

HOUSE BILL No. 2458

By Committee on Judiciary

2-7

9 AN ACT concerning cities; authority over nuisance; amending K.S.A. 12-
10 1617f, 12-1751, 12-1752, 12-1753 and 12-1755 and K.S.A. 2006 Supp.
11 12-1617e and 12-1750 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 12-1617e is hereby amended to read
15 as follows: 12-1617e. (a) The governing body of any city may have re-
16 moved or abated from any lot or parcel of ground within the city any and
17 all nuisances, including rank grass, weeds ~~or~~, other vegetation, *tree waste,*
18 *solid waste, junk, litter, refuse, trash and any other items or conditions*
19 *described as a nuisance by state law or local ordinance.* The governing
20 body may have drained any pond or ponds of water, at the cost and
21 expense of the owner of the property on which the nuisance is located,
22 whenever the city, county or joint board of health or other agency as may
23 be designated by the governing body of the city files with the clerk of
24 such city its statement in writing that such nuisance, rank vegetation or
25 pond of water, describing the same and where located, is a menace and
26 dangerous to the health of the inhabitants of the city, or of any neigh-
27 borhood, family or resident of the city. The governing body of the city,
28 by resolution, also may make such determination.

29 (b) Except as provided by subsection (c), the governing body of the
30 city shall order the owner or agent of the owner of the property to remove
31 and abate from the property the thing or things therein described as a
32 nuisance within a time, not exceeding 10 days, to be specified in the order.
33 The governing body of the city shall grant extensions of such ten-day time
34 period if the owner or agent of the property demonstrates that due dili-
35 gence is being exercised in abating the nuisance. The order shall state
36 that before the expiration of the waiting period or any extension thereof,
37 the recipient thereof may request a hearing before the governing body
38 or its designated representative. The order shall be served on the owner
39 or agent of such property by certified mail, return receipt requested, or
40 by personal service. If the property is unoccupied and the owner is a
41 nonresident, then by mailing the order by certified mail, return receipt
42 requested, to the last known address of the owner.

43 (c) If the owner or agent of the owner of the property has failed to

1 accept delivery or otherwise failed to effectuate receipt of a notice sent
2 pursuant to this section during the preceding twenty-four month period,
3 the governing body of a city may provide notice of the issuance of any
4 further orders to abate or remove a nuisance from such property in the
5 manner provided by subsection (b) or as provided in this subsection.
6 Except as specifically provided in this subsection, the governing body may
7 provide notice of the order by such methods including, but not limited
8 to, door hangers, conspicuously posting notice of such order on the prop-
9 erty, personal notification, telephone communication or first class mail.
10 If the property is unoccupied and the owner is a nonresident, notice
11 provided by this section shall be given by telephone communication or
12 first class mail.

13 (d) If the owner or agent fails to comply with the requirement of the
14 order for a period longer than that named in the order, the city shall
15 proceed to have the things described in the order removed and abated
16 from the lot or parcel of ground. If the city abates or removes the nui-
17 sance, the city shall give notice to the owner or agent by certified mail,
18 return receipt requested, of the total cost of such abatement or removal
19 incurred by the city. Such notice also shall state that payment of such cost
20 is due and payable within 30 days following receipt of such notice. The
21 city also may recover the cost of providing notice, including any postage,
22 required by this section. If the cost of such removal or abatement and
23 notice is not paid within the thirty-day period, the cost shall be collected
24 in the manner provided by K.S.A. 12-1,115, and amendments thereto, or
25 shall be assessed and charged against the lot or parcel of ground on which
26 the nuisance was located. If the cost is to be assessed, the city clerk, at
27 the time of certifying other city taxes to the county clerk, shall certify
28 such costs, and the county clerk shall extend the same on the tax roll of
29 the county against the lot or parcel of ground, and it shall be collected
30 by the county treasurer and paid to the city as other city taxes are collected
31 and paid. The city may pursue collection both by levying a special as-
32 sessment and in the manner provided by K.S.A. 12-1,115, and amend-
33 ments thereto, but only until the full cost and any applicable interest has
34 been paid in full.

