

CHAPTER 12 NUISANCES

- Article 1. General Provisions.**
Article 2. Abatement of Nuisances.
Article 3. Penalty.

Article 1. General Provisions.

Section 12-1. Definitions.

As used in this Chapter, these words shall have the following meanings:

1. Administrative Officer. The term “administrative officer shall mean the Town Clerk-Treasurer or the nuisance abatement official appointed by the Town Board of Trustees.
2. Boarded and Secured. The term “boarded and secured” shall mean the closing, boarding and locking of any or all exterior openings so as to prevent entry into a structure.
3. Dilapidated Building. The term “dilapidated building” shall mean a structure which, through neglect or injury lacks the necessary repairs or otherwise is in a state of decay or partial ruin, to such an extent that said structure is a hazard to the health, safety and welfare of the general public.
4. Owner. The word “owner” shall mean the owner(s) of record, as shown by the most current tax rolls of the Kiowa County Treasurer or County Clerk or County Assessor.
5. Trash. The word “trash” shall mean any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, waste or other matter of any kind or form which is uncared for, discarded or abandoned.
6. Weeds. The word “weeds” shall include, but not be limited to, poison ivy, poison oak, poison sumac and all vegetation at any stage of maturity, which:
 - a. Exceeds twelve (12) inches 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, safety and/or welfare of the public or Community, create a traffic or fire hazard, or otherwise interfere with the mowing of said weeds;
 - b. Conceals or invites deposition or accumulation of refuse or trash, regardless of the height of the vegetation;
 - c. Harbors rodents or vermin;

- d. Gives off unpleasant or noxious odors;
- e. Constitutes a traffic or fire hazard; or
- f. Is dead or diseased.

Provided, that, the word “weeds” shall not include tended crops or land zoned for agricultural use, which crops are planted more than one hundred and fifty (150) feet from a parcel zoned for other than agricultural use.

Section 12-2. Nuisance Unlawful.

It shall be unlawful for any person (owner, lessee or other) to create or maintain a nuisance, or to permit a nuisance to remain on premises under said person's control, within the corporate limits of the Town of Mountain Park, Oklahoma.

Section 12-3. Town Board May Determine and Define Nuisances.

The Town Board of Trustees has the power to determine what is and what shall constitute a nuisance within the corporate limits of the Town of Mountain Park, Oklahoma, and, for the protection of the public health, parks and water supply, outside of said Town's corporate limits.

Section 12-4. Nuisance Defined.

A nuisance consists of unlawfully doing an act, omitting to perform a duty or any thing or condition which:

- 1. Annoys, injures or endangers the comfort, health or safety of others; **or**
- 2. Offends public decency; **or**
- 3. Unlawfully interferes with, obstructs, tends to obstruct or renders dangerous for use, any lake, drainage way, stream, stream basin, public park, street or other public property; **or**
- 4. In any way renders persons insecure in life or in the use of property .

Section 12-5. Public Nuisances; Possible Remedies.

- 1. A public nuisance is one which affects, at the same time, an entire Community, neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

2. The possible remedies against a public nuisance are:
 - a. Prosecution on complaint before the Municipal Court;
 - b. Prosecution of information or indictment before another appropriate court;
 - c. Civil action; and
 - d. Abatement:
 - i. By the person injured; or
 - ii. By the Municipality, in accordance with State Law or Ordinance.
3. No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

Section 12-6. Private Nuisances; Possible Remedies.

1. Every nuisance not included in Section 12-5 (above) is a private nuisance.
2. The possible remedies against a private nuisance are:
 - a. Civil action; and
 - b. Abatement:
 - i. By the person injured; or
 - ii. By the Municipality, in accordance with State Law or Ordinance.

Section 12-7. Person(s) Liable.

1. 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, **shall be** liable therefore in the same manner as the person who first created it.
2. **Every owner or other person having lawful possession, custody or control or, or who is otherwise lawfully in control of an/or responsible for property on which a nuisance is located shall be liable therefor.**

Section 12-8. Procedure Cumulative.

The various procedures for abating nuisances prescribed by this Chapter and by other provisions of State law and ordinances shall be cumulative one (1) to the other; the Town Board of Trustees may elect to follow any such procedure which is applicable in abating any particular nuisance.

