TITLE 6

HEALTH AND SANITATION

CHAPTERS:

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6.06   Environmental Quality
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6.0
September 2006

CHAPTER 6.04
SOLID WASTE

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6.04.010 Short Title. This Ordinance shall be known and may be cited as the Municipal Solid Waste Ordinance of the City of Olathe. (Ord. 03-72 § 1, 2003; Ord. 94-87 § 2, 1994.)

6.04.020 Definitions. For the purposes of this Chapter the following terms, phrases, words and their derivations shall have the following meaning:

A. Ashes: Residue from fires.

B. Bulk Item: Appliances that do not contain CFC's or freon, carpeting, furniture, other household items, and other items of such volume and size as to be too large for collection by a residential collection vehicle.

C. City: The City of Olathe, Kansas.

D. City Manager: The City Manager of the City of Olathe, Kansas.

E. Commercial: Any company, corporation, business, firm, association, sole proprietorship, partnership, municipality, political subdivision, or government entity that is billed for solid waste collection on one account.

F. Computer recycling: The recycling of computers (e.g. central processing units, laptops and notebooks), monitors, printers, scanners and associated peripherals (e.g. keyboards, cords, speakers, mice, etc.).

G. Container: Any plastic or paper bag, can, cart, bin, dumpster, unit or other similar device used for storage and/or collection of solid waste.

H. Customer: A person, firm, or corporation utilizing the City’s solid waste service.

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I. Electronic recycling: The recycling of electronic articles (e.g. televisions, cell phones, telephones and battery packs).

J. Garbage: Waste from the preparation, cooking and consumption of food; market refuse, waste from the handling, storage and sale of produce.

K. Hazardous waste: Any waste that because of its quantity, concentration, or physical, chemical, or infection characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or which poses a substantial presence or potential hazard to human health, wildlife or the environment when improperly treated, stored, transported, dispersed of or otherwise managed.

L. Litter: Garbage, refuse and rubbish and all other waste material which, if thrown or deposited, tends to create a danger to public health, safety and welfare.

M. Multi-Family Residential: Any apartment, mobile home park or condominium complex regardless of whether each unit is served by an individual water meter and/or is platted or re-platted for individual ownership, and billed for solid waste collection on one account.

N. Person: An individual, partnership, firm, trust, company, association, corporation, individual or individuals having controlling or majority interest in a corporation, institution, political subdivision, state agency or federal department or agency. The term also means the occupant or the owner, or both, of the premises for which services mentioned in this Chapter is rendered.

O. Private Property: All property, including, but not limited to, vacant land or any land, building or other structure designed or used for residential, commercial business, industrial, institutional or religious purposes, together with any yard, grounds, walk, driveway, fence, porch, steps, vestibule, mailbox or other structure appurtenant thereto.

P. Public Place: All streets, sidewalks, boulevards, alleys or other public ways, all public parks, squares, spaces, grounds, buildings and lakes.

Q. Recyclables: Any scrap materials that can be used as a replacement for virgin material in manufacturing, including, but not limited to, ferrous metals, scrap paper products, scrap plastics and nonferrous metals.

R. Residential: A building, part of a building, or structure that is designed for occupancy by one family.

S. Residential Development: The construction of any new residential dwelling or dwellings on any property.

T. Solid Waste: Garbage, trash and other discarded materials, including, but not limited to, solid, semisolid, sludges, or other waste materials resulting from industrial, commercial, agricultural and domestic activities.

U. Solid Waste Connection Fee: The fee paid by new residential development to cover the cost of connecting the dwelling to the solid waste system through the purchase of a collection cart and payment of the pro-rata share of the cost of equipment necessary to collect solid waste from the residential customer.

V. Tree and Brush Pruning Waste: Waste resulting from the pruning of brush and trees or from the cleanup of tree damage after wind storms. Tree pruning waste shall be limited in size to four inches in diameter and not larger than sixty (60) inches. Brush pruning waste shall be securely tied in bundles not larger than sixty (60) inches long and eighteen (18) inches wide. Brush, tree limbs, tree trunks, etc. larger than described above shall be considered special waste and collected under the authority and procedure established in Section 6.04.080C.

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W. Yard Waste: Plant material (leaves, grass clippings, flowers, roots, etc.), organic debris commonly thrown away in the course of maintaining yards and gardens, including sod, and other biodegradable organic material. Yard waste excludes food waste, plastic and synthetic fibers, lumber, wood or tree limbs and soil contaminated with hazardous waste. (Ord. 09-42 § 1, 2009; Ord. 08-84 § 1, 2008; Ord. 07-133 § 1, 2007; Ord. 06-108 § 1, 2006; Ord. 04-16 § 1, 2004; Ord. 03-72 § 1, 2003; Ord. 94-87 § 2, 1994.)

6.04.030 Solid Waste Enterprise.

(a) The solid waste enterprise of the City shall consist of all vehicles, supplies, equipment, materials, garages and other lands and buildings used or intended for use in the collection and disposal of solid waste. The Division shall also consist of all City officers and employees assigned to any duties in connection with the collection and disposal of solid waste, including operations, billings and supervisory personnel.

(b) The City Manager shall have full control over all work provided for and contemplated under this Chapter.

(c) The City Manager shall have authority to promulgate rules and regulations based upon the provisions of this Chapter, including, but not limited to:

   (1) Time and day schedules of and routes for collection of solid wastes;
   (2) Preparation and drainage of garbage deposited in solid waste containers;
   (3) Specifications for solid waste containers, including the type, composition, equipment, size and shape thereof;
   (4) Identification of solid waste containers and of the covers thereof, and of equipment thereto appertaining, if any;
   (5) Weight limitations on the combined weight of solid waste containers;
   (6) Storage of solid waste in solid waste containers;
   (7) Sanitation, maintenance and replacement of solid waste containers;
   (8) Collection and disposal of solid waste;
   (9) Collection points of solid waste containers; and
   (10) Handling and collection of special waste such as computer recycling materials, electronic recycling articles, toxic waste, sludges, ashes, agriculture, construction, bulky items, tires, automobiles, oils, greases, tree trunks, large tree limbs, large quantities of brush, etc.

   (d) A copy of any and all rules and regulations made and promulgated under the provisions hereof shall be filed in the office of the City Clerk. (Ord. 08-84 § 2, 2008; Ord. 06-108 § 2, 2006; Ord. 03-72 § 1, 2003; Ord. 94-87 § 2, 1994.)

6.04.040 Collection of Solid Waste. The City shall provide for the collection of solid waste as follows:

(a) Residential Collection. The City shall provide for the collection of residential solid waste and recyclables for the entire city. The City may, at its discretion, collect solid waste outside City limits.

(b) Multi-Family Residential. The City shall provide for the collection of multi-family residential solid waste and recyclables for the entire City. Multi-Family Residential property owners shall contract with the City for solid waste removal as current waste collection contracts expire, but no later than January 1, 2012.
6.04.050 Precollection Practices.

A. Prohibited Material from Normal Collection. No person shall place anything for collection in the public streets and public alleys of the City except in accordance with the terms of this Chapter.

No large dead animals, bricks, concrete, lumber, dirt, plaster, brush or tree limbs over four (4) inches in diameter, sand, gravel, large chunks of metal (such as automobile frames), other heavy metals, tires, refuse from construction or remodeling, items over two hundred (200) pounds, or hazardous materials as herein defined shall be placed for collection in the public streets or public alleys. Such items may be collected under the authority and procedure established in Section 6.04.080 (c).

B. Separation of Waste. Solid waste items shall be separated from yard waste, recyclables and bulk items.

C. Preparation of Waste. Solid waste, recyclables and yard waste shall be placed in the proper containers as required by Section 6.04.060. Tree limbs less than four (4) inches in diameter and brush shall be securely tied in bundles not larger than sixty (60) inches long and eighteen (18) inches in diameter when not placed in bags or other approved containers.

D. Placement for Collection. On the day the collection is scheduled for any residential premises, or not earlier than 5 p.m. of the night before collection is scheduled, City provided collection carts and all items to be picked up shall be placed at the street in front of the premises. City provided collection carts shall be removed from the curb as soon after collection of trash as possible, and no later than 5:00 p.m. the day after the collection day. When not at the curb for collection, the carts must be stored inside the garage or beside the residence. (Ord. 09-42 § 2, 2009; Ord. 06-88 § 1, 2006; Ord. 05-124 § 1, 2005; Ord. 03-72 § 1, 2003; Ord. 94-87 § 2, 1994.)

6.04.060 Containers. All solid waste shall be placed in containers of the type and size hereinafter prescribed:

A. Residential Solid Waste. Residential customers of the City shall be required to dispose of all solid waste in spill proof containers. The City shall provide for each residential dwelling unit one industrial manufactured cart designed to contain and store solid waste. The cart is the property of the City of Olathe and is provided for trash collection service at the residential premises and does not belong to the resident. Repairs to the carts will be the responsibility of the City.

1. The standard size cart provided will be approximately 95 gallons capacity. Carts with smaller capacity will be made available to residents in lieu of the standard size at the resident’s request.

2. Additional carts may be provided with an additional monthly fee at the individual resident’s request. Such fee shall be adopted by the Governing Body of the City by resolution.

3. Overflow volume of weekly trash must be securely bagged or containerized and placed at the curb for collection. In no instance shall the combined weight of each overflow volume container and its contents be packed so as to contain more than fifty (50) pounds.

4. The resident is responsible for cleaning and protecting the cart from damage. Resident may be charged for repairs due to neglect or misuse of the cart.
B. Residential Yard Waste. Residential customers of the City who do not compost shall be required to dispose of yard waste in special compostable yard waste paper bags or specifically designed carts for handling yard waste. The City will provide a yard waste cart for each residential dwelling unit where the customer requests such delivery. The customer will be charged for the cost of the yard waste cart and the customer will be charged for such cart on the next regular billing statement after delivery. The fee for yard waste carts shall be adopted by the Governing Body of the City by resolution.

C. Recyclables. The City will provide a recycling container at no charge to the customer. The container is the property of the City of Olathe and is provided for recyclable collection service at the residential premises and does not belong to the resident. The resident is responsible for cleaning and protecting the container from damage. Repairs to the container will be the responsibility of the City. The resident may be charged for repairs due to neglect or misuse of the container.

D. Commercial. Commercial customers shall be required to dispose of solid waste in containers meeting the specifications established by the City Manager pursuant to Section 6.04.030 (c). The containers shall be waterproof, leak proof and shall be covered at all times except when depositing waste therein or removing contents therefrom. The containers shall be fully accessible to collection equipment, public health personnel and fire inspection personnel.

E. Nonconforming containers may be collected together with its contents and disposed of.


A. Public Places. It shall be unlawful for any person to place solid waste in any street, alley or other public place, or upon any private property whether owned by such person or not, within the City except it be in proper containers for collection or under express approval of the City Manager. It shall also be unlawful for any person to throw or deposit solid waste in any stream or other body of water.

B. Unauthorized Accumulation. Any unauthorized accumulation of solid waste or yard waste on any premises is hereby declared to be a nuisance and is prohibited.

C. Scattering of Solid Waste. It shall be unlawful to cast, place, sweep or deposit anywhere within the City any solid waste in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, alley, sewer, parkway or other public place, or into any occupied premises within the City.

