

ORDINANCE NO. 3818

AN ORDINANCE CREATING CHAPTER 18 OF THE CITY'S CODIFIED ORDINANCES FOR THE PURPOSE OF DECREASING THE NUMBER OF NEGLECTED STRUCTURES AND ENSURING THE SAFETY OF PROPERTY AND INDIVIDUALS IN THE CITY OF OSAWATOMIE, KANSAS AND TO BE TITLED "NEGLECTED STRUCTURES"

WHEREAS, City staff have been directed to create an Ordinance for all neglected structures within the City of Osawatomie, Kansas; and

WHEREAS, it is deemed necessary to amend the Osawatomie City Code to decrease the number of neglected structures within the city; and

WHEREAS, The Governing Body finds that a registration of neglected structures is a rational means by which the city can safeguard its interests in protecting the life, safety, and preservation of the value of land and buildings throughout the city;

Chapter 18 - NEGLECTED STRUCTURES

CHAPTER 18.01 - REGISTRATION OF NEGLECTED STRUCTURES

Sec. 18.01.010. - Purpose.

Neglected structures are a major cause and source of blight in both residential and non-residential neighborhoods, especially when the Owner of the structure fails to actively maintain and manage the structure to ensure that it does not become a liability to the neighborhood. Neglected structures and/or substandard or unkempt structures discourage economic development and retard appreciation of property values. It is the responsibility of property owners to prevent structures from becoming a burden to the neighborhood and community and a threat to the public health, safety, and welfare. A neglected structure that is not well maintained and managed can be the core and source of spreading blight.

Such structures constitute a nuisance, and to adequately protect public health, safety and welfare, the establishment and enforcement of a registration system to monitor such structures and to develop a means to decrease the number of neglected structures within the city is necessary.

Sec. 18.01.020. - Public nuisance.

Neglected structures shall constitute a public nuisance.

Sec. 18.01.030. - Enforcement of chapter—Applicability of chapter.

The Director of Community Development is designated to administer and enforce this chapter.

Sec. 18.01.040. - Violation not exclusive.

Violations of this chapter are in addition to any other violations enumerated within the ordinances of the Code of the City of Osawatomie. This chapter in no way limits the penalties, actions or abatement procedures which may be taken by the city for a violation of this chapter which is also a violation of any other ordinance of the city or statute of the State of Kansas.

Sec. 18.01.050. - Inspection of property.

(1) All officers authorized to enforce this chapter are hereby authorized and directed to make inspections to determine the condition of property located within the city, in order that he or she may perform his/her duty of safeguarding the welfare and safety of the general public and in order that he/she may ascertain that property as set forth in this title are properly maintained.

(2) Any officer or employee of the City charged with the enforcement of this title shall not, in the discharge of his/her duties, thereby render himself/herself liable personally.

Sec. 18.01.060. - Definitions.

(1) 'Boarded' means that some or all of the structure's doors or windows have been covered with plywood, wood or metal sheeting, paneling or other similar materials, for the purpose of preventing entry into the structure by persons, animals or the elements of weather.

(2) 'Building' means a structure, accessory structure or other structure adapted to permanent or continuous occupancy or use for residential, public, institutional, business, industrial or storage purposes.

(3) 'City' means the City of Osawatomie, Kansas.

(4) 'Deterioration' means the condition or appearance of a structure characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, excessive use or lack of maintenance.

(5) 'Director of Community Development' means the Person in charge of the Codes Department of the City or his/her authorized representative.

(6) 'Dwelling' means any structure, apartment structure, mobile home or manufactured home which is wholly or partly used or intended to be used for living or sleeping by human occupants.

(7) 'Dwelling Unit' means any room or group of rooms located within a structure and forming a single habitable unit with facilities that are used or intended to be used for living, sleeping, cooking, and eating.

(8) 'Good State Repair' means Structurally sound, stable, free of Deterioration, and performing the function for which intended.

(9) 'Good Working Condition' means the item is fully operable for the use for which it was intended.

(10) 'Neglected Structure' means a 'Neglected Occupied Structure' and a 'Neglected Unoccupied Structure'.

