

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
July 28, 2022
7:00 P.M.**

Call to Order

1. **Roll Call** _____ Roberts _____ Longanecker _____ Lewis _____ Beem
_____ Stambaugh _____ Lebakken
2. **Welcome**
3. **Pledge of Allegiance**

Consent Agenda *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

4. Approve Minutes from July 14, 2022 Regular City Council Meeting
5. Approve Agreement to Terminate Contract for Services for Construction of Wastewater Improvements and Transportation and Treatment of Wastewater in an Area Between the City of Edgerton, Kansas and Gardner, Kansas.
6. Approve Appointment of Bill Malloy to the Edgerton Planning Commission for a term ending in September 2024

Motion: _____ Second: _____ Vote: _____

Regular Agenda

7. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.
8. **Public Comments.** The City of Edgerton encourages public participation in local governance issues. To facilitate an efficient and effective meeting, persons wishing to address the City Council must sign-up before the meeting begins. Speakers must provide their name and address for the record and are limited to three (3) minutes. The maximum time limit for all speakers will be thirty (30) minutes. Comments on personnel matters or matters pending before court/other outside tribunals are not permitted. Any comments are for informational purposes only. No action will be taken.

The Mayor may modify these provisions, as necessary. The Mayor may limit any unnecessary, off-topic, or redundant comments or presentations. Speakers should address their comments to City Council members only and should not speak to fellow audience members. City Council members will not engage in a dialogue or debate with speakers. Speakers and audience members should conduct themselves in a civil and respectful manner. Disruptive conduct may result in removal from the meeting.

Business Requiring Action

9. **CONSIDER RESOLUTION NO. 07-28-22A AUTHORIZING THE ACQUISITION OF IMPROVEMENTS TO THE SEWERAGE SYSTEM OF THE CITY; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.**

Motion: _____ Second: _____ Vote: _____

10. CONSIDER RESOLUTION NO. 07-28-22B AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION BONDS, SERIES 2022A, OF THE CITY OF EDGERTON, KANSAS.

Motion: _____ Second: _____ Vote: _____

11. CONSIDER RESOLUTION NO. 07-28-22C AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION TEMPORARY NOTES, SERIES 2022A, OF THE CITY OF EDGERTON, KANSAS

Motion: _____ Second: _____ Vote: _____

12. CONSIDER ORDINANCE NO. 2112 AMENDING CHAPTER VIII, ARTICLE 7 OF THE CITY CODE OF THE CITY OF EDGERTON, KANSAS AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH

Motion: _____ Second: _____ Vote: _____

13. Report by the City Administrator

- 2nd Quarter Community Development Report
- Draft Records Retention Schedule

14. Report by the Mayor

15. Future Meeting Reminders:

- August 9th: Planning Commission Meeting – 7:00PM
- August 11th: City Council Meeting – 7:00PM
- August 25th: City Council Meeting – 7:00PM
- September 8th: City Council Meeting – 7:00PM
- September 13th: Board of Zoning Appeals – 6:15PM
- September 13th: Planning Commission Meeting – 7:00PM
- September 22nd: City Council Meeting – 7:00PM

16. Adjourn Motion: _____ Second: _____ Vote: _____

EVENTS

August 1st: Animal Wonders: Summer Series
August 3rd: Family Pasta Making Class
August 4th: Fun in the Sun
August 6th: Summer Movie Night in the Downtown Greenspace
August 8th: Dog Days of Summer
August 17th: Senior Lunch & BINGO

City of Edgerton, Kansas
Minutes of City Council Regular Session
July 14, 2022

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on July 14, 2022. The meeting convened at 7:01 PM with Mayor Roberts presiding.

1. ROLL CALL

Clay Longanecker	present via phone
Josh Lewis	absent
Josh Beem	present
Josie Stambaugh	present
Deb Lebakken	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator, Beth Linn
- City Attorney, Lee Hendricks
- City Clerk, Alex Clower
- Public Works Director, Dan Merkh
- Public Works Superintendent, Trey Whitaker
- Finance Director, Karen Kindle
- Marketing & Communications Manager, Kara Banks

2. WELCOME

3. PLEDGE OF ALLEGIANCE

Consent Agenda *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

4. Approve Minutes from June 9, 2022 Regular City Council Meeting
5. Approve Cost of Living Adjustments (COLA) for Employees
6. Accept Easements for 8th & Braun Intersection Improvements

Councilmember Lebakken made motion to approve the consent agenda, seconded by Councilmember Stambaugh. The items were approved, 3-0.

Councilmember Longanecker joined via phone conference at 7:05PM.

Regular Agenda

7. Declaration.

Councilmember Stambaugh stated she had would like to approach the podium to address the Governing Body. She provided the Governing Body and staff at the dais with a KORA request for activity on Facebook regarding a profile called "Fauxsie Stambaugh".

She stated as everyone is aware, she is a business owner and has a family, which are two of the most important things in her life. She stated she takes her role as a councilmember very seriously. She stated it has been brought to her attention that a Facebook page exists which she claimed to be slanderous and two of her fellow councilmembers have engaged with the page. She stated this page is using her business name, suggests she is breaking the law and includes a post(s) which is/are seemingly upset that she has a new car and goes on vacations.

She directed comments to Councilmember Lebakken and stated that although she was appointed and not elected, Ms. Lebakken is expected to act in a manner that is respectful.

She addressed Councilmember Beem and stated the same for him, but added she owns a new car because she has good credit and knows how to manage her money.

She stated she does support the people of Protect Rural Joco, which has not been kept a secret, they did donate to her campaign, but they do not fund her life.

She stated there have been multiple posts every week which she claimed degraded and harmed her character and those involved should be ashamed. She stated public officials could win a defamation lawsuit when there is intent to harm a public figure. She claimed since this page was created, other members of the governing body have engaged with this page, doing so with neglect and malice as elected officials. She stated she has worked hard and will not let others tarnish her reputation. She stated she expects a public apology, the site to be taken down, and a resignation from those involved.

Councilmember Lebakken stated she does not know who the page belongs to and that it is not her page.

Councilmember Stambaugh stated you have to be invited or added as a friend.

Mayor Roberts stated this is why the City Attorney has cautioned people many times about Facebook and social media in general as an elected official. He stated likes and comments on a page or post does not mean ownership.

City Attorney Lee Hendricks stated he understands there may be frustration about who created this page and who is posting on it. He stated he is against council being involved in Facebook. He stated he does not see exchanges on a private Facebook page as a city matter and does not think it benefits the governing body in any way to treat this as a City matter.

Councilmember Stambaugh stated this would not be a City matter if she were not on Council or if other Councilmembers were not involved.

Mr. Hendricks stated in the time he has represented the city, he has seen numerous posts involving members of staff, himself and Council that have been negative. He stated not one of them have come to the podium because it is not a city matter. He stated how people want to deal with private posts is their choice. He stated his recommendation to the council is to not dive into this any further as it is not a city matter.

Councilmember Stambaugh stated she wanted to shed light on people who have been appointed and elected to this council. She stated if she has to, she will go on her own.

8. Public Comments.

Mayor Roberts stated before he begins public comments, he would like to let everyone know that the Governing Body must have an Executive Session at 7:30PM due to scheduling with the City's Bond Counsel, Scott Anderson.

Mayor Roberts then requested public comments.

Jennifer Williams, 21993 Moonlight Rd., addressed the Council and handed out a packet. She stated the packet includes a copy of a transcript regarding what she described as narrow corridor annexation. She stated that also included is a letter Mayor Roberts wrote to the Board of County Commissioners and the section of the City's Unified Development Code regarding annexation. She claimed that the City violated their own code and state statutes. She stated during a hearing the judge said he could see the illegality, but that the attorney general should review it. She stated the timeline of events in this annexation are very misleading and show the intent to access. She stated the city was hanging on the fact that once it went to court, it would be dismissed for not having standing. She claimed the City's attorney volunteered to write the journal entry for the case, so that he would not have to include the judge's statement about illegality. She stated this is unfair to those that have made a life in this area and that it would be different if all the land already annexed was being used. She stated they are begging for the city to de-annex this land. She stated this is not ethical and asked Council to motion to de-annex the area.

Councilmember Stambaugh asked if they're saying the land was illegally annexed.

Ms. Williams claimed it was illegally annexed using a narrow corridor with intent to access. She stated the day the land was purchased by Treadstone Acquisitions, it was annexed at a Council meeting. She stated it was not on the agenda and added during the meeting. She stated the governing body then called a special meeting 7 days later for another annexation, which was a possibility due to this first purchase and annexation. She stated the day access was received, the next day the city filed for rezoning.

Councilmember Stambaugh asked if the next step would then be the attorney general.

Ms. Williams answered yes the statute could be rewritten to circumvent what she claimed to be an island annexation, so it is not unconstitutional.

Mayor Roberts stated Council will receive an update tonight from the City Attorney on the court case that was recently dismissed.

Business Requiring Action

- 9. CONSIDER ORDINANCE NO. 2111 AMENDING CHAPTER XI, ARTICLE 7, SECTION 11-706 OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS**

**REGARDING THE ENFORCEMENT OF THE PROHIBITION OF MOTORIZED
WHEELED DEVICES AND REPEALING ALL OTHER ORDINANCES OR PARTS OF
ORDINANCES IN CONFLICT THEREWITH**

Ms. Beth Linn, City Administrator, addressed the Council. She stated in 2021 the Governing Body approved an ordinance that allows for some unconventional vehicles within city limits and on city streets by obtaining city tags. She stated this summer there has been an increase in the usage of other wheeled devices that are not permitted by this ordinance, leading to a number of citizen complaints. She stated the code as it reads today prohibits the operation of motorized wheeled device on any city street, highway, or sidewalk. This means any wheeled device like electric minibikes, go carts, etc. but does not include unconventional vehicles when properly permitted and operated.

She stated the enforcement section of this code is outdated related to minors and only allows the Sheriff's Office to escort a child home and notify parents of violation. She stated staff would recommend updating this section of the code to deem the violation as a traffic infraction for either a minor or adult. This would allow the Sheriff's Office to write a citation for municipal court, the draft ordinance also includes escalating fine amounts for repeat offenders.

Councilmember Stambaugh stated there is nothing for children to do in this town. She stated she would be livid if her 8-year-old daughter were riding her electric battery powered scooter and an officer cited her for it. She stated kids should be able to have fun on a city street or sidewalk.

Ms. Linn stated this is currently illegal per code today, what staff is asking for is instead of escorting a child home, they will be able to cite for a violation. She stated having an 8-year-old on a electric dirt bike on those streets with truckers is not safe.

Mayor Roberts stated this amendment to the code comes from numerous complaints of children riding with no care for what is around them.

Councilmember Stambaugh stated the increased truck traffic and truck routes throughout town have more to do with the unsafe conditions than children riding their toys.

Councilmember Lebakken asked for a definition of motorized.

Ms. Linn stated anything with a battery or motor.

With no further questions or comments, Mayor Roberts then requested a motion to approve Ordinance No. 2111, amending the city code regarding the enforcement of the prohibition of motorized wheeled devices.

Councilmember Beem moved to approve the ordinance, seconded by Councilmember Longanecker. Ordinance No. 2111 was approved, 3-1 with Councilmember Stambaugh voting against.

10. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) UNDER THE ATTORNEY/CLIENT EXCEPTION TO INCLUDE THE CITY ATTORNEY, CITY ADMINISTRATOR AND BOND COUNSEL TO DISCUSS CONTRACT NEGOTIATIONS.

Mayor Roberts requested motion to recess into executive session pursuant to KSA 75-4319(B)(2) under the attorney-client exception to include the City Attorney, City Administrator and City Bond Counsel to discuss contract negotiations with no action taken for 20 minutes.

Councilmember Lebakken moved to approve the motion, seconded by Councilmember Beem. The motion was approved, 4-0.

The meeting recessed into executive session at 7:29PM.

Mayor Roberts requested motion to return to open session.

Councilmember Lebakken made motion to return to open session with no action taken, seconded by Councilmember Stambaugh. The motion was approved, 4-0. Open session resumed at 7:49PM.

11. CONSIDER THE PURCHASE OF TWO (2) STANDARD LARGE METRO MATRIX MESSAGE BOARDS FROM C-HAWKK CONSTRUCTION INC.

Mr. Dan Merkh, Public Works Director, addressed the Council. He stated in July 2021 at the 2022 Budget Work Session, staff made the recommendation to move several pieces of equipment from the unfunded list to the funded program for 2021-2022. He stated this included the purchase of two changeable message boards. He stated the department currently rents the boards for local events, large scale road closures and to handle some annual traffic control needs. He stated the use of these boards has increased significantly in the past few years. He added staff has found it can be difficult to secure the rental boards on short notice and rental costs continue to trend upward.

He stated the Vehicle and Equipment Policy requires the preparation of specifications for the replacement of equipment with an effort for those to be as standard as possible to provide for economical and efficient repairs. He stated this policy also requires that the city first use cooperative purchasing partnerships, but currently there are no partnerships for this class of equipment. He stated staff solicited for four bids from local vendors as well as online retailers, out of this process C-Hawkk Construction Inc. is the lowest and most qualified bidder.

He stated purchasing equipment in our current economic climate has changed the bidding and quoting process. He stated currently the lowest bidder has provided the structured quote from the message boards supplier, Wanco, who will only honor the quote for a period of 10 days. He stated staff has obtained quotes over the last several months and the costs have significantly increased, from February to June the cost increased approximately 3.25%. He stated based on the current pricing outlined, the additional increase is still under the allocated budget for this

purchase. He stated staff is requesting approval to purchase two message boards, not to exceed the budget amount of \$34,000.

