

CHAPTER13

NUISANCES

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ARTICLE 1. GENERAL**13-1 : NUISANCE DEFINED:**

- A. A "nuisance" is unlawfully doing an act, or omitting to perform a duty, or is any thing or condition which either:
1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
 2. Offends decency;
 3. Unlawfully interferes with, obstructs, or tends to obstruct or renders dangerous for passage, any lake or navigable river, stream, canal, or basin, or any public park, square, street, or other public property; or
 4. In any way renders other persons insecure in life or in the use of property.
- B. A "public nuisance" is one which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.
- C. Every nuisance not included in subsection B of this section is a "private nuisance". (Ord. 2000-06, 10-16-2000)

13-2 : PERSON RESPONSIBLE:

- A.** Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it. (Ord. 2000-06, 10-16-2000)

13-3: TIME DOES NOT LEGALIZE:

- A. No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right. (Ord. 2000-06, 10-16-2000)

13-4 : REMEDIES AGAINST PUBLIC NUISANCES:

- A. The remedies against a public nuisance are:
1. Prosecution on complaint before the municipal court.
 2. Prosecution on information or indictment before another appropriate court.
 3. Civil action.
 4. Abatement:
 - a. By person injured as provided in 50 Oklahoma Statutes section 12.
 - b. By the town in accordance with law or ordinance. (Ord. 2000-06, 10-16-2000)

13-5 : REMEDIES AGAINST PRIVATE NUISANCES:

- A. The remedies against a private nuisance are:
1. Civil action.
 2. Abatement:
 - a. By person injured as provided in 50 Oklahoma Statutes sections 14 and 15.
 - b. By the town in accordance with law or ordinance. (Ord. 2000-06, 10-16-2000)

13-6 : POWER TO DEFINE AND ABATE NUISANCE:

- A. As provided in 50 Oklahoma Statutes section 16, the town has power to determine what is and what shall constitute a nuisance within its corporate limits and, for the protection of the public health, the public parks and the public water supply, outside of its corporate limits. Whenever it is practical to do so, the town has power summarily to abate any such nuisance after notice to the owner and an

opportunity for him to be heard, if this can be done. (Ord. 2000-06, 10-16-2000)

13-7 : POWER TO DESIGNATE ADMINISTRATIVE OFFICER:

- A.** The town has the power to designate an administrative officer (such as a "code enforcement" officer) who will enforce the town's nuisance ordinance and initiate abatement proceedings against persons who are in violation of said nuisance. (Ord. 2000-06, 10-16-2000)

13-8 : CERTAIN PUBLIC NUISANCES DEFINED:

- A.** In addition to other public nuisances declared by other sections of this code or law, the following are hereby declared to be nuisances:
1. The sale, or offering for sale, of unwholesome food and drink; or the keeping of a place where such sales or offerings are made.
 2. The sale, offering for sale, or furnishing of intoxicating liquor in violation of the state law or ordinances of the town; or the keeping of a place where intoxicating liquor is sold, offered for sale, or furnished in violation of the state law or ordinances of the town.
 3. The exposure, display, sale, or distribution of obscene pictures, books, pamphlets, magazines, papers, documents, or objects; or the keeping of a place where such are exposed, displayed, sold, or distributed.
 4. The keeping of a place where persons gamble, whether by cards, slot machines, punchboards, or otherwise.
 5. The keeping of a place where prostitution, illicit sexual intercourse, or other immoral acts are practiced.
 6. The keeping of a place where activities in violation of the state law or ordinances are practiced or carried on.
 7. The conduct or holding of public dances in violation of the ordinances of the town; or the keeping of a place where such dances are held.
 8. The public exposure of a person having a contagious disease.

9. The continued making of loud or unusual noises which annoy persons of ordinary sensibilities; or the keeping of an animal which makes such noises.

10. The operation or use of any electrical apparatus or machine which materially and unduly interferes with radio or television reception by others.

11. Any use of a street or sidewalk or a place adjacent thereto which causes crowds of people to gather so as to obstruct traffic on such street or sidewalk, or which otherwise obstructs traffic thereon, except as may be authorized by law or ordinance.

12. Permitting water or other liquid to flow or fall, or ice or snow to fall, from any building or structure upon any street or sidewalk.

13. All wells, pools, cisterns, bodies, or containers of water in which mosquitoes breed or are likely to breed, or which are so constructed, formed, conditioned, or situated as to endanger the public safety.

14. Rank weeds or grass, carcasses, accumulations of manure, refuse, or other things, which are, or are likely to be, breeding places for flies, mosquitoes, vermin, or disease germs and the premises on which such exist.

15. Any building or structure which is dilapidated and dangerous to the public health or safety because of damage, decay, or other condition.

16. Any pit, hole, or other thing which is so constructed, formed, conditioned, or situated as to endanger the public safety.

17. Any fire or explosion hazard which endangers the public safety.

18. Any occupation or activity which endangers the public peace, health, morals, safety, or welfare.

19. Any motor vehicle (whether in operating condition or not) or any trailer without a current vehicle plate as required by law for vehicles used on the public highways, when stored or kept in a residence district.

20. Any dismantled, unserviceable, inoperable, junked, or abandoned vehicle or any vehicle legally or physically incapable of being operated, for a period of forty eight (48) hours.

21. Anything placed in or upon any street or alley of this town which in any way obstructs the same is hereby declared a nuisance, providing, this subsection shall not apply to those things placed in or upon such streets or alleys by virtue of any license granted by the town through its ordinance and provided further that this subsection shall not apply to any building or construction material or machinery temporarily placed upon any street to be used in the building or construction of any improvement upon the property adjoining such street, but such material or machinery must be removed as soon as the necessity for keeping the same in such street shall cease to exist.