D. Points of Collection.

1. Residential. All solid waste, recyclables and yard waste shall be picked up at the curb. Overflow volume containers shall not weigh more than fifty (50) pounds.

2. Multi-Family Residential. All solid waste and yard waste shall be picked up at the curb or at the location of the container. City employees will not go upon private property to collect solid waste, except areas that are open to the public, such as business parking lots and private alleys.

3. Commercial. All solid waste shall be picked up at the location of the container. City employees will not go upon private property to collect solid waste, except areas that are open to the public, such as business parking lots and private alleys.

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E. Frequency of Collection.

1. Residential. Residential solid waste and yard waste shall be collected once a week. Recyclables shall be collected bi-weekly or other intervals as may be fixed by the City Manager pursuant to Section 6.04.115.

2. Multi-Family Residential. Multi-Family Residential solid waste and yard waste shall be collected once a week and may be collected at such other intervals as may be fixed by the City Manager upon a determination that such other intervals are necessary for the preservation of the health and/or safety of the public.

3. Commercial. Commercial solid waste shall be collected once weekly and may be collected at such other intervals as may be fixed by the City Manager upon a determination that such other intervals are necessary for the preservation of the health and/or safety of the public.

F. Right to Regulate Separation, Deposit, Disposal. The City reserves the right to and retains the option at its discretion to require the separation of paper, recyclable materials, yard waste or other component parts of solid waste, to prescribe the method of disposal thereof, and to direct other related activities as determined necessary.

G. It is unlawful for any person to:

1. Deposit solid waste, yard waste, recyclables or bulk items in any solid waste container other than his/her own without the written consent of the owner of such container and/or with the intent of avoiding payment of the service charge hereinafter provided for solid waste collection and disposal.

2. Interfere in any manner with solid waste collection equipment, or with solid waste collectors in the lawful performance of their duties as such, whether such equipment or collectors shall be those of the City or those of a solid waste collection agency operating with a permit within the City.

3. Remove solid waste, yard waste, recyclables or bulk items from any container or private property without the approval of the owner thereof. (Ord. 09-42 § 4, 2009; Ord. 08-84 § 5, 2008; Ord. 05-124 § 3, 2005; Ord. 03-72 § 1, 2003; Ord. 94-87 § 2, 1994.)

6.04.080 Special Solid Waste Problems.

A. Residential Yard Waste.

1. Yard waste may be collected at curb side if such waste is properly contained in compostable yard waste paper bags or specifically designed carts for handling yard waste. Collection shall take place on a schedule established by the City Manager and may be at a different time than the collection of solid waste. Yard waste may also be deposited at any authorized City yard waste drop-off site or any authorized compost site while such site is open.

2. It shall be unlawful for any person to deposit yard waste in or upon any public street, water or grounds in the City; mix or permit the mixing of yard waste with solid waste for City curb side collection; or deposit yard waste at any authorized yard waste or compost site while the site is closed.

B. Residential Tree and Brush Pruning Waste. Tree and brush pruning waste may be collected at curb side if such waste is properly sized and/or bundled. Collection shall take place on a schedule established by the City Manager and may be at a different time than the collection of solid waste.

C. Bulk Items. The regular collection service shall not remove bulk items. Such items may be picked up separately if an Olathe resident calls the City one business day prior to the resident's regular collection day. (Ord. 12-28 § 2, 2012; Ord. 03-72 § 1, 2003; Ord. 01-09 § 2, 2001; Ord. 94-87 § 2, 1994.)
6.04.090 Service Charges.

A. There is hereby imposed a residential service charge for the collection and disposal of solid waste within City limits and such residential service charge shall be adopted by the Governing Body of the City by resolution.

The Residential Charge includes weekly trash collection, separate yard waste collection, recyclables and household hazardous waste disposal. Trash bags are available for purchase. The fee for trash bags shall be adopted by the Governing Body of the City by resolution.

B. Service charges for residential customers outside City limits shall be determined by the City Manager. The City Manager may charge residential customers outside City limits up to 1.25 times the monthly residential service charge for solid waste residential customers within City limits.

C. There is hereby imposed a service charge for the recycling of computers, computer related equipment, and electronic recycling articles and such charges shall be adopted by the Governing Body of the City by resolution.

D. There is hereby imposed a service charge for the collection and disposal of bulk items and such charges shall be adopted by the Governing Body of the City by resolution.

E. There is hereby imposed a multi-family residential service charge for the collection and disposal of solid waste within City limits and such multi-family residential service charge shall be determined by the City Manager on the basis of quantity, frequency and characteristics of material, point of pickup and the time required to collect the solid waste.

F. Commercial Charges. The maximum service charge for each commercial user will be determined by the City Manager on the basis of quantity and characteristics of material, point of pickup and the time required to collect the solid waste if service is performed by the City. Such maximum service charge rates shall be placed on file in the office of the City Clerk. The City Manager shall have the authority to negotiate and enter into contract with each institutional and other business establishments at a rate less than the maximum service charge in order to meet current market conditions.

G. Additional regulations.

1. The service and service charge shall be terminated upon presentation of satisfactory proof to the City Manager that any such dwelling unit or establishment is unoccupied and shall be commenced upon renewed occupancy thereof.

2. The system of service established by the provisions of this Chapter is designated as an integral part of the City's program of health and sanitation. The services provided for in this Chapter shall be deemed to be furnished both to the occupant and the owner of the premises receiving such services, and the City may enforce collection of such charge by bringing proper legal action against the occupant, the owner, or both, of any premises which has received such services, to recover any sums due for such service, plus a reasonable attorney's fee to be fixed by the court.

3. The service charge herein provided for is imposed, jointly and severally, upon the owner and upon the occupant of each residential unit receiving such service under the provisions of this Chapter; and billing therefor shall be made to the person receiving sanitation service to each such dwelling unit, in which event billing therefor shall be made to the owner or occupant thereof, or both. Service charges shall be payable to the department empowered to collect service charges imposed by the City. (Ord. 09-42 § 5, 2009; Ord. 08-84 § 6, 2008; Ord. 07-133 § 3, 2007; Ord. 06-108 § 3, 2006; Ord. 06-88 § 3, 2006; Ord. 03-72 § 1, 2003; Ord. 02-129 § 1, 2002; Ord. 01-09 § 3, 2001; Ord. 00-113 § 1, 2000; Ord. 99-92 § 1, 1999; Ord. 98-105 § 1, 1998; Ord. 97-141 § 1, 1997; Ord. 96-91 § 1, 1996; Ord. 95-93 § 1, 1995; Ord. 94-87 § 2, 1994.)
6.04.095 Solid Waste Connection Fee. A solid waste connection fee for new development shall be paid at the time of application for the building permit. The solid waste connection fee shall be paid for by the applicant requesting the solid waste connection. Such solid waste connection fee shall be established by the Governing Body of the City by resolution. (Ord. 11-21 § 1, 2011; Ord. 07-133 § 4, 2007.)

6.04.100 Solid Waste Collection Fund. The revenue collected under the provisions of this Chapter shall be deposited in a solid waste collection fund and shall be subject to an annual audit as now required by the laws of the state, and shall be used for the following purposes:

(a) Personal services of employees of this division;

(b) Cost of the operation of equipment and purchase or lease of new or additional equipment, including the costs of property damage and public utility insurance;

(c) Special clothing and/or uniforms where required in the performance of the duties of this department;

(d) Cost of the operation of the City transfer station and landfill, including any additional employees needed to properly dispose, regulate and operate the City dumping ground and its disposal system;

(e) In the event sufficient funds are available, the Governing Body may use such funds as are available to defray the cost of spraying any public or private property within the City Limits and such other expenses as are classified as public sanitation of the City;

(f) Cost of overhead services, such as legal, financial, city administration, management services and municipal services;

(g) Purchase of land and buildings;

(h) Payment of principal and interest from the issuance of solid waste/transfer station bonds and related bond issuance costs;

(i) Cost of contractual services, commodities and capital outlay;

(j) Operating reserves. (Ord. 03-72 § 1, 2003; Ord. 94-87 § 2, 1994.)

6.04.110 Transfer Station and Composting Facility.

A. The City will provide a solid waste transfer station and composting facility at such locations designated by the City to be used by refuse vehicles owned by the City, private refuse haulers and individuals.

B. Rules and regulations concerning the hours of operation and fee for disposal at the transfer station and/or composting facility shall be adopted from time to time by the City Manager. (Ord. 10-54 § 1, 2010; Ord. 03-72 § 1, 2003; Ord. 94-87 § 2, 1994.)

6.04.115 Residential Recycling Program.

A. A curbside recycling program is hereby established for the benefit of residential solid waste collection customers of the City. Effective January 1, 2010, curbside recycling shall be provided for all single family residences in Olathe. In addition, public and private drop-off facilities for recyclables will be available for some specific recyclables.

B. Curbside residential recycling charges shall be included in the monthly residential solid waste rates.
C. The City Manager shall have the authority to promulgate rules and regulations on:

   1. Days of collection of residential recyclables;
   2. Pre-collection practices;
   3. The type, color and physical dimensions of recycling bins or containers; and
   4. Specific materials to be collected for recycling.

D. All recyclable materials shall become the property of the City when it is placed at the curbside for collection or placed in a color-coded container to be saved for collection day. It shall be unlawful for any person not authorized by the City to remove any item placed for recyclable collection from any recycling container. (Ord. 09-42 § 6, 2009; Ord. 08-84 § 7, 2008; Ord. 03-72 § 1, 2003; Ord. 02-129 § 2, 2002; Ord. 01-109 § 4, 2001; Ord. 96-84 § 2, 1996; Ord. 95-06 § 1, 1995.)

**6.04.120 Penalty.** Any person, firm or corporation violating any provision of this Ordinance shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. (Ord. 09-42 § 8, 2009; Ord. 03-72 § 1, 2003; Ord. 94-87 § 2, 1994.)

6.7.2
January 2010
CHAPTER 6.06
ENVIRONMENTAL QUALITY

Sections:
6.06.010  Authority.
6.06.020  Purpose.
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6.06.046  Parking Requirements for Single-Family, Two-Family, and Multifamily Lots – Commercial Vehicle Parking Prohibited.
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6.06.110  Abatement Hearing.
6.06.120  Abatement by City.
6.06.130  Notice of Cost; Assessment and Collection.
6.06.140  Action in Municipal Court.
6.06.150  Penalty.