(11) 'Neglected Occupied Structure' means an Occupied Structure in which one or more of the following events have occurred within the preceding eighteen months:

- a. The structure is the subject of two or more notices of violation of the Code of the City of Osawatomie and the Owner has failed to demonstrate that due diligence is being exercised in abating the violation(s);
- b. The structure has been declared to be a criminal nuisance pursuant to K.S.A. 22-3901, et seq.;
- c. The Owner has failed to appear and/or a warrant has been issued in municipal court for a violation of the Building and/or Property Maintenance Codes of the City of Osawatomie;
- d. The Owner has refused to accept service of notices of violations of the Code of the City of Osawatomie;
- e. The structure has sustained substantial Deterioration due to lack of maintenance; or
- f. The Owner has failed to follow the purpose and intent set forth in Ordinance 3802 (Healthy Homes).

(12) 'Neglected Unoccupied Structure' means an unoccupied structure (whether or not boarded) in which one or more of the following events have occurred:

- a. Within the last eighteen months, the property is the subject of two or more notices of violation of the Code of the City of Osawatomie and the Owner has failed to demonstrate that due diligence is being exercised in abating the violation;
- b. The structure is Unsecured;
- c. The structure has sustained significant fire, wind or water damage and is uninhabitable.
- d. The structure has been declared a criminal nuisance pursuant to K.S.A. 22-3901, et. seq.
- e. The structure has been Boarded for a period of more than ninety days.
- f. The structure has sustained substantial Deterioration due to lack of maintenance.
- g. The Owner has failed to appear and a warrant has been issued in municipal court for a violation of the City of Osawatomie Building and/or Property Maintenance Codes; or

h. The Owner has refused to accept service of notices of violations of the Building and/or Property Maintenance Codes of the City of Osawatomie.

(13) 'Occupancy' means the purpose for which a structure or portion thereof is utilized or occupied.

(14) 'Operator' means any Person who has charge, care or control of a structure, or part thereof, in which Dwelling Units or rooming units are let.

(15) 'Owner' means any Person who is a holder of any legal or equitable interest in a premises, and, alone or jointly or severally with others,

a. Has recorded legal title to any Dwelling or Dwelling Unit with or without accompanying actual possession thereof; or

b. Has charge, care, or control of any, Dwelling, or Dwelling Unit, but not limited to all persons who have an interest in a structure and any who are in possession or control thereof as Owner or agent of the owner, contract purchaser, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

In the absence of substantial evidence to the contrary, records of the Miami County Register of Deeds, certified copies of court records or judgments of any court, copies of lease agreements, contracts for deed, mortgages, tax records, rental agreements, and/or other financial documents related to the property shall be conclusive evidence of the ownership of the property.

(16) 'Person,' as used in this chapter, means any individual, firm, association, company, syndicate, partnership, or other legal entity, or a natural person for the purposes of the Occupancy standards hereof.

(17) 'Premises' shall mean a lot, plot or parcel of land including the structures and structures located thereon.

(18) 'Resident Agent' means a natural Person residing within Miami County, Kansas, or a company or agency with a manager or agent who resides in Miami County, Kansas, who is authorized to make or order repairs, to order or oversee service to Dwellings and Dwelling Units, and/or to receive notices on behalf of the owner.

(19) 'Safe and Sanitary' for purposes of this chapter shall mean free from conditions that are dangerous or could cause injury and free from elements such as filth or bacteria that endanger health.

(20) "Structure" means dwelling and/or premises

(21) 'Structurally Sound' means free of imperfections and/or Deterioration that affect the intended use of a structure or the integrity of a footing, foundation, wall, roof, chimney, arch, window, door or porch/deck support system.

(22) 'Supplied' means paid for, furnished, or provided by or under the control of the Owner or Operator.

(23) 'Unoccupied structure' means a structure that has been vacated for a period of 12 months or longer and is not actively used as a place of residence or business, or is frequently open or Unsecured so that unauthorized admittance may be gained without damaging any portion of the property.

(24) 'Unsecured' means that access to the structure may be obtained through open, unlocked, broken or missing doors or windows of a structure.

(25) " Vacated means a structure that one previously occupied

(26) 'Workmanship means installation or repair that meets the minimum recommended installation and maintenance requirements of the product manufacturer and meets all applicable code requirements.