22. Every pigpen located close by any street, or shall become offensive to the public by reason of the foul or obnoxious odors arising therefrom, or that may become obnoxious or annoying to the public by reason of any noises made by the animals therein contained is hereby declared a nuisance.

23. Every stable or cowshed, should it be permitted to become offensive by reason of any foul or noxious odors arising therefrom is hereby declared a nuisance.

24. Every stock pen or lot that shall be permitted to become offensive or obnoxious to the public by reason of foul or noxious odors arising therefrom, or by reason of the noises made by such stock therein contained is hereby declared a nuisance.

25. The keeping of any dog kennel, within the limits of this town for the breeding and raising of dogs that shall become offensive, obnoxious or annoying to the public by reason of its close proximity, to any street, or by reason of the barking, whining and noises made by such animals therein contained, is hereby declared to be a nuisance.

26. Every privy that shall become offensive, obnoxious or annoying to the public by reason of the foul and noxious odors arising therefrom, is hereby declared to be a nuisance.

27. Any letter, word, name, number, symbol, slogan, message, drawing, picture, writing or other mark of any kind visible to the public that is unlawfully or without permission drawn, painted, chiseled, scratched, or etched on a rock, tree, wall, bridge, fence, gate, building or other structure.

- B. The above enumeration of certain public nuisances shall be cumulative and not limit other provisions of law or ordinances defining public or private nuisances either in more general or more specific terms. (Ord. 2000-06, 10-16-2000)

13-9 : ABATEMENT OF NUISANCES:

- A. Some nuisances are of such nature as to constitute a grave and immediate danger to the peace, health, safety, morals, or welfare of one or more persons or of the public generally. It is recognized that circumstances may be such as to justify, and even to require, the chairman of the board of trustees or other appropriate officer or agency of the town government to take immediate and proper action summarily to abate such nuisances, or reduce or suspend the danger until more deliberate action can be taken toward such abatement.
- B. The code enforcement officer, the chief of the fire department, the town police chief, the town attorney, the building official, the electrical inspector, the plumbing inspector or any other officer subordinate to the board of trustees, may submit to the board of trustees a statement as to the existence of a nuisance as defined by the ordinances of the town or law, and a request or recommendation that it be abated. The health officer, any town trustee or any resident or residents of the town may submit such a statement and request or recommendation to the board of trustees.
- C. The board of trustees shall determine whether or not the alleged nuisance is a nuisance in fact. For the purpose of gathering evidence on the subject the board shall have power to subpoena and examine witnesses, books, papers, and other effects. Before proceeding to abate the nuisance or to have it abated, the board shall give notice of a hearing on the proposed abatement to the owner of any property concerned and to any other person alleged or deemed responsible for or to be causing the nuisance, and an adequate opportunity to be heard, is such notice and opportunity for a hearing can be given. Such notice to the owner and other persons concerned shall be given in writing by mail or by service by a police officer if their names and addresses are known; but, if the names and addresses are not known and the peace, health, safety, morals, or welfare of the person or persons or public adversely affected would not be unduly jeopardized by the necessary delay, a notice of the hearing shall be published in a paper of general circulation within the town.

- D. If the board finds that a nuisance does in fact exist, it shall direct the owner and/or other persons responsible for or causing the nuisance to abate it within a specified time if the peace, health, safety, morals, or welfare of the person or persons or public adversely affected would not be unduly jeopardized by the consequent delay. If such peace, health, safety, morals, or welfare would be unduly jeopardized by the consequent delay, or if the owner or other persons responsible for or causing the nuisance do not abate it within the specified time, the board shall direct the chairman of the board to abate the nuisance or to have it abated, if summary abatement is practical as authorized by 50 Oklahoma Statutes 1971 section 16. [he town clerk shall send a statement of the cost of such summary abatement to the owner and/or other persons responsible for or causing the nuisance, as may be just under the circumstances, if their names and addresses are known. Until paid, such cost shall constitute a debt to the town collectible as other debts of the town may be collected. (Ord. 2000-06, 10-16-2000)J

13-10: ABATEMENT BY SUIT IN DISTRICT COURT:

- A. In cases where it is deemed impractical summarily to abate a nuisance, the town may bring suit in the district court of the county where the nuisance is located, as provided in 50 Oklahoma Statutes section 17. (Ord. 2000-06, 10-16-2000)

13-11 : NUISANCE UNLAWFUL:

- A. It is unlawful for any person (owner, lessee, or other) to create or maintain a nuisance within the town, or to permit a nuisance to remain on premises under his control within the town. (Ord. 2000-06, 10-16-2000)

13-12 : PROCEDURE CUMULATIVE:

- A. The various procedures for abating nuisances prescribed by this chapter and by other provisions of law and ordinance shall be cumulative one to the other; and the town may elect to follow any such procedure which is applicable in abating any particular nuisance. (Ord. 2000-06, 10-16-2000)

13-13 : PENALTY:

- A. Any person who violates any provision of this chapter, by doing any act prohibited or declared to be unlawful thereby, or declared to be a nuisance, an offense, or misdemeanor thereby, or who fails to do any act required by any such provision, or who fails to do any act when such provision declares such failure to be unlawful or to be an offense or misdemeanor, or who violates any legal order or regulation made pursuant to this chapter, or who maintains any nuisance as defined in this chapter, is guilty of an offense. Each day upon which any such violation continues, shall constitute a separate offense. (Ord. 2000-06, 10-16-2000)