6.06.010 Authority.  The city, under the authority of Kansas Statutes Annotated 12-1617e, is hereby authorized to provide for and require the removal and abatement of any and all nuisances, garbage and inoperable vehicles on lots or parcels of ground within the city.  (Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)

6.06.020 Purpose.  The purpose of this chapter is to protect, preserve, upgrade and regulate the environmental quality of the city.  This will be accomplished by prohibiting certain environmental conditions which may exist and are identified as a threat to the health, safety and welfare of the general public or to the aesthetic characteristics of the city and to provide for the administration and enforcement thereof.  (Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)

6.06.030 Definitions.  For the purposes of this chapter, the following definitions apply:

"City" means the City of Olathe, Kansas;

"Code" means the Olathe Municipal Code;

"Commercial or Industrial" means areas which are used or intended to be used primarily for other than residential or agricultural purposes;

"Commercial Vehicle" means a vehicle with or without its own motive power; with a chassis rated at one (1) ton or more; dimensions exceeding twenty (20) feet in total length, eight (8) feet in total width, or seven (7) feet in total height; and used primarily for the carrying of equipment, livestock, minerals, liquids or other commodities, or the carrying of persons in the performance of a transportation service.  Commercial vehicles include hauling and advertising trailers if used for commercial (e.g., non-recreational) purposes;
"Compost Pile" means a mixture consisting of leaves, stems, grasses, dirt and other organic matter which shall be stored in an enclosure and used for garden soil conditioning purposes. Said enclosure shall be screened or placed in a manner which is not offensive to neighboring residents or the general public;

"Garbage" means without limitation, any accumulation of animal, fruit or vegetable waste matter which normally is the by-product of handling, preparation, cooking, serving, delivering, storage or any other use of foodstuffs;

"Graffiti" means any drawing, painting, writing, inscription, figure or mark, regardless of its content, of the type which is commonly known and referred to as "graffiti," which is written, drawn, painted, sprayed, scratched or otherwise placed or affixed, regardless of the nature of the material used, on any wall, window, rock, building or portion thereof, fence, gate, sign, other structure, tree or other real or personal property, either publicly or privately owned, and that is visible from any adjacent public or private property or public or private right of way. "Graffiti" shall not include any permitted sign allowed to be erected in Section 18.50.190 of the Unified Development Ordinance;

"Immediate Vehicle Hazard" means any unattended vehicle which has been placed on jacks, blocks or a stand unless such vehicle is placed in a garage or other building;

"Nuisance" means, without limitation, any accumulation or collection of filth, human or animal excrement, tree limbs, lumber, wood, glass, rocks, concrete, dirt, grass clippings, leaves, cans, containers, paper, trash, plastic, petroleum products, styrofoam, rubber, metal, discarded appliances or other household items, abandoned or inoperable vehicles or parts thereof, or any other material or item which is thrown, left, deposited or stored upon any public or private property, except that compost piles as defined by Section 6.06.030 shall not constitute a nuisance;

The above also includes any place, operation, materials or substance offensive in appearance or which emits or causes any nauseous odors. Any dilapidated fence, wall, building or other structure in disrepair, open pits, pools or ponds of water or fluids, trenches or wells and/or any other condition which is offensive to or a threat to the environmental quality, health, safety or welfare of the City as determined by any Public Officer shall also constitute a nuisance;

"Inoperable Vehicle" means a vehicle or component parts thereof which cannot function properly or be used for its original purpose, including, without limitation, a condition of being junked, parted out, used for salvage, or any part thereof discarded or stored, or use of any part for artful or decorative purposes. Also, included would be any vehicle which is not currently registered or licensed or parked in any manner which would be a violation of other City ordinances or incapable of moving under its own power or would be unlawful to operate upon any street, road or highway. A vehicle which is temporarily inoperative but is in the process of being repaired shall be repaired within thirty (30) consecutive days or it shall be deemed an inoperable vehicle as defined in this section;

"Passenger Vehicle" means a vehicle which is:

1) licensed for use on public streets;
2) designed primarily for the transportation of people as opposed to equipment, freight or other vehicles, and
3) sold primarily to individuals for personal use.

This definition includes, but is not limited to, motorcycles, mopeds, motorscooters, automobiles commonly referred to as coupes, sedans, hatchbacks, station wagons, convertibles, minivans, passenger vans, cargo vans, and pickup trucks, any of which would not otherwise meet the definition of commercial vehicle or recreational vehicle as set forth herein;
"Person" means any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or any 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;

"Premises" means any lot, parcel or tract of land, including any structures, and/or excavations located thereon;

"Public Officer" means any City representative charged by the City Manager or designee with the administration and enforcement of this chapter;

"Recreational Vehicle" means a vehicular-type unit which is:

1) Built on a chassis or for use on a chassis,
2) designed primarily as temporary living quarters for recreational, camping, vacation or travel use, and
3) has its own motive power or is mounted on or drawn by another vehicle.

This definition includes, but is not limited to, motor homes (Class A, B, or C), travel trailers, folding camping trailers, 5th wheel trailers, truck campers (each as shown in Illustration A), passenger vehicles or buses specifically modified to meet the three conditions above, and boats, any of which would not otherwise meet the definition of commercial vehicle or passenger vehicle as set forth herein;

"Residential District" refers to any place or area where the property is zoned for residential occupancy including single-family, two-family and multifamily lots;

"Unimproved Premises" means any lot parcel or tract of land without any structures or any other type of improvement or development thereon;

"Vehicle" means any automobile, van, truck, all-terrain vehicle, motorcycle, moped, motorscooter, recreational vehicle, farm machinery, construction equipment, boat, boat trailer, airplane, bicycle, trailer, wagon or other device mounted on wheels and designed to carry any cargo, operator or passenger and may be powered by an engine or pulled or pushed by any device or person;

"Yard" means the area of the premises not occupied by a structure. (Ord. 14-54 § 1, 2014; Ord. 94-05 § 1, 1994; Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)
ILLUSTRATION A

RECREATIONAL VEHICLES

Class A Motor Home

Class B Motor Home

Class C Motor Home

Travel Trailer

Folding Camper Trailer

Fifth-Wheel Trailer

Truck Camper
6.06.040 Unlawful Acts. It shall be unlawful for any person to allow to exist on any premises any garbage, graffiti, nuisance, inoperable vehicles or immediate vehicle hazard as defined. Except that the provisions of this section shall not apply to

(a) any vehicle which is enclosed in a garage or other building;

(b) the parking or storage of one temporarily disabled vehicle for a period of thirty (30) consecutive days or less; or

(c) any person conducting a business enterprise in compliance with existing zoning regulations and who places such vehicles behind screening of sufficient size, strength and density in order to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles. (Ord. 94-05 § 2, 1994; Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)

6.06.041 Proof of Operability. When, after reasonable investigation, the Public Officer believes a vehicle meets the definition of an Inoperable Vehicle in Section 6.06.030, the vehicle shall be deemed to be an Inoperable Vehicle subject to the provisions of Section 6.06.040. Where a vehicle is (1) parked or stored in a residential district so that it is visible from a public or private street, or from adjacent private property with the permission of the adjacent property owner; and (2) the license plate of such vehicle is screened from view by an adjacent structure or vegetation, or by a cover, tarp or similar object, then the vehicle shall be deemed to be an inoperable vehicle subject to the provisions of Section 6.06.040. In both cases, such a determination may be voided if the property owner or vehicle owner or resident demonstrates to the Public Officer that the vehicle is operable on a public street and furnishes proof that the vehicle has a license plate and current registration as required for operation of the vehicle on public streets and highways. Such demonstration or proof shall be provided to a Public Officer of the City within fifteen (15) days from the date when a notice of violation was first given to the property owner, vehicle owner or resident. It shall be a violation of this Section to fail to provide such demonstration of operability or proof of registration within the specified time whether or not said vehicle is operable or legally registered. For the purposes of this Section, a vehicle shall be considered visible, even if covered, if the shape of the covered object is recognizable as a vehicle. Any covered object not recognizable as a vehicle shall be governed by the nuisance provisions of this Chapter. (Ord. 14-54 § 3, 2014.)

6.06.045 Unlawful Outdoor Illumination.

(a) No person shall install, maintain and/or use an outdoor visible light or other source of illumination which is on private property and produces glare or direct illumination across a property line in a residential area of such intensity that it creates a nuisance or unreasonably interferes with the use or enjoyment of adjacent property.

(b) Outside lights must be made up of a light source and reflector so that, acting together, the light beam is controlled and not directed across a property line.

(c) This section shall not apply to street lights or lights installed, maintained and used in connection with the use and operation of any outdoor stadium; amphitheater or athletic field.

(d) Unlawful outdoor illumination as defined by this section shall be deemed to be a "nuisance" under this chapter and to effect legal relief persons directly affected may sign a complaint in Municipal Court. (Ord. 94-60 § 1, 1994.)
6.06.046 Parking Requirements for Single-Family, Two-Family, and Multifamily Lots – Commercial Vehicle Parking Prohibited.

A. Parking on single-family, two-family, and multifamily paved driveways or paved parking areas is restricted to passenger vehicles and wreckers, tow trucks or car carriers, as defined by K.S.A. 66-1329, and any amendments thereto, no larger than a factory designated, one (1) ton, single axle, dual wheel size which is immediately available for emergency response by an operator who is on duty or on call. However, wreckers, tow trucks or car carriers shall not be parked upon a paved driveway or paved parking area on a single-family, two-family, or multifamily paved driveway or paved parking area for more than twelve (12) hours during any twenty-four (24) hour period.

B. All passenger vehicles shall be parked on paved driveways or paved parking areas adjacent to the garage or carport. In areas where there are no garages or carports, passenger vehicles may be parked on paved driveways or paved parking areas constructed perpendicular to the street.

C. No passenger vehicle parking is allowed in the public right-of-way between the curb and the sidewalk or the area between the curb and the front lot line where no sidewalk exists.

D. No person shall stop, stand or park a commercial vehicle on any street, alley, lot, paved driveway or paved parking area within any residential district, except when loading or unloading such vehicle or when in the performance of a service to or upon real property within any residential district where such vehicle is parked. (Ord. 14-54 § 4, 2014.)

6.06.047 Recreational Vehicle Parking on a Single-Family or Two-Family Lot – Criteria. It is permissible to park or store not more than two (2) recreational vehicles on a single-family or two-family lot, provided that the following criteria are met:

A. The recreational vehicle shall be parked in a garage, the side yard or rear yard but not in the front yard, except as provided in Subsection G below.

B. The recreational vehicle shall not be parked closer than two (2) feet to any property line.

C. The recreational vehicle shall not be 1) used for on-site dwelling purposes for more than fourteen (14) days per year; or 2) permanently connected to sewer lines, water lines or electrical lines; or 3) used for storage.

D. The recreational vehicle shall be operable, its equipment shall be in a usable working condition at all times, not leaking fluids, and maintained in a clean, well-kept state that does not detract from the appearance of the surrounding area.

E. The recreational vehicle and the area where such vehicle is parked shall be maintained in a clean and neat manner. The area the recreational vehicle is parked on is not required to be paved; provided, however that any recreational vehicle must be parked or stored, or driven to and from said parking or storage area, on a dust-free and rut-free surface, including, without being limited to, any such areas covered with grass, ground cover, water-permeable grass pavers, cement, asphalt or other similar ground cover. Parking, storage or driving on gravel or exposed dirt is prohibited; provided, however, driving on a gravel driveway that has been previously established as a lawful nonconforming use is permitted.

F. The recreational vehicle shall be owned by the resident upon whose property it is parked, provided that others visiting the resident may park their recreational vehicle on the lot in accordance with the requirements set forth herein for a period of time not to exceed fourteen (14) consecutive days.