Section 12-9. **Review of Demolition Activities.**

The Planning Commission shall have the power to make recommendations regarding the proposed demolition of designated Historic Landmarks or Historic Structures, including **without limitation** public demolition procedures initiated through Statutory “nuisance abatement” processes, as well as other public or privately-initiated demolition processes; no Permit to demolish all or part of Historic Landmarks or Historic Structures shall be granted by the Municipal Building Inspector, nor shall an abatement order be implemented, except as follows:

1. Except as otherwise provided, no person, including an agent of the Town of Mountain Park, Oklahoma, in charge of an Historic Landmark or Historic Site improvement in an Historic District shall be granted a Permit or permission to demolish, partially or in total, such property without the written approval of the Planning Commission and the Town Board of Trustees.
2. Upon the filing of an application with the Planning Commission, **the** Commission shall determine whether the proposed change would destroy or adversely affect the historical features of the Historic Landmark, Historic Site or Historic District property.
3. If the Planning Commission determines that the Historic Landmark, Historic Site or property within an Historic District would be adversely affected by the proposed change, it may withhold its consent to the granting of permission for the Permit. The Commission shall make its decision within thirty (30) days after the filing of such application and shall state in writing the reasons for withholding consent, mailing the same to the applicant.
4. If the Planning Commission refuses to grant permission or approve issuance of a Permit for demolition, negotiations shall be initiated with the applicant to arrive at a mutually agreeable plan to avoid demolition, maintain historic integrity and achieve the applicant’s objectives. If no plan is agreed upon within six (6) months of the filing of the application the **applicant may appeal to the Town Board of Trustees and the decision of the Board of Trustees shall be binding.**

Sections 12-10 through 12-19. (Reserved for future use.)

Article 2. **Abatement of Nuisances.**

Section 12-20. **Summary Abatement of Nuisances.**

1. Whenever it is practical to do so, the Town Board of Trustees has the power summarily to abate any such nuisance, after notice to the owner and opportunity to be heard.
2. Some nuisances are of such nature as to constitute a grave and immediate danger to the peace, health, safety, morals or welfare of one (1) or more persons or the public generally, and it is recognized that, in such circumstances, the Mayor (or a representative)

may be justified or required to take immediate and proper action summarily to abate such nuisances, or to reduce or suspend the danger, until more deliberate action can be taken toward such abatement.

3. The Fire Chief, the Chief of Police, the Town Attorney, the Health Official, any Trustee, any resident of the Town of Mountain Park, Oklahoma, or any other officer subordinate to the Town Board of Trustees, may submit to the Town Board, a statement as to the existence of a nuisance as defined by State Law or the Ordinances of the Town, and a request or recommendation that it be abated.
4. The Town Board of Trustees shall determine whether or not the alleged nuisance is a nuisance in fact, and before proceeding to have the nuisance abated, the Town 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, if 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; if the names and addresses are not known, and the peace, health, safety, morals or welfare of the person, persons or public adversely affected would not be unduly jeopardized by the necessary delay, a notice of the hearing shall be published in a newspaper of general circulation within the Town or County.
5. If the Town Board of Trustees 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, 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 Town Board of Trustees shall direct the Mayor to abate the nuisance or have it abated, if summary abatement is practical.
6. The Town Clerk-Treasurer 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.

Section 12-21. Abatement of Public Health Nuisances.

1. The Local or County Health Official shall have the authority to order, in writing, the owner or occupant of any private premises in the Town to remove from such premises, within a reasonable length of time and at the owner's 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; failure to do so shall constitute an offense. Such order shall be served on the owner or occupant (or agent) of the premises by the Local or County Health Official,

or a policeman. If the premises are unoccupied and the residence of the owner, occupant or agent, if unknown, is without the State, the order may be served by posting a copy thereof on the premises or by publication in at least one (1) issue of a newspaper having a general circulation in the Town or County.

2. If the order is not complied with, the Health Official may cause the order to be executed, and the cost thereof shall be certified to the Town Clerk-Treasurer; the cost of abating such nuisance shall be added to the Municipal utility bill of the owner or occupant (if a user of any Municipal utility service) 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 Municipal utility service, such costs, after certification to the Town Clerk-Treasurer, may be collected in any manner in which any other debt due the Town may be collected.

Section 12-22.

Removal of Unsafe and Dilapidated Structures.