Councilmember Lebakken asked what the current rental cost of a sign is.

Mr. Merkh stated it depends on how many hours or days and size needed. He stated it could be anywhere from \$2,000-\$3,000 for an average two- or three-day rental.

Councilmember Lebakken asked what the average life span is.

Mr. Merkh stated he did not know, but it is a long time unless an accident were to occur. He stated this product is Wi-Fi enabled which means you can edit the board from anywhere. He stated mechanically the life span should be more than the 10-year typical.

Mayor Roberts stated there has been an increase in need, adding staff does not always rent because the money is not always available. He stated if the city had their own, it would be used more often than what is seen today.

With no further questions or comments, Mayor Roberts then requested motion to approve the purchase of two standard message boards in the amount not to exceed \$34,000.

Councilmember Longanecker moved to approve the motion, seconded by Councilmember Beem. The item was approved, 4-0.

12. Report by the City Administrator

Ms. Kara Banks, Marketing & Communications Manager, addressed the Council. She stated since the last report in January the city has received 100 new followers on Facebook and the top posts have been related to public safety town hall, Cyclones In The Outfield, the July 3rd celebration and the pop-up splash pad. She stated the top viewed pages on the City's website include the Community Picnic & Fireworks event, City Council Agenda and Packets and the Events page. She stated almost half of the users for the website are now accessing via mobile device, which is up 23% since January.

Ms. Linn provided to council a resolution to appoint Christopher Clinton as the Deputy City Clerk. She stated this will allow for Chris to execute documents and record meetings, etc. in the absence of the City Clerk as she expects her new addition to her family. She stated this will also allow redundancy to act in that capacity in the future without having to bring action forward each time.

Mayor Roberts stated he likes the idea of having a Deputy City Clerk because it builds redundancy that has been lacking.

With no questions or comments, Mayor Roberts then requested motion to approve the appointment of Christopher Clinton to Deputy City Clerk for the City of Edgerton, Kansas.

Councilmember Lebakken moved to approve the motion, seconded by Councilmember Longanecker. The item was approved, 4-0.

13. Report by the Mayor

Mayor Roberts invited the City Attorney to give an update related to the court case mentioned previously.

Mr. Lee Hendricks, City Attorney, addressed the Council. He stated he is pleased there is a large crowd so that the city can make clear what he believes have been misleading and dishonest comments made regarding pending litigation matters. He stated he wants to remind everyone that he does not represent the Mayor or councilmembers as individuals, rather he represents the City of Edgerton as a whole.

He stated that when there is pending litigation involving the city it is the City's approach not to comment on such cases. He stated that in this instance however, even though the parties are awaiting the judge's final journal entry on his dismissal ruling, given the comments made, he thinks it would be best in this instance to discuss the truth of what is going on.

He stated there are currently two lawsuits filed by the Plaintiff Protect Rural Joco pending against the City. He stated one is related to what has been mentioned this evening and the other is related to zoning actions which are still pending and will not be discussed.

He stated the matter that has been brought forward this evening is related to protocol the city took regarding annexations. The parties are currently waiting for a journal entry to be entered in that case.

He stated a petition was filed in that case and the normal routine is that when a petition is filed, an answer is then submitted by the defendant. He stated in this case, the city did not file an answer but instead immediately filed a motion to dismiss claiming the plaintiffs' had a lack of standing to bring the case. He stated that as a rule judges do not like dismissing cases, especially early in the case. He stated when a case is dismissed early on it is likely because the judge was presented with overwhelming evidence to do so. He stated a video conference was held on the motion to dismiss and it was a very short conference.

He stated the protocol following a ruling by a judge in smaller cases is to ask or have the successful party draft a journal entry for the judge to then sign off on. He stated that once that draft is created the journal entry is shared between with all parties to the lawsuit to make sure they agree on the language of the draft before presenting to judge for final approval. He stated there was a claim earlier that Todd Luckman, a partner in his law firm, volunteered to prepare the journal entry in this case but claimed he did so in an untoward manner. He stated he can assure the City and the public that what occurred in this instance was normal protocol. A draft journal entry was submitted to the opposing party for review prior to submission to the judge. He stated that opposing counsel in the lawsuit has continued to want to add additional

information to that journal entry and he and his partner at the firm do not believe that adding such additional comment, when a judge has already stated there is no standing and he does not have any jurisdiction to rule, is not proper in this instance. He stated when parties disagree on the language of a journal entry, they both draft journal entries which are sent to the judge and the judge then chooses which order to agree upon. He stated this process is still pending. He stated that the bottom line at this time is that the judge ruled that the Plaintiffs Protect Rural JOCO do not have standing to bring the case and dismissed it for that reason. The parties are just awaiting his decision on the language of the final ruling.

He stated following the hearing where the case was ruled dismissed, there was a discussion in front of the Johnson County Commission and comments were made which were incorrect related to how the judge ruled. He stated it was mentioned the Mayor's letter to the Commissioners is misleading, but that he and the city stand by everything that letter stated. He stated it was repeated many times by Ms. Williams that the City illegally annexed, and the judge did not rule that in any way.

Ms. Williams stated because the judge cannot rule on this.

Mr. Hendricks stated correct, because he cannot and has no jurisdiction, which is why the case was dismissed. He stated any comment made by the public believing that the judge ruled the annexations were illegal is untrue, he did not state that. He stated the decision was that case is dismissed.

Ms. Williams stated the judge also said the case needs to be reviewed.

Mr. Hendricks stated the judge said they can have this case reviewed if they believe it to be illegal but not that they should do so.

He stated as he completely understands that there have been times and will continue to be times that there are disagreements between the City and others. He stated he is open to and wants to be a party that can bridge gaps, but he is frustrated and believes it is a bad look to misread and continually mistate what have been clear comments and a clear ruling by the court.

He asked for any questions from the Council.

Councilmember Stambaugh asked what the next step would be if Protect Rural Joco decided to go to the Attorney General and pursue different action.

Mr. Hendricks stated the City would then respond to whatever that party brought forward.

Councilmember Stambaugh stated when you do send response, you then wait on an answer. She stated the journal entry the City submitted was very basic, but she is sure there were points that Protect Rural JoCo wanted to make. She stated comments online have been very rude.

Mr. Hendricks stated he understands there will be instances where people mistake what has happened. He stated he does not want incorrect information spread and it is important that the City take the time to correctly state the facts.

Councilmember Stambaugh stated when we're talking about someone's livelihood, we don't mock and laugh.

Mr. Hendricks stated he doesn't recall doing that and apologizes if that's what was interpreted.

Councilmember Stambaugh stated when we are making statements that are important, mocking and laughing while listening to others speak. She stated we should all be giving each other the same respect.

Mr. Hendricks stated he saw no instance of him mocking or laughing at others. In this instance the ruling was simple and straightforward and there was no need for additional language in the journal entry.

Councilmember Stambaugh stated due process would have been to get an answer, which they did not have the chance to do so because the city pushed to dismiss the case.

Mr. Hendricks answered if there was standing and the court ruled there was none.

Mayor Roberts stated legal action is black and white, it is facts. The reality is judges do not like to dismiss anything because a judge wants to hear both sides. He stated in this case, the ruling was that there was no standing. He stated he wanted to make sure everyone was aware of the process and of the correct court ruling.

Mr. Hendricks reiterated that the judge cannot issue a ruling on this case beyond the dismissal for lack of standing.

14. Future Meeting Reminders:

- July 28th: City Council Meeting – 7:00PM
- August 9th: Planning Commission Meeting – 7:00PM
- August 11th: City Council Meeting – 7:00PM
- August 25th: City Council Meeting – 7:00PM
- September 8th: City Council Meeting – 7:00PM
- September 13th: Planning Commission Meeting – 7:00PM

15. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) UNDER THE ATTORNEY/CLIENT EXCEPTION TO INCLUDE THE CITY ATTORNEY AND CITY ADMINISTRATOR TO DISCUSS PENDING LITIGATION.

Mayor Roberts requested motion to recess into executive session pursuant to KSA 75-4319(B)(2) under the attorney-client exception to include the City Attorney and City Administrator to discuss pending litigation with no action taken for 5 minutes.

Councilmember Stambaugh moved to approve the motion, seconded by Councilmember Lebakken. The motion was approved, 4-0.

The meeting recessed into executive session at 8:17PM.

Mayor Roberts requested motion to return to open session.

Councilmember Stambaugh made motion to return to open session with no action taken, seconded by Councilmember Lebakken. The motion was approved, 4-0.
Open session resumed at 8:22PM.

16. Adjourn

Councilmember Beem moved to adjourn, seconded by Councilmember Lebakken. All in favor. The meeting was adjourned at 8:23PM.

Submitted by Alexandria Clower, City Clerk

City Council Action Item

Council Meeting Date: July 28, 2022

Department: Utilities

Agenda Item: Consider Agreement To Terminate Contract For Services For Construction Of Wastewater Improvements And Transportation And Treatment Of Wastewater In An Area Between The City Of Edgerton, Kansas And Gardner, Kansas

Background/Description of Item:

In 2012, the City of Edgerton entered into a contract with the City of Gardner for construction of wastewater improvements (Big Bull Creek Wastewater Treatment Facility and Conveyance System). This contract also includes the transportation and treatment of wastewater.

The City of Edgerton would like to purchase from Gardner all interests Gardner has in the Cooperative Facilities as defined by the Agreement including Gardner's contractual right to use the Cooperative Facilities and their right to utilize the specified percentage of capacity at the Cooperative Facilities. This purchase will terminate all responsibilities of the Parties as described in the Contract.

The terms of the purchase include:

- Purchase price: four million, three hundred and thirty-eight thousand, seven dollars and forty-six cents (\$4,338,007.46)
- Cancels the previous balance of incremental rate increase (\$27,547.52)
- Payment made within 120 days of the signing of this Agreement, unless otherwise agreed to by the parties.
- Edgerton does not assume any debts of Gardner. Gardner remains liable for any and all debts related to the Cooperative Facilities, the Gardner Facilities, Gardner's share of the Full Development Cost and Gardner's Development Share as described in the Contract.
- Gardner shall maintain ownership and control of the Gardner Facilities as defined within the Contract and as further described on Exhibit B.
- City of Edgerton will split equally (50/50) the balance in Repair fund as each entity contributed equally to the fund.
- Gardner shall cap its Individual Force Main connected to the Waverly Lift Station within sixty (60) days. That process shall be inspected by Edgerton. Once approved by Edgerton, Gardner shall provide written certification to Edgerton of its disconnection from the Cooperative Facilities.

Staff recommends financing the buyout payment as described below to include an initial payment and then funding from General Obligation (GO) Bonds.

- \$450,000 from the Sewer System Development Fund
- \$450,000 from the Economic Development Fund
- \$3,600,000 from GO Bonds with a 10-year term, with annual debt service to be paid from the LPKC Phase II Economic Development Fee

None of this buyout contract would be funded by the wastewater fund nor general wastewater utility customers or rates.

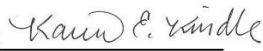
All of the enabling documents for this financing are included on the July 28, 2022 City Council meeting.

This contract has been reviewed and approved by the City Attorney. The Contract was approved by the Gardner City Council on July 18, 2022.

Related Ordinance(s) or Statue(s): n/a

Funding Source: Sewer System Development Fund, Economic Development Fund, GO Bonds

Budget Allocated: \$4,500,000

x 

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approve Agreement To Terminate Contract For Services For Construction Of Wastewater Improvements And Transportation And Treatment Of Wastewater In An Area Between The City Of Edgerton, Kansas And Gardner, Kansas

Prepared by: Beth Linn, City Administrator

**AGREEMENT TO TERMINATE CONTRACT FOR SERVICES FOR
CONSTRUCTION OF WASTEWATER IMPROVEMENTS AND
TRANSPORTATION AND TREATMENT OF WASTEWATER IN AN AREA
BETWEEN THE CITY OF EDGERTON, KANSAS AND GARDNER, KANSAS**

THIS AGREEMENT TO TERMINATE CONTRACT FOR SERVICES FOR CONSTRUCTION OF WASTEWATER IMPROVEMENTS AND TRANSPORTATION AND TREATMENT OF WASTEWATER IN AN AREA BETWEEN THE CITY OF EDGERTON, KANSAS AND GARDNER, KANSAS (hereinafter "Agreement"), is made and entered into by and between the **City of Edgerton, Kansas** (hereinafter "Edgerton"), and the **City of Gardner, Kansas** (hereinafter "Gardner"), referred to jointly as "the Parties", as of the dates listed below.