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G. Parking of one (1) recreational vehicle is permitted on a front driveway provided that the following conditions are met:

1. There is no reasonable access to the rear or side yard. A lot shall be deemed to have reasonable access to the rear or side yard if:
   a. the side yards are ten (10) feet or more in width;
   b. there is less than ten (10) feet of difference in the elevation of the front and rear yards as measured at the front and rear lot lines; and
   c. there are no large trees (trunk four [4] inches in caliper) or large shrubs (six [6] feet in height) in the side yards. Corner lots shall normally be deemed to have reasonable access to the rear yard. A fence shall not be deemed as preventing reasonable access.

2. Inside parking is not possible.

3. No part of the recreational vehicle shall extend over side yards, sidewalks or street right-of-way.

H. Recreational vehicles may be parked on the front drive for up to two (2) days to load and two (2) days to unload as related to a trip.

I. No tarps or other non-fitting covers may be used on a recreational vehicle. (Ord. 14-54 § 5, 2014.)

6.06.050 Right of Entry. Any authorized officer or agent of the city, pursuant to this chapter, shall be allowed to enter onto any land within the city limits to investigate violations of this chapter or for the abatement of violations pursuant to this chapter. (Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)

6.06.060 Responsibility to Abate. The property owner, representative, tenant or other such person with control, occupancy or possession of real property shall be responsible for the abatement of any unlawful acts defined by Section 6.06.040. (Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)

6.06.070 Public Officer; Notice to Abate. The City Manager shall designate a public officer to be charged with the administration and enforcement of this chapter. The public officer shall authorize the investigation of violations of this chapter. If it is determined that a violation of this chapter exists, then the officer or authorized designee shall send a notice to abate to the property owner, representative, tenant or other such responsible person by certified mail, return receipt requested, to the last known address of such property owner, representative, tenant or other such responsible person. (Ord. 11-12 § 1, 2011; Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)

6.06.080 Notice Requirements. The notice of abatement shall state:

(a) A common and/or legal description of the property upon which the violation exists;

(b) That the property is in violation of the provisions of this chapter;

(c) A description of the nature of the violation that would reasonably allow the property owner or other responsible person, representative or tenant to determine the nature of the violation to allow for self-abatement;

(d) That the person in charge of the property shall have five (5) days from the date of the mailing of the notice to either remove and abate the violation of this chapter or request a hearing before the city's designated representative on the matter;

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(e) That upon written request received prior to the expiration of the notice period, the property owner, representative, tenant or other responsible person may request a hearing before a designated hearing officer of the city;

(f) That if the owner, occupant, or agent of the property fails to correct the violation or request a hearing within five (5) days of the mailing of notice, the city or its authorized agent will remove and abate the violation of this chapter by reasonable means and assess the costs of removal, including reasonable administrative costs, against such person. Notice of the total cost of such abatement shall be provided to the owner, occupant or agent by certified mail, return receipt requested, or personal service;

(g) That if the assessed costs of removal, including administrative costs, are not paid within thirty (30) days of the date when the assessment comes due, the costs will be added to the property tax as a special assessment;

(h) That if any special assessments levied by the city in accordance with this chapter remain unpaid for a period of one year or more after their initial levy, the city may collect the amount due in the same manner as a personal debt of the property owner to the city by bringing an action in the Johnson County District Court. Such actions may be maintained, prosecuted and all proceedings taken, including any award of postjudgment interest, in accordance with K.S.A. 16-204, and amendments thereto, to the same effect and extent as for the enforcement of an action for debt. All provisional remedies available in such actions shall be available to the city in the enforcement of the payment of such obligations. In such actions the city also shall be entitled to recover interest at the rate provided in K.S.A. 79-2968, and amendments thereto, from and after the date a delinquency occurs in the payment of special assessments levied under this chapter. The city may pursue collection both by levying a special assessment and in the manner provided by this section, but only until the full cost and any applicable interest has been paid in full;

(i) Violation of any provisions of this article shall be deemed a misdemeanor and be punishable by a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) or imprisonment not to exceed thirty (30) days, or both. Each day any violation of this chapter continues shall constitute a separate offense punishable as a misdemeanor; Prosecution of any offender under this section does not limit the city's right to abate any violation as defined under this chapter or to additionally recover any costs incident to the abatement process, including reasonable administrative costs;

(j) That the public officer should be contacted if there are any questions regarding the notice. (Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)

6.06.090 Service of Notice.

(a) The notice shall be personally served or sent by certified mail, return receipt requested, once each calendar year or if the property is unoccupied and the owner is a nonresident of the State of Kansas, then by mailing notice by certified mail to the last known address of the owner once each calendar year;

(b) Failure to sign for the certified return, receipt requested, mail notice from the City, or failure to pick up said notice from the post office within fifteen (15) days shall not be deemed a lack of notice under this chapter where delivery was attempted and a record of this attempt was provided as required by procedures for certified mail.

(c) Second or subsequent notices, within the same calendar year, will be served personally or sent by first class mail and will result in mandatory Court appearances. (Ord. 11-12 § 2, 2011; Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)
6.06.100 Abatement of Immediate Vehicle Hazard. When in the opinion of the public officer an immediate vehicle hazard as defined by 6.06.030(f) exists in such a condition as to require immediate action to protect the public, such officer may erect barricades or cause the vehicle to be taken down or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents or lienholders. The costs of any such action shall be assessed and paid in the manner set out in Section 6.06.130. (Ord. 90-21 § 2, 1990.)

6.06.110 Abatement Hearing. If the recipient of the notice of abatement makes a written request for hearing within the notice period, then the city shall immediately schedule a hearing during a regular business day within ten (10) calendar days from the receipt of the written request. The hearing shall be conducted by a designated hearing officer appointed by the city manager who shall not be a subordinate of the officer who issued the notice of abatement or conducted the investigation. The hearing officer shall receive evidence, review the investigation and prepare a written order. The order shall be sent by certified mail to all relevant parties within ten (10) days of the hearing, unless otherwise stated at the hearing, and prior to the city taking any action to abate the violation. The order shall describe the relevant facts relied upon, state the specific code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement or orders as deemed necessary by the hearing officer. (Ord. 90-21 § 2, 1990; Ord. 80-59 § 2 (part), 1980.)

6.06.120 Abatement by City. If the property owner, representative or tenant fails to request a hearing and fails to abate the violations within the notice period, then the city shall go onto the property to abate the violation in a reasonable manner. The city shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violations. The city may use its own employees or contract for services to abate violations of this chapter. (Ord. 90-21 § 2, 1990.)

6.06.130 Notice of Cost; Assessment and Collection.

   (a) If the city takes action to abate the violation, it shall provide a notice of costs to the property owner, representative or tenant. The notice of costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the notice of costs may also be posted on the property in a reasonable manner. The notice of costs may also be posted on the property in a reasonable manner. The notice of costs shall state:

   (1) The common or legal description of the property, or both;
   (2) The nature of the violation, including relevant ordinances;
   (3) The nature of the work performed to abate the violation;
   (4) The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
   (5) That the notice is a demand for payment within thirty (30) days from the date of the notice;
   (6) That failure to pay the entire amount within thirty (30) days shall allow the city to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;
   (7) That such additional remedies to recover costs shall include additional amounts, including additional administrative costs, attorneys' fees when applicable, and interest;
   (8) That payments shall be made by check or money order made payable to the city, with no post-dating of the check, and sent to the address stated within the notice, with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments.

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(b) If the payment of costs is not made within the 30-day period, the city may levy a special assessment for such cost against the lot or piece of land. The city clerk, at the time of certifying other city taxes to the county clerk, shall certify the aforesaid costs, and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

Provided further, the city may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt.

The city may pursue both assessment and collection at the same time until the full cost, including applicable interest, court costs, attorneys' fees and administrative costs have been paid in full. (Ord. 90-21 § 2, 1990.)

6.06.140 Action in Municipal Court. If an authorized public officer determines that a violation of this chapter exists, the officer may file a complaint with the Municipal Court for such violation. No other procedures are required as a prerequisite to the filing of a complaint. (Ord. 90-21 § 2, 1990.)

6.06.150 Penalty.

(a) Any property owner, representative or tenant found in violation of this chapter shall be subject to prosecution in the Olathe Municipal Court. Any person found guilty of violating the provisions of this chapter shall be subject to a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00); or imprisonment for a term not to exceed thirty (30) days, or both;

(b) Prosecution of any offender under this chapter does not limit the city's right to pursue assessment or collection of costs as stated in this chapter, or by other laws;

(c) Each day that any violation of this chapter continues shall constitute a separate offense;

(d) The city shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provision of this chapter and to seek civil penalties, and to abate nuisances maintained in violation thereof, and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceedings to prevent such unlawful nuisance or condition. (Ord. 90-21 § 2, 1990.)

CHAPTER 6.09

WEEDS

Sections:
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6.09.030 Findings.
6.09.040 Definitions.
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6.09.060 Responsibility to Abate.
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6.09.110 Abatement by the City.
6.09.120 Notice of Cost; Assessment and Collection.

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6.09.010 Authority. The city, under the authority of Kansas Statutes Annotated 12-1617(f) and Kansas Statutes Annotated 2-1314, is hereby authorized to provide for and require the cutting or destruction of noxious weeds, weeds and other uncontrolled vegetation on lots or pieces of land within the city. (Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990; Ord. 80-47 § 1, 1980.)

6.09.020 Purpose. The purpose of this chapter is to provide reasonable controls restricting the excessive growth of weeds, grasses and other noncultivated vegetation; to declare that the excessive growth of such vegetation is noxious, unsightly, and is offensive to the general public health, safety and welfare of the community; to provide a method of enforcement of this act; to provide procedures to notify property owners or those in control of the property that a violation exists and to allow for self-abatement by such owner; to provide property owners or those in control of the property notification and an opportunity to be heard concerning violations of this chapter; to provide administrative procedures to allow the city to direct the abatement of violations; to provide a method of assessing or collecting costs for such abatement; to declare that the existence of such violations are unlawful and to provide penalties for enforcement through the Municipal Court system. (Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990; Ord. 80-47 § 2, 1980.)

6.09.030 Findings. The Governing Body of the city hereby finds that the allowance of the excessive growth of certain vegetation is noxious, unsightly, offensive to the residential and commercial development in the city, and offensive to the general public health, safety and welfare of the community. Excessive vegetation growth creates potential traffic safety problems; promotes conditions which accelerate the spread of fires; promotes the nesting and proliferation of rodents, snakes, mosquitoes and vermin; creates short and long-term impacts on the area, including the diminution of property values and the integrity of the neighborhood; and interferes with the orderly development of property in the city. (Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990; Ord. 80-47 § 3, 1980.)

6.09.040 Definitions. For the purposes of this chapter, the following definitions apply:

(a) “Agent” shall mean any person registered with the city as agent for a property, or any non-owner listed on the Johnson County tax roll as the person to receive the tax bill notice;

(b) “Best Management Practices” shall mean stormwater management practices used to prevent or control the discharge of pollutants into waters. These may include engineered solutions, a schedule of activities, prohibition of practices, maintenance procedures, or other management practices. They include three categories: preservation and promotion of natural hydrology (open space, natural vegetation, filter strips), engineered stormwater treatment and infiltration (bio-retention filters, engineered swales, infiltration trenches), and onsite detention and treatment (pervious pavement, wet ponds).

