ORDINANCE NO. 174

AN ORDINANCE ESTABLISHING A PROCEDURE FOR ABATEMENT OF NUISANCES; PROVIDING FOR NOTICE AND A HEARING; AUTHORIZING THE CITY TO ABATE SUCH NUISANCES AND ASSESS THE COSTS OF SUCH AGAINST THE PROPERTY UPON WHICH THE NUISANCE IS LOCATED UNDER CERTAIN CONDITIONS; PROVIDING FOR APPOINTMENT OF A PUBLIC OFFICER AND PRESCRIBING THE DUTIES OF SUCH OFFICER; PROVIDING PENALTIES FOR VIOLATION OF THIS ORDINANCE; AND REPEALING ORDINANCES NO. 10, 37, 128 and 139.

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

SECTION 1. PURPOSE

The purpose of this Ordinance is to protect, preserve, upgrade and regulate the environmental quality of residential, commercial and industrial neighborhoods of the City of Basehor by outlawing conditions which are injurious to the health, safety, welfare and aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof.

SECTION 2. DEFINITIONS

(a) Abandoned Motor Vehicle shall mean any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149, inclusive, as amended; or incapable of moving under its own power; or in a junked or wrecked condition.

(b) Dangerous or Hazardous Object shall mean glass, bottle glass, nails, tacks, wire, cans or other substance or object likely to injure any person, animal or vehicle.

(c) Dangerous or Hazardous Structure shall mean any structure which is unsafe because of design, or characterized by dilapidation, deterioration or disrepair, or which constitutes a fire hazard.

(d) Dilapidation, Deterioration or Disrepair shall mean any condition characterized by, but not limited to: holes, breaks, rot, decay, crumbling, cracking, peeling or flaking paint, rusting, or other evidence of physical damage, neglect, lack of

maintenance, excessive use or deterioration due to exposure to the elements.

(e) Inoperative Motor Vehicle shall mean any motor vehicle which for a period of ten (10) consecutive days is in a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed, or which is placed on jacks, blocks or other supports, or which is absent one or more parts necessary for the lawful operation of the vehicle upon any public roadway, or which is incapable of moving under its own power.

(f) Garbage shall mean without limitation any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage or use of foodstuffs.

(g) Governing Body shall mean the city council of the City of Basehor, Kansas.

(h) Person shall mean any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.

(i) Premises shall mean any lot, plot, piece or parcel of land including the structures, if any, thereon.

(j) Salvage Materials shall mean materials of some value that are obtained from the disassembly of various kinds of machinery and mechanical appliances and/or the demolition of buildings or similar structures, or machinery and mechanical appliances that are unable to perform the function or purpose for which they were originally constructed.

(k) Structure shall mean anything constructed or erected which requires location on the ground or is attached to something having a location on the ground including any appurtenances belonging thereto.

(1) Trash shall mean combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, lumber, packing materials, furniture, bedding, rags, straw, hay, leaves, yard trimmings or tree branches and non-combustible waste consisting of, but not limited to: metal, cans, glass, crockery, plastics, mineral matter, ashes, street rubbish and sweepings.

SECTION 3. PUBLIC OFFICER

The Governing Body shall designate a public officer to be charged with the administration and enforcement of this Ordinance.

SECTION 4. ENFORCEMENT STANDARDS

No person shall be found in violation of this Ordinance unless the public officer, after a reasonable inquiry and inspection of the premises, finds that conditions exist of a quality and appearance not commensurate with the character of the neighborhood. Such finding must be supported by evidence of a level of maintenance significantly below conditions existing in the rest of the neighborhood. Such evidence shall include conditions declared unlawful under Section 5 of this Ordinance, but shall not include conditions which are not readily visible or accessible from any public place or from any surrounding private property.

SECTION 5. UNLAWFUL ACT

It shall be unlawful and shall constitute a nuisance for any person to dump, throw, deposit or leave or cause to be dumped, thrown, deposited or left on any public premises, or for any owner, occupant, agent or other person in charge or possession of any private premises to dump, throw, deposit or leave or cause to be dumped, thrown, deposited or left on such private premises, any garbage, trash, salvage materials, dangerous or hazardous objects, dangerous or hazardous structures, abandoned motor vehicles or inoperative motor vehicles.