35 (e) Any city may remove and abate from property other than public
36 property or property open to use by the public a motor vehicle deter-
37 mined to be a nuisance. Disposition of such vehicle shall be in compliance
38 with the procedures for impoundment, notice and public auction pro-
39 vided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amend-
40 ments thereto. Following any sale by public auction of a vehicle deter-
41 mined to be a nuisance, the purchaser may file proof thereof with the
42 division of vehicles, and the division shall issue a certificate of title to the
43 purchaser of such motor vehicle. If a public auction is conducted, but no

1 responsible bid received, the city may file proof thereof with the division
2 of vehicles, and the division shall issue a certificate of title of such motor
3 vehicle to the city. Any person whose motor vehicle has been disposed of
4 pursuant to this subsection shall be eligible for a refund of the tax imposed
5 pursuant to K.S.A. 79-5101 et seq., and amendments thereto. The amount
6 of such refund shall be determined in the manner provided by K.S.A. 79-
7 5107, and amendments thereto.

8 Sec. 2. K.S.A. 12-1617f is hereby amended to read as follows: 12-
9 1617f. (a) The governing body of any city is hereby authorized to provide
10 for and require the cutting or destruction of all *rank grass*, weeds, *noxious*
11 *weeds as defined in K.S.A. 2006 Supp. 2-1314, and amendments thereto,*
12 *or other vegetation* on lots or pieces of land within the city. Except as
13 provided by subsection (b), the city clerk shall issue a notice to the owner,
14 occupant or agent by certified mail, return receipt requested, or by per-
15 sonal service to cut or destroy such weeds *or other vegetation*. If the
16 property is unoccupied and the owner is a nonresident, such notice shall
17 be sent by certified mail, return receipt requested, to the last known
18 address of the owner. The notice shall state that before the expiration of
19 the waiting period provided herein the recipient thereof may request a
20 hearing before the governing body or its designated representative. If the
21 occupant, owner or agent fails to request a hearing or refuses to cut or
22 remove such weeds *or other vegetation*, after five days' notice by the city
23 clerk, or in cases where the owner is unknown or is a nonresident, and
24 there is no resident agent, 10 days after notice has been published by the
25 city clerk in the official city paper, the city shall cut or destroy such weeds
26 *or other vegetation* and shall keep an account of the cost of same and
27 report to the city clerk. Except as provided by subsection (b), the city
28 shall give notice to the owner, occupant or agent by certified mail, return
29 receipt requested, of the total cost of such cutting or removal incurred
30 by the city. The city also may recover the cost of providing notice, in-
31 cluding postage, required by this section. Such notice also shall state that
32 payment of such cost is due and payable within 30 days following receipt
33 of such notice. If the cost of such removal or abatement is not paid within
34 the thirty-day period, the city may levy a special assessment for such cost
35 against the lot or piece of land in the same manner as provided in K.S.A.
36 12-1617e, and amendments thereto, or the city may collect the cost in
37 the manner provided by K.S.A. 12-1,115, and amendments thereto. The
38 city may pursue collection both by levying a special assessment and in the
39 manner provided by K.S.A. 12-1,115, and amendments thereto, but only
40 until the full cost and any applicable interest has been paid in full.

41 (b) In lieu of giving notice as provided by subsection (a), a city may
42 give notice as provided by this subsection. The governing body shall adopt
43 an ordinance which states its weed removal policy and notification pro-

1 cedure. Such procedure shall provide for a minimum one-time yearly
2 written notification by mail or personal service to the owner, occupant or
3 agent. Such notice shall include the same information required by sub-
4 section (a). In addition, such notice shall include a statement that no
5 further notice shall be given prior to removal of weeds *or other vegetation*.

6 If there is a change in the record owner of title to property subsequent
7 to the giving of notice pursuant to this subsection, the city may not recover
8 any costs or levy an assessment for the costs incurred by the cutting or
9 destruction of weeds *or other vegetation* on such property unless the new
10 record owner of title to such property is provided notice as required by
11 this section.

12 Sec. 3. K.S.A. 2006 Supp. 12-1750 is hereby amended to read as
13 follows: 12-1750. As used in this act:

14 (a) "Structure" means any building, wall or other structure.

15 (b) "Enforcing officer" means the building inspector or other officer
16 designated by ordinance and charged with the administration of the pro-
17 visions of this act.