(c) “Calendar Year” as used herein means that period of time beginning January 1 and ending December 31 of the same year;

(d) “City” shall mean the City of Olathe, Kansas;

(e) “Developed Parcel” shall mean any lot, tract, or other parcel of unimproved real estate with any man-made changes, including but not limited to buildings, structures, stormwater improvements, utilities, and other site developments.
(f) “Excessive Growth” shall mean any vegetation which is more than eight (8) inches in height on developed parcels or more than twelve (12) inches in height on undeveloped parcels, either above the ground or in length if matted down as measured along the stem and shall include all trees, bushes, shrubs, flowers and ornamental or garden plants, either cultivated or uncultivated if such plants are not made readily distinguishable from surrounding vegetation of excessive growth and plants which are poisonous to the touch, including poison ivy, poison oak and poison sumac;

(g) “Governing Body” shall mean the City Council of the City of Olathe, Kansas;

(h) “Person” shall mean any individual; individuals; partnership; corporation; unincorporated association; other business organization; committee; board; trustee; receiver; agent; or any representative who has charge, care or responsibility for maintenance of any property, lot or parcel of land regardless of status as owner, tenant or lessee, and regardless of whether such person has possession;

(i) “Perennial violator” shall mean any person having control of real property for which two (2) or more notices to abate have been issued within any two (2) year period;

(j) “Property owner” shall mean the person who owns the property as indicated by the records of the Register of Deeds or appraiser’s office in Johnson County, Kansas; and for purposes of this chapter shall include the owner of property abutting the streets, avenues, boulevards, public easements and public rights-of-way;

(k) “Representative” shall mean any person listed in the Johnson County, Kansas, appraiser’s office or treasurer’s office for the purposes of paying taxes; a registered agent with the Kansas Secretary of State’s office for corporate or partnership ownership; an agent or manager directed by the property owner, estate or court order to represent the interests of the property or to otherwise control activities on the real property; or corporate officer;

(l) “Tenant” shall mean any person who has a severable or non-severable interest in the real property either by oral or written lease or covenant, or by other methods of conveying a limited interest in such lands; or any person who occupies or has possession of such real property;

(m) “Undeveloped Parcel” shall mean any lot, tract, or parcel of real estate without any man-made changes, structures or other improvements, except grading.

(n) “Vegetation” shall include, but not be limited to, weeds, woody vines, brush, grass and uncultivated plants;

(o) “Waterways” shall include, but not be limited to, any stream, creek, brook, branch, depression, reservoir, lake, pond, or drainage way in or into which stormwater runoff flows.

(p) “Weeds” shall include, but not be limited to, kudzu (Pueraria lobata), field bindweed (Convolvulus arvensis), Russian Knapweed (Centaurea pircis), hoary cress (Lepidium draba), Canada thistle (Cirsium Arvense), quackgrass (Agropyron repens), leafy spurge (Euphobia esula), bur ragweed (Franseria tomentosa and discolor), pignut (Hoffmannseggia densiflora), musk (nodding), thistle (Carduus nutans L.), Johnson grass (Sorghum halepense), sericea lespedeza (Lespedeza cuneata) and multiflora rose (Rosa Multiflora) (Ord. 08-109 § 1, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990; Ord. 80-47 § 4, 1980.)

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6.09.050 Excessive Growth Unlawful. It shall be unlawful for any person to allow excessive growth of vegetation on any lot or parcel of land within the city or any area between the property lines of said lot or parcel, and the curb line or edge of any adjacent street, and the centerline of any adjacent alley, including, but not specifically limited to, sidewalks, streets, alleys, easements, rights of way and all other areas, public or private. (Ord. 08-109 § 2, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990; Ord. 80-47 § 5, 1980.)

6.09.060 Responsibility to Abate. The property owner or other responsible person of real property shall be responsible for the abatement of any excessive growth of vegetation as made unlawful by Section 6.09.050. Further, it is the responsibility of the property owner or other responsible person to clearly mark, stake out or otherwise distinguish between trees, bushes, shrubs, flowers and ornamental or garden plants as compared to any excessive vegetation in the surrounding area. (Ord. 08-109 § 3, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.070 Public Officer; Notice to Abate. The city manager shall designate a public officer to be charged with the administration and enforcement of this chapter. The public officer shall authorize the investigation of violations of this chapter. If it is determined that a violation of this chapter exists, then the officer or authorized assistant shall send a written notice to abate to the property owner, representative, tenant or other such responsible person by certified mail, return receipt requested, to the last known address of such property owner, representative, tenant or other such responsible person. Such notice shall be required once per calendar year. (Ord. 08-109 § 4, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.080 Notice Requirements. The notice to abate shall state:

(a) A common and/or legal description of the property upon which the violation exists;

(b) That the property is in violation of the provisions of this chapter;

(c) A description of the nature of the violation that would reasonably allow the property owner or other responsible person to determine the nature of the violation to allow for self-abatement;

(d) That the person in charge of the property shall have five (5) days from the date of the mailing of the notice, or in cases where the owner is unknown and the property is vacant, ten (10) days after notice has been published by the city in the official city paper to either eradicate the excessive growth of vegetation or request a hearing before the city’s designated representative on the matter;

(e) That upon written request received prior to the expiration of the notice period, the property owner or other responsible person may request a hearing before a designated hearing officer of the city;

(f) That if the property owner or other responsible party fails to correct the violation or request a hearing within five (5) days of the mailing of notice or ten (10) days in the case of notice by publication, the city or its authorized agent will remove the excessive growth of vegetation by reasonable means and assess the costs of removal, including reasonable administrative costs, against such person. Notice of the total cost of such abatement shall be provided to the property owner or other responsible party by certified mail, return receipt requested, or personal service;

(g) That if the assessed costs of removal, including administrative costs, are not paid within thirty (30) days of the date when the assessment comes due, the costs will be added to the property tax as a special assessment;

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(h) That if any special assessments levied by the city in accordance with this chapter remain unpaid for a period of one year or more after their initial levy, the city may collect the amount due in the same manner as a personal debt of the property owner to the city by bringing an action in the Johnson County District Court. Such actions may be maintained, prosecuted and all proceedings taken, including any award of post judgment interest, in accordance with K.S.A. 16-204, and amendments thereto, to the same effect and extent as for the enforcement of an action for debt. All provisional remedies available in such actions shall be available to the city in the enforcement of the payment of such obligations. In such actions the city also shall be entitled to recover interest at the rate provided in K.S.A. 79-2968, and amendments thereto, from and after the date a delinquency occurs in the payment of special assessments levied under this chapter. The city may pursue collection both by levying a special assessment and in the manner provided by this section, but only until the full cost and any applicable interest has been paid in full;

(i) That no further notice shall be given prior to removal of any subsequent excessive growth during the calendar year

(j) That the public officer shall be contacted if there are any questions regarding the notice to abate or notice of costs;

(k) If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the city may not recover the costs or levy an assessment for the costs incurred by the cutting or destruction of the excessive growth on such property unless the new record owner of title to such property is provided notice as required by this section;

(l) Prosecution of any offender under this section does not limit the city’s right to abate any excessive growth as defined under this chapter or to additionally recover any costs incident to the abatement process, including reasonable administrative costs. (Ord. 08-109 § 5, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.090 Service of Notice.

(a) The notice shall be personally served or sent by certified mail, return receipt requested, and where the property is either vacant or unoccupied, and the property owner or other responsible person is unknown, then the city clerk shall publish the notice to abate in the official city newspaper;

(b) If the notice to abate is made by publication, the property owner or other responsible person will be ordered to abate the problem within ten (10) days of the publication;

(c) Failure to sign for the certified mail, return receipt requested, notice from the city, or failure to pick up said notice from the post office within fifteen (15) days shall not be deemed a lack of notice under this chapter where delivery was attempted and a record of this attempt was provided as required by procedures for certified mail. (Ord. 08-109 § 6, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.100 Abatement Hearing. If the recipient of the notice to abate makes a written request for hearing within the notice period, then the city shall immediately schedule a hearing during a regular business day within ten (10) calendar days from the receipt of the written request.

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The hearing shall be conducted by a designated hearing officer appointed by the city manager who shall not be a supervisor or subordinate of the officer who issued the notice to abate or conducted the investigation. The hearing officer shall receive evidence, review the investigation and prepare a written order. The order shall be sent by certified mail to all relevant parties within ten (10) days of the hearing, unless otherwise stated at the hearing and prior to the city taking any action to abate the violation. The order shall describe the relevant facts relied upon, state the specific code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement or orders as deemed necessary by the hearing officer. (Ord. 08-109 § 7, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.105 Annual Notice of Weed Removal. Repealed 7/15/97. (Ord. 97-97 § 2, 1997; Ord. 94-09 § 1, 1994.)

6.09.110 Abatement by the City. If the property owner or other responsible person fails to request a hearing and fails to abate the violations within the notice period, then the city shall go onto the property to abate the violation in a reasonable manner.

The city shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violations. The city may use its own employees or contract for services to abate violations of this chapter. Any authorized officer or agent of the city shall be allowed to relocate or remove any trash, debris, limbs or brush, building materials or other such items if such relocation or removal is reasonably necessary to abate the violation. (Ord. 08-109 § 8, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.120 Notice of Cost; Assessment and Collection.

(a) If the city takes action to abate the violation, it shall provide a notice of costs to the property owner or other responsible person. The notice of costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the notice of costs may also be posted on the property in a reasonable manner. The notice of costs shall state:

(1) The common or legal description of the property, or both;
(2) The nature of the violation, including relevant ordinances;
(3) The nature of the work performed to abate the violation;
(4) The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
(5) That the notice is a demand for payment within thirty (30) days from the date of the notice;
(6) That failure to pay the entire amount within thirty (30) days shall allow the city to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;
(7) That such additional remedies to recover costs shall include additional amounts, including additional administrative costs, attorneys’ fees when applicable, and interest;
(8) That payments shall be made by check or money order made payable to the city, with no post-dating of the check, and sent to the address stated within the notice, with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments.

(b) If the payment of costs is not made within the 30-day period, the city may levy a special assessment for such cost against the lot or piece of land. The city clerk, at the time of certifying other city taxes to the county clerk, shall certify the aforesaid costs, and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

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Provided further, the city may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt. The city may pursue both assessment and collection at the same time until the full cost, including applicable interest, court costs, attorneys’ fees and administrative costs have been paid in full. (Ord. 08-109 § 9, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.130 Exceptions. This chapter shall not be made applicable to:

(a) The growing of brome, alfalfa, timothy, clover or other grasses for hay purposes within any residential or agricultural zoned district on a property in excess of three (3) acres in size.

(b) Undeveloped parcels zoned other than for agricultural uses if such parcel is one contiguous parcel, not intersected by any public roadway, and is greater than ten (10) acres, and contiguous undeveloped parcels not adjacent to any developed parcel. Provided, however, on any such parcel no excessive growth of vegetation shall be allowed in any area within fifty (50) feet from the curb or edge of any public roadway, or within fifty (50) feet of the property line adjacent to any other public roadway, or of the property line of any property being used for residential or commercial purposes.

(c) Waterways, any areas protected by local, state or federal regulations, natural or xeri-scaped areas approved by the Development Services Director or City Engineer, or their designee, provided those areas are kept free of all noxious weeds and “Best Management Practices” are followed.

(d) Tree preservation areas where physical characteristics inhibit normal mowing practices.