WITNESSETH:

WHEREAS, Edgerton and Gardner entered into an agreement dated May 10th, 2012 entitled CONTRACT FOR SERVICES FOR CONSTRUCTION OF WASTEWATER IMPROVEMENTS AND TRANSPORTATION AND TREATMENT OF WASTEWATER IN AN AREA BETWEEN THE CITY OF EDGERTON, KANSAS AND GARDNER, KANSAS, (hereinafter "Contract"); and

WHEREAS, as a term of the Contract the Parties agreed to the construction of the Cooperative Facilities, attached to the Contract and to this Agreement, as **Exhibit A**; and

WHEREAS, while Article V of the Contract provides that Edgerton maintains fee simple title to the Cooperative Facilities;

WHEREAS, pursuant to Article VII of the Contract Gardner possesses a contractual right to connect to and discharge untreated sanitary sewage and wastes to the Cooperative Facilities, subject to quantity and quality limitations set forth in the Contract and subject to the right of Edgerton to be compensated for its costs and expenses pursuant to the Contract;

WHEREAS, Gardner is servicing debt for its Development Share of the Full Development Cost of the Cooperative Facilities; and

WHEREAS, Edgerton wishes to purchase and Gardner wishes to sell any and all interest Gardner has in the Cooperative Facilities including Gardner's contractual right to use the Cooperative Facilities including Gardner's right to utilize the specified percentage of capacity at the Cooperative Facilities as provided for within the Contract; and

WHEREAS, this purchase will terminate all responsibilities of the Parties as described in

the Contract; and

WHEREAS, on June 28, 2022 the parties jointly participated in a video conference with representatives from the Kansas Department of Health and the Environment (KDHE) to inquire about any necessary approvals from KDHE pursuant to Gardner's loan documentation for the proposed assignment as reflected within this Contract, at which time the parties were informed that no KDHE approval was required as: (1) Gardner's loan was not being assigned; and, (2) there was no conveyance of the physical plant known as the Cooperative Facilities as Edgerton held fee simple title to the plant;

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Edgerton and Gardner, they do hereby agree as follows:

1. Purchase by Edgerton of Gardner's Interest in the Cooperative Facilities Including Gardner's Contractual Right to Use the Cooperative Facilities. Edgerton agrees to purchase from Gardner any and all interest Gardner holds in the Cooperative Facilities, including but not limited to Gardner's contractual right to use the Cooperative Facilities, attached hereto as **Exhibit A**, for a purchase price of four million, three hundred and thirty-eight thousand, seven dollars and forty-six cents (\$4,338,007.46) as established in the attached **Exhibit C**. This payment from Edgerton to Gardner shall be made within 120 days of the signing of this Agreement, unless otherwise agreed to by the parties. Edgerton is not assuming any debts of Gardner as a term of this transaction and Agreement, and Gardner remains liable for any and all debts related to the Cooperative Facilities, the Gardner Facilities, Gardner's share of the Full Development Cost and Gardner's Development Share as described in the Contract. Gardner stipulates and agrees the purchase price is sufficient contribution for both the Cooperative Facilities and the termination of rights and duties under the prior Contract for Services. By signing this Agreement, Gardner agrees to provide any information and sign any documentation necessary to effectuate the transfer of its interest in the Cooperative Facilities, including its contractual right to use the Cooperative Facilities, to Edgerton, including notification to any regulatory authorities. Gardner shall maintain ownership and control of the Gardner Facilities as defined within the Contract and as further described on Exhibit B. The parties stipulate that this Agreement constitutes Edgerton's consent pursuant to Article XVII of the Contract permitting Gardner to assign and convey its Contract rights as provided for herein. The parties further stipulate that the provision within Article XVII that provides that upon an assignment or transfer that "in no event shall such consent relieve Gardner from its obligations accrued under the terms of this Agreement," shall not survive the termination of the Contract as provided for within Paragraph 5 of this Agreement.

2. Return of Initial Deposit. Article X of the Contract requires that Edgerton and Gardner each deposit the sum of fifty thousand dollars (\$50,000.00) into the Repair Fund and maintain that balance for ongoing maintenance of the Cooperative Facilities. Further, Article X states that

“Upon termination of this Agreement, the balance of the Repair Fund, if any, will be distributed equally to the Parties”. The present balance in the Repair Fund is \$103,122.46. The Parties agree to this equal distribution upon signing of this Agreement by both Parties.

3. Capping of Line, Inspection and Certification. Upon the signing of this Agreement, Gardner agrees to cause its Individual Force Main connection at the Waverly Lift Station to be capped within sixty (60) days. That process shall be inspected by Edgerton, and once approved by Edgerton, Gardner shall provide written certification to Edgerton of its disconnection from the Cooperative Facilities.

4. Release and Waiver. In consideration for the promises and covenants stated herein the Parties, their successors and assigns, and all other parties in any way related to a Party hereby release and forever discharge the other Party, its employees, independent contractors and elected officials, their successors and assigns from any and all claims, demands, damages, both known or unknown, to person and property, including injuries which may develop or be discovered in the future, actions, causes of action, whether in tort or in contract, attorney’s fees or suits of any kind or nature whatsoever, associated with the construction, maintenance and operation of the Cooperative Facilities and/or the parties’ respective performance or lack thereof under the Contract. Gardner hereby covenants and agrees to indemnify and hold harmless Edgerton, its elected officials, independent contractors and employees from any and all claims, demands, actions, causes of action, suits or complaints that may be brought by any person, persons, firm, corporation or entity against it for any wages, injury, damage or other loss, arising from this transfer. Edgerton hereby covenants and agrees to indemnify and hold harmless Gardner, its elected officials, independent contractors and employees from any and all claims, demands, actions, causes of action, suits or complaints that may be brought by any person, persons, firm, corporation, regulatory agency or entity against it for any wages, injury, fines, damage or other loss, arising from the past, current or future operation of the Cooperative Facilities.

5. Termination. Upon payment as described in Paragraph 1, the return of funds described in Paragraph 2 and the capping, inspection and certification described in Paragraph 3, the **CONTRACT FOR SERVICES FOR CONSTRUCTION OF WASTEWATER IMPROVEMENTS AND TRANSPORTATION AND TREATMENT OF WASTEWATER IN AN AREA BETWEEN THE CITY OF EDGERTON, KANSAS AND GARDNER, KANSAS** shall be deemed terminated with the only surviving responsibilities being those listed in Paragraph 3 above.

6. Modification. No provision of this Contract may be modified, altered or amended by the individual action of either party. All such modifications, alterations or amendments must be agreed to in writing by both Parties.

7. Governing Law and Regulations. This Amendment will be governed by and construed in accordance with the laws and regulations of the State of Kansas. The Parties stipulate that any interest the respective parties may hold in the Cooperative Facilities were

and are held by the Parties in a proprietary capacity, and the Parties are authorized to transfer any such interest in the Cooperative Facilities.

8. **Entire Agreement.** This Agreement to Terminate constitutes the entire agreement between the Parties regarding the subject matter contained herein and no representations or understandings not contained herein will be binding upon the Parties.

IN WITNESS THEREOF, the Parties hereto have set their hands and seals effective the date listed below.

CITY OF EDGERTON, KANSAS

Date: _____

By: _____
Donald R. Roberts, Mayor

ATTEST:

City Clerk

[SEAL]

CITY OF GARDNER, KANSAS

Date: _____

By: _____
Todd Winters, Mayor

ATTEST:

City Clerk

[SEAL]

EXHIBIT A

COOPERATIVE FACILITIES

The Cooperative Facilities shall include those items listed below, located as reflected on the map made part of this Exhibit A.

1. *Wastewater Treatment Plant*—The WWTP, its physical site and all improvements and appurtenances thereto.
 - a. Phase One—Plant with 0.50 MGD average day treatment capacity as provided in the Initial Development Plan
 - b. Phase Two—Upgrade to Phase One plant to provide a total 1.0 MGD average day treatment capacity as provided in the Initial Development Plan
2. *Force Main Trench*—A shared trench, sufficient in size to accommodate the Individual Force Mains, commencing from a point west of the intersection of 191st and Waverly Road in Edgerton and terminating at the upstream end of the Interceptor.
3. *Interceptor*—The 30- and 36-inch (preliminary size) gravity sewer interceptor running from a point adjacent to Homestead Lane in unincorporated Johnson County, Kansas, roughly equidistant from West 199th Street and the intersection of Interstate 35 and Homestead Lane, including a 36" pipeline under Interstate 35.
4. *Land and Easements*—Real estate held in fee simple title, temporary and permanent easements and related for any of the WWTP, Interceptor, or Force Main Trench.

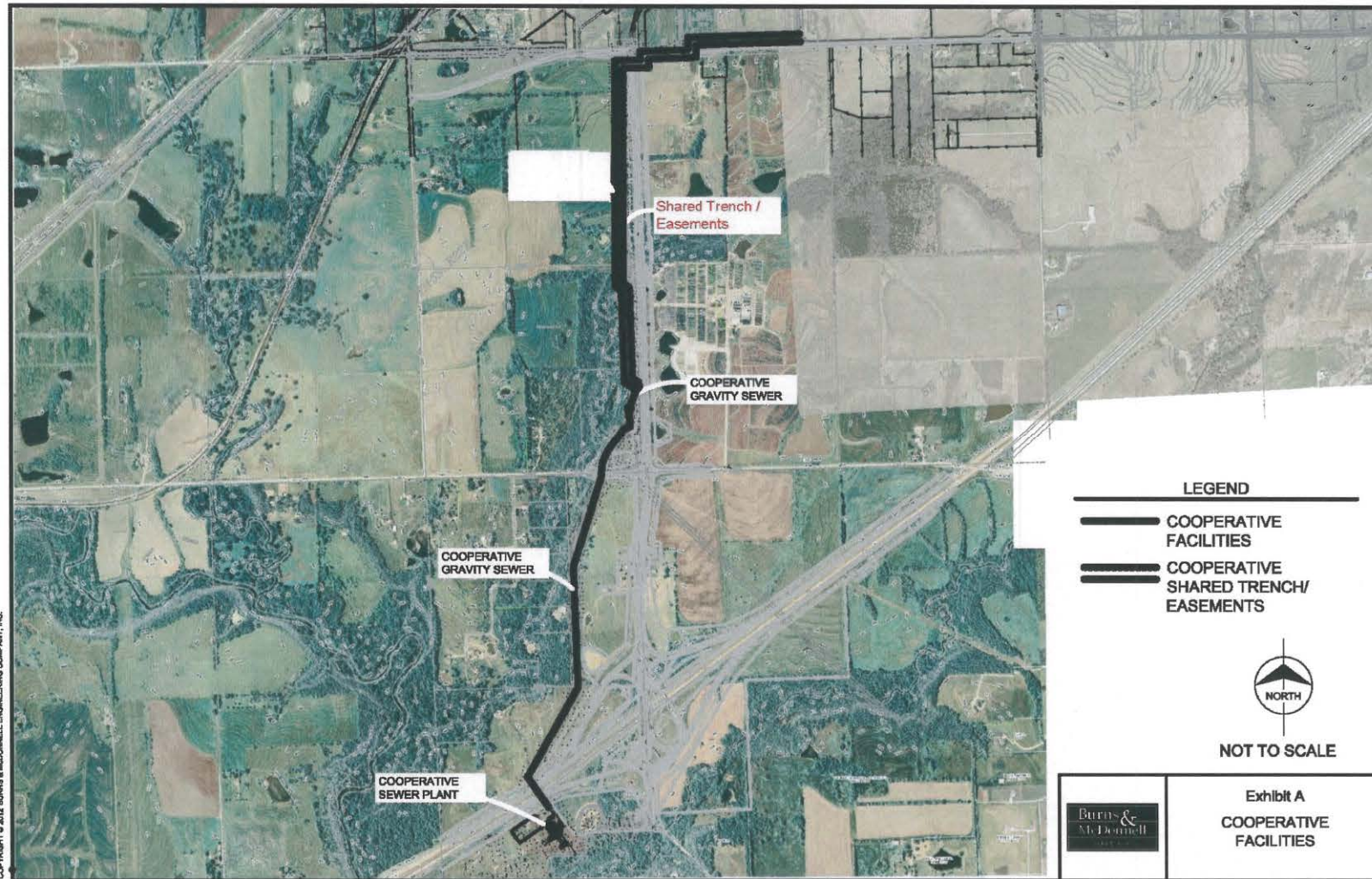
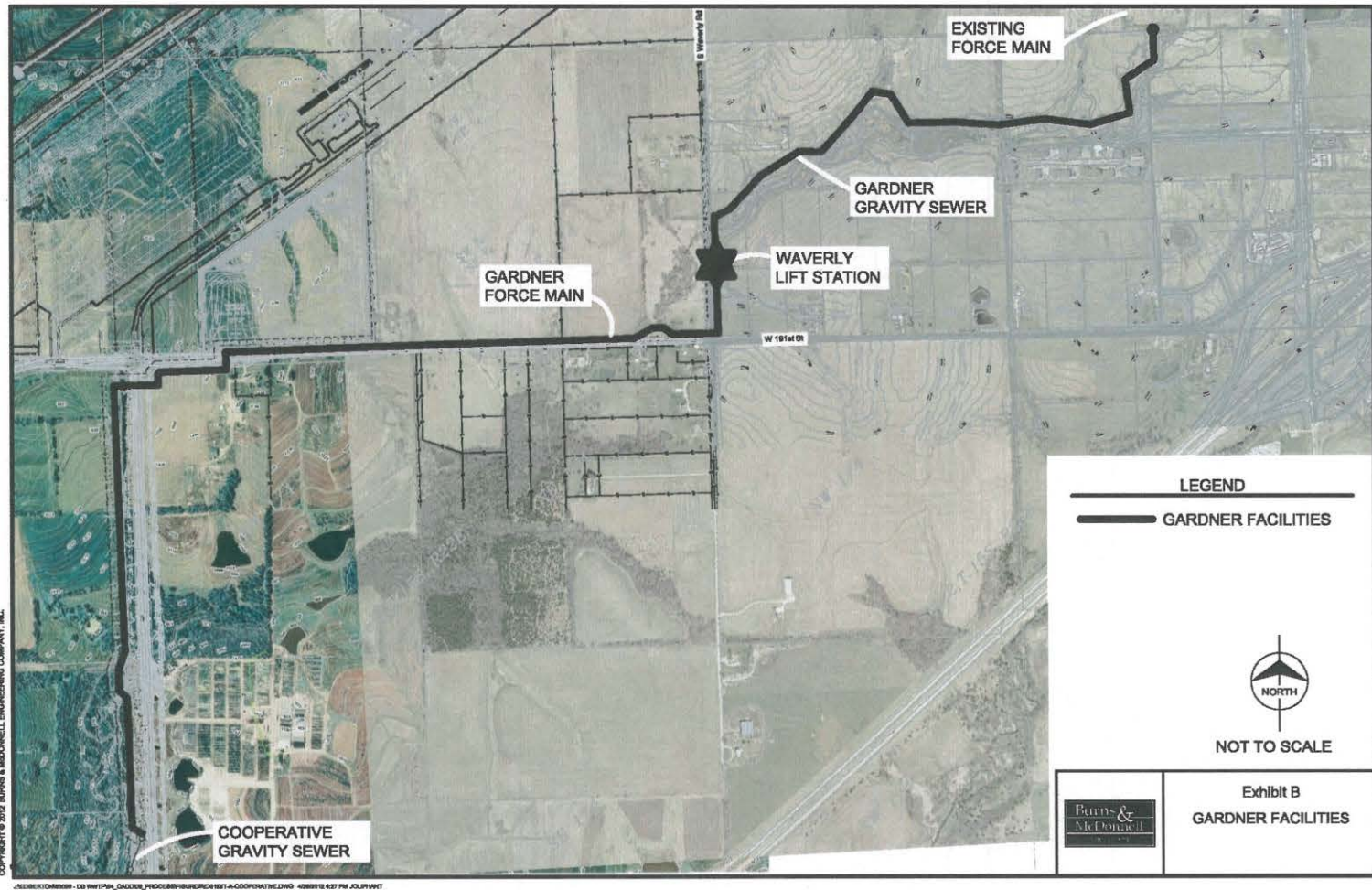


EXHIBIT B

GARDNER FACILITIES

The Cooperative Facilities shall include those items listed below, located as reflected on the map made part of this Exhibit B.