1. When, in the opinion of the Municipal Building Inspector, the Local or County Health Official or any Municipal official, any building, wall or other structure upon, adjoining or near any street, avenue, alley or public ground within the Town of Mountain Park, Oklahoma, becomes dangerous, insecure or liable to collapse from inherent structural weakness or decay, or which, from fire damage or other causes, becomes a menace to life or property, the same may be declared to be a nuisance .
 - a. Any such building shall be reported by the Municipal Building Inspector or any Municipal official to the Town Board of Trustees, together with the lot and block number, the owner (or agent) and a description of the condition. Additional data shall be provided, including material from the Community's Preservation Inventory, concerning historic and/or architectural significance.
 - b. Upon receipt of such report, the Town Board of Trustees shall review the significance to the Community by requesting a recommendation from the Planning Commission; following review of said recommendation, the Town Board shall consider whether or not to declare such building or structure to be a nuisance and serve ten (10) days' legal written notice on the owner (or agent) to wreck or remove the same or provide an alternative proposal for restoration, sale and restoration, or other appropriate method of encouraging productive re-use of the structure. **The** notice shall be posted on the property to be affected, and shall also be sent by certified mail, with return receipt requested, to the owner, as shown on the County Treasurer's records. Written notice shall also be mailed to any mortgage holder, as shown by the County Clerk's records. If neither the property owner nor the mortgage holder can be located, notice may be given by legal notice; such notice may be published once, not less than ten (10) days prior to any hearing or action by the Town pursuant to the provisions of this Section, or, as an alternative, notice may be given by first class mail to the property owner and mortgage holder.

- c. The Town Board of Trustees may hear all objections and evidence in relation thereto and, unless the owner can show good and sufficient reason why the building should not be condemned, the original order of the Town Board shall be executed, or any appropriate alternative solution may be implemented.
- d. 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 such conditions, the Town Board of Trustees may cause the dilapidated building to be torn down and removed, or implement an alternative solution, and shall fix reasonable dates for the commencement and completion of the work.
- e. The Town Clerk-Treasurer shall immediately file a notice of 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. 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 Town Board of Trustees.
- f. The Town Board of Trustees shall determine the actual cost of the repair, restoration, dismantling or removal of dilapidated buildings and any other expenses that may be necessary in conjunction with the removal of the nuisance conditions, including the cost of notice and mailing. The Town Clerk-Treasurer shall forward a statement of the actual cost attributable to the work on the buildings and a demand for payment of such costs, by certified mail with return receipt requested, to the property owner. In addition, a copy of said statement shall be mailed to any mortgage holder.
- g. If the Municipality repairs, restores, 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 actual repairs, restoration, dismantling or removal of the dilapidated buildings. If work on the dilapidated building is done on a private contract basis, the contract shall be awarded to the **lowest and** most responsible and responsive bidder.
- h. When payment is made to the Municipality for costs incurred, the Town Clerk-Treasurer 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 Town Clerk-Treasurer shall forward a certified statement of the amount of the cost to the County Treasurer. The costs shall be levied on the property and collected by the County Treasurer as are other taxes authorized by Law. The cost 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 co-equal 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 any time prior to

collection, the Municipality may pursue any civil remedy for collection of the amount owed and interest thereon. Upon receiving payment, the Town Clerk-Treasurer shall forward to the County Treasurer a notice of such payment and shall direct discharge of the lien.

i.

Nothing in the provisions of this Section 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.

j.

After a building has been declared dilapidated, and before the commencement of the removal of the nuisance conditions on the dilapidated building, the Town Board of Trustees may authorize that such a building be boarded and secured.

2. Any Municipal official shall have the right to stop the construction of any building or structure, or the alteration, repair or wrecking of the same, if the same is being done in a careless or reckless manner, or in violation of the provisions of this Code of Ordinances.

Section 12-23. Cleaning and Mowing of Property.

1. It shall be unlawful for any owner of any lot, tract or parcel of land situated wholly or in part within the corporate limits of the Town to allow trash or weeds to grow, stand or accumulate upon such premises and it shall be the duty of such owner to **properly and safely** remove or destroy any such trash or weeds.
2. Any officer or employee of the Town of Mountain Park, Oklahoma, who discovers an accumulation of trash or growth of grass and weeds, or both these conditions, upon any premises within the corporate limits of **the** Town, shall report the condition to the Administrative Officer (who shall be appointed by the Town Board) if, as a result of the accumulation or growth, the premises appear to be:
 - a. Detrimental to the health, safety, benefit and welfare of the public and the Community; or
 - b. A hazard to traffic; or
 - c. A fire hazard to property.
3. Upon receiving the report provided for in Subsection 2 (above), or upon receipt of equivalent information from any reliable source, and upon determination that a nuisance or violation of **this** Code of Ordinances exists, the Administrative Officer shall give written notice of the finding and direct the owner or occupant to abate the condition within ten (10) days.
4. The written notice provided for in Subsection 3 (above) shall be sent by certified mail, with return receipt requested, to the owner of the property at the address shown by the current year's tax rolls in the Office of the Treasurer of the County in which the property

is located. If the return receipt shows that the property owner cannot be located or that the owner cannot be served by certified mail, notice may be given by publication as **defined in Title 10 O.S. § 1-102(8)** one (1) time, not less than ten (10) days prior to any hearing or action by the Town. If the Town Board of Trustees anticipates further abatement of any nuisance in accordance with provisions of this Section, the notice shall state that "Any accumulations of trash or excessive weed or grass growth on the property occurring within six (6) months after the initial removal of trash or the cutting or mowing of weeds or grass on the property pursuant to such notice may be summarily abated by the Town Board of Trustees. Further, the costs of such abatement shall be assessed against the owner, and a lien may be imposed on such property to secure such payment. All such actions may be taken without further notice to the property owner.