Provided further, however, that the city reserves its right of abatement under this chapter whenever it determines that any excessive growth of vegetation creates or enhances an identifiable health or safety problem, including, but not limited to, proliferation of rats, mosquitoes and/or vermin, or creates a fire hazard. (Ord. 08-109 § 10, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.140 Right of Entry. Any authorized officer or agent of the city, pursuant to this chapter, shall be allowed to enter onto any land within the city limits to investigate violations of this chapter or for the abatement of violations pursuant to this chapter. (Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.150 Action in Municipal Court. If an authorized public officer determines that a violation of this chapter exists, the officer may file a complaint with the Municipal Court for such violation. No other procedures are required as a prerequisite to the filing of a complaint. (Ord. 08-109 § 11, 1997; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)

6.09.160 Penalty.

(a) Any property owner or other responsible person found in violation of this chapter shall be subject to prosecution in the Olathe Municipal Court. Any person found guilty of violating the provisions of this chapter shall be subject to a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00);

(b) Any person found guilty of violating this chapter two (2) or more times within any one-year period, or determined by the Municipal Court to be a perennial violator shall be fined not less than Two Hundred and Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00);

(c) Prosecution of any offender under this chapter does not limit the city’s right to pursue assessment or collection of costs as stated in this act, or by other laws;

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Each day that any violation of this chapter shall continue shall constitute a separate offense;

The city shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provision of this chapter and to seek civil penalties, and to abate nuisances maintained in violation thereof, and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceedings to prevent such unlawful excessive growth of vegetation. (Ord. 08-109 § 12, 2008; Ord. 97-97 § 2, 1997; Ord. 90-22 § 2, 1990.)


CHAPTER 6.16. Inoperable Vehicles. Repealed. (Ord. 90-21 § 1, 1990; Ord. 87-30 § 25, 1987; Ord. 807 § 1, 2, 1979; Ord. 111 § 1-9, 1972.)

CHAPTER 6.18

NOISE CONTROL

Sections:
6.18.010 Short Title and Scope.
6.18.020 Definitions.
6.18.030 Powers/Duties of Noise Control Officer.
6.18.050 Variances.
6.18.060 Sound Levels By Receiving Land Use.
6.18.070 Motor Vehicle Maximum Sound Levels.
6.18.080 Immediate Threats to Health and Welfare.
6.18.090 Compliance Required--Violation--Penalty.
6.18.100 Manner of Enforcement.
6.18.110 Injunction.
6.18.120 Other Remedies.
6.18.130 Liability.
6.18.140 Separability.
6.18.010 Short Title and Scope. This ordinance may be cited as the "Noise Control Ordinance of the City of Olathe" and it shall apply to the control of all noise and sound originating within the limits of the City of Olathe. (Ord. 85-13 § 1, 1985.)

6.18.020 Definitions. For the purpose of this chapter, the following items have the meaning ascribed to them as hereinafter defined, unless where otherwise expressly stated or where the context clearly defines a different meaning.

Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular; the words "shall" or "must" are mandatory; and the term "used for" includes the meaning "designated for" or "intended for." All terminology used in this ordinance, not defined as follows, shall be in conformance with the American National Standards Institute (ANSI) document: American National Acoustical terminology ANSI S1.1 1994 (R1997) or the latest approved revision thereof.

(a) "A-weighted sound level" means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dba.

(b) “Background Noise” means noise which exists at a point as a result of a combination of many distant sources individually indistinguishable.

(c) "Commercial area" means a district that has been assigned a zoning designation of District C-0, C-1, C-2 or C-3 in accordance with Chapters 19.32, 19.34, 19.36, and 19.38 of the Olathe Municipal Code.

(d) "Construction" means any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition, for or of public or private rights-of-way, structures, buildings, utilities or similar property.

(e) "Decibel (dB)" means a unit for measuring the level of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the RMS pressure of the sound measured to the RMS reference pressure, which is 20 micropascals (20 micronewtons per square meter.)

(f) "Demolition" means any dismantling, intentional destruction or removal of structures, buildings, utilities, public or private right-of-way surfaces or similar property.

(g) "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

(h) "Emergency work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(i) "Equivalent A-weighted sound level (Leq)" means the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. For the purposes of this ordinance, a time period of not less than ten (10) minutes, and representative of the noise condition of interest, shall be used, unless otherwise specified.

(j) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

(k) "Impulsive sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts and the discharge of firearms.
(l) "Industrial area" means a district that has been assigned a zoning designation of District M-1, M-2 or M-3 in accordance with Chapters 19.42; 19.44; and 19.46 of the Olathe Municipal Code.

(m) "Motor carrier vehicle engaged in interstate commerce" means any vehicle for which regulations apply pursuant to Section 18 of the Federal Noise Control Act of 1972 (P.L. 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

(n) "Motor vehicle" means every vehicle which operates on land, other than a motorcycle, which is self-propelled as defined in K.S.A. 8-126.

(o) "Motorboat" means any vessel which operates in or on water, propelled by machinery, whether or not such machinery is the principal source of propulsion as defined in K.S.A. 32-1102. Such a vessel would include, but is not limited to, boats, barges, amphibious craft, water ski towing devices and hovercraft.

(p) "Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term "tractor", as defined in K.S.A. 8-126.

(q) "Muffler or sound dissipative device" means a device for abating the sound of escaping gases of an internal combustion engine, or for abating sound transmitted in a duct, chase, pipe or other opening.

(r) "Noise" means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

(s) "Noise control officer (NCO)" means the designated representative of the director of the Development Services, City of Olathe, where the responsibility for the city noise control program is established.

(t) "Noise disturbance" means any sound which

(a) endangers or injures the safety or health of humans or animals, or
(b) annoys or disturbs a reasonable person of normal sensitivities, or
(c) endangers or injures persons or real property.

(u) "Noise sensitive zone" means any area designated pursuant to Section 6.18.030 (a) (3) of this ordinance for the purpose of ensuring exceptional quiet.

(v) "Person" means any individual, association, partnership, or corporation, and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

(w) "Planned unit development" means a district that has been assigned a zoning designation of District PUD in accordance with Chapter 19.10 of the Olathe Municipal Code.

(x) "Powered model vehicle" means any self-propelled airborne, waterborne, or landborne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

(y) "Public right-of-way" means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

(z) "Public space" means any real property, buildings or structures thereon which are owned or controlled by a governmental entity.

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(aa) "Pure tone" means any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this ordinance, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies of 500 Hz and above and by 8 dB for center frequencies between 160 and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

(bb) "Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

(cc) "Recreational aircraft" means flying vehicles which have a primary purpose of sport flying, such as motorized hang gliders, ultralight aircraft and hot air balloons.

(dd) "Residential area" means a district that has been assigned a zoning designation of District R-A, R-A-1, R-1, R-2, R-3, R-4 or R-5 in accordance with Chapters 19.14; 19.16; 19.18; 19.20; 19.22; 19.24; 19.26 and 19.28 of the Olathe Municipal Code.

(ee) "RMS sound pressure" means the square root of the time averaged square of the sound pressure, denoted Prms.

(ff) "Sound" means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium, and is the objective cause of hearing. The description of sound may include any characteristic of such sound, including duration, level and frequency.

(gg) "Sound level" means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.42 1986 (R 1998) or the latest approved revision thereof). If the frequency weighting is not indicated, the A-weighting shall apply. If the meter time response is not indicated, the "slow" response shall apply.

(hh) "Sound level meter" means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

(ii) "Sound pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

(jj) "Sound pressure level" means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micropascals (20 x 10-6 N/m2). The sound pressure level is denoted Lp or SPL and is expressed in decibels.

(kk) "Weekday" means any day Monday through Friday which is not a legal holiday. (Ord. 00-89 § 1, 2000; Ord. 87-30 § 26, 1987)
6.18.030 Powers/Duties of Noise Control Officer (NCO.)

(a) The noise control program established by this ordinance shall be administered by the Department of Development Services. In order to implement and enforce this ordinance, the director of the Development Services will appoint a noise control officer who shall have, in addition to any other authority vested, the power to:

(1) Upon presentation of proper credentials, enter and inspect any private property or place, and inspect any report or records at any reasonable time when granted permission by the owner, or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, a search warrant may be obtained from a court of competent jurisdiction upon showing of probable cause to believe that a violation of this ordinance may exist.

Such inspection may include administration of any necessary tests.

(2) In consonance with subparagraph (a) (1) preceding; Sections 6.18.130 and 6.18.140; other provisions of this ordinance and the city prosecutor, investigate and pursue possible violations of this ordinance.

(3) Prepare recommendations, to be approved by the Governing Body for the designation of noise-sensitive zones which contain noise-sensitive activities. Existing quiet zones shall be considered noise-sensitive zones until otherwise designated. Noise-sensitive activities include, but are not limited to, operations of schools, libraries open to the public, churches, hospitals, and nursing homes. (Ord. 00-89 § 2, 2000; Ord. 87-30 § 26, 1987; Ord. 85-13 § 1, 1985.)

6.18.040 Prohibited Acts. No person shall unreasonably make, continue, or cause to be made or continued, any noise disturbance. Non-commercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section. The following acts, and the causing thereof, are declared to be in violation of this ordinance:

(a) Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound:

(1) Between the hours of 11:00 p.m. and 7:00 a.m. the following day in such a manner as to create a noise disturbance across a real property boundary or within a noise sensitive zone (except for activities open to the public and for which a permit has been issued by the city clerk.)

(2) In such a manner as to create a noise disturbance at 50 feet (15 meters) from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters.

(3) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.

(4) This section shall not apply to non-commercial spoken language covered under subparagraph (b) following.

(b) Using or operating loudspeakers/public address systems as follows:

(1) For any non-commercial purpose any loudspeaker, public address system, or similar device between the hours of 11:00 p.m. and 7:00 a.m. the following day, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone.

(2) For any commercial purpose any loudspeaker, public address system, or similar device;
[a] such that the sound therefrom creates a noise disturbance across a real property boundary or within a noise sensitive zone; or

[b] between the hours of 11:00 p.m. and 7:00 a.m. the following day on a public right-of-way or public space.

(c) Offering for sale anything by shouting or outcry within any residential or commercial area of the city (except by permit issued by the city clerk and/or except between the hours of 8:00 a.m. and 7:00 p.m.).

(d) Owning, possessing or harboring any animal or bird which frequently or for continued duration, howls, barks, meows, squawks, or makes other sounds which create a noise disturbance across a residential real property boundary or within a noise sensitive zone.

(e) Loading, unloading, opening, closing or other handling of boxes, crates, containers, trash, building materials or similar objects between the hours of 11:00 p.m. and 7:00 a.m. the following day in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone.

(f) Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work:

   (1) Between the hours of 11:00 p.m. and 7:00 a.m. the following day, seven days a week, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone, except for emergency work of public service utilities or by special variance issued pursuant to Section 6.18.050(a.)

   (2) At any other time such that the sound level at or across a real property boundary exceeds 65 dba. This subsection shall not apply to construction hand tools (to include power tools) that are mobile in nature and are being used at a field construction site for temporary construction purposes.

   (3) This section shall not apply to the use of domestic power tools subject to Section 6.18.040(p.)