18 (c) "Abandoned property" means any residential real estate for which
19 taxes are delinquent for the preceding two years and which has been
20 unoccupied continuously by persons legally in possession for the preced-
21 ing 180 days.

22 (d) "Organization" means any nonprofit corporation organized under
23 the laws of this state and which has among its purposes the improvement
24 of housing.

25 (e) "Rehabilitation" means the process of improving the property into
26 compliance with applicable fire, housing and building codes.

27 (f) "Parties in interest" means any owner or owners of record, judg-
28 ment creditor, tax purchaser or other party having any legal or equitable
29 title or interest in the property.

30 (g) "Last known address" includes the address where the property is
31 located, or the address as listed in the tax records.

32 (h) "*Materials*" means *tree waste, solid waste, junk, trash, litter, re-*
33 *fuse and other items or conditions described as a nuisance by state law*
34 *or local ordinance.*

35 Sec. 4. K.S.A. 12-1751 is hereby amended to read as follows: 12-
36 1751. (a) The governing body of any city shall have the power to cause
37 the repair or removal of, or to remove any structure *or materials* located
38 within the city, which may have become unsafe ~~or~~ dangerous *or injurious*
39 *to the public health.*

40 (b) The governing body of any city shall have the power to cause the
41 rehabilitation of or to rehabilitate any abandoned property located within
42 the city.

43 Sec. 5. K.S.A. 12-1752 is hereby amended to read as follows: 12-

1 1752. (a) Whenever the enforcing officer files with the governing body
2 of the city a statement in writing that any structure *or materials*, describ-
3 ing the same and where located, is unsafe ~~or~~ dangerous, *injurious to the*
4 *public health* or is abandoned property, the governing body, by resolution,
5 shall fix a time and place at which the owner, the owner's agent, any
6 lienholders of record and any occupant of such structure may appear and
7 show cause why such structure should not be condemned and ordered
8 repaired or demolished in the case of unsafe or dangerous structures *or*
9 *why such materials should not be ordered cleaned up, abated or removed*
10 *in the case of unsafe, dangerous or injurious materials* or rehabilitated in
11 the case of abandoned property. Such resolution shall be published once
12 each week for two consecutive weeks on the same day of each week. At
13 least 30 days shall elapse between the last publication and the date set
14 for the hearing. A copy of the resolution shall be mailed by certified mail
15 within three days after its first publication to each such owner, agent,
16 lienholder and occupant, at the last known address and shall be marked
17 "deliver to addressee only."

18 (b) *After notice has been given and before the date set for hearing,*
19 *the enforcing officer shall be authorized to enter the property on which*
20 *the structure or materials are located, to further determine the condition*
21 *of the structure or nature of the materials, if the enforcing officer is not*
22 *able to make a full determination from observations off the property. Any*
23 *information or determination made from such a viewing may be submitted*
24 *as evidence at the hearing by the enforcing officer.*

25 Sec. 6. K.S.A. 12-1753 is hereby amended to read as follows: 12-
26 1753. On the date fixed for hearing or any adjournment thereof, the
27 governing body shall hear all evidence submitted by the owner, the
28 owner's agent, lienholders of record and occupants having an interest in
29 such structure *or the property on which the materials are located*, as well
30 as evidence submitted by the enforcing officer filing the statement and
31 shall make findings by resolution. If the governing body of the city finds
32 that such structure is unsafe or dangerous, such resolution shall direct
33 the structure to be repaired or removed and the premises made safe and
34 secure. *If the governing body of the city finds that such materials are*
35 *unsafe, dangerous or injurious to public health, such resolution shall di-*
36 *rect the materials be cleaned up, abated or removed and the premises*
37 *made safe and secure.* If the governing body of the city finds that such
38 structure is abandoned property, the governing body may authorize the
39 rehabilitation of such property as provided by K.S.A. 12-1756a. Such res-
40 olution shall be published once in the official city paper and a copy mailed
41 to the owners, agents, lienholders of record and occupants in the same
42 manner provided for the notice of hearing. The resolution shall fix a
43 reasonable time within which the repair or removal of such structure *or*

1 *cleanup, abatement or removal of such materials* shall be commenced and
2 a statement that if the owner of such structure fails to commence the
3 repair or removal of such structure *or cleanup, abatement or removal of*
4 *such materials* within the time stated or fails to diligently prosecute the
5 same until the work is completed, the governing body will cause the
6 structure to be repaired or razed and removed in the case of unsafe or
7 dangerous structures, *materials be cleaned up, abated or removed in the*
8 *case of injurious materials* or rehabilitated in the case of abandoned
9 property.