Sec. 18.01.070. - Duty to register neglected structure.

a. The Owner or Operator of a Neglected Structure shall be required, after written notification from the Director of Community Development or designee, to apply for registration of such structure within thirty days of the date of notification. Such notification shall be served on the Owner or Resident Agent by personal service or by certified mail, return receipt requested. If the Owner is a non-resident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner.

b. The registration application shall include the following information:

1. A description of the premises;
2. The names and addresses of the Owner or owners;
3. The names and addressed of all known lienholders and all other parties with a legal or equitable ownership interest in the structure;
4. The name of the Resident Agent; and
5. If such structure is unoccupied, the period of time the structure is expected to remain unoccupied and/or a plan and timetable to comply with applicable city codes.

Sec. 18.01.080. - Registration fee.

A registration fee of twenty-five dollars (\$25.00) per structure shall be collected, at the time of application, by the City Clerk.

Sec. 18.01.090. - Resident agent.

(a) The owner or Operator of any Neglected Structure, which is subject to the registration requirements of Section 18.01.070, shall designate a Resident Agent for the structure. Any Owner who lives within Miami County may designate himself or herself as the Resident Agent.

(b) In cases where the Owner of the Neglected Structure (s) lives more than 100 miles outside of the City of Osawatomie, Kansas, the Owner shall designate a Resident Agent who shall reside within a 100-mile radius of the corporate limits of the City of Osawatomie, Kansas

(c) The designation of Resident Agent shall constitute an authorization by the Owner to act on behalf of the Owner with regard to all requirements under this chapter and may accept all notices, including all notices pursuant to the Code of the City of Osawatomie, all notices of proposed abatements and all compliance orders and administrative orders.

(d) The Owner 's designation of a Resident Agent shall not relieve the Owner or Operator of any obligation to comply with the provisions of this chapter or any other provisions of the Code of the City of Osawatomie or laws of the State of Kansas.

Sec. 18.01.100. - Registration penalty.

(a) Any Owner or Operator who fails to register a Neglected Structure, as required by this chapter, may be liable for a civil penalty not to exceed Two hundred fifty dollars (\$250.00) per structure.

(b) If the structure continues to meet the definition of a Neglected Structure for a period of ninety (90) calendar days, and the Owner fails or refuses to register such structure, the Director may continue to assess a penalty of two hundred fifty dollars (\$250.00) for each ninety (90) calendar day period the structure continues to be unregistered. At no time may the amount of the assessment exceeds one thousand dollars (\$1,000.00) per structure in a calendar year.

(c) All penalties assessed shall be payable directly to the City Clerk.

Sec. 18.01.110. - Procedures for registration penalty.

(a) Whenever the Owner or Operator of a Neglected Structure does not register such structure, a Notice of Registration Penalty may be issued to the Owner or Operator.

(b) A separate Notice of Registration Penalty shall be issued for each subsequent penalty that may be assessed pursuant to Section 18.01.105.

(c) The Notice of Registration Penalty shall be served upon the Owner or Operator by certified mail or personal service.

Sec. 18.01.120. - Reinspection.

The Director may periodically reinspect Neglected Structures to ensure compliance of this chapter and all applicable court and administrative orders.

Sec. 18.01.130. - Removal from registration.

A Neglected Structure shall be removed from the registration requirements of this chapter by the Director of Community Development upon such structure:

1. Being brought into compliance with all health and safety standards set forth in the codes of the City of Osawatomie;
2. Being removed or demolished by the Owner;
3. Being abated or demolished by the City of Osawatomie, if such structure is unsafe or unfit for habitation.

Sec. 18.01.140. - Registration nontransferable.

If the Neglected Structure is required to be registered pursuant to Section 18.01.070, a new registration shall be required for each change of ownership of the structure. The Owner or Operator of a Neglected Structure which is registered with Director of Community Development pursuant to this Chapter, shall notify the Director of Community Development within ten business days of the sale or transfer of any registered property. All past notices are required to be given to the new owner.

Sec. 18.01.150. - Duty to file statement of intent for neglected structures.

(a) The Director shall create and make available a form entitled 'Statement of Intent' to be completed by the owner, Operator or Resident Agent of any Neglected Unoccupied Structure required to be registered pursuant to this chapter.

(b) The owner, Operator or Resident Agent of a Neglected Unoccupied Structure shall complete the information required on the standard Statement of Intent and submit the Statement to the Director of Community Development within thirty (30) days of the date the Director orders that the structure be registered.

(c) The Director shall determine whether a submitted Statement of Intent is complete and may require an Owner to provide more complete information.