ARTICLE 2. ABATEMENT OF WEEDS AND TRASH

13-14 : AUTHORITY TO ABATE WEED AND TRASH NUISANCE:

- A. As provided in 11 Oklahoma Statutes section 22-111, the town has the authority to cause property within municipal limits to be cleaned of trash and weeds or grass to be cut or mowed. (Ord. 2000-06, 10-16-2000)

13-15 : NOTICE TO OWNER OF PROPERTY:

- A. At least ten (10) days' notice shall be given to the owner of the property by mail at the address shown by the current year's tax rolls in the county treasurer's office before town's governing body holds a hearing or takes action. At the time of mailing of notice to the property owner, the town shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailer. However, if the property owner cannot be located within ten (10) days of the date of mailing by the town's governing body, notice may be given by posting a copy of the notice on the property or by publication one time not less than ten (10) days prior to any hearing or action by the town.
- B. The notice shall order the property owner to clean the property of trash, or to cut or mow the weeds or grass on the property, as appropriate, and the notice shall further state that unless such work is performed within ten (10) days of the date of the notice the work shall be done by the town and a notice of lien shall be filed with the

county clerk against the property for the costs due and owing the town. (Ord. 2000-06, 10-16-2000)

13-16 : OWNER MAY CONSENT TO ABATEMENT:

- A. The owner of the property may give written consent to the town authorizing the removal of the trash or the mowing of the weeds or grass. By giving written consent, the owner waives his or her right to a hearing by the town. (Ord. 2000-06, 10-16-2000)

13-17 : HEARING:

- A. A hearing may be held by the town's governing body to determine whether the accumulation of trash or the growth of weeds or grass has caused the property to become detrimental to the health, benefit, and welfare of the public and the community or a hazard to traffic, or creates a fire hazard to the danger of property. (Ord. 2000-06, 10-16-2000)

13-18 : RIGHT OF ENTRY TO ABATE NUISANCE:

- A. Upon finding that the condition of the property constitutes a detriment or hazard, and that the property would be benefited by the removal of such conditions, the agents of the town are granted the right of entry on the property for the removal of trash, mowing of weeds or grass, and performance of the necessary duties as a governmental function of the municipality. Immediately following the cleaning or mowing of the property, the municipal clerk shall file a notice of lien with the clerk describing the property and the work performed by the town, and stating that the town claims a lien on the property for the cleaning and mowing costs. (Ord. 2000-06, 10-16-2000)

13-19 : PAYMENT FOR WORK PERFORMED:

- A. The town's governing body shall determine the actual cost of such cleaning and mowing and any other expenses as may be necessary in connection with abating said nuisance, including the cost of notice and mailing. The municipal clerk shall forward by mail to the property owner a statement of such actual cost and demanding payment. If

cleaning and mowing are done by the town, the cost to the property owner for the cleaning and mowing shall not exceed the actual cost of the labor, maintenance, and equipment required. If cleaning and mowing are done on a private contract basis, the contract shall be awarded to the lowest and best bidder. If payment is not made within thirty (30) days from the date of the mailing of the statement, the municipal clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located and the same shall be levied on the property and collected by the county treasurer as other taxes authorized by law. Until fully paid, the cost and the interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer, coequal with the lien of ad valorem taxes and all other taxes and special assessments and prior and superior to all other titles and liens against the property, and the lien shall continue until the cost shall be fully paid. At the time of collection, the county treasurer shall collect a fee of five dollars (\$5.00) for each parcel of property. The fee shall be deposited to the credit of the general fund of the county. At any time prior to the collection, the town may pursue any civil action remedy for collection of the amount owing and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created by this section. Upon receiving payment, if any, the municipal clerk shall forward to the county treasurer a notice of such payment and directing discharge of the lien. (Ord. 2000-06, 10-16-2000)

13-20 : APPEAL:

- A. The property owner shall have the right to appeal to the town's governing body from any order of the enforcement officer or governing body. Such appeal shall be taken by filing a written notice of appeal with the municipal clerk within ten {10} days after the administrative order is rendered. (Ord. 2000-06, 10-16-2000)

13-21 : FURTHER NOTICE OF ABATEMENT:

- A. If a notice is given by the town's governing body to property owner ordering the property within the municipal limits to be cleaned of trash and weeds or grass to be cut or mowed, any subsequent accumulations of trash or excessive weed or grass growth on the property occurring within a six (6) month period may be declared to be a nuisance and may be summarily abated without further notice

to the property owner. At the time of each summary abatement, the town shall notify the property owner of the abatement and the costs thereof. The notice shall state that the property owner may request a hearing within ten (10) days after the date of mailing the notice. The notice, whether by mail, posting or publication, shall state: "that any accumulations of trash or excessive weed or grass growth on the owner's property occurring within six months from and after the date of this notice may be summarily abated by the town's governing body; that the costs of such abatement shall be assessed against the owner; and that a lien may be imposed on the property to secure such payment, all without further prior notice to the property owner". (Ord. 2000-06, 10-16-2000)

13-22 : DEFINITIONS:

A. For purposes of this article:

- CLEANING: The removal of trash from property.

- OWNER: The owner of record as shown by the most current tax rolls of the county treasurer.

- TRASH: Any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, or waste, or matter of any kind or form which is uncared for, discarded, or abandoned.

