each lot, piece or parcel of land. There shall be a minimum charge per each lot, piece or parcel of land for the first one hour, and thereafter a minimum charge per hour until completion. The city manager shall mail a statement of cost to the last known address of the owner, occupant or agent in charge of such property. If such costs are not paid within 30 days from the mailing of such notice, a special assessment for such costs against the lot or piece of land shall be made and the city clerk shall certify such assessment to the county clerk for collection and payment to the city the same as other assessments and taxes are collected and paid to the city. Fees are established annual in the budget resolution and shown in Exhibit C-801.

(e) Appeal. The owner, occupant or agent in charge of the property may request in writing a hearing before the governing body within five (5) days of the receipt of the notice.

(f) Right of Entry. The city manager is hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of inspecting, cutting, destroying and/or removing such weeds in a manner not inconsistent with this article.

(g) Publication Notice to Property Owners. The city clerk shall, at least once each year during the months of April, May, June or July, cause to be published in the official city paper a notice in substantially the following form:

**NOTICE TO PROPERTY OWNERS AND PERSONS  
IN CHARGE OF PROPERTY.**

(a) All property owners and persons in charge or possession of any tract, lot or piece of land in the City of Liberal are hereby notified that all



weeds and overgrown vegetation now growing on private property in the City of Liberal, Kansas, must be cut and removed within 5 days.

(b) If the owner or person in charge of any property shall fail or neglect to cut any weeds or obnoxious vegetation growing thereon as herein directed, the city shall proceed to cut such weeds and obnoxious vegetation and shall assess the costs and charges therefor against the respective properties which, if not paid, will be certified to the county clerk for collection with other special assessments as provided by law.

[Sections 2-221 through 2-229 reserved for future use]

#### NEW SECTION 2-230. RECOVERY OF COST OF ABATEMENT.

(a) Record of Cost of Abatement. In addition to, or as an alternative to prosecution as provided in Section 2-209, the city manager may seek to remedy violations of this ordinance in the following manner. If a person to whom an order has been served has not voluntarily abated the property, the City may abate the nuisance and collect or otherwise recover all costs of such abatement as provided in this Article. The City shall keep an itemized account of the costs involved in abating the nuisance. The City shall post conspicuously on the property and shall also mail to the owner of the property, and other persons described in Article 2-207(c), a statement including:

- (1) What abatement action has been taken;
- (2) An itemization of removal, repair, administrative, legal and all other costs incurred, including, but not limited to costs of actual abatement of the nuisance, costs to inspect the property, prepare notices, staff time to discuss violations with property owners, prepare specifications and contracts, inspect work, mail and print documents, and storage;
- (3) That the total costs incurred are due and payable within thirty days from the date of this notice;
- (4) That if the owner fails to make payments within thirty days from the date of this notice or within the time extended by agreement with the finance director, the amount will be charged to the owner on the next regular tax bill and recorded as a lien against the property;
- (5) The date, time and place for a hearing before the City Commission during which the owner may contest the amount charged pursuant to subdivision (c) of this section.

This statement shall be posted on the property and served upon the

owners of said property pursuant to Article 2-207(c), at least seven calendar days prior to the date specified in the notice. At the time fixed for the hearing on the statement of costs, the City Commission shall consider the statement and protests or objections raised by the person liable to be assessed for the cost of the abatement. The City Commission may revise, correct or modify the statement as it considers just and thereafter shall confirm the statement by council resolution.

(b) Cost of Abatement of Special Assessment Against the Property. If the property owner does not pay the cost of abating the nuisance within thirty days after the City Commission confirms the cost of abatement the cost shall constitute a lien upon the real property and shall be collected as a special assessment against the real property. A copy of the confirmation shall be delivered to the tax collector for the City, whereupon it shall be the duty of said tax collector to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes, and shall be collected at the same time and in the same manner as ordinary municipal taxes. The assessment shall continue until it is paid, together with interest at the rate of ten percent per year computed from the date of confirmation of the statement until the same time and in the same manner as ad valorem real property taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ad valorem real property taxes. All laws applicable to levy, collection and enforcement of ad valorem real property taxes apply to this special assessment.

(c) Notice of Special Assessment. When a special assessment is charged against property as provided in this article, the City shall file in the appropriate county office(s) a certificate substantially in the following form:

**NOTICE OF SPECIAL ASSESSMENT  
CLAIM OF THE CITY OF LIBERAL**

Pursuant to the authority vested by the provisions of the City of Liberal Municipal Code including Sections \_\_\_\_\_, the City Commission of the City of Liberal did on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ cause the premises hereinafter described to be rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property; and the City Commission of the City of Liberal did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ assess the cost of such rehabilitation, repair, or demolition upon the real property hereinafter described, and the same has not been paid nor any part

thereof; and that said City of Liberal does hereby claim an assessment on such rehabilitation, repair or demolition in the amount of said assessment, to wit: the sum of \$\_\_\_\_\_;

and the same shall be an assessment upon said real property until the same has been paid in full and discharged of record.