1. *Waverly Road Lift Station* – The lift station will, its physical site, and all appurtenances thereto. Flow metering at the Lift Station will be used for billing purposes and to assure flow from Gardner facilities do not exceed the available capacity of the Big Bull Creek WWTP.
 - a. Phase 1 – lift station with a firm capacity of 500,000 gallons per day
 - b. Phase 2 – Upgrade lift station as needed, capacity anticipated to be no larger than 1.5 million gallons per day firm capacity
2. *Gardner Interceptor* – A dedicated interceptor, tentatively sized as 15-inches in diameter and sufficient to convey up to 1.5 million gallons per day, from the South Gardner Force Main to the Waverly Road Lift Station. The interceptor facility includes manholes tentatively spaced at 400 feet apart, a motor-actuated valve designed to allow flow from the existing South Gardner Force Main to be diverted into the Interceptor, and a metering flume used in the control of the motor-actuated diversion valve.
3. *Gardner Force Main* – A dedicated force main, tentatively sized as 8-inches and sized to convey flows up to 1.5 million gallons per day, from the Waverly Road Lift Station to the upper manhole of the Cooperative Facilities' Interceptor. The Force Main will be buried in its own trench from the Lift Station to a point along 191st Street and midway between Waverly Road and Homestead Lane, where it will be installed in the shared Force Main Trench described in the Cooperative Facilities.



Big Bull Creek Wastewater Treatment Plant Costs
City of Gardner
Joint Costs
4/27/2022

Preliminary Design		
Task A - Prelim Design/Stipulated Price Joint Facilities	\$	29,000.00
Task B - Const Estimating/Logistics Joint Facilities	\$	5,000.00

Design/Construction		
General Items	\$	2,164,441.84
WWTP	\$	4,209,797.93

** removes Item 39 - Gardner Force Main (\$319,680)

Other		
Gardner Share Land Acq, Utilities, Rate Study	\$	162,117.80
Construction Observation	\$	231,830.88

TOTAL	\$	6,802,188.45
minus principal payments paid to KDHE 12/31/21	\$	2,297,051.76
Outstanding debt 12/31/22	\$	4,505,136.69
minus principal payment to KDHE 3/1/22	\$	167,129.23
OUTSTANDING DEBT 4/27/22	\$	4,338,007.46

EXHIBIT

C

City Council Action Item

Council Meeting Date: July 28, 2022

Department: Administration

Agenda Item: Consider Resolution No. 07-28-22A Authorizing the Acquisition of Improvements to the Sewerage System of the City; and Providing for the Payment of the Costs Thereof.

Background/Description of Item:

On July 28, 2022, Edgerton City Council will consider an Agreement To Terminate Contract For Services For Construction Of Wastewater Improvements And Transportation And Treatment Of Wastewater Between the City of Edgerton and the City Gardner. If approved the City will purchase from Gardner all interests Gardner has in the Cooperative Facilities as defined by the Agreement including Gardner's contractual right to use the Cooperative Facilities and their right to utilize the specified percentage of capacity at the Cooperative Facilities. This purchase will terminate all responsibilities of the Parties as described in the Contract.

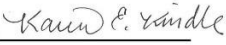
Resolution No. 07-28-22A does the following:

- Authorizes the project
- Provides for the payment of the project costs
- Includes a description of the project and the cost of the project
- Denotes how the project will be funded
 - The resolution indicates that the entire project cost will be funded with GO Bonds. This allows the City maximum flexibility to pay some of the cost from other sources and only finance a portion of the project with GO Bonds.
 - Staff recommends financing the buyout payment as described below to include an initial payment and then funding from General Obligation (GO) Bonds.
 - \$450,000 from the Sewer System Development Fund
 - \$450,000 from the Economic Development Fund
 - \$3,600,000 from GO Bonds with a 10-year term, with annual debt service to be paid from the LPKC Phase II Economic Development Fee
 - **None of this buyout contract would be funded by the wastewater fund nor general wastewater utility customers or rates.**

Related Ordinance(s) or Statue(s): Charter Ordinance No. 22

Funding Source: n/a

Budget Allocated: n/a

x 

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approve Resolution No. 07-28-22A Authorizing the Acquisition of Improvements to the Sewerage System of the City; and Providing for the Payment of the Costs Thereof.

Enclosed: Resolution No. 07-28-22A

Prepared by: Karen Kindle, Finance Director

RESOLUTION NO. 07-28-22A

A RESOLUTION OF THE CITY OF EDGERTON, KANSAS, AUTHORIZING THE ACQUISITION OF IMPROVEMENTS TO THE SEWERAGE SYSTEM OF THE CITY; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.

WHEREAS, the City of Edgerton, Kansas (the “City”) owns and operates a combined public water supply system, sewerage plant and system, electric system and gas system (the “System”); and

WHEREAS, Charter Ordinance No. 22 of the City (the “Charter Ordinance”) authorizes the City to operate and maintain sewers and disposal works for the collection and purification of the sewage of the City and to issue general obligation bonds to pay all or part of any costs thereof; and

WHEREAS, the governing body of the City plans to improve the System as follows:

Acquisition of the City of Gardner’s share of the Big Bull Creek Wastewater Treatment Facility pursuant to an agreement previously approved by the City Council (the “Project”);

and hereby finds and determines that it is necessary and advisable to provide for the payment of the costs of the Project by the issuance of general obligation bonds, as authorized by the Charter Ordinance.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. Project Authorization. It is hereby authorized, ordered and directed that the System be improved by acquiring and executing the Project.

Section 2. Project Financing. The costs of the Project shall not exceed \$4,500,000, plus costs of issuance and interest on any interim financing. The costs of the Project, together with interest during the period of construction, costs of issuance and interest and fees related to any interim financing, shall be payable from the proceeds of general obligation bonds of the City issued under authority of the Charter Ordinance (the “Bonds”).

Section 3. Reimbursement. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 4. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

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ADOPTED AND APPROVED by the governing body of the City of Edgerton, Kansas, on July 28, 2022.

(Seal)

Donald Roberts, Mayor

ATTEST:

Christopher Clinton, Deputy City Clerk

APPROVED AS TO FORM:

Gilmore & Bell, P.C., Bond Counsel

City Council Action Item

Council Meeting Date: July 28, 2022

Department: Administration

Agenda Item: Consider Resolution No. 07-28-22B Authorizing the Offering for Sale of General Obligation Bonds, Series 2022A, of the City of Edgerton, Kansas.

Background/Description of Item:

Earlier this evening the Governing Body considered Resolution No. 07-28-22A authorizing the Acquisition of BBCWWTP Joint Infrastructure Project, which denoted that the project would be funded with General Obligation (GO) Bonds. Staff recommends that the project be funded as follows:

- \$450,000 from the Sewer System Development Fund
- \$450,000 from the Economic Development Fund
- \$3,600,000 from GO Bonds with a 10-year term, with annual debt service to be paid from the LPKC Phase II Economic Development Fee
- **None of this buyout contract would be funded by the wastewater fund nor general wastewater utility customers or rates.**

Resolution No. 07-28-22B does the following:

- Authorizes the offering for sale of the Series 2022A General Obligation (GO) Bonds;
- Authorizes the financial advisor and the bond counsel to prepare and issue a Notice of Bond Sale which describes the terms of the Bonds;
- Directs and authorizes the City Clerk to publish the Notice of Bond Sale;
- Directs and authorizes City staff, the Financial Advisor and the Bond Counsel to prepare a Preliminary Official Statement related to the Bonds;
- Authorizes the Mayor/Finance Director/other City officers to:
 - Approve the form of the Preliminary Official Statement;
 - Annually provide certain financial and operating data to comply with the Municipal Securities Rule Making Board continuous disclosure requirements;
 - Execute other documents that may be necessary for the purchaser of the bonds to comply with Security and Exchange Commission rules.
- Authorizes the Mayor/Finance Director/other City officers, the Financial Advisor and the Bond Counsel to take such other actions that may be necessary to carry out the sale of the bonds.

The sale of the bonds will be a competitive sale as required by Kansas statutes. Below is the anticipated calendar of events related to the sale.

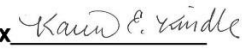
- 9/1/2022 – Post Preliminary Official Statement
- 9/8/2022
 - Competitive Bond Auction
 - Council consideration of Ordinance/Resolution authorizing the final terms of the Bonds
- 9/15/2022 – Post Final Official Statement
- 9/22/2022
 - Close on the Bonds
 - Payment issued to Gardner

The City Attorney has reviewed and approved this resolution.

Related Ordinance(s) or Statute(s): Resolution No. 07-28-22A

Funding Source: n/a

Budget Allocated: n/a

Finance Director Approval:  x
Karen Kindle, Finance Director

Recommendation: Approve Resolution No. 07-28-22B Authorizing the Offering for Sale of General Obligation Bonds, Series 2022A, of the City of Edgerton, Kansas.

Enclosed: Resolution No. 07-28-22B

Prepared by: Karen Kindle, Finance Director

RESOLUTION NO. 07-28-22B

RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION BONDS, SERIES 2022A, OF THE CITY OF EDGERTON, KANSAS.

WHEREAS, the City of Edgerton, Kansas (the “Issuer”), pursuant to Charter Ordinance No. 22 of the Issuer, has previously authorized certain improvements described as follows (the “Improvements”):

<u>Project Description</u>	<u>Authority (K.S.A.)</u>	<u>Amount</u>
Acquisition of a portion of Big Bull Creek Wastewater Treatment Facility	Charter Ord. No. 22; Art. 12, Sec. 5 of the Constitution of the State of Kansas	\$4,500,000

WHEREAS, the Issuer proposes to issue its general obligation bonds to permanently finance a portion of the costs of the Improvements; and

WHEREAS, the Issuer has selected the firm of Columbia Capital Management, LLC, (“Municipal Advisor”), as Municipal Advisor and Gilmore & Bell, P.C. (“Bond Counsel”) as Bond Counsel for a series of general obligation bonds of the Issuer to be issued in order to provide funds to permanently finance a portion of the Improvements; and

WHEREAS, the Issuer desires to authorize the Municipal Advisor to proceed with the offering for sale of said general obligation bonds and related activities; and

WHEREAS, one of the duties and responsibilities of the Issuer is to prepare and distribute a preliminary official statement relating to said general obligation bonds; and

WHEREAS, the Issuer desires to authorize the Municipal Advisor and Bond Counsel, in conjunction with Issuer staff, to proceed with the preparation and distribution of a preliminary official statement and notice of bond sale and to authorize the distribution thereof and all other preliminary action necessary to sell said general obligation bonds.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, AS FOLLOWS:

Section 1. The Issuer is hereby authorized to offer for sale the Issuer’s General Obligation Bonds, Series 2022A (the “Bonds”) as described by the presentation of the Municipal Advisor on this date. The Mayor, City Administrator, Finance Director and City Clerk, in conjunction with the Municipal Advisor and Bond Counsel, are hereby authorized and directed to cause to be prepared a Notice of Bond Sale describing the terms of the Bonds, and to use such document in connection with the sale of the Bonds. All proposals for the purchase of the Bonds shall be delivered to the governing body at its meeting to be held on the sale date referenced in the Notice of Bond Sale, at which meeting the governing body shall review such bids and award the sale of the Bonds or reject all proposals.

Section 2. The Mayor, City Administrator, Finance Director and City Clerk, in conjunction with the Municipal Advisor and Bond Counsel, are hereby authorized and directed to cause to be prepared a Preliminary Official Statement related to the Bonds (the “Preliminary Official Statement”) and to use such document in connection with the sale of the Bonds.

Section 3. The City Clerk, in conjunction with the Municipal Advisor and Bond Counsel, is hereby authorized and directed to give notice of said bond sale by publishing a summary of the Notice of Bond Sale not less than 6 days before the date of the bond sale in a newspaper of general circulation in Johnson County, Kansas, and the ***Kansas Register*** and by distributing copies of the Notice of Bond Sale and Preliminary Official Statement to prospective purchasers of the Bonds. Proposals for the purchase of the Bonds shall be submitted upon the terms and conditions set forth in the Notice of Bond Sale and awarded or rejected in the manner set forth in the Notice of Bond Sale.