- WEED: Includes, but is not limited to, poison ivy, poison oak, or poison sumac and all vegetation at any state of maturity which: exceeds twelve inches (12") in height, except healthy trees, shrubs, or produce for human consumption grown in a tended and cultivated garden unless such trees and shrubbery by their density or location constitute a detriment to the health benefit and welfare of the public and community or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the mowing of said weeds; regardless of height, harbors, conceals, or invites deposits or accumulation of refuse or trash; harbors rodents or vermin; gives off unpleasant or noxious odors; constitutes a fire or traffic hazard; is dead or diseased. Furthermore, the term "weed" shall not include

tended crops on land zoned for agricultural use which are planted more than one hundred fifty feet (150') from a parcel zoned for other than agricultural use. (Ord. 2000-06, 10-16-2000)

13-23 : AGRICULTURAL AND RAILROAD PROPERTY:

- A. This article shall not apply to any property zoned and used for agricultural purposes or to railroad property under the jurisdiction of the Oklahoma corporation commission. However, a municipal governing body may cause the removal of weeds or trash from property zoned and used for agricultural purposes pursuant to the provisions of this article but only if such weeds or trash pose a hazard to traffic and are located in, or within ten (10) yards of, the public right of way at intersections. (Ord. 2000-06, 10-16-2000)

ARTICLE 3. PUBLIC HEALTH NUISANCES

13-24: HEALTH NUISANCES; ABATEMENT:

- A. Pursuant to 63 Oklahoma Statutes section 1-1011, the health officer shall have authority to order the owner or occupant of any private premises in the town to remove from such premises, at his own expense, any source of filth, cause of sickness, condition conducive to the breeding of insects or rodents that might contribute to the transmission of disease, or any other condition adversely affecting the public health, within twenty four (24) hours, or within such other time as may be reasonable, and a failure to do so shall constitute an offense. Such order shall be in writing and *may* be served personally on the owner or occupant of the premises, or authorized agent thereof, by the health officer or by policemen, or a copy thereof may be left at the last usual place of abode of the owner, occupant, or agent, if known and within the state. If the premises are unoccupied and the residence of the owner, occupant, or agent is unknown, or is without the state, the order may be served by posting a copy thereof on the premises, or by publication in at least one issue of a newspaper having a general circulation in the town.
- B. If the order is not complied with, the health officer *may* cause the order to be executed and complied with, and the cost thereof sh.all be certified to the town clerk, and the cost of removing or abating such nuisance shall be added to the water bill or other town utility

bill of the owner or occupant if he is a user of water from the town water system or such other utility service. The cost shall be treated as a part of such utility bill to which it is added, and shall become due and payable, and be subject to the same regulations relating to delinquency in payment, as the utility bill itself. If such owner or occupant is not a user of any town utility service, such costs, after certification to the town clerk, may be collected in any way in which any other debt due the town may be collected.

- C. The superintendent of the water and sewer department of the town of Chouteau is hereby designated the health officer for the town for the purpose of this article. (Ord. 2000-06, 10-16-2000)

ARTICLE 4. ABATEMENT OF DILAPIDATED BUILDING

13-25 : AUTHORITY TO ABATE DILAPIDATED BUILDINGS:

- A. A municipal governing body may cause dilapidated buildings within the municipal limits to be torn down and removed. (Ord. 2000-06, 10-16-2000)

13-26 : NOTICE TO PROPERTY OWNER:

- A. At least ten (10) days' notice that a building is to be torn down or removed shall be given to the owner of the property before the governing body holds a hearing. The notice shall be posted on the property to be affected. In addition, a copy of the notice shall be sent by mail to the property owner at the address shown by the current year's tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last known address of the mortgagee. At the time of mailing of notice to any property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailer. However, if neither the property owner nor mortgage holder can be located, notice may be given by posting a copy of the notice on the property, or by publication as defined in 11 Oklahoma Statutes section 1-102. The notice may be published once not less than ten (10) days prior to any hearing or action by the municipality pursuant to the provisions of this section. (Ord. 2000-06, 10-16-2000)

13-27 : **HEARING:**

- A. A hearing shall be held by the governing body to determine if the property is dilapidated and has become detrimental to the health, safety, or welfare of the general public and the community, or if the property creates a fire hazard which is dangerous to other property. (Ord. 2000-06, 10-16-2000)

13-28 : **DEMOLITION PROCEEDINGS:**

- A. Pursuant to a finding that the condition of the property constitutes a detriment or a hazard and that the property would be benefited by the removal of the same, the governing body may cause the dilapidated building to be torn down and removed. The governing body shall fix reasonable dates for the commencement and completion of the work. The municipal clerk shall immediately file a notice of dilapidation and lien with the county clerk describing the property, the findings of the municipality at the hearing, and stating that the municipality claims a lien on the property for the destruction and removal costs and that such costs are the personal obligation of the property owner from and after the date of filing of the notice. The agents of the municipality are granted the right of entry on the property for the performance of the necessary duties as a governmental function of the municipality if the work is not performed by the property owner within dates fixed by the governing body. (Ord. 2000-06, 10-16-2000)

13-29 : **COST TO PROPERTY OWNER:**

- A. The governing body shall determine the actual cost of the dismantling and removal of dilapidated buildings and any other expenses that may be necessary in conjunction with the dismantling and removal of the buildings, including the cost of notice and mailing. The municipal clerk shall forward a statement of the actual cost attributable to the dismantling and removal of the buildings and a demand for payment of such costs, by mail to the property owner. In addition, a copy of the statement shall be mailed to any mortgage holder at the address provided for in section 13-26 of this article. At the time of mailing of the statement of costs to any property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailer. If a municipality

dismantles or removes any dilapidated buildings, the cost to the property owner shall not exceed the actual cost of the labor, maintenance, and equipment required for the dismantling and removal of the dilapidated buildings. If dismantling and removal of the dilapidated buildings is done on a private contract basis, the contract shall be awarded to the lowest and best bidder. (Ord. 2000-06, 10-16-2000)