The real property hereinbefore mentioned, and upon which an assessment is claimed, is that certain parcel of land lying and being in the City of Liberal, County of Seward, State of Kansas, and particularly described as follows:

(description of property)

DATED: This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

---

City Manager of the City of Liberal, Kansas

(ACKNOWLEDGMENT)

[Sections 2-231 through 2-239 reserved for future use]

NEW SECTION 2-240. VIOLATIONS-ADDITIONAL REMEDIES

(a) Municipal Court Prosecutions

(1) The owner or other person having charge or control of any such building or premises who maintains any public nuisance defined in this article, or who violates any order of abatement served as provided in this Article is guilty of an ordinance violation. Each day such violation is committed or permitted to continue after notification to cease and desist shall constitute a separate offense and each subsequent violation shall, upon conviction, be punishable as prescribed by law.

(2) Any occupant or lessee in possession of any such building or structure who fails to vacate said building or structure in accordance with an order given as provided

in this article is guilty of an ordinance violation. Each day such violation is committed or permitted to continue after notification to cease and desist shall constitute a separate offense and each subsequent violation shall, upon conviction, be punishable as prescribed by law.

(3) Any person who removes any notice or order posted as required in this article, for the purpose of interfering with the enforcement of the provisions of this article is guilty of an ordinance violation. Each day such violation is committed or permitted to continue after notification to cease and desist shall constitute a separate offense and each subsequent violation shall, upon conviction, be punishable as prescribed by law.

(4) As an additional remedy, the operation or maintenance of any property or thing in violation of the provisions of this article shall be deemed and is declared to be a public nuisance and may be subject to abatement by restraining order or injunction issued by a court of competent jurisdiction. All remedies and actions shall be cumulative and use of one remedy shall not prevent or diminish the use of any other.

(5) Penalties for violation of any provision of this ordinance shall be a fine of not less than \$100.00 per day for a first conviction, nor more than \$2500.00, and not less than \$500.00 per day for each subsequent conviction, nor more than \$2500.00 and not more than one (1) year incarceration, or both.

(b) Administrative Proceedings

(1) The owner or other person having charge or control of any such building or premises who maintains any public nuisance defined in this article, or who violates any order of abatement served as provided in this Article is subject to an administrative penalty. Each day such violation is committed or permitted to continue after notification to cease and desist shall constitute a separate offense, each of which is subject to payment of an administrative penalty as herein provided.

(2) Any occupant or lessee in possession of any such building or structure who fails to vacate said building or structure in accordance with an order given as provided in this article is subject to an administrative penalty. Each day such violation is committed or permitted to continue after notification to cease and desist shall constitute a separate offense, each of which is subject to payment of an administrative penalty as herein provided.

(3) Any person who removes any notice or order posted as required in this article, for the purpose of interfering with the enforcement of the provisions of this article is subject to an administrative penalty. Each day such violation is committed or permitted to continue after notification to cease and desist shall constitute a separate

offense, each of which is subject to payment of an administrative penalty as herein provided.

(4) As an additional remedy, the operation or maintenance of any property or thing in violation of the provisions of this article shall be deemed and is declared to be a public nuisance and may be subject to abatement by restraining order or injunction issued by a court of competent jurisdiction. All remedies and actions shall be cumulative and use of one remedy shall not prevent or diminish the use of any other.

(5) Penalties for violation of any provision of this article shall be an administrative fee of not less than \$100.00 per day for a first offense, and no less than \$500.00 per day for each subsequent offense. The city manager shall serve upon the owner, occupant or agent in charge of the property notice of the imposition of the administrative penalty.

(6) Upon receipt of the notice of the imposition of the administrative penalty, the owner, occupant or agent in charge of the property may request in writing a hearing before the governing body within five (5) days of the receipt of the notice. Should a hearing not be requested, the administrative penalty shall stand and be subject to assessment as provided for in this article.

[Sections 2-241 through 2-249 reserved for future use]

NEW SECTION 2-250. CONSTRUCTION. Nothing in this Article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its laws nor to prevent or punish violations thereof. The powers conferred by this Article shall be in addition to and supplemental to the power conferred by the Kansas Constitution, by any other law or by ordinance.

EFFECTIVE THIS 14th day of June, 2016.

\_\_\_\_\_  
Joe Denoyer, Mayor

ATTEST

\_\_\_\_\_  
Alicia Hidalgo, City Clerk

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Shirla R. McQueen

Date: \_\_\_\_\_