(d) When a submitted Statement of Intent does not meet with the Director's approval, the Owner or registered agent shall, within ten business days, correct and resubmit the Statement of Intent.

(e) The Statement of Intent shall include information as to:

- (1) expected period that the structure will remain unoccupied;
- (2) a plan for regular maintenance during the period that the structure is unoccupied; and

(3) a reasonable plan and time line for the lawful Occupancy, rehabilitation or demolition of the structure.

Sec. 18.01.160. - Neglected unoccupied structure penalty.

(a) Any Owner or Operator who fails to submit a Statement of Intent or refuses to supplement or modify a Statement of Intent which does not meet with the approval of the Director or otherwise comply with the requirements of Section 18.01.140, may be liable for a civil penalty not to exceed \$250.00 per calendar year.

(b) Any Owner or Operator of a Neglected Unoccupied Structure that remains as a Neglected Unoccupied Structure for a period of ninety (90) consecutive calendar days may be liable for a civil penalty in the amount of two hundred fifty dollars (\$250.00) per structure, not to exceed one thousand (\$1,000.00) per calendar year unless:

(1) A Statement of Intent has been filed and approved by the Director; and

(2) One of the following applies:

(A) The Owner is proceeding diligently in good faith to complete the repair or rehabilitation; or,

(B) The structure is the subject of an active structure permit for repair or rehabilitation and in good standings; or

(C) The structure is maintained in compliance with this chapter and is actively being offered for sale, lease or rent; or,

(D) The property Owner can demonstrate that he or she made a diligent and good faith effort to implement the actions set forth in the approved Statement of Intent within the timeline contained within the Statement of Intent.

(c) If the structure continues to meet the definition of Neglected Unoccupied Structure as provided in this chapter beyond the initial ninety (90) calendar days, and if the Owner does not meet any of the exceptions set forth in this section, the Director may continue to assess a penalty of two hundred fifty dollars (\$250.00) for each ninety (90) calendar day period the structure continues to constitute a Neglected Unoccupied Structure. At no time may the amount of the assessment exceed one thousand dollars (\$1,000.00) per structure in a calendar year.

(d) The property Owner of a Neglected Structure may face condemnation proceedings and demolition of said structure(s),

(e) An assessment of all costs incurred for the condemnation and demolition will be assessed to the property.

(f) All penalties assessed shall be payable directly to the City Clerk.

Sec. 18.01.170. - Procedures for neglected unoccupied structure penalty.

(a) Whenever the Director determines that a structure meets the definition of a Neglected Unoccupied Structure as defined by this chapter for a period of more than ninety (90) consecutive calendar days, and the Owner does not meet any of the exceptions set forth in Section 18.01.150, a Notice of Neglected Unoccupied Structure Penalty may be issued to the Owner or Operator.

(b) A separate Notice of Neglected Unoccupied Structure Penalty shall be issued for each subsequent penalty that may be assessed pursuant to Section 18.01.150.

(c) The Notice of Neglected Unoccupied Structure Penalty shall be served upon the Owner or Operator or his or her registered agent by certified mail or personal service.

Sec. 18.01.180. - Appeals to the Board of Appeals.

a. Appeals from the decision of the Director of Community Development or his designee, of the registration requirements or the assessment of a registration or Neglected Structure penalty, as provided for by this chapter, may be made by requesting, in writing, to the Director, within ten days after receiving such decision or penalty, a hearing before the Board of Code Appeals

b. The appeal must be heard by the Board within forty-five days of receipt of the written request. The board may affirm, reverse or modify the penalty assessed.

c. Appeals from the decision of the board of appeals may be made to the City Council by requesting in writing to the City Clerk, within ten days after receiving such decision, a hearing before such City Council. Such appeal shall be heard, with written notification as to time and place given such appellant, within forty-five days after receipt of the written request.

Sec. 18.01.190.- Code requirements.

All Neglected Structures shall be required to abide by all current structure codes, including but not limited to the International Property Maintenance Code, zoning requirements, and city codes.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

Section 1. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after February 1, 2023 after one publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, a majority being in favor thereof, this 28th day of December, 2022.

APPROVED AND SIGNED by the Mayor.

Nick Hampson
Mayor

(SEAL)

ATTEST:

Tammy Seamands
City Clerk