Section 4. For the purpose of enabling the purchaser of the Bonds (the “Purchaser”) to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”), the Mayor and Finance Director or other appropriate officers of the Issuer are hereby authorized: (a) to approve the form of said Preliminary Official Statement and to execute the “Certificate Deeming Preliminary Official Statement Final” in substantially the form attached hereto as ***Exhibit A*** as approval of the Preliminary Official Statement, such official’s signature thereon being conclusive evidence of such official’s and the Issuer’s approval thereof; (b) covenant to provide continuous secondary market disclosure by annually transmitting certain financial information and operating data and other information necessary to comply with the Rule to the Municipal Securities Rulemaking Board; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the Rule.

Section 5. The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of the Bonds or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 6. The Mayor, Finance Director and the other officers and representatives of the Issuer, the Municipal Advisor and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to carry out the sale of the Bonds.

Section 7. The transactions described in this Resolution may be conducted, and documents related to the Bonds may be sent, received, executed, and stored, by electronic means or transmissions. Copies, telecopies, electronic files and other reproductions of original executed documents (or documents executed by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 8. This Resolution shall be in full force and effect from and after its adoption.

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ADOPTED AND APPROVED by the governing body of the City of Edgerton, Kansas, on July 28, 2022.

(SEAL)

Donald Roberts, Mayor

ATTEST:

Christopher Clinton, Deputy City Clerk

APPROVED AS TO FORM ONLY:

Gilmore & Bell, P.C., Bond Counsel

EXHIBIT A

**CERTIFICATE DEEMING
PRELIMINARY OFFICIAL STATEMENT FINAL**

_____, 2022

To: _____

Re: City of Edgerton, Kansas, General Obligation Bonds, Series 2022A

The undersigned is the duly acting Finance Director of the City of Edgerton, Kansas (the “Issuer”), and is authorized to deliver this Certificate to the purchaser (the “Purchaser”) of the above-referenced bonds (the “Bonds”) on behalf of the Issuer. The Issuer has previously caused to be delivered to the Purchaser copies of the Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Bonds.

For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the “Rule”), the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be final as of its date, except for the omission of such information as is permitted by the Rule, such as offering prices, interest rates, selling compensation, aggregate principal amount, principal per maturity, delivery dates, ratings, identity of the underwriters and other terms of the Bonds depending on such matters.

CITY OF EDGERTON, KANSAS

By: _____
Title: Finance Director

City Council Action Item

Council Meeting Date: July 28, 2022

Department: Administration

Agenda Item: Consider Resolution No. 07-28-22C Authorizing the Offering for Sale of General Obligation Temporary Notes, Series 2022A, of the City of Edgerton, Kansas.

Background/Description of Item:

The City issued temporary notes in 2019 to finance a portion of the 2019 Street Reconstruction Project. The City paid off a portion of the principal that was due and renewed those notes for two more years in September 2020 by issuing the Series 2020A Temporary Notes. When the 2020 notes were issued, the City added funding for the Homestead Ln & 200th Street Intersection Project. At this time, the principal portion related to the 2019 Street Reconstruction Project has been paid off and slightly more than half the principal remains for the Homestead Ln & 200th Street Intersection Project. The Series 2020A Temporary Notes mature on October 1, 2022.

The Homestead Ln & 200th Street Intersection Project is to be funded with revenue from the Homestead Lane Retail TIF District. However, the revenue is received over time and revenue received so far has not been sufficient to pay off the remaining principal for the project. The notes will need to be renewed. Staff has begun working with the City's financial advisor and the City's bond counsel to renew the notes for a term of two years. The sale will be a negotiated sale like the sale of both the 2019 and 2020 Temporary Notes. The City's financial advisor will solicit quotes via a bank direct purchase RFQ process, will analyze the quotes received and will recommend a bank for the City to approve.

Resolution No. 07-28-22C authorizes the offering for sale of the Series 2022A Notes and grants authority for the Mayor to execute a note purchase agreement with the recommended bank within certain parameters. In addition, the resolution authorizes the Mayor, City Administrator, City Clerk, the Finance Director and other City officials, Bond Counsel, and the Financial Advisor to take such other actions that may be necessary to carry out the sale of the Notes.

Below is the anticipated calendar of events related to the sale.

- 7/29/2022 – Financial Advisor distributes the bank direct purchase RFQ
- 8/12/2022 – Proposals due from banks

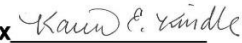
- 9/8/2022 – Council adoption of Ordinance/Resolution authorizing the final terms of the notes and the Note Purchase Agreement
- 9/22/2022 – Close on the Notes
- 10/1/2022 – Redemption of the Series 2020A Temporary Notes

The City Attorney has reviewed and approved this resolution.

Related Ordinance(s) or Statue(s): Resolution No. 9-10-20A, Resolution No. 9-10-20B

Funding Source: n/a

Budget Allocated: n/a

Finance Director Approval:  x
Karen Kindle, Finance Director

Recommendation: Approve Resolution No. 07-28-22C Authorizing the Offering for Sale of General Obligation Temporary Notes, Series 2022A, of the City of Edgerton, Kansas.

Enclosed: Resolution No. 07-28-22C

Prepared by: Karen Kindle, Finance Director

RESOLUTION NO. 07-28-22C

A RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION TEMPORARY NOTES, SERIES 2022A, OF THE CITY OF EDGERTON, KANSAS.

WHEREAS, the City of Edgerton, Kansas (the “Issuer”) has previously authorized certain internal improvements described as follows (the “Improvements”):

<u>Project Description</u>	<u>Resolution No.</u>	<u>Authority (K.S.A.)</u>	<u>G.O. Bonds Authorized</u>
Street Improvements (Homestead)	09-10-20A	12-685 <i>et seq.</i>	\$1,752,000*

* Plus interest on any temporary financing and costs of issuance.

WHEREAS, the Issuer has previously issued the following temporary notes to temporarily finance a portion of the costs of the Improvements and other public improvements within the City (the “Refunded Notes”):

<u>Series</u>	<u>Dated Date</u>	<u>Maturity Date</u>	<u>Original Amount</u>	<u>Outstanding Amount</u>
2020A	Sept. 24, 2020	Oct. 1, 2022	\$3,115,000.00	\$987,083.10

WHEREAS, permanent financing for the Improvements will not be completed prior to the maturity date of the Refunded Notes and it is necessary for the Issuer to provide cash funds to meet its obligations on the Refunded Notes by the issuance of additional temporary notes of the Issuer; and

WHEREAS, the Issuer has selected the firm of Columbia Capital Management, LLC, Merriam, Kansas (the “Municipal Advisor”), as Municipal Advisor to the Issuer for one or more series of temporary notes of the Issuer in order to provide funds to retire the Refunded Notes; and

WHEREAS, the Issuer desires to authorize the Municipal Advisor to proceed with the negotiating for sale of said temporary notes and related activities; and

WHEREAS, due to the volatile nature of the municipal bond market and the desire of the Issuer to achieve maximum benefit of timing of the sale of said temporary notes, the governing body desires to authorize the Mayor to confirm the sale of such temporary notes, if necessary, prior to the next meeting of the governing body to adopt the necessary resolution providing for the issuance thereof.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, AS FOLLOWS:

Section 1. The Issuer is hereby authorized to proceed with the negotiating of the sale of the Issuer’s General Obligation Temporary Notes, Series 2022A (the “Notes”) in accordance with the presentation made by the City’s Finance Director on this date. The offering for sale of the Notes shall be accomplished in consultation with the City Administrator, Finance Director, Gilmore & Bell, P.C., Kansas City, Missouri, the Issuer’s bond counsel (“Bond Counsel”), and the Municipal Advisor. The confirmation of the sale of the Notes shall be subject to the execution of a note purchase agreement (the “Note Purchase Agreement”) between the purchaser of the Notes (the “Purchaser”) and the Issuer in a form approved by Bond Counsel and the Issuer’s legal counsel, the adoption of a resolution by the

governing body of the Issuer authorizing the issuance of the Notes, and the execution of various documents necessary to deliver the Notes.

The Mayor (or, in the Mayor's absence, the acting Mayor) is hereby authorized to execute the Note Purchase Agreement subject to the following parameters: (a) the principal amount of the Notes shall not exceed \$1,025,000; (b) the true interest cost of the Notes shall not exceed 3.50%; and (c) the final maturity of the Notes shall be no later than September 1, 2024.

Section 2. The Mayor, City Administrator, Finance Director, Clerk and the other officers and representatives of the Issuer, Bond Counsel and the Municipal Advisor are hereby authorized and directed to take such other action as may be necessary to carry out the sale of the Notes and to make provision for redemption of the Refunded Notes from proceeds of the Notes and other available funds of the Issuer.

Section 3. This Resolution shall be in full force and effect from and after its adoption.

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ADOPTED by the governing body on July 28, 2022.

Donald Roberts, Mayor

(SEAL)

ATTEST:

Christopher Clinton, Deputy City Clerk

APPROVED AS TO FORM ONLY:

Gilmore & Bell, P.C., Bond Counsel

City Council Action Item

Council Meeting Date: July 28, 2022

Department: Community Development

Agenda Item: Consider Ordinance No. 2112 Amending Chapter VIII, Article 7 Of The City Code Of The City Of Edgerton, Kansas And Repealing All Ordinances or Parts of Ordinances In Conflict Therewith.

Background/Description of Item:

As was noted during the recent Citizen's Survey, code enforcement is high on the list of priorities for Edgerton residents. City Staff continues to review Edgerton's Municipal Code so that it remains relevant and effective for the code enforcement process.

Chapter VIII, Article 7, *Minimum Housing Code*, is of particular importance because it enables staff to ensure properties comply with the ICC International Residential Building Code. Recently staff has encountered housing in Edgerton where front stoops/porches are missing or decks that have pulled away from the residential structure. These dangerous and unsafe conditions represent a life/safety hazard which can be corrected through the code enforcement process. However, it was recently noted that Chapter VIII, Article 7, *Minimum Housing Code*, did not contain the same procedures for due process as all other code infractions. It required a hearing before the Governing Body as opposed to judicial proceedings before the City of Edgerton Municipal Court. Revising sections 8-712 through 8-718 aligns this section with the same procedures used in Chapter 8, Articles 2 through 4 related to other code violations like health nuisances, inoperable vehicles and tall grass and weeds.

While amending Article 7, Staff noted that other slight corrections and clarifications were needed as it had been twenty-six years since this section was originally adopted. In addition to the language clarifications, Section 8-709(a)(4) was added as there is nothing in Edgerton's Municipal Code today requiring a resident to establish grass, ground cover or other erosion control measure so as to prevent eroding soil from flowing onto adjacent properties, onto sidewalks, and into right of ways within fourteen days.

The City Attorney has prepared the attached Ordinance 2112 for the Governing Body's consideration.

Related Ordinance(s) or Statue(s): City of Edgerton Code 1995.

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approval of Ordinance No. 2112 Amending Chapter VIII, Article 7 Of The City Code Of The City Of Edgerton, Kansas And Repealing All Ordinances or Parts of Ordinances In Conflict Therewith.

Enclosed: Redlined Chapter VIII, Article 7
Ordinance 2112

Prepared by: Katy Crow, Development Services Director

ARTICLE 7. MINIMUM HOUSING CODE

- 8-701. TITLE. This article shall be known as the “Minimum Standard for Housing and Premises Code,” and will be referred to herein as “this code.” (Code 1995)
- 8-702. GENERAL. Buildings used in whole or in part as a home or residence of a single family or person and every building used in whole or in part as a home or residence of two or more persons or families living in separate apartments and all premises, either residential or non-residential, shall conform to the requirements of this code. (Code 1995)
- 8-703. DECLARATION OF POLICY. The governing body declares the purpose of this code is to protect, preserve, and promote the physical and mental health of the people, ~~investigate and control communicable diseases- including the general appearance of~~ regulate privately and publicly-owned structures or dwellings, and all ~~other~~ premises for the purpose of sanitation and public health, ~~general appearance, and protect the safety of the people and promote the general welfare by legislation which shall be applicable to all dwellings, structures and premises now in existence or hereafter constructed or developed and which legislation:~~
- (a) Establishes minimum standards for basic equipment and facilities for light, ventilation and heating, for safety from fire, for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance;
 - (b) Establishes standards concerning unsightly and blighted buildings and premises, both residential and non-residential structures.
 - (c) Determines the responsibilities of owners, operators and occupants.
 - (d) Provides for the administration and enforcement thereof.
(Ord. 2112, 2022; Code 1995)
- 8-704. DEFINITIONS. The following definitions shall apply to the enforcement of this code:
- (a) Basement shall mean a portion of a building located partly underground but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground.
 - (b) Cellar shall mean a portion of a building located partly or wholly underground and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.
 - (c) Dwelling shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants; provided, that temporary housing hereinafter defined shall not be regarded as a dwelling.
 - (d) Dwelling Unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or intended to be used for living, sleeping, cooking and eating.