SECTION 6. ENFORCEMENT PROCEDURE

A. Inquiry and Inspection.

The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the Board of Health or fire department. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance as defined by Section 5. Upon making any inquiry and inspection the public officer shall make a written report of findings.

B. Right of Entry.

The public officer shall have the right of access and entry upon private property for the purpose of making inquiry and inspection to determine if a nuisance exists.

C. Notice.

Any person found by the public officer to be in violation of Section 5 shall be served a notice of such violation. The notice shall be served by certified mail, postage prepaid, return receipt requested.

D. Notice Contents.

The notice shall state the condition which constitutes a violation of Section 5. The notice shall also inform the person that: (1) such person shall have ten (10) days from the date of serving the notice to abate the condition in violation of Section 5; or (2) such person shall have ten (10) days from the date of serving the notice to request a hearing before the governing body as provided by Section 10; and (3) failure to abate the condition or to request a hearing within the time allowed by result in prosecution as provided by Section 7 and/or abatement of the condition by the City as provided by Section 8.

SECTION 7. PENALTY

Should the person fail to comply with the notice to abate the nuisance or to request a hearing within the time allowed the public officer may file a complaint in the municipal court of the City of Basehor against such person and upon conviction of any violation of Section 5 shall be fined in an amount not to exceed

One Hundred Dollars ($100.00) or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional and separate offense.

SECTION 8. ABATEMENT

In addition to, or as an alternative to, prosecution in accordance with Section 7, the public officer may seek to remedy violations of this Ordinance in the following manner. If a person to whom a notice has been sent pursuant to Section 6C has neither alleviated the condition causing the alleged violation nor requested a hearing before the Govering Body within the time period specified in Section 6D, 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 ten (10) days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the person in violation as provided by Section 11. A copy of the resolution shall be served upon the person in violation in one of the following ways: (1) personal service upon the person in violation; (2) service by certified mail, postage prepaid, return receipt requested; or (3) in the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

SECTION 9. STORAGE AND DISPOSAL OF PROPERTY

Whenever the public officer is authorized to abate a condition causing a violation, as provided in Section 8, the following procedures shall be observed:

(1) Items confiscated which have no practical value to the person in violation shall be disposed by the city;

(2) Items confiscated which might reasonably be of some value to the person in violation shall be placed in storage by the city. The person in violation shall be informed by certified mail, postage prepaid, return receipt requested, of the disposition or storage of any items confiscated. In the case of items stored, the person in violation shall be further informed that such items shall be stored for a period of thirty (30) days and further that those items may be claimed by the person upon payment to the city for expenses incurred, as provided in Section 11. If the items are not claimed within the thirty (30) day period, then the city may sell the items and deduct its expenses, returning the amount in excess of expenses, if any, to the person.

SECTION 10. HEARING BEFORE GOVERNING BODY

If a hearing is requested within the time allowed by Section 6D, 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 (5) days in advance thereof. At any such hearing, the person may be represented by counsel. 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 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 a copy thereof upon the person in the manner provided in Section 8.

SECTION 11. EXPENSES

All costs and expenses incurred by the city in carrying out the provisions of Sections 8, 9 and 10, may be charged to the person in violation and, in addition, if the person in violation is also the record owner of the property on which the violation

exists, the expenses may be assessed against the person in violation in the manner provided in K.S.A. 12-6a17.

SECTION 12. CONSTRUCTION

Nothing in this Ordinance shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this Ordinance shall be in addition to and supplement to the powers conferred by the Kansas Constitution, by any other law or by Ordinance.

Passed by the Governing Body of the City of Basehor, Kansas this 1st day of November, 1983.

Approved by the Mayor of the City of Basehor, Kansas this 1st day of November, 1983.

Forrest L. Tuter
FORREST TUTER, Mayor

SUSAN E. GUY NOTARY PUBLIC STATE OF KANSAS

ATTEST:

Susan E. Guy
City Clerk