13-30 : PAYMENT FOR WORK PERFORMED:

- A. When payment is made to the municipality for costs incurred, the municipal clerk shall file a release of lien, but if payment attributable to the actual cost of the dismantling and removal of the buildings is not made within six (6) months from the date of the mailing of the statement to the owner of such property, the municipal clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located. The costs shall be levied on the property and collected by the county treasurer as are other taxes authorized by law. Until finally paid, the costs and the interest thereon shall be the personal obligation of the property owner from and after the date of the notice of dilapidation and lien is filed with the county clerk. In addition the cost and the interest thereon shall be lien against the property from the date the notice of the lien is filed with the county clerk. The lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property. The lien shall continue until the cost is fully paid. At the time of collection, the county treasurer shall collect a fee of five dollars (\$5.00) for each parcel of property. The fee shall be deposited to the credit of the general fund of the county. At any time prior to collection as provided for in this section, the municipality may pursue any civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section. Upon receiving payment, the municipal clerk shall forward to the county treasurer a notice of such payment and shall direct discharge of the lien. (Ord. 2000-06, 10-16-2000)

13-31: **AUTHORITY TO CARRY OUT ABATEMENT PROCEEDINGS:**

A. The municipality may designate, by ordinance, a code enforcement officer or administrative body to carry out the duties of the governing body specified in this article. The property owner shall have the right of appeal to the municipal governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the municipal clerk within ten (10) days after the administrative order is rendered. (Ord.

2000-06, 10-16-2000)

13-32: **DEFINITIONS:**

A. For the purposes of this article:

DILAPIDATED BUILDING:

1. A structure which through neglect or mJury 7 lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that the structure is a hazard to the health, safety, or welfare of the general public,

2. A structure which is unfit for human occupancy due to the lack of necessary repairs and is considered uninhabitable or is a hazard to the health, safety, and welfare of the general public,

3. A structure which is determined by the municipal governing body or administrative officer of the municipal governing body to be an unsecured building, as defined by 11 Oklahoma Statutes section 22-112.1, more than three times within any twelve (12) month period,

4. A structure which has been boarded and secured, as defined by 11 Oklahoma Statutes section 22-112.1, for more than thirty six (36) consecutive months, or

Pk 5. A structure declared by the municipal governing body to constitute a public nuisance.

OWNER: The owner of record as shown by the most current tax rolls of the county treasurer. (Ord. 2000-06, 10-16-2000)

13-33: **DUTY TO PROTECT HEALTH, SAFETY AND WELFARE OF PUBLIC:**

- A. Nothing in the provisions of this article shall prevent the municipality from abating a dilapidated building as a nuisance or otherwise exercising its police power to protect the health, safety, or welfare of the general public. (Ord. 2000-06, 10-16-2000)

13-34 : **LIABILITY OF TOWN OFFICIALS:**

- A. The officers, employees or agents of the municipality shall not be liable for any damages or loss of property due to the removal of dilapidated buildings performed pursuant to the provisions of this article or as otherwise prescribed by law. (Ord. 2000-06, 10-16-2000)

13-35 : **AGRICULTURAL PROPERTY:**

- A. The provisions of this article shall not apply to any property zoned and used for agricultural purposes. (Ord. 2000-06, 10-16-2000)

ARTICLE 5. BOARDING ANO SECURING DILAPIDATED BUILDINGS

13-36: **AUTHORITY TO BOARD DILAPIDATED BUILDING:**

- A. After a building has been declared dilapidated, as provided in article 4 of this chapter, and before the commencement of the tearing down and removal of a dilapidated building, the governing body of any municipality may authorize that such a building be boarded and secured. However, if the dilapidated building is vacant and unfit for human occupancy, the governing body of any municipality may authorize the structure to be demolished pursuant to article 4 of this chapter. (Ord. 2000-06, 10-16-2000)

13-37 : ABATEMENT OF TRASH AND WEEDS AROUND DILAPIDATED BUILDING:

- A. A governing body of any municipality *may* cause the premises on which an unsecured building is located to be cleaned of trash and weeds in accordance with the provisions of article 2 of this chapter. (Ord. 2000-06, 10-16-2000)

13-38 : PROCESS OF BOARDING AND SECURING DILAPIDATED BUILDING:

- A. A governing body of any municipality *may* cause an unsecured building to be boarded and secured in accordance with the following procedures:

1. Before the governing body orders such action, at least ten (10) days' notice that such unsecured building is to be boarded and secured shall be given by mail to any property owners and mortgage holders as provided in article 4 of this chapter. At the time of mailing of notice to any property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. A copy of the notice shall also be posted on the property to be affected. However, if neither the property owner nor mortgage holder can be located, notice may be given by posting a copy of the notice on the property or by publication. Such notice shall be published one time, not less than ten (10) days prior to any hearing or action by the municipality pursuant to the provisions of this section. If a municipal governing body anticipates summary abatement of a nuisance in accordance with the provisions of subsection A9 of this section, the notice shall state: "that any subsequent need for boarding and securing the building within a six-month period after the initial boarding and securing of the building pursuant to such notice may be summarily boarded and secured by the municipal governing body; that the costs of such boarding and securing shall be assessed against the owner; and that a lien may be imposed on the property to secure such payment, all without further prior notice to the property owner or mortgage holder";

2. The owner of the property may give written consent to the municipality authorizing the boarding and securing of such unsecured building and to the payment of any costs incurred

thereby. By giving written consent, the owner waives any right the owner has to a hearing by the municipal governing body;

3. If the property owner does not give written consent to such actions, a hearing may be held by the municipal governing body to determine whether the boarding and securing of such unsecured building would promote and benefit the public health, safety or welfare. Such hearing may be held in conjunction with a hearing on the accumulation of trash or the growth of weeds or grass on the premises of such unsecured building held pursuant to the provisions of section 13-15 of this chapter. In making such determination, the governing body shall apply the following standard: The governing body may order the boarding and securing of the unsecured building when the boarding and securing thereof would make such building less available for transient occupation, decrease a fire hazard created by such building, or decrease the hazard that such building would constitute an attractive nuisance to children.