- (e) Habitable Dwelling shall mean any structure or part thereof that shall be used as a home or place of abode by one or more persons.
- (f) Habitable Room shall mean a room designed to be used for living, sleeping, eating or cooking purposes, excluding bathrooms, toilet rooms, closets, hall and storage places, or other similar places, not used by persons for extended periods.
- (g) Infestation shall mean the presence, within or around a dwelling, of insects, rodents, or other pests.
- (h) Multiple Dwelling shall mean any dwelling containing more than two dwelling units.
- (i) Occupant shall mean any person, ~~over one year of age,~~ living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.
- (j) Operator shall mean any person who has charge, care, owns, or has control of a premise or of a building or structure or part thereof, in which dwelling units or rooming units are let.
- (k) Owner shall mean any person, firm, or corporation, who jointly or severally along with others, shall be in actual possession of, or have charge, care and control of any structure or dwelling unit or premises within the city as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder, and such person shall be deemed and taken to be the owner or owner of such property within the true intent and meaning of this code and shall be bound to comply with the provisions of this article to the same extent as the record owner and notice to any such person shall be deemed and taken to be a good and sufficient notice as if such person or persons were actually the record owner or owner of such property.
- (l) Person shall mean and include any individual, firm, corporation, association or partnership.
- (m) Plumbing shall mean and include all of the following supplied facilities and equipment: gas or fuel burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer, gas or fuel lines.
- (n) Premise shall mean any lot or land area, either residential or non-residential, not covered by a structure and which is subject to a city tax in part or in whole.
- (o) Public Officer shall mean the ~~e~~Code ~~e~~Enforcement Officer or his/her designee official(s).
- (p) Rooming House shall mean any dwelling, or that part of a dwelling containing one or more rooming units in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father, or sister or brother of the owner or operator.
- (q) Rooming Unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.
- (r) Refuse. For the purpose of this article refuse shall include garbage, and trash.

- (1) Garbage shall mean any accumulation of animal, fruit or vegetable waste matter that attends the preparation of, use of, cooking of, delivering of, or storage of meats, fish, fowl, fruit or vegetable.
- (2) Trash (Combustible). For the purpose of this article combustible trash shall mean waste consisting of papers, cartons, boxes, barrels, wood and excelsior, tree branches, yard trimmings, wood furniture, bedding and leaves, or any other combustible materials.
- (3) Trash (Non-Combustible) For the purpose of this article non-combustible trash shall mean waste consisting of metals, tin cans, glass, crockery, other mineral refuse and ashes and street rubbish and sweepings, dirt, sand, concrete scrap, or any other non-combustible material.
- (s) Structure shall mean anything constructed or erected on the ground or attached to something having a location on the ground.
- (t) Supplied shall mean paid for, furnished, or provided by or under the control of, the owner or operator.
- (u) Temporary Housing shall mean any tent, trailer, recreational vehicle or other temporary or mobile structure used for human shelter which is designed to be transportable and which is not attached to the ground, house or building or another structure, or to any utilities system on the same premises for more than 30 consecutive days, except when located in a mobile home court duly licensed under laws of the city.
- (v) Words – Meanings. Whenever the words “dwelling,” “dwelling unit,” “rooming house,” “rooming unit,” “premises,” are used in this ordinance, they shall be construed as though they were followed by the words “or any part thereof.” (Ord. 2112, 2022; Code 1995)

8-705. DUTY OF OCCUPANT OR OWNER OR OCCUPIED OR UNOCCUPIED BUILDING AND ITS PREMISES OR VACANT PREMISES.

- (a) It shall be the duty of the owner of every occupied or unoccupied dwelling, building and premises or vacant premise, including all yards, lawns and courts to keep such property clean and free from any accumulation of filth, rubbish, garbage, or any similar matter as covered by sections 8-708 and ~~5098-709~~.
- (b) It shall be the duty of each occupant of a dwelling unit to keep in clean condition the portion of the property which he or she occupies and of which he or she has exclusive control, to comply with the rules and regulations, to place all garbage and refuse in proper containers. Where care of the premise is not the responsibility of the occupant then the owner is responsible for violations of this code applicable to the premises.
- (c) If receptacles are not provided by the owner, then the occupant shall provide receptacles as may be necessary to contain all garbage and trash.
- (d) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for

such extermination whenever his or her dwelling unit is the unit primarily infested.

- (e) Notwithstanding, the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a vermin proof or reasonable insect-proof condition, extermination shall be the responsibility of the owner and operator.
- (f) Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner. (Ord. 2112, 2022; Code 1995)

8-706. REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS. No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements. The following requirements are hereby declared essential to the health and safety of the occupants of such dwelling or dwelling unit:

- (a) Attached Garages or Non-dwelling Areas. All non-dwelling ~~dwelling structures~~ and garages ~~which~~ are covered by a common or connecting roof, ~~must have a then the ceiling also must have ceiling with~~ a fire resistance rating of not less than one hour as defined in the building code.
- (b) Basement or Cellar. The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation.
- (c) Basement Dwelling Units. The use of basements or cellars for dwelling units is prohibited unless they comply with ~~s~~Section 8-706(r) of this Article governing ventilation, provided however, if occupied at the time of the passage of this code and if it complies with all other provisions of this code, the public officer may approve less than the required windows, if in his or her opinion, the window area is not detrimental to the occupants.
- (d) Bathing Facilities. Every dwelling unit shall contain within a room which affords privacy to a person in the room, a bathtub or shower in good working condition and properly connected to an approved water and sewer system.
- (e) Boarding and Rooming Houses. No room shall be used for sleeping purposes unless the ceiling height is at least seven feet and there are at least 400 cubic feet of air space for each occupant over six years of age. For sleeping rooms with sloping ceilings, the ceiling height shall be at least seven feet over at least 50 percent of the floor area.
 - (1) Bathing facilities shall be provided in the form of a tub or shower for each eight occupants. Separate facilities shall be provided for sex and plainly marked.
 - (2) A flush ~~water-closet-toilet~~ shall be provided for each six occupants and shall be separated with the separate access from bathing facilities if more

- than four occupants are served by each. Separate facilities shall be provided for each sex and shall be plainly marked.
- (f) Drainage. All courts, yards or other areas on the premises of any dwelling shall be so graded and drained that there is no pooling of the water thereon. Properly constructed wading and swimming pools and ~~fish ponds~~fishponds are excepted from this section.
- (g) Entrances.
- (1) There shall be for each dwelling unit a normally used separate access either to a hallway, stair way, or street, which is safe and in good repair. Each entrance area must have a landing area that meets building code standards.
- (2) A secondary exit to the ground shall be available in the case of fire through windows, porch roofs, ladders or any combination that is free of hazard or egress.
- (h) Floor Area. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area, inside measurements. No floor space shall be included in determining habitable room area over which the ceiling is less than seven feet above the floor for the purpose of this subsection.
- (i) Garbage and Trash Receptacles. Every dwelling and every dwelling unit shall be provided with such receptacles, not exceeding 32 gallon capacity, as may be necessary to contain all garbage and trash and such receptacles shall at all times be maintained in good repair.
- (j) Heating. Every dwelling and every dwelling unit shall be so constructed, insulated, and maintained and be provided by owner or occupant with heating units so that it is capable of reaching an air temperature of 70 degrees Fahrenheit under ordinary winter conditions. The chimney of the dwelling or dwelling unit shall be maintained in good order, and the owner of the approved heating equipment shall maintain it in good order and repair.
- (k) Kitchen Sink. In every dwelling unit containing two or more rooms, there shall be at least one kitchen sink with public water under pressure and connected to the public sewer, or if that sewer system is not available, to a sewage disposal system approved by the city health department.
- (l) Lavatory Facilities. Every dwelling unit shall contain within its walls a lavatory basin in good working condition and properly connected to an approved water and sewer system and located in the same room as the required flush water closet or as near to the room as practicable.
- (m) Lighting. Every habitable room shall have a ceiling electric outlet and a duplex outlet in wall or floor, or at least two wall or floor outlets.
- (n) Lighting of Toilets and Bathrooms. Every toilet and every bathroom in every dwelling shall have at least one electric light in either the ceiling or on the wall.

- (o) Plumbing. All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good work order.
- (p) Privies. All pit privies, privy vaults, "dry hopper" sewer-connected privies and frost-proof closets are hereby declared to be a public nuisance.
- (q) Toilet Facilities. There shall be at least one flush ~~water closet~~ toilet in good working condition for each dwelling unit; ~~which flush water closet shall be~~ located within the dwelling and in a room which affords privacy.
- (r) Ventilation. Every habitable room in a dwelling or dwelling unit shall contain a window or windows openable directly to the outside air and the total area of such window or windows shall be not less than five percent of the floor area of such room. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall be capable of providing not less than four air changes per hour, except that in toilet compartments such system shall provide a complete air change every five minutes and be automatically put in operation when the toilet compartment light is in the "on" position.
- (s) Water Heating Facilities. Every dwelling shall have supplied water heating facilities which are installed in an approved manner and are maintained and operated in a safe and good working condition and are properly connected with the hot water lines to the kitchen sink, lavatory and bathtub or shower.
- (t) Windows and Doors. Every window and exterior door shall be reasonably weather-tight, lockable, and rodent-proof and shall be kept in good working condition and good repair. (Ord. 2112, 2022; Code 1995)

8-707. MAINTENANCE AND REPAIR; DWELLINGS. Every dwelling and every part thereof shall be maintained in good repair by the owner or agent and be fit for human habitation. The roof shall be maintained so as not to leak and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, ~~decks, door landings,~~ porches, windows, skylights, chimneys, toilets, sinks, walls, and ceilings shall be kept in good repair and usable condition. (Ord. 2112, 2022; Code 1995)

8-708. DESIGNATION TO UNFIT DWELLINGS. The designation of dwellings or dwelling units as unfit for human habitation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the following requirements:

- (a) The Public Officer may determine, or five citizens may petition in writing, that any dwelling unit is unfit for human use or habitation if ~~he, she or~~ they find that conditions exist in such structure which are dangerous or injurious to the health, safety or morals ~~if of~~ the occupants of such buildings or other residents of the neighborhood, or which will have a blighting influence on properties in the area.
- (b) Such Conditions may include the following without limitation:
 - (1) Defects therein increasing the hazards of fire, accident, or other calamities.
 - (2) Lack of:

- i. Adequate ventilation.
 - ii. Light.
 - iii. Cleanliness.
 - iv. Sanitary facilities.
- (3) Dilapidation.
- (4) Disrepair.
- (5) Structural defects.
- (6) Overcrowding.
- (7) Inadequate ingress and egress.
- (8) Unsightly appearance that constitute a blight to the adjoining property, the neighborhood or the city.
- (9) Air Pollution.
- (c) Placarding – Order to Vacate. Any dwelling or dwelling unit ~~condemned~~ deemed as unfit for human habitation, and so designated and placarded by the Public Officer ~~public officer~~ shall be vacated within a reasonable time as so ordered.
- (d) ~~Notice-Order~~ of Violation. Procedures as outlined in section 8-712 are applicable hereto.
- (e) Compliance ~~Required~~ before ~~Reoccupancy~~ reoccupying. No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by the ~~pPublic eOfficer~~.
- (1) The ~~pPublic eOfficer~~ shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.
- (2) It shall be unlawful for anyone to let, lease, occupy or permit the occupancy, whether for a consideration or not, of any dwelling so posted and any violation of this provision shall constitute a public offense within the meaning of this code.
- (3) It shall be unlawful for any person to deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except the ~~pPublic eOfficer~~ as herein provided, and any violation of this provision shall constitute a public offense within the meaning of this code. (Ord. 2112, 2022; Code 1995)

8-709. DESIGNATION OF BLIGHTED PREMISES (RESIDENTIAL AND NON-RESIDENTIAL). The designation of unsightly and blighted premises and elimination thereof shall be carried out in compliance with the following requirements.

- (a) The Public Officer may determine, or five citizens may petition in writing, that if the appearance of a premise is not commensurate with the character of the properties in the neighborhood or otherwise constitutes a blight to the adjoining property or the neighborhood or the city for such reasons as, but not limited to:

- (1) Dead trees or other unsightly natural growth.
- (2) Unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation, inadequate drainage.
- (3) Violation of any other law or regulations relating to the use of land and the use of occupancy of the buildings and improvements.
- (4) Absence of grass, suitable ground cover or other erosion control measure in nonpaved areas for more than fourteen days.

(b) Notice of Violation. Procedures as outlined in section 8-712 are applicable hereto. (Ord. 2112, 2022; Code 1995)

8-710. DESIGNATION OF BLIGHTED BUILDINGS AND PREMISES (NON-RESIDENTIAL).

- (a) Certain Blighted Conditions covered in sections 8-708: and 8-709509 concerning buildings and premises which are on the tax roll of the city are applicable to all non-residential buildings and premises.
- (b) Notice Order of Violation. Procedures of notification shall follow those prescribed in section 8-712. (Ord. 2112, 2022; Code 1995)

8-711. COMPLAINTS; INQUIRY AND INSPECTION OF BUILDINGS AND STRUCTURES, AND PREMISES.

- (a) For the Purpose of Determining Compliance with the provisions of this code, the ~~p~~Public ~~e~~Officer or his or her authorized representative is hereby authorized to make inspections to determine the condition, use, and occupancy of dwellings, dwelling units, rooming units, and the premises upon which the same are located. This requirement is applicable to existing dwellings or buildings.
- (b) The Public Officer is not limited by the conditions in the above paragraph (a) where new construction or vacant premises are involved and may make such inspections at any appropriate time.
- (c) The Owner, Operator, and Occupant of every dwelling, dwelling unit, and rooming unit shall give the public officer, or his or her authorized representative, during reasonable hours, free access to such dwelling, dwelling unit, and rooming unit, and its premises, for the purpose of such inspection, examination and survey after identification by proper credentials.
- (d) Every Occupant of a dwelling shall give the owner thereof, or his or her authorized agent or employee, access to any part of such dwelling, or its premises, at all reasonable times, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this code or with any rule or regulation adopted and promulgated, or any order issued pursuant to the provisions of this code. (Code 1995; Ord. 2112, 2022)

8-712. ~~NOTICE OF VIOLATIONS; PROCEDURES.—(a) Informal Discussion: Whenever the public officer or his or her authorized representative determines that there has been a violation of any provision of this code, the public officer will arrange with the alleged~~

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violator for an informal discussion of violations, and whether repair and correction is justified.

