

ORDINANCE NO. 387

AN ORDINANCE AMENDING ORDINANCE #353 BY ADDING THE NEW PROVISIONS OF **Article 6: OVERHANGING, DANGEROUS, OR DEAD TREE NUISANCES.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERBROOK, KANSAS ARTICLE 6 SHALL NOW READ:

Section 1: OVERHANGING, DANGEROUS, OR DEAD TREE NUISANCE: It shall be unlawful for any persons to maintain or permit any nuisance within the city as defined, without limitation, as follows

- (a) The person, corporation, partnership, or association occupying or having charge or control of any premises with any tree over hanging any street or any right of way within the City, shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection. There shall be a clear space of 12 feet above the surface of the street or right of way.
- (b) The person, corporation, partnership, or association occupying or having charge or control of any premise shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a danger to health, public safety or welfare.
- (c) The city shall have the right to immediately prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, or interferes with the visibility of any traffic control device or sign.
- (d) All trees defined above are hereby declared a nuisance and subject to abatement as provided below.

Section 2: PUBLIC OFFICER: The governing body shall designate a public officer to be charged with the administration and enforcement of this ordinance.

Section 3: COMPLAINTS; 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, chief of police, or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings.

Section 4: RIGHT OF ENTRY. The public officer has the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

Section 5: ORDER OF VIOLATION.

- (a) The governing body shall serve upon the owner, any agent of the owner of the property, or any other persons, corporation, partnership or association found by the public officer to be in violation of Section 2 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 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. (K.S.A. 12-1617e)

Section 6: SAME; CONTENTS. The order shall state the condition(s) which is (are) in violation of section 1. The order shall also inform the person, corporation, partnership or association that:

- (a) He, she or they shall have 30 days from receipt of the order to abate the condition(s) in violation of Section 2; provided, however, that the governing body [or its designee named in Section 2] shall grant one or more extensions of the 10 day period if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions in violation of Section 1; or,
- (b) He, she or they have 30 days from receipt of the order, plus any additional time granted under subsection (a), to request a hearing before the governing body or its designated representative of the matter as provided by section 9;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 7 and/or abatement of condition(s) by the city as provided by Section 8

Section 7: 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 and upon conviction of any violation of provisions of Section 1, be fined in an amount not to exceed \$100 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during

or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

Section 8: ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 7, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom an order has been served pursuant to Section 5 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 6, 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 the 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 10. A copy of the resolution shall be served upon the person in violation in one of the following ways.

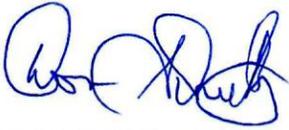
- (a) Personal service upon the person in violation;
- (b) Certified mail, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to the effect shall be made by the public officer 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 the 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.

Section 9: HEARING: If a hearing is requested within the 10 day period as provided in Section 6, 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. The hearing shall be held by the governing body or its designated representative 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 or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing

body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in Section 8.

Section 10: COSTS ASSESSED. If the city abates or removes the nuisance pursuant to Section 8, 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 the abatements 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.

PASSED AND APPROVED THIS 13TH DAY OF SEPTEMBER, 2017.



DON SCHULTZ MAYOR



JAMES H. KOGER CITY CLERK

ATTEST

(SEAL)