Upon making the required determination, the municipal governing body may order the boarding and securing of the unsecured building;

4. When the governing body orders the boarding and securing of such unsecured building, the municipal clerk shall immediately file a notice of unsecured building and lien with the county clerk describing the property, stating the findings of the municipality at the hearing at which such building was determined to be unsecured, and stating that the municipality claims a lien on the property for the costs of boarding and securing such building and that such costs are the personal obligation of the property owner from and after the date of filing the notice;

5. Pursuant to the order of the governing body, the agents of the municipality are granted the right of entry on the property for the performance of the boarding and securing of such building and for the performance of all necessary duties as a governmental function of the municipality;

After an unsecured building has been boarded and secured, the governing body shall determine the actual costs of such actions and any other expenses that may be necessary in conjunction therewith including the cost of the notice and mailing. The municipal clerk shall forward a statement of the actual costs attributable to the boarding and securing of the unsecured building and a demand for payment of such costs, by mail to any property owners and mortgage holders as provided in article 4 of this chapter. At the time of mailing of the

statement of costs to any properly owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee.

If a municipality boards and secures any unsecured building, the cost to the property owner shall not exceed the actual cost of the labor, materials and equipment required for the performance of such actions. If such actions are done on a private contract basis, the contract shall be awarded to the lowest and best bidder;

7. When payment is made to the municipality, for costs incurred, the municipal clerk shall file a release of lien, but if payment attributable to the actual costs of the boarding and securing of the unsecured building is not made within thirty (30) days from the date of the mailing of the statement to the owner of such property, **the clerk shall** forward a certified statement of the amount of the costs to the county treasurer of the county in which the property is located. The costs shall be levied on the property and collected by the county treasurer as are other taxes authorized by law. Until finally paid, the costs and the interest thereon shall be the personal obligation of the property owner from and after the date the notice of unsecured building and lien is filed with the county clerk. In addition the costs and the interest thereon shall be a lien against the property from the date the notice of the lien is filed with the county clerk. The lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property. The lien shall continue until the costs and interest are fully paid. At any time prior to collection as provided for in this subsection A7, the municipality may pursue any civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property. A mineral interest if severed from the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section. Upon receiving payment, the municipal clerk shall forward to the county treasurer a notice of such payment and shall direct discharge of the lien;

8. The municipality may designate by ordinance a code enforcement officer or administrative body to carry out the duties of the governing body specified in section 13-36 of this article. The property owner or mortgage holder shall have a right of appeal to the municipal governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written

notice of appeal with the municipal clerk within ten (10) days after the administrative order is rendered;

9. If a municipal governing body causes a structure within the municipal limits to be boarded and secured, any subsequent need for boarding and securing within a **six** (6) month period constitutes a public nuisance and may be summarily boarded and secured without further prior notice to the property owner or mortgage holder. At the time of each such summary boarding and securing, the municipality shall notify the property owner and mortgage holder of the boarding and securing and the costs thereof. The notice shall state that the property owner may request an appeal with the municipal clerk within ten (10) days after the mailing of the notice. The notice and hearing shall be as provided for in subsection A1 of this section. Unless otherwise determined at the hearing the cost of such boarding and securing shall be determined and collected as provided for in subsections A6 and A7 of this section;

10. A governing body of any municipality may determine that a building is unsecured and order that such building be boarded and secured in the manner provided for in this subsection even though such building has not been declared, by the governing body, to be dilapidated. {Ord. 2000-06, 10-16-2000}

39: **DEFINITIONS:**

A. For the purposes of this article:

BOARDING AND SECURING OR BOARDED AND SECURED: The closing, boarding or locking of any or all exterior openings so as to prevent entry into the structure.

UNFIT FOR HUMAN OCCUPANCY: A structure that due to lack of necessary repairs is considered uninhabitable and is a hazard to the health, safety, and welfare of the general public.

UNSECURED BUILDING: Any structure which is not occupied by a legal or equitable owner thereof, or by a lessee of a legal or equitable owner, and into which there are one or more unsecured openings such as

broken windows, unlocked windows, broken doors, unlocked doors, holes in exterior walls, holes in the roof, broken basement or cellar hatchways, unlocked basement or cellar hatchways or other similar unsecured openings which would facilitate an unauthorized entry into the structure. (Ord. 2000-06, 10-16-2000)

13-40: **AGRICULTURAL PROPERTY:**

- A. The provisions of this section shall not apply to any property zoned and used for agricultural purposes. (Ord. 2000-06, 10-16-2000)