(g) Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone.

(h) Airport and aircraft operations as provided following:

   (1) The director of Development Services shall consult with the Johnson County Airport Commission to recommend changes in airport operations to minimize any noise disturbance which the airport manager may have authority to control.

   (2) Nothing in this section shall be construed as to prohibit, restrict, penalize, enjoin, or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with, or pursuant to, applicable federal laws or regulations.

   (i) Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, or amplifies sound in any place of public entertainment at a sound level greater than 85 dba as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign is located outside such place, near each public entrance, stating "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT."

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(j) The use or firing of explosives, firearms, or similar devices which create impulsive sound so as to cause a noise disturbance across a real property boundary or on a public space or right-of-way, without first obtaining a special variance issued pursuant to Section 6.18.050(a.). (Such permit need not be obtained for licensed game-hunting activities on property where such activities are authorized.)

(k) Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary, in a public space or within a noise sensitive zone between the hours of 11:00 p.m. and 7:00 a.m. the following day. Maximum sound levels in a public space during the permitted period of operation shall conform to those set forth for residential land use in Section 6.18.060(a) and shall be measured at a distance of 25 feet from any point on the path of the vehicle. Maximum sound levels for residential property and noise sensitive zones, during the permitted period of operation, shall be governed by Section 6.18.060(a) and Section 6.18.040(o) respectively.

(l) Stationary non-emergency signaling devices as provided following:

   (1) Sounding or permitting the sounding of a signal from any stationary bell, chime, siren, whistle or similar device, intended primarily for non-emergency or non-warning purposes, from any place between the hours of 11:00 p.m. and 7:00 a.m. the following day and for more than three (3) minutes in any hourly period between the hours of 7:00 a.m. and 11:00 p.m.

   (2) Sound sources covered by this provision and not exempted under subparagraph (1) preceding shall be exempted by the director of Development Services using criteria set forth in Section 6.18.050.

(m) Emergency signaling devices as provided following:

   (1) The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil emergency alarm, siren, whistle or similar stationary emergency signaling device, except for emergency or warning purposes or for testing, as provided in subparagraph (2) following:

   (2) (a) Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not before 7:00 a.m. or after 11:00 p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed 10 minutes.

   (b) Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur except as required for training, for testing after repairs or for proper functioning. Such testing shall not occur before 7:00 a.m. or after 11:00 p.m. The time limit specified in subparagraph (a) above shall not apply to such complete system testing.

(n) Operating or permitting the operation of any motorboat in any lake, river, stream, or other waterway in such a manner as to exceed a sound level of 88 dba at 25 feet or the nearest shoreline, whichever distance is less.

(o) The creation or causing of the creation of any sound within any noise sensitive zone designated pursuant to Section 6.18.030(a)(3):

   (1) So as to disrupt the activities normally conducted within the zone, provided that conspicuous signs are displayed indicating the presence of the zone; or

   (2) Containing a hospital, nursing home, or similar activity, so as to interfere with the functions of such activity or disturb or annoy the patients in the activity, provided that conspicuous signs are displayed indicating the presence of the zone.

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(p) Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snowblower, or similar device used outdoors in residential areas between the hours of 11:00 p.m. and 7:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary, except for the twenty four (24) hour period immediately following a snowfall or other weather related emergency.

(q) Tampering acts or the causing thereof as follows:

(1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any noise control device or element of design or noise label of any product.
(2) The intentional removing or rendering inaccurate or inoperative of any sound monitoring instrument or device positioned by or for the NCO.
(3) The use of a product which has had a noise control device or element of design or noise label removed or rendered inoperative, with knowledge that such action has occurred.

(r) Operating or permitting the operation of any parking lot sweeper or similar device that sweeps clean parking lots or sidewalks of trash, dirt, mud or other debris (exclusive of City street sweeping activities) between the hours of 11:00 p.m. and 7:00 a.m. the following day in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone. (Ord. 00-89 § 3, 2000; Ord. 85-13 § 1, 1985.)

6.18.050 Variances. The provisions of this ordinance shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or in the performance of emergency work. Variances may be requested as provided following:

(a) Special variances.

(1) The director of Development Services shall have the authority, consistent with this section, to grant special variances which may be requested pursuant to Sections 6.18.040(f) (Construction) and 6.18.040(j) (Explosives, firearms, and similar devices.)
(2) Any person seeking a special variance pursuant to this section shall file an application with the director of Development Services. Special variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special variance shall terminate it and subject the person holding it to those provisions of this ordinance regulating the source of sound or activity for which the special variance was granted.
(3) Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like applications for initial special variances under subparagraph (2) preceding.
(4) The director of Development Services may issue guidelines defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.

(b) Variances for time to comply.

(1) Within 60 days following the effective date of this ordinance, the owner of any commercial or industrial source of sound may apply to the director of Development Services for a variance in time to comply with Section 6.18.060. The director of Development Services shall have the authority, consistent with this section, to grant a variance, not to exceed 180 days from the effective date of this ordinance.

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(2) Any person seeking a variance in time to comply shall file an application with the director of Development Services. The application shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this ordinance prior to the date requested in the application would constitute unreasonable hardship or be extremely difficult to accomplish within the allotted time.

(3) Applicants for variances for time to comply and persons contesting variances may be required to submit any information the director of Development Services may reasonably require. In granting or denying an application, the director of Development Services shall place on public file a copy of the decision and the reasons for denying or granting the variance in time to comply.

(4) Variances for time to comply shall be granted to the applicant containing all necessary conditions, including a schedule for achieving compliance. The variance for time to comply shall not become effective until all conditions are agreed to by the applicant. Non-compliance with any condition of the variance shall terminate the variance and subject the person holding it to those provisions of this ordinance for which the variance was granted.

(5) Application for extension of time limits specified in variances for time to comply or for modification of other substantial conditions shall be treated like applications for initial variances under subparagraph (2) preceding, except that the director of Development Services must find that the need for the extension or modification clearly outweighs any adverse impacts of granting the extension or modification.

(6) The director of Development Services may issue guidelines defining the procedures to be followed in applying for a variance for time to comply and the criteria to be considered in deciding whether to grant a variance.

(c) Appeals. Appeals of an adverse decision of the director of Development Services shall be made to the Board of Zoning Appeals as it is constituted in Section 19.64.020 of the Olathe Municipal Code (OMC). The procedure for filing an appeal with the Board of Zoning Appeals will be the same as provided in Sections 19.64.030 and 19.64.040(a) of the (OMC). The Board of Zoning Appeals, in review of an appeal of the director of Development Services as provided for in this ordinance, will be guided by criteria as developed under subparagraph (6) preceding and their interpretation of this ordinance. Should the appellant desire, the decision of the Board of Zoning Appeals may be further appealed to the District Court of Johnson County for judicial decision. (Ord. 00-89 § 4, 2000; Ord. 85-13 § 1, 1985.)

6.18.060 Sound Levels by Receiving Land Use.

(a) No person shall operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category shown following when measured at or within the property boundary of the receiving land use:

<table>
<thead>
<tr>
<th>Receiving land-use category</th>
<th>Time</th>
<th>Sound level limit, dba</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-A, R-A-1, R-1, R-2, R-3, R-4, R-5, PUD, A (Residential, public space, open space or agricultural or institutional)</td>
<td>7:00 a.m.-11:00 p.m.</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>11:00 p.m.-7:00 a.m.</td>
<td>50</td>
</tr>
</tbody>
</table>

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(b) For any source of sound which emits a pure tone or impulsive sound, the maximum sound level limits set forth in subparagraph (a) preceding shall be reduced by 5 dba.

(c) The provisions of this section shall not apply to the unamplified human voice, interstate railway locomotives and railway cars, and any agricultural activity.

(d) When background sound levels exceed those Sound Level Limits identified by the table in 6.18.060 (a) due to indistinguishable noise sources (such as but not limited to; freeways, wind, birds, crickets, etc.) a particular sound is not a violation of this Noise Control Ordinance unless it exceeds a Leq of 5 dB(A) above the background sound level. Appropriate noise level measurements will be taken on the receiving property to determine the background noise level and the level of the suspect sound. If the suspect sound is determined to exceed a Leq of 5 dB(A) above the background sound level, the creation of this sound is a violation of the ordinance. (Ord. 00-89 § 5, 2000; Ord. 85-13 § 1, 1985.)

6.18.070 Motor Vehicle Maximum Sound Levels.

(a) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the sound emitted by the motor vehicle or motorcycle exceeds the level set forth following:

Motor Vehicle and Motorcycle Sound Limits
(Measured at 50 Feet or 15.2 Meters)

<table>
<thead>
<tr>
<th>Vehicle Class</th>
<th>Speed Limit 35 MPH or Less</th>
<th>Speed Limit over 35 MPH</th>
<th>Stationary run-up</th>
</tr>
</thead>
<tbody>
<tr>
<td>All motor vehicles of GVWR or GCWR of 10,000 lbs. or more</td>
<td>88</td>
<td>92</td>
<td>87</td>
</tr>
<tr>
<td>Any motorcycle</td>
<td>84</td>
<td>88</td>
<td>84</td>
</tr>
<tr>
<td>Any other motor vehicle or any combination of vehicles towed by any motor vehicle</td>
<td>78</td>
<td>82</td>
<td>78</td>
</tr>
</tbody>
</table>

(b) Mufflers and sound dissipative devices.
(1) No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler or other sound dissipative device in good working order and in constant operation.

(2) No person shall remove or render inoperative, or cause to be removed or rendered inoperative other than for purposes of maintenance, repair, or replacement, any muffler or sound dissipative device on a motor vehicle or motorcycle.

(c) No person shall sound a horn or other auditory signaling device on or in any motor vehicle on any public right-of-way or public space, except as provided in K.S.A. 8-1738.

(d) No person shall operate or permit the operation of any motor vehicle with a gross vehicle weight rating (CVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached to such a vehicle, for a period longer than 30 minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, on a public right-of-way or public space within 300 feet (92 meters) of a residential area or designated noise sensitive zone, between the hours of 11:00 p.m. and 7:00 a.m. the following day.

(e) No person shall operate or cause to be operated any recreational motorized vehicle off a public right-of-way in such a manner that the sound level emitted therefrom exceeds the limits set forth following a distance of 50 feet (15.2 meters) or more from the path of the vehicle when operated on a public space or at or across the boundary of private property when operated on private property. This section shall apply to all recreational motorized vehicles, whether or not duly licensed and registered, including, but not limited to, commercial or non-commercial racing vehicles, motorcycles, go-carts, snowmobiles, amphibious craft, campers, dune buggies and recreational aircraft, but not including motorboats:

<table>
<thead>
<tr>
<th>Vehicle Type</th>
<th>Sound Level, dba</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motorcycle</td>
<td>88</td>
</tr>
<tr>
<td>Any other vehicle</td>
<td>82</td>
</tr>
</tbody>
</table>

(Ord. 04-121 § 1, 2004; Ord. 00-89 § 6, 2000; Ord. 85-13 § 1, 1985.)

6.18.080 Immediate Threats to Health and Welfare.

(a) The director of Development Services shall order an immediate halt to any sound which exposes any person, except those excluded pursuant to subparagraph (b) following, to continuous sound levels or to impulsive sound levels in excess of those shown in the tables of subparagraph (e) following. Within 10 days following issuance of such an order, the municipal counsel shall apply to the appropriate court for an injunction to replace the order.