~~(b) Formal Hearing. If a satisfactory solution to the violations, either by correction, demolition or removal, is not forthcoming, then a legal notice of a formal hearing will be issued according to the following procedures; (1) Shall be in writing~~

~~(2) Shall list the violations alleged to exist or to have been committed.~~

~~(3) Shall provide a reasonable time, but not less than 30 days in any event for the correction of the violations particularized.~~

~~(4) Shall be addressed to and served upon the owner of the property, the operator of the dwelling, and the occupant of the dwelling unit or the rooming unit concerned, if the occupant is or may be responsible for violation.~~

~~(5) If one or more persons whom the notice is addressed cannot be found or served after diligent effort to do so, service may be made upon such person or persons by posting a notice in a conspicuous place in or about the dwelling affected by the notice, in which event the public officer or his or her authorized representative shall include in the record a statement as to why such posting was necessary.~~

~~(6) Delivery shall be personal service or by registered or certified mail, return receipt requested, delivered to addressee only. If service is made by registered or certified mail, the public officer or his or her authorized representative shall include in the record a verified statement giving details regarding the mailing. (Code 1995)~~

~~-ORDER OF VIOLATION.~~

~~(a) The governing body or its designee, as hereinafter named, shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of Section 8-708 and/or 8-709 an order stating the violation. 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 by mailing the order by certified mail, return receipt requested, to the last known address of the owner.~~

~~(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.~~

~~(c) The Public Officer is hereby designated by the governing for the purposes of issuing the order required herein. Such order shall be issued by the Public Officer upon the filing of a written statement of a violation of this Article. The order shall be issued in the name of the governing body; shall be served as required in this Article; and shall, contain all notices and other information as required by this Article and K.S.A. 12-16173, and amendments thereto. (Ord. 2112, 2021; Code 1995)~~

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8-713. SAME; CONTENTS. The order shall state the condition(s) which is (are) in violation of Section 8-708 and/or 8-709. The notice shall also inform the person, corporation, partnership or association that:

- (a) He, she or they shall have 30 days from the date of serving the order to abate the condition(s) in violation of Section 8-708 and/or 8-709; 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 8-714;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 8-715 and/or abatement of the condition(s) by the city as provided by Section 8-716. (Ord. 2112, 2021; Code 1995)

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~~8-713.~~ 8-713.a PUBLIC OFFICER: AUTHORITY. For the purpose of protecting the city against unsightly or blighted premises, also the health, welfare, and safety of the inhabitants of dwellings or dwelling units, the public officer referred heretofore is hereby authorized, with the consent and prior knowledge of the governing body, to enforce provisions of this code and of other laws which regulate or set standards affecting buildings and premises. (Ord. 2112, 2021; Code 1995)

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~~8-714. GOVERNING BODY; AUTHORITY. The governing body is hereby authorized:~~

- ~~(a) To Informally Review all alleged violations as provided in section 8-712(a) prior to notification prescribed in section 8-712(b).~~
- ~~(b) To Take Action as prescribed in section 8-712(b).~~
- ~~(c) To Hear Appeals where there is opposition to any order, requirements, decision or determination by the public officer in enforcement of this code as outlined in section 8-718.~~
- ~~(d) Discretionary Authority may be exercised in specific cases where variance from the terms of the code as:~~
 - ~~(1) Will not adversely affect the public health, safety or welfare of inhabitants of the city.~~
 - ~~(2) Is in harmony with the spirit of this code.~~
 - ~~(3) Where literal enforcement of the code will result in unnecessary hardship.~~

~~(Code 1995)~~

8-714. -HEARING. If a hearing is requested within the 10 day period as provided in Section 8-712, 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 manner provided in Section 8-715. (Ord. 2112, 2021; Code 1995)

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~~8-714. ORDER TO CORRECT AND/OR REPAIR, REMOVE OR DEMOLISH. At the time of the placarding and order to vacate specified by section 8-708 (c) hereof, the public officer shall also issue and cause to be served upon the owner a notice advising of the options of removal or demolition in lieu of correction and/or repair following the procedures as outlined in section 8-712. (Code 1995)~~

~~8-715. DEMOLITION BY PUBLIC OFFICER; PROCEDURE AND COSTS:~~

- ~~(a) Failure to Comply with the order under section 8-715 hereof for the alteration or improvement of such structure, the public officer, with the consent and prior knowledge of the governing body, may cause such condemned structure to be removed or demolished and the premises improved to eliminate the conditions outlined in section 8-709 of the code.~~
- ~~(b) The Cost of Demolition by a Public Officer shall be a lien upon the property upon which the cost was incurred and such lien, including as a part thereof an allowance of his or her costs and necessary attorney's fees, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property or shall be assessed as a special assessment upon 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 aforesaid costs and the county clerk shall extend the same on the tax rolls against the lot or parcel of land.~~
- ~~(c) If the Structure is Removed or Demolished by the Public Officer he or she shall offer for bids and sell the structure or the materials of such structure. The proceeds of such sale shall be credited against the cost of the removal or demolition and, if there is any balance remaining, it shall be paid to the parties entitled thereto after deduction of costs or judicial proceedings, if any, including the necessary attorney's fees incurred therein, as determined by the court, if involved. (Code 1995)~~

8-715. 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 public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association. Upon such complaint in the municipal court, any person found to be in violation of Section 8-708 and/or 8-709, shall, upon conviction, be punished by a fine of not less than \$50.00 or more than \$100.00, or by imprisonment for not more than 30 days, or by both such fine and imprisonment for each offense. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. (Ord. 2112, 2021; Code 1995)

8-716. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 8-715, the public officer may seek to remedy violations of this Article in the

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following manner. If a person to whom an order has been served pursuant to Section 8-712 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 8-713, 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 8-717. 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) Certified mail, 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.
- (d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. (Ord. 2112, 2021; Code 1995)

8-717. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-716, the city shall give notice to the owner or his or her 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. 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. (Ord. 2112, 2021; Code 1995)

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~~8-718. 8-717.~~ CONFLICT OF LAWS; EFFECT OR PARTIAL INVALIDITY.

- (a) Conflicts between the provisions of this code and with a provision of any zoning, building, fire, safety, or health ordinance or code of the city, existing on the effective date of this article, the provision shall prevail which establishes the higher standard.
- (b) Conflicts between this article with a provision of any other ordinance or code of the city existing on the effective date of this article which establishes a lower standard, the provisions of this article shall be deemed to prevail and such other laws or codes are hereby declared to be repealed to the extent that they may be found in conflict with this code. (Code 1995)

~~8-718. GOVERNING BODY; APPEALS. (a) Any person, firm, or corporation considering themselves aggrieved by the decision of the public officer and who desires to present a formal protest to the governing body shall in writing, request a hearing before the governing body within 10 days after receiving notice of the decision of the public officer, as provided in section 8-712(b). Such protest and request for a hearing shall be filed with the office of the city clerk.~~
~~(b) Upon receipt of a protest and request for a hearing, the city clerk shall notify in writing the governing body of such appeal.~~
~~(c) The governing body shall, within 30 days of receipt of protest and request for a hearing, determine a date for the hearing.~~
~~(d) Notice of the date for the hearing shall be sent to the appellant at least 10 days before the hearing.~~
~~(e) Except where an immediate hazard exists as described in section 8-612 of this code, the filing of a protest and request for a hearing before the governing body as specified in subsection (a) shall operate as a stay of the enforcement of the public officer's order until such time as the governing body has reached a decision on the matter. (Code 1995)~~

8-719. RIGHT OF PETITION. After exhausting the remedy provided in section 8-~~718~~715, any person aggrieved by an order issued by the public officer and approved by the governing body after a hearing on the matter, may within 30 days from the date which the order became final petition the district court of the county in which the property is located to restrain the public officer from carrying out the provisions of the order. (Ord. 2112, 2021; Code 1995)

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ORDINANCE NO. 2112

AN ORDINANCE AMENDING CHAPTER VIII, ARTICLE 7 OF THE CITY CODE OF THE CITY OF EDGERTON, KANSAS AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH.

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

SECTION 1. Chapter VIII, Article 7 of the City Code of the City of Edgerton, Kansas, is hereby amended to read as follows:

ARTICLE 7. MINIMUM HOUSING CODE

8-701. TITLE. This article shall be known as the "Minimum Standard for Housing and Premises Code," and will be referred to herein as "this code." (Code 1995)

8-702. GENERAL. Buildings used in whole or in part as a home or residence of a single family or person and every building used in whole or in part as a home or residence of two or more persons or families living in separate apartments and all premises, either residential or non-residential, shall conform to the requirements of this code. (Code 1995)

8-703. DECLARATION OF POLICY. The governing body declares the purpose of this code is to protect, preserve, and promote the physical and mental health of the people, including the general appearance of privately and publicly-owned structures or dwellings, and all other premises for the purpose of sanitation and public health:

- (a) Establishes minimum standards for basic equipment and facilities for light, ventilation and heating, for safety from fire, for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance;
- (b) Establishes standards concerning unsightly and blighted buildings and premises, both residential and non-residential structures.
- (c) Determines the responsibilities of owners, operators and occupants.
- (d) Provides for the administration and enforcement thereof.

(Ord. 2112, 2022; Code 1995)

8-704. DEFINITIONS. The following definitions shall apply to the enforcement of this code:

- (a) Basement shall mean a portion of a building located partly underground but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground.
- (b) Cellar shall mean a portion of a building located partly or wholly underground and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

- (c) Dwelling shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants; provided, that temporary housing hereinafter defined shall not be regarded as a dwelling.
- (d) Dwelling Unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or intended to be used for living, sleeping, cooking and eating.
- (e) Habitable Dwelling shall mean any structure or part thereof that shall be used as a home or place of abode by one or more persons.
- (f) Habitable Room shall mean a room designed to be used for living, sleeping, eating or cooking purposes, excluding bathrooms, toilet rooms, closets, hall and storage places, or other similar places, not used by persons for extended periods.
- (g) Infestation shall mean the presence, within or around a dwelling, of insects, rodents, or other pests.
- (h) Multiple Dwelling shall mean any dwelling containing more than two dwelling units.
- (i) Occupant shall mean any person, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.
- (j) Operator shall mean any person who has charge, care, owns, or has control of a premise or of a building or structure or part thereof, in which dwelling units or rooming units are let.
- (k) Owner shall mean any person, firm, or corporation, who jointly or severally along with others, shall be in actual possession of, or have charge, care and control of any structure or dwelling unit or premises within the city as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder, and such person shall be deemed and taken to be the owner or owner of such property within the true intent and meaning of this code and shall be bound to comply with the provisions of this article to the same extent as the record owner and notice to any such person shall be deemed and taken to be a good and sufficient notice as if such person or persons were actually the record owner or owner of such property.
- (l) Person shall mean and include any individual, firm, corporation, association or partnership.
- (m) Plumbing shall mean and include all of the following supplied facilities and equipment: gas or fuel burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer, gas or fuel lines.
- (n) Premise shall mean any lot or land area, either residential or non-residential, not covered by a structure and which is subject to a city tax in part or in whole.
- (o) Public Officer shall mean the Code Enforcement Officer or his/her designee (s).
- (p) Rooming House shall mean any dwelling, or that part of a dwelling containing one or more rooming units in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father, or sister or brother of the owner or operator.

- (q) Rooming Unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.
- (r) Refuse. For the purpose of this article refuse shall include garbage, and trash.
 - (1) Garbage shall mean any accumulation of animal, fruit or vegetable waste matter that attends the preparation of, use of, cooking of, delivering of, or storage of meats, fish, fowl, fruit or vegetable.
 - (2) Trash (Combustible). For the purpose of this article combustible trash shall mean waste consisting of papers, cartons, boxes, barrels, wood and excelsior, tree branches, yard trimmings, wood furniture, bedding and leaves, or any other combustible materials.
 - (3) Trash (Non-Combustible) For the purpose of this article non-combustible trash shall mean waste consisting of metals, tin cans, glass, crockery, other mineral refuse and ashes and street rubbish and sweepings, dirt, sand, concrete scrap, or any other non-combustible material.
- (s) Structure shall mean anything constructed or erected on the ground or attached to something having a location on the ground.
- (t) Supplied shall mean paid for, furnished, or provided by or under the control of, the owner or operator.
- (u) Temporary Housing shall mean any tent, trailer, recreational vehicle or other temporary or mobile structure used for human shelter which is designed to be transportable and which is not attached to the ground, house or building or another structure, or to any utilities system on the same premises for more than 30 consecutive days, except when located in a mobile home court duly licensed under laws of the city.
- (v) Words – Meanings. Whenever the words “dwelling,” “dwelling unit,” “rooming house,” “rooming unit,” “premises,” are used in this ordinance, they shall be construed as though they were followed by the words “or any part thereof.” (Ord. 2112, 2022; Code 1995)

8-705. DUTY OF OCCUPANT OR OWNER OR OCCUPIED OR UNOCCUPIED BUILDING AND ITS PREMISES OR VACANT PREMISES.