ARTICLE 6. GRAFFITI

13-41: **POWER TO ABATE GRAFFITI:**

- A.** A municipal governing body may cause graffiti to be removed from property within the municipal limits in accordance with the following procedures:
1. The property owner and the tenant, if any, may give their written consent to the municipality authorizing removal of the graffiti. By giving such written consent, the owner and the tenant each waives the right to notice and a hearing by the municipality as otherwise required by this section;
 2. If the consent of the property owner and the tenant, if any, to remove graffiti from the property cannot be obtained, the municipality may remove the graffiti without such consent pursuant to the procedures set forth in this article;
 3. To remove graffiti from property without the consent of the property owner and the tenant, if any, at least ten (10) days' notice shall be given by mail directed to the address shown by the current year's tax rolls in the county treasurer's office. Notice to the tenant, if any, shall be given by mail directed to the property address. The notice shall order the property owner and the tenant, if any, to remove graffiti from the property and shall further state that unless such work is performed within twenty (20) days of the date of the notice the work shall be done by the municipality. At the time of mailing of notice to the property owner and the tenant, if any, the

municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee(s). In addition, notice shall be given by posting a copy of the notice on the property at least one time not less than ten (10) days prior to any hearing or action by the municipality. If a municipal governing body anticipates summary abatement of graffiti in accordance with the provisions of section 13-42 of this article, the notice shall state that any accumulations of graffiti on the property occurring within one year from and after the date of the notice may be summarily abated by the municipality without a hearing and further prior notice to the property owner or the tenant, if any, except by posting of notice at least one time on the property once not less than two (2) business days prior to such summary abatement;

4. A hearing may be held by the municipal governing body to determine whether the accumulation of graffiti on the property has caused the property to become detrimental or a hazard to the health, safety, or general welfare of the public and the community;

5. Upon finding that the condition of the property constitutes a detriment or hazard, and that the property, the public, and the community would be benefited by removal of such conditions, the agents of the municipality are granted the right of entry onto the property for the removal of the graffiti thereon and for performance of the necessary duties as a governmental function of the municipality; and

6. The municipality may designate by ordinance an administrative officer or administrative body to perform the functions set forth in this section. The property owner and the tenant, if any, shall have a right of appeal to the municipal governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the municipal clerk within ten (10) business days after the administrative order is rendered. (Ord. 2000-06, 10-16-2000)

13-42 : NOTICE TO PROPERTY OWNER:

- A. If a notice is given by a municipal governing body to a property owner and tenant if any, ordering graffiti to be removed from property within the municipal limits in accordance with the procedures provided for in section 13-41 of this article, any subsequent accumulations of graffiti on the property occurring within a one year period may be summarily abated without further prior

notice to the property owner or the tenant, if any. However, prior to the summary abatement by the municipality, notice thereof shall be posted at least one time on the property not less than two (2) business days prior to such summary abatement. This section shall not apply if the records of the county clerk show that the ownership and/or tenancy of the property was transferred after notice was given pursuant to this section. (Ord. 2000-06, 10-16-2000)

13-43 : TOWN TO BEAR EXPENSE OF REMOVAL OF GRAFFITI:

- A. Removal of graffiti by a municipality pursuant to the provisions of this article shall be performed at the sole expense of the municipality. In removing the graffiti, the municipality shall restore the property as nearly as possible to the condition as it existed immediately prior to the graffiti being placed on the property. (Ord. 2000-06, 10-16-2000)

13-44 : DUTY TO PROTECT HEALTH, SAFETY AND WELFARE OF PUBLIC:

- A. Nothing in the provisions of this article shall prevent the municipality from abating graffiti as a nuisance or otherwise exercising its police power to protect the health, safety, or general welfare of the public. (Ord. 2000-06, 10-16-2000)

13-45 : LIABILITY OF TOWN OFFICIALS:

- A. The municipality and its officers, employees or agents shall not be liable for any damages or loss of property due to the removal of graffiti performed pursuant to the provisions of this article. (Ord. 2000-06, 10-16-2000)

13-46 : POWER TO ENACT A STRICTER ORDINANCE:

- A. Nothing in this article shall prohibit the municipal governing body from enacting ordinances concerning the removal of graffiti that are stricter than this article. (Ord. 2000-06, 10-16-2000)

13-47: **DEFINITIONS:**

A. For the purposes of this article:

ADVERTISING: Any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner or tenant of the property, or an agent of such owner or tenant, for the purpose of promoting products or services or conveying information to the public.

GRAFFITI: Means, without limitation, any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fence, gate, building or other structure; provided, this definition shall not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, or by an authorized agent for such owner or tenant.

OWNER: The owner of record as shown by the most current tax rolls of the county treasurer.

REMOVAL, REMOVE, OR REMOVED: When used in relation to the eradication of graffiti means the act of taking graffiti *off* of, or masking the presence of graffiti on, a rock, tree, wall, bridge, fence, gate, building or other structure.

TENANT: Any person shown by the records of the county clerk's office as a lessee of property, or any person lawfully in actual physical possession of property. (Ord. 2000-06, 10-16-2000)

ARTICLE 7. ABANDONED OR JUNKED VEHICLE

13-48: **CERTAIN VEHICLES PROHIBITED:**

A. No person shall deposit, store, keep or permit to be deposited, stored or kept in the open upon public or private property a dismantled, unserviceable, inoperable, junked or abandoned vehicle or any vehicle legally or physically

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incapable of being operated, for a period exceeding forty eight (48) hours, unless such vehicle or the parts thereof is completely enclosed within a building or stored in connection with a business lawfully established pursuant to the ordinances of the town of Chouteau, Oklahoma, or is stored on property lawfully designated under the zoning ordinances of the town of Chouteau as a place where such vehicles may be stored. (Ord. 2000-06, 10-16-2000)