(b) No order pursuant to subparagraph (a) preceding shall be issued if the only persons exposed to sound levels in excess of those listed in subsection (e) following are exposed as a result of
(1) trespass;
(2) invitation upon private property by the person causing or permitting the sound; or
(3) employment by the person or a contractor of the person causing or permitting the
sound. (Employee exposure at their work place are exempted because employee sound
exposure levels are regulated under the Occupational Safety and Health Act.)

(c) Any person subject to an order issued pursuant to subparagraph (a) preceding shall
comply with such order until:

(1) the sound is brought into compliance with the order, as determined by the
director of Development Services; and
(2) a judicial order has superseded the director of Development Services order.

(d) Any person who violates an order issued pursuant to this section shall, for each day of
violation, be fined not less than Five Hundred Dollars ($500.00) nor more than One Thousand
Dollars ($1,000.00.)

(e) The tables following list the sound level limits which could pose an immediate threat to
public health and welfare, as measured at any point that is normally occupied by a person:

### Continuous Sound Levels which Pose an Immediate Threat

<table>
<thead>
<tr>
<th>Sound Levels Limit, Leq</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>90</td>
<td>24 Hours</td>
</tr>
<tr>
<td>93</td>
<td>12 Hours</td>
</tr>
<tr>
<td>96</td>
<td>6 Hours</td>
</tr>
<tr>
<td>99</td>
<td>3 Hours</td>
</tr>
<tr>
<td>102</td>
<td>1.5 Hours</td>
</tr>
<tr>
<td>105</td>
<td>45 Minutes</td>
</tr>
<tr>
<td>108</td>
<td>22 Minutes</td>
</tr>
</tbody>
</table>

### Impulsive Sound Levels which Pose an Immediate Threat

<table>
<thead>
<tr>
<th>Sound Level Limit (dba) (As measured using &quot;impulse&quot; meter time response)</th>
<th>Number of Repetitions per 24 hour period</th>
</tr>
</thead>
</table>

6.30
January 2001
6.18.090 Compliance Required--Violation--Penalty. It is unlawful for any person, corporation, association, partnership or individual to fail to comply with any lawful orders issued pursuant to the provisions of this chapter. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding Five Hundred Dollars ($500.00) or be imprisoned in the county jail for a period not exceeding one (1) year or be so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Ord. 85-13 § 1, 1985.)

6.18.100 Manner of Enforcement. Violation of this chapter shall be prosecuted in the same manner as other misdemeanor violations of the city's code; provided, however, that in the event of violation of Sections 6.18.060 and 6.18.070, a written notice of intention to prosecute will be given the alleged violator not less than ten (10) calendar days prior to the issuance of a misdemeanor complaint. No complaint shall be issued in the event the cause of the violation is removed, the condition abated or fully corrected within such ten (10) day period. In the event the alleged violator cannot be located in order to serve the notice of intention to prosecute, the notice as required herein shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violator at his or her last known address or at the place where the violation occurred, in which event the ten (10) day period shall commence on the date of the day following the receipt of such notice. (Ord. 85-13 § 1, 1985.)

6.18.110 Injunction. As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision hereof and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by the District Court of Johnson County, Kansas. (Ord. 85-13 § 1, 1985.)

6.18.120 Other Remedies. No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law. (Ord. 85-13 § 1, 1985.)

6.18.130 Liability. No officer, agent, Governing Body member or employee of the City of Olathe shall render himself or herself personally liable for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his or her duties under this chapter. (Ord. 87-30 § 27, 1987; Ord. 85-13 § 1, 1985.)

6.18.140 Separability. If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Ord. 85-13 § 1, 1985.)

6.31
January 2001
CHAPTER 6.20
INDOOR CLEAN AIR

Sections:
6.20.010 Short Title
6.20.020 Definitions
6.20.030 Prohibition of Smoking in Enclosed Places of Employment and All Enclosed Public Spaces
6.20.040 Responsibilities of Employers, Proprietors, Owners and Managers
6.20.050 Exceptions
6.20.060 Posting of Signs on Buildings or Areas in Which Smoking Is Permitted
6.20.070 Retaliation Prohibited
6.20.080 Enforcement
6.20.090 Penalties
6.20.100 Other Applicable Laws

6.20.010 Short Title. This Chapter shall be known and may be cited as the Olathe Indoor Clean Air Ordinance. (Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)

6.20.020 Definitions. For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the following meaning:

Access point means the area within a ten (10) foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to Section 6.20.050.

Bar means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.

Educational facility means any building used for instruction of enrolled students, including, but not limited to, any day care center, nursery school, public or private school, college, university, medical school, law school, or career and technical education school. Single family “Home Schooling” in a private residence shall not be deemed an educational facility.

Electronic Cigarette means a battery-powered device, whether or not such device is shaped like a cigarette, which can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

Employee means any person, who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.

Employer means a person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.

Enclosed area means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an “enclosed area”:

A. Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and
B. Rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.

6.32
February 2015
Food service establishment means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

Medical care facility means a physician’s office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.

Outdoor recreational facility means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.

Place of employment means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For purposes of this section, a private residence shall not be considered a “place of employment” unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

Private club means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.

Proprietor means any person who owns, leases, operates, manages, or otherwise has control of any establishment, building, or enclosed area. The term "proprietor" includes corporations, associations, non-profit entities, or partnerships as well as individuals.

Public building means any building owned or operated by:

A. The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof;
B. Any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or
C. Any other separate corporate instrumentality or unit of the state or any municipality.

Public meeting means any meeting open to the public pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of this state.

Public transportation means any air, land, or water vehicle used for the mass transportation of persons in intrastate travel for compensation, including, but not limited to, any airplane, train, bus, or boat that is not subject to federal smoking regulations.

Public places means any enclosed areas open to the public or used by the general public including, but not limited to: Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a “public place” unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.
Recreational facility means, but is not limited to, any enclosed, indoor area used by the
general public and used as a sports pavilion, health spa, boxing arena, bowling alley, swimming pool,
stadium, arena, roller or ice skating rink, video game facility, senior citizen recreational facility or
other similar place where members of the general public assemble either to engage in physical
exercise, participate in athletic competition or witness a sporting event.

Smoke or smoking means possession of a lighted cigarette, cigar, pipe or any other lighted
smoking equipment burning tobacco in any other form or device designed for the use of tobacco or
use of an electronic or battery-powered vaporizer (such as e-cigarette/electronic cigarette) that
simulates tobacco smoking by producing an aerosol that resembles smoke.

Substantial dues or membership fee requirements means initiation costs, dues or fees
proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not
considered nominal and implemented to otherwise avoid or evade restrictions of a statewide ban on
smoking.

Tobacco shop means any indoor area operated primarily for the retail sale of tobacco,
tobacco products or smoking devices or accessories, and which derives not less than eighty (80%) of
its gross receipts from the sale of tobacco.

Vapor retailer means any indoor area operated primarily for the retail sale of an electronic
or battery-powered vaporizer and vapor-related accessories, and which derives not less than eighty
(80%) of its gross receipts from the sale of electronic or battery-powered vaporizers and vapor-
related accessories. (Ord. 15-10 § 1, 2015; Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)

6.20.030 Prohibition of Smoking in Enclosed Places of Employment and All Enclosed
Public Spaces. It shall be unlawful, with no requirement of a culpable mental state, to
smoke in an enclosed area or at a public meeting including, but not limited to:

A. Public places;
B. Any vehicle of public transportation, including but not limited to buses, taxicabs and
limousines;
C. Restrooms, lobbies, hallways and other common areas in public and private buildings,
condominiums and other multiple-residential facilities;
D. Restrooms, lobbies and other common areas in hotels and motels and in at least eighty
percent (80%) of the sleeping quarters within a hotel or motel that may be rented to guests;
E. Access points of all buildings and facilities not exempted pursuant to Section 6.20.050;
and
F. Any place of employment. (Ord. 12-37 § 1, 2012; Ord. 10-44 § 1, 2010; Ord. 06-97 § 1,
2006.)

6.20.040 Responsibilities of Employers, Proprietors, Owners and Managers.

A. The proprietor or other person in charge of the premises of a public place, or other area
where smoking is prohibited, shall post or cause to be posted in a conspicuous place signs displaying
the international no smoking symbol and clearly stating that smoking is prohibited by state law.
B. Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one (1) week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

C. Notwithstanding any other provision of this section, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area. (Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)

6.20.050 Exceptions. The provisions of this Chapter shall not apply to:

A. The outdoor areas of any building or facility beyond the access points of such building or facility;

B. Private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;

C. A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty percent (20%);

D. The gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;

E. That portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to Section 6.20.040 C and that is fully enclosed and ventilated;

F. That portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to Section 6.20.040 C and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

G. Tobacco shops;

H. A class “A” or class “B” club as defined in K.S.A. 41-2601, and amendments thereto, which:

1. Held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and
2. Notifies the secretary of health and environment in writing, not later than ninety (90) days after the effective date of the Kansas Clean Air Act, that it wishes to continue to allow smoking on its premises;

I. A private club in designated areas where minors are prohibited; and

J. Vapor retailers. (Ord. 15-10 § 2, 2015; Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)

6.20.060 Posting of Signs on Buildings or Areas in Which Smoking is Permitted. The proprietor of any building or area in which smoking is not prohibited by this Chapter who allows smoking in any building or area or part thereof shall post and properly maintain signs in an appropriate place on such building or area, in a clear, conspicuous, and prominent manner, stating "Warning: Smoking Permitted." This section shall not be construed as requiring the posting of signs on private homes, private residences or private automobiles. (Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)
6.20.070 Retaliation Prohibited. No employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer reports or attempts to prosecute a violation of any of the provisions of Sections 6.20.030 and 6.20.040. (Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)

6.20.080 Enforcement.

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of Sections 6.20.030 and/or 6.20.040.

B. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person:

1. Has knowledge that smoking is occurring; and
2. Acquiesces to the smoking under the totality of the circumstances.

C. It shall be unlawful for any person, with no requirement of a culpable mental state, to smoke in any area where smoking is prohibited by the provisions of Sections 6.20.030 and/or 6.20.040.

D. The authority to administer the provisions of this Chapter is vested in the Fire Chief and his/her duly authorized representatives.

E. Whenever the need arises, the Fire Chief may call upon the fire and police departments and other departments of the City to aid in the enforcement of the provisions of this Chapter.

F. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Fire Chief. (Ord. 12-37 § 2, 2012; Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)

6.20.090 Penalties.

A. Any person who violates any provision of Sections 6.20.030 and/or 6.20.040, shall be guilty of a cigarette or tobacco infraction punishable by a fine:

1. Not exceeding $100 for the first violation;
2. Not exceeding $200 for a second violation within a one (1) year period after the first violation; or
3. Not exceeding $500 for a third or subsequent violation within a one (1) year period after the first violation.

For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

B. Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of Section 6.20.080 B shall be considered a separate violation for purposes of determining the number of violations under Section 6.20.090. (Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)

6.20.100 Other Applicable Laws. This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 10-44 § 1, 2010; Ord. 06-97 § 1, 2006.)