5. The owner of the property may give his written consent to the Town of Mountain Park, Oklahoma, authorizing the removal of the nuisance; by providing written consent, the owner waives his right to a hearing.
6. Upon a finding that a condition exists as set out in Subsection 2 (above), and that the property would be benefited by the removal of such condition, and after at least ten (10) days from the date of receipt of the notice by the owner or occupant or the date of publication, the Administrative Officer shall order the property to be cleaned of trash, or order trash or weeds to be cut, removed or destroyed, unless the owner:
 - a. Has cut, removed or destroyed the trash or weeds in accordance with the notice; or
 - b. Has filed a written request for a hearing on the matter with the Town Clerk-Treasurer within a ten (10) day period to appeal the Administrative Officer's decision to the Town Board of Trustees. If the owner or occupant has given written consent authorizing the Town to abate the trash or weeds, any right to a hearing shall be considered waived, and the owner shall pay for the cost of the work. The Town Board may affirm, reverse or modify the order of the Administrative Officer. The Town Board's review shall be limited to a review of the finding of facts and order of the Administrative Officer to determine if the provisions of this Section have been complied with.
7. At any hearing onto the matter, the Administrative Officer may receive information thereto, including anything which may be presented by the owner of the premises, personally or by agent or attorney. The Administrative Officer shall prepare a written finding of the facts and order which will be placed in the property files.
8. The work ordered to be performed under this Section may be done by the Town or it may be let by contract to the **lowest and** most responsible and most responsive bidder for a period of not to exceed one (1) year. Immediately following the cleaning or mowing, the Town Clerk-Treasurer shall file a notice of lien with the Kiowa County Clerk, in accordance with State Law.

9. Upon completion of the work ordered to be performed under this Section, the Town shall prepare a statement, itemizing each tract of property involved, as follows: labor, machinery rental or depreciation, fuel and supplies, cost of notice, other costs and indirect costs, along with a demand for payment of the total cost, and forward it by certified mail, with return receipt requested, to:
 - a. The owner of the property at the address shown by the current tax rolls in the Office of the Treasurer of the County in which the property lies; or
 - b. To the address given by the person giving written consent or requesting the appeal, as provided for hereinabove.
10. If the costs of the work performed under this Section are not paid within thirty (30) days from the date of mailing the statement prescribed by Subsection 9 (above), the Town Clerk-Treasurer shall forward a certified statement of the amount of the costs to the **Kiowa** County Treasurer in order that the amount be levied upon the property and be collected by the County Treasurer in the manner prescribed by the law of this State. The lien **shall be** co-equal 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. The lien shall continue until the cost is fully paid. At any time prior to collection, as provided in this Section, the Town may pursue any civil remedy for collection of the amount owed and interest thereon. Upon receiving payment, if any, the Town Clerk-Treasurer shall forward to the County Treasurer a notice of such payment, directing discharge of the lien.
11. If the Town Board of Trustees causes property within the Municipal limits to be cleaned of trash and weeds or grass to be cut or mowed in accordance with the procedures provided for in this Section, any subsequent accumulations of trash or excessive weed or grass growth on the property occurring within a twelve (12) month period may be declared to be a nuisance and may be summarily abated without further prior notice to the property owner. At the time of each summary abatement, the Municipality 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 and hearing shall be as provided for in this Section. Unless otherwise determined at the hearing, the cost of such abatement shall be determined and collected as provided for in this Section.

Sections 12-24 through 12-29.

(Reserved for future use.)

Article 3. Penalty.

Section 12-30. Penalty.

Any person who violates any provision of this Chapter by doing any act prohibited, 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, who fails to do any act when such provision declares such failure to be unlawful or to be an offense or misdemeanor, who violates any legal order or regulation made pursuant to this Chapter, or who maintains any nuisance as defined in this Chapter, shall be guilty of an offense and, upon conviction thereof, shall be

punished by a fine not exceeding the limits established in Section 11-40, Article 3, Chapter 11 of this Code of Ordinances. Each day upon which any such violation continues, shall constitute a separate offense.