13-49: **NUISANCE DECLARED:**

- A. The accumulation or storage of one or more vehicles or parts thereof as described in section 13-48 of this article shall constitute a nuisance detrimental to the health, safety and welfare of the inhabitants of the town of Chouteau. It shall be the duty of the owner of such vehicle or the parts thereof or the owner of the private property or the lessee or other person in possession or control of the property upon which such vehicle is located to remove the vehicle from such property or have the vehicle housed in a building where it will not be visible from the street or from other private property. The removal or enclosure shall be made within ten (10) days after notice has been given to the owner of the vehicle or the owner, lessee or person in control of the property upon which such vehicle is located. The time may be extended by the enforcement official in the case of an obvious hardship. (Ord. 2000-06, 10-16-2000)

13-50: **ABATEMENT:**

- A. Upon any failure of the owner or person in control of the vehicle or the owner, lessee, or person in control of the property upon which the vehicle may be located, to remove the vehicle or place it in an enclosed building within ten (10) days after notice has been placed on the vehicle, the code enforcement official shall notify, in writing, the police department of the city which shall promptly cause the vehicle to be removed and impounded in accordance with the police department's impound procedures. The wrecker service where the vehicle is impounded shall cause notification of the vehicle owner and lien holder of its impoundment as provided by state law. (Ord. 2000-06, 10-16-2000; amd. Ord. 2019-5, 6-10-2019)

13-51 : **ORDER OF ABATEMENT:** (Rep. by Ord. 2019-5, 6-10-2019)

13-52 : **OWNER'S RIGHT TO REGAIN POSSESSION OF VEIDCLE:**

- A. The owner or person in control of any vehicle or vehicles so removed may regain possession thereof by obtaining an impound release from the police

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department in accordance with the police department's impound procedures. All costs owing for impound towing and storage fees shall be paid to the wrecker service where the vehicle is impounded. Should the vehicle go unclaimed, the wrecker service shall dispose of such in accordance with state law. (Ord. 2000-06, 10-16-2000; amd. Ord. 2019-5, 6-10-2019)

13-53: **APPEAL:**

- A. An appeal to the municipal governing body may be taken by any person aggrieved where it is alleged there is error in any order, requirement, decision or determination made by the code enforcement officer concerning any dismantled, unservicable, inoperable, junked or abandoned vehicle. Said appeal may be made to the Board of Trustees of the Town of Chouteau by filing a written notice with the Town Clerk-Treasurer, Town of Chouteau, 111 S. Lewis, Chouteau, OK 74337, within ten (10) days from the date notice was affixed to the vehicle. Said written appeal shall stay enforcement of any action pending hearing before the Board of Trustees, which shall consider the matter in its entirety. (Ord. 2000-06, 10-16-2000; amd. Ord. 2019-5, 6-10-2019)

13-54: **PENALTY:**

- A. Any person required by the provisions of this article to remove a dismantled, junked or abandoned vehicle who shall fail to do so in compliance with notice as provided herein, shall be guilty of an offense and, upon conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500.00), excluding costs, or by imprisonment in the town jail for a period of not more than ninety (90) days, or both. Each and every violation and each day of such violation shall be a separate offense. (Ord. 2000-06, 10-16-2000)

13-55: **DEFINITIONS:**

- A. For the purposes of this article:

DISMANTLED,
JUNKED, ABANDONED
OR INOPERABLE
VEHICLE:

Shall be deemed to include the major parts thereof including bodies, engine transmissions, frames and rear ends, or any vehicle which does not have current and valid license tags.

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PERSON:	Any person, firm, partnership, association, corporation, company or organization of any kind.
PRIVATE PROPERTY:	Any real property within the corporate limits of the city which is not public property as described herein.
PUBLIC PROPERTY:	Any property owned or controlled by the city, the county, the state, or any public entity thereof, or the United States Government within the city limits, and shall include all streets and highways.
VEHICLE:	Any machine propelled by other than human muscle and shall include without limitation any airplane, automobile, truck, trailer, motorcycle, tractor, buggy, wagon, or self-propelled farm or construction equipment.(Ord. 2000-06, 10-16-2000; amd. Ord. 2019-5, 6-10-2019)

ARTICLE 8. AUTHORITY GRANTED TO CODE ENFORCEMENT OFFICER

13-56: **ACTION SPECIFICALLY AUTHORIZED BY CODE ENFORCEMENT OFFICER:**

The designated code enforcement officer (CEO) is granted specific authority to act as set forth herein to enforce the provisions of this code related to public nuisances:

- A. Upon receipt of a referral, whether written or oral, anonymous or not, of a violation of this chapter the CEO is authorized to visually inspect said referral.
- B. Upon confirmation of a violation the CEO is authorized to issue a ten (10) day compliance letter directing that the alleged nuisance be abated by the property owner or person in possession of the premises. The CEO, in the CEO's discretion, may extend the time for compliance. Provided, such extension shall be made in writing by the CEO.

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- C. For violations of any provision of this chapter the CEO may issue a citation for violation which shall be prosecuted in the municipal court pursuant to chapter 1, article SA of this code. If not specified, the penalty for such violation shall be as set forth in the town's general penalty ordinance, section 14-1 of this code.

- D. Upon the failure of the property owner or person in possession of the premises to comply with the request contained within the compliance letter the CEO may refer the matter to the town board of trustees or other designated authority for abatement proceedings set forth in this code and consistent with state statutes. Provided, high weeds and trash (article 2 of this chapter), abandoned or junked vehicles (article 7 of this chapter) may be abated under the provisions of sections 13-15 and 13-16 of this chapter. (Ord. 2016-4, 10-10-2016)