- (a) It shall be the duty of the owner of every occupied or unoccupied dwelling, building and premises or vacant premise, including all yards, lawns and courts to keep such property clean and free from any accumulation of filth, rubbish, garbage, or any similar matter as covered by sections 8-708 and 8-709).
- (b) It shall be the duty of each occupant of a dwelling unit to keep in clean condition the portion of the property which he or she occupies and of which he or she has exclusive control, to comply with the rules and regulations, to place all garbage and refuse in proper containers. Where care of the premise is not the responsibility of the occupant then the owner is responsible for violations of this code applicable to the premises.
- (c) If receptacles are not provided by the owner, then the occupant shall provide receptacles as may be necessary to contain all garbage and trash.

- (d) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his or her dwelling unit is the unit primarily infested.
- (e) Notwithstanding, the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a vermin proof or reasonable insect-proof condition, extermination shall be the responsibility of the owner and operator.
- (f) Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner. (Ord. 2112, 2022; Code 1995)

8-706. REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS. No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements. The following requirements are hereby declared essential to the health and safety of the occupants of such dwelling or dwelling unit:

- (a) Attached Garages or Non-dwelling Areas. All non-dwelling structures and garages which are covered by a common or connecting roof, must have a ceiling with a fire resistance rating of not less than one hour as defined in the building code.
- (b) Basement or Cellar. The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation.
- (c) Basement Dwelling Units. The use of basements or cellars for dwelling units is prohibited unless they comply with Section 8-706(r) of this Article governing ventilation, provided however, if occupied at the time of the passage of this code and if it complies with all other provisions of this code, the public officer may approve less than the required windows, if in his or her opinion, the window area is not detrimental to the occupants.
- (d) Bathing Facilities. Every dwelling unit shall contain within a room which affords privacy to a person in the room, a bathtub or shower in good working condition and properly connected to an approved water and sewer system.
- (e) Boarding and Rooming Houses. No room shall be used for sleeping purposes unless the ceiling height is at least seven feet and there are at least 400 cubic feet of air space for each occupant over six years of age. For sleeping rooms with sloping ceilings, the ceiling height shall be at least seven feet over at least 50 percent of the floor area.
 - (1) Bathing facilities shall be provided in the form of a tub or shower for each eight occupants. Separate facilities shall be provided for sex and plainly marked.

- (2) A flush toilet shall be provided for each six occupants and shall be separated with the separate access from bathing facilities if more than four occupants are served by each. Separate facilities shall be provided for each sex and shall be plainly marked.
- (f) Drainage. All courts, yards or other areas on the premises of any dwelling shall be so graded and drained that there is no pooling of the water thereon. Properly constructed wading and swimming pools and fishponds are excepted from this section.
- (g) Entrances.
 - (1) There shall be for each dwelling unit a normally used separate access either to a hallway, stair way, or street, which is safe and in good repair. Each entrance area must have a landing area that meets building code standards.
 - (2) A secondary exit to the ground shall be available in the case of fire through windows, porch roofs, ladders or any combination that is free of hazard or egress.
- (h) Floor Area. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area, inside measurements. No floor space shall be included in determining habitable room area over which the ceiling is less than seven feet above the floor for the purpose of this subsection.
- (i) Garbage and Trash Receptacles. Every dwelling and every dwelling unit shall be provided with such receptacles, not exceeding 32 gallon capacity, as may be necessary to contain all garbage and trash and such receptacles shall at all times be maintained in good repair.
- (j) Heating. Every dwelling and every dwelling unit shall be so constructed, insulated, and maintained and be provided by owner or occupant with heating units so that it is capable of reaching an air temperature of 70 degrees Fahrenheit under ordinary winter conditions. The chimney of the dwelling or dwelling unit shall be maintained in good order, and the owner of the approved heating equipment shall maintain it in good order and repair.
- (k) Kitchen Sink. In every dwelling unit containing two or more rooms, there shall be at least one kitchen sink with public water under pressure and connected to the public sewer, or if that sewer system is not available, to a sewage disposal system approved by the city health department.
- (l) Lavatory Facilities. Every dwelling unit shall contain within its walls a lavatory basin in good working condition and properly connected to an approved water and sewer system and located in the same room as the required flush water closet or as near to the room as practicable.
- (m) Lighting. Every habitable room shall have a ceiling electric outlet and a duplex outlet in wall or floor, or at least two wall or floor outlets.

- (n) Lighting of Toilets and Bathrooms. Every toilet and every bathroom in every dwelling shall have at least one electric light in either the ceiling or on the wall.
- (o) Plumbing. All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good work order.
- (p) Privies. All pit privies, privy vaults, "dry hopper" sewer-connected privies and frost-proof closets are hereby declared to be a public nuisance.
- (q) Toilet Facilities. There shall be at least one flush toilet in good working condition for each dwelling unit located within the dwelling and in a room which affords privacy.
- (r) Ventilation. Every habitable room in a dwelling or dwelling unit shall contain a window or windows openable directly to the outside air and the total area of such window or windows shall be not less than five percent of the floor area of such room. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall be capable of providing not less than four air changes per hour, except that in toilet compartments such system shall provide a complete air change every five minutes and be automatically put in operation when the toilet compartment light is in the "on" position.
- (s) Water Heating Facilities. Every dwelling shall have supplied water heating facilities which are installed in an approved manner and are maintained and operated in a safe and good working condition and are properly connected with the hot water lines to the kitchen sink, lavatory and bathtub or shower.
- (t) Windows and Doors. Every window and exterior door shall be reasonably weather-tight, lockable, and rodent-proof and shall be kept in good working condition and good repair. (Ord. 2112, 2022; Code 1995)

8-707. MAINTENANCE AND REPAIR; DWELLINGS. Every dwelling and every part thereof shall be maintained in good repair by the owner or agent and be fit for human habitation. The roof shall be maintained so as not to leak and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, decks, door landings, porches, windows, skylights, chimneys, toilets, sinks, walls, and ceilings shall be kept in good repair and usable condition. (Ord. 2112, 2022; Code 1995)

8-708. DESIGNATION TO UNFIT DWELLINGS. The designation of dwellings or dwelling units as unfit for human habitation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the following requirements:

- (a) The Public Officer may determine, or five citizens may petition in writing, that any dwelling unit is unfit for human use or habitation if they find that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the neighborhood, or which will have a blighting influence on properties in the area.
- (b) Such Conditions may include the following without limitation:

- (1) Defects therein increasing the hazards of fire, accident, or other calamities.
- (2) Lack of:
 - i. Adequate ventilation.
 - ii. Light.
 - iii. Cleanliness.
 - iv. Sanitary facilities.
- (3) Dilapidation.
- (4) Disrepair.
- (5) Structural defects.
- (6) Overcrowding.
- (7) Inadequate ingress and egress.
- (8) Unsightly appearance that constitute a blight to the adjoining property, the neighborhood or the city.
- (9) Air Pollution.
- (c) Placarding – Order to Vacate. Any dwelling or dwelling unit deemed as unfit for human habitation, and so designated and placarded by the Public Officer shall be vacated within a reasonable time as so ordered.
- (d) Order of Violation. Procedures as outlined in section 8-712 are applicable hereto.
- (e) Compliance required before reoccupying. No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by the Public Officer.
 - (1) The Public Officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.
 - (2) It shall be unlawful for anyone to let, lease, occupy or permit the occupancy, whether for a consideration or not, of any dwelling so posted and any violation of this provision shall constitute a public offense within the meaning of this code.
 - (3) It shall be unlawful for any person to deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except the Public Officer as herein provided, and any violation of this provision shall constitute a public offense within the meaning of this code. (Ord. 2112, 2022; Code 1995)

8-709. DESIGNATION OF BLIGHTED PREMISES (RESIDENTIAL AND NON-RESIDENTIAL). The designation of unsightly and blighted premises and elimination thereof shall be carried out in compliance with the following requirements.

- (a) The Public Officer may determine, or five citizens may petition in writing, that if the appearance of a premise is not commensurate with the character of the properties in the neighborhood or otherwise constitutes a

blight to the adjoining property or the neighborhood or the city for such reasons as, but not limited to:

- (1) Dead trees or other unsightly natural growth.
 - (2) Unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation, inadequate drainage.
 - (3) Violation of any other law or regulations relating to the use of land and the use of occupancy of the buildings and improvements.
 - (4) Absence of grass, suitable ground cover or other erosion control measure in nonpaved areas for more than fourteen days.
- (b) Notice of Violation. Procedures as outlined in section 8-712 are applicable hereto. (Ord. 2112, 2022; Code 1995)

8-710. DESIGNATION OF BLIGHTED BUILDINGS AND PREMISES (NON-RESIDENTIAL).

- (a) Certain Blighted Conditions covered in sections 8-708 and 8-709 concerning buildings and premises which are on the tax roll of the city are applicable to all non-residential buildings and premises.
- (b) Order of Violation. Procedures of notification shall follow those prescribed in section 8-712. (Ord. 2112, 2022; Code 1995)

8-711. COMPLAINTS; INQUIRY AND INSPECTION OF BUILDINGS AND STRUCTURES, AND PREMISES.

- (a) For the Purpose of Determining Compliance with the provisions of this code, the Public Officer or his or her authorized representative is hereby authorized to make inspections to determine the condition, use, and occupancy of dwellings, dwelling units, rooming units, and the premises upon which the same are located. This requirement is applicable to existing dwellings or buildings.
- (b) The Public Officer is not limited by the conditions in the above paragraph (a) where new construction or vacant premises are involved and may make such inspections at any appropriate time.
- (c) The Owner, Operator, and Occupant of every dwelling, dwelling unit, and rooming unit shall give the public officer, or his or her authorized representative, during reasonable hours, free access to such dwelling, dwelling unit, and rooming unit, and its premises, for the purpose of such inspection, examination and survey after identification by proper credentials.
- (d) Every Occupant of a dwelling shall give the owner thereof, or his or her authorized agent or employee, access to any part of such dwelling, or its premises, at all reasonable times, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this code or with any rule or regulation adopted and promulgated, or any order issued pursuant to the provisions of this code. (Code 1995; Ord. 2112, 2022)

8-712. ORDER OF VIOLATION.

(a) The governing body or its designee, as hereinafter named, shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of Section 8-708 and/or 8-709 an order stating the violation. 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 by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(c) The Public Officer is hereby designated by the governing for the purposes of issuing the order required herein. Such order shall be issued by the Public Officer upon the filing of a written statement of a violation of this Article. The order shall be issued in the name of the governing body; shall be served as required in this Article; and shall, contain all notices and other information as required by this Article and K.S.A. 12-16173, and amendments thereto. (Ord. 2112, 2021; Code 1995)

8-713. SAME; CONTENTS. The order shall state the condition(s) which is (are) in violation of Section 8-708 and/or 8-709. The notice shall also inform the person, corporation, partnership or association that:

- (a) He, she or they shall have 30 days from the date of serving the order to abate the condition(s) in violation of Section 8-708 and/or 8-709; 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 8-714;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 8-715 and/or abatement of the condition(s) by the city as provided by Section 8-716. (Ord. 2112, 2021; Code 1995)

8-713.a PUBLIC OFFICER: AUTHORITY. For the purpose of protecting the city against unsightly or blighted premises, also the health, welfare, and safety of the inhabitants of dwellings or dwelling units, the public officer referred heretofore is hereby authorized, with the consent and prior knowledge of the governing body, to enforce provisions of this code and of other laws which regulate or set standards affecting buildings and premises. (Ord. 2112, 2021; Code 1995)

8-714. HEARING. If a hearing is requested within the 10 day period as provided in Section 8-712, 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 manner provided in Section 8-715. (Ord. 2112, 2021; Code 1995)

8-715. **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 public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association. Upon such complaint in the municipal court, any person found to be in violation of Section 8-708 and/or 8-709, shall, upon conviction, be punished by a fine of not less than \$50.00 or more than \$100.00, or by imprisonment for not more than 30 days, or by both such fine and imprisonment for each offense. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. (Ord. 2112, 2021; Code 1995)

8-716. **ABATEMENT.** In addition to, or as an alternative to prosecution as provided in Section 8-715, the public officer may seek to remedy violations of this Article in the following manner. If a person to whom an order has been served pursuant to Section 8-712 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 8-713, 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 8-717. 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) Certified mail, 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.
- (d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from

such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. (Ord. 2112, 2021; Code 1995)

8-717. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-716, the city shall give notice to the owner or his or her 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. 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. (Ord. 2112, 2021; Code 1995)

8-718. CONFLICT OF LAWS; EFFECT OR PARTIAL INVALIDITY.

- (a) Conflicts between the provisions of this code and with a provision of any zoning, building, fire, safety, or health ordinance or code of the city, existing on the effective date of this article, the provision shall prevail which establishes the higher standard.
- (b) Conflicts between this article with a provision of any other ordinance or code of the city existing on the effective date of this article which establishes a lower standard, the provisions of this article shall be deemed to prevail and such other laws or codes are hereby declared to be repealed to the extent that they may be found in conflict with this code. (Code 1995)

8-719. RIGHT OF PETITION. After exhausting the remedy provided in section 8-715, any person aggrieved by an order issued by the public officer and approved by the governing body after a hearing on the matter, may within 30 days from the date which the order became final petition the district court of the county in which the property is located to restrain the public officer from carrying out the provisions of the order. (Ord. 2112, 2021; Code 1995)

SECTION 2. REPEAL OF CONFLICTING ORDINANCES. All ordinances or sections of ordinances in conflict herewith are hereby repealed.

SECTION 3. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage, approval and publication once in the City's official paper.

PASSED by the Council and APPROVED by the Mayor on this 28th day of July, 2022.

DONALD ROBERTS, Mayor

ATTEST:

CHRISTOPHER CLINTON, Deputy City Clerk

APPROVED AS TO FORM:

LEE W. HENDRICKS, City Attorney