10 Sec. 7. K.S.A. 12-1755 is hereby amended to read as follows: 12-
11 1755. (a) If the owner of any structure has failed to commence the repair
12 or removal of such structure *or cleanup, abatement or removal of such*
13 *materials* within the time stated in the resolution or has failed to diligently
14 prosecute the same thereafter, the city may proceed to raze and remove
15 such structure, *cleanup, abatement or removal of such materials*, make
16 the premises safe and secure, or let the same to contract. The city shall
17 keep an account of the cost of such work and may sell the salvage from
18 such structure *or materials* and apply the proceeds or any necessary por-
19 tion thereof to pay the cost of removing such structure *or materials* and
20 making the premises safe and secure. All moneys in excess of that nec-
21 essary to pay such costs and the cost of publications of notice and any
22 postage for mailing of notice, after the payment of all costs, shall be paid
23 to the owner of the premises upon which the structure *or materials* was
24 located.

25 (b) The city shall give notice to the owner of such structure *or the*
26 *owner of the property on which such materials are located* by restricted
27 mail of the total cost incurred by the city in removing such structure *or*
28 *materials* and making the premises safe and secure and the cost of pro-
29 viding notice. Such notice also shall state that payment of such cost is due
30 and payable within 30 days following receipt of such notice. If the cost is
31 not paid within the thirty-day period and if there is no salvageable material
32 or if moneys received from the sale of salvage or from the proceeds of
33 any insurance policy in which the city has created a lien pursuant to K.S.A.
34 40-3901 et seq., and amendments thereto, are insufficient to pay the cost
35 of such work, the balance shall be collected in the manner provided by
36 K.S.A. 12-1,115, and amendments thereto, or shall be assessed as a special
37 assessment against the lot or parcel of land on which the structure *or*
38 *materials* was located and the city clerk at the time of certifying other
39 city taxes, shall certify the unpaid portion of the costs and the county clerk
40 shall extend the same on the tax rolls of the county against such lot or
41 parcel of land. The city may pursue collection both by levying a special
42 assessment and in the manner provided by K.S.A. 12-1,115, and amend-
43 ments thereto, but only until the full cost and any applicable interest has

1 been paid in full.

2 Whenever any structure is removed from any premises under the pro-
3 visions of this act, the city clerk shall certify to the county appraiser that
4 such structure, describing the same, has been removed.

5 (c) If there is no salvageable material, or if the moneys received from
6 the sale of salvage or from the proceeds of any insurance policy in which
7 the city has created a lien pursuant to K.S.A. 40-3901 et seq., and amend-
8 ments thereto, are insufficient to pay the costs of the work and the cost
9 of providing notice, such costs or any portion thereof in excess of that
10 received from the sale of salvage or any insurance proceeds may be fi-
11 nanced, until the costs are paid, out of the general fund or by the issuance
12 of no-fund warrants. Whenever no-fund warrants are issued under the
13 authority of this act the governing body of such city shall make a tax levy
14 at the first tax levying period for the purpose of paying such warrants and
15 the interest thereon. All such tax levies shall be in addition to all other
16 levies authorized or limited by law and shall not be subject to the aggre-
17 gate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes
18 Annotated, and amendments thereto. Such warrants shall be issued, reg-
19 istered, redeemed and bear interest in the manner and in the form pre-
20 scribed by K.S.A. 79-2940, and amendments thereto, except they shall
21 not bear the notation required by that section and may be issued without
22 the approval of the state board of tax appeals. All moneys received from
23 special assessments levied under the provisions of this section or from an
24 action under K.S.A. 12-1,115, and amendments thereto, when and if paid,
25 shall be placed in the general fund of the city.

26 Sec. 8. K.S.A. 12-1617f, 12-1751, 12-1752, 12-1753 and 12-1755 and
27 K.S.A. 2006 Supp. 12-1617e and 12-1750 are hereby repealed.

28 Sec. 9. This act shall take effect and be in force from and after its
29 publication in the statute book.