

2012 Kansas Statutes

17-4759. Ordinances relating to repair, closing, demolition or removal of structures unsafe, insanitary, dangerous or inimical to welfare of residents; complaints and orders issued pursuant thereto. (a) Whenever any municipality finds that there exist in such municipality structures which are unfit for human use or habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions, including those set forth in subsection (c), rendering such structures unsafe, insanitary or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality, the municipality may require or cause the repair, closing, demolition or removal of such structures in the manner herein provided. "Residential structure" or "dwelling" means any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any appurtenances belonging thereto or usually enjoyed therewith. "Nonresidential structure" means any structure which is used for other than residential purposes, or a part of such structure, or a structure a part of which is used for other than residential purposes and, where applicable, the premises on which such structures are situated.

(b) Upon the adoption of an ordinance finding that structural conditions of the character described in subsection (a) exist within a municipality, the governing body of such municipality is hereby authorized to adopt ordinances relating to the structures within such municipality which are unfit for human use or habitation. Such ordinances shall include the following provisions that:

(1) A public officer be designated or appointed to exercise the powers prescribed by the ordinances.

(2) Whenever a petition is filed with the public officer or by at least five residents of the municipality charging that any structure is unfit for human use or habitation or whenever it appears to the public officer, on the officer's own motion, that any structure is unfit for human use or habitation, the officer, if the officer's preliminary investigation discloses a basis for such charges, shall issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such structure, including persons in possession, a complaint stating the charges. Such complaint shall contain a notice that: A hearing will be held before the public officer or the officer's designated agent at a place therein fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) If, after such notice and hearing, the public officer determines that the structure under consideration is unfit for human use or habitation, the officer shall state in writing the findings of facts in support of such determination and shall issue and cause to be served upon the owner thereof an order which:

(A) Requires the owner, within the time specified in the order, to repair, alter, or improve such structure to render it fit for human use or habitation or to vacate and close the structure until conformance with ordinances established under this law if the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the replacement value of the structure. The ordinance of the municipality shall fix a certain percentage of such cost as being reasonable; or

(B) requires the owner, within the time specified in the order, to remove or demolish such structure if the repair, alteration or improvement of the structure cannot be made at a reasonable cost in relation to the replacement value of the structure. The ordinance of the municipality shall fix a certain percentage of such cost as being reasonable.

(4) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the structure, the public officer may cause such structure to be repaired, altered or improved, or to be vacated and closed.

(5) If the owner fails to comply with an order to remove or demolish the structure, the public officer may cause such structure to be removed or demolished.

(6) The amount of the cost of the repairs, alterations, improvements, vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred. Such lien shall include allowance of the officer's costs and the necessary attorney's fees and may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property. In lien [lieu] of foreclosure, the costs, including the officer's costs, may be assessed as a special assessment against the lot or parcel of land on which the structure was located, in which case the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against the lot or parcel of land. If the structure is removed or demolished by the public officer, the officer shall sell the materials of such structure and shall credit the proceeds of the sale against the cost of the removal or demolition. If there is any balance remaining it shall be paid to the parties entitled thereto as determined by proper judicial proceedings instituted by the public officer after deducting the costs of such judicial proceedings, including necessary attorneys' fees incurred therein, as determined by the court.

(c) An ordinance adopted by a municipality pursuant to this section shall provide that the public officer may determine that a structure is unfit for human use or habitation if the officer finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the municipality or which have a blighting influence on properties in the area. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation; air pollution; light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations, or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements. Such ordinance may provide additional standards to guide the public officer or the officer's agents or employees in determining the fitness of a structure for human use or habitation.

(d) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section shall be served upon persons either personally or by registered or certified mail. If the location of such persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, service may be made by publishing the complaint or order once in a

newspaper printed and published in the municipality or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the structures are located. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order also shall be filed with the clerk of the district court of the county in which the structure is located and the filing of the complaint or order shall have the same force and effect as other *lis pendens* notices provided by law.

(e) Any person affected by an order issued by a public officer pursuant to this section may petition the district court of the county in which the property is located for an injunction restraining the public officer from carrying out the provisions of the order. Upon such petition, the court may issue a temporary injunction restraining the public officer pending the final disposition of the case. Such petition shall be filed not later than 30 days after the posting and service of the order of the public officer. Hearings shall be held by the court on such petition as soon thereafter as possible and shall be given preference over other matters before the court. The court shall hear and determine the issues raised and shall enter a final order or decree in the proceedings. In all such proceedings the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of a public officer pursuant to this section shall be entitled to recover any damages for action taken pursuant to such order or because of compliance by such person with such order.

(f) An ordinance adopted by the governing body of the municipality pursuant to this section may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this section, including, in addition to others herein granted, the power to:

(1) Investigate the structure conditions in the municipality in order to determine which structures therein are unfit for human use or habitation;

(2) administer oaths and affirmations, examine witnesses and receive evidence;

(3) enter upon premises for the purpose of making examinations, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

(4) appoint and fix the duties of such officers, agents and employees as the officer deems necessary to carry out the purposes of such ordinance; and

(5) delegate any of the officer's functions and powers under such ordinance to such officers, agents and employees as the officer may designate.

(g) As soon as possible after adopting an ordinance under this section, the governing body of any municipality shall prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the structures in such municipality to determine the fitness of such structures for human use or habitation, and for the enforcement and administration of its ordinance or ordinances adopted under this section.

(h) Nothing in this section shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(i) Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

(j) Any municipality, by ordinance adopted by its governing body, may:

(1) Prescribe minimum standards for the use and occupancy of any type structure throughout the city;

(2) prevent the use or occupancy of any structure which is injurious to the public health, safety, morals or welfare; and

(3) prescribe punishment for the violation of any provision of such ordinance.

History: L. 1955, ch. 86, § 18; L. 1965, ch. 155, § 1; L. 1981, ch. 173, § 54; L. 1998, ch. 159, § 1; July 1.