

(Summary Published in the Leavenworth Times on January 20, 2024)

## ORDINANCE NO. 8232

### AN ORDINANCE REGARDING UNSAFE OR DANGEROUS STRUCTURES AND ABANDONED PROPERTY, AMENDING ARTICLE XI (UNSAFE OR DANGEROUS PROPERTIES; ABANDONED PROPERTY) OF CHAPTER 10 (BUILDINGS AND CONSTRUCTION) OF THE LEAVENWORTH CODE OF ORDINANCES, AND ESTABLISHING NEW AND REPLACEMENT SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:

**Section 1.** Article XI of Chapter 10 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

#### ARTICLE XI. UNSAFE OR DANGEROUS STRUCTURES; ABANDONED PROPERTY

##### **Sec. 10-527. State law adopted; definitions.**

Except as specifically set forth herein, the provisions of K.S.A. 12-1750 *et seq.*, as amended, are adopted by reference as though more fully set forth herein. As used in this article, the following terms shall have the meanings indicated in this section.

- (a) *Abandoned property* – means:
- (1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding ninety (90) days; or
  - (2) commercial real estate for which the taxes are delinquent for the preceding two (2) years and which has a blighting influence on surrounding properties.
- (b) *Unfit for human occupancy* – means:
- (1) any structure that is deemed unfit for human occupancy, as established under the International Property Maintenance Code, as adopted by the city (see Article X of Chapter 10 of the Leavenworth Code of Ordinances); and/or
  - (2) any structure that is deemed unfit for human use or habitation, including conditions that 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.

- (c) *Unsafe or dangerous structure* – means (i) any structure that is deemed unsafe, unfit for human occupancy, unlawful, or dangerous as established herein or under the International Property Maintenance Code, as adopted by the city, and/or (ii) any structure or part of a structure which remains or is damaged to present a dangerous or unsafe condition to the public including, but not limited to, structures damaged by fires, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding, or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, missing boards or siding, unsecured doors, or unsecured openings which allow the harboring of animals, insects, transients, or create an attraction to children; structures which due to the opinion of qualified experts or inspectors, including but not limited to, fire, engineering, or architectural experts; present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued, and any building permit has lapsed for more than ninety (90) days; structures which remain unfinished, or without an occupancy permit, after eighteen (18) months from the date of the first building permit and where no inspection for newly completed work has been requested within the last ninety (90) days.

#### **Sec. 10-528. Designation of enforcing officer.**

In addition to those persons identified as the "code official" under the International Property Maintenance Code, as adopted by the city, the director of planning and community development, the building official, building inspector, code enforcement officer, or other designated city official tasked with enforcing property maintenance laws in the city are designated as the enforcing officer(s) charged with the administration of the provisions of this article and K.S.A. 12-1750 *et seq.*, as amended.

#### **Sec. 10-529. Prohibition.**

It is unlawful to maintain or allow the existence of any unsafe or dangerous structure, or any abandoned property, in the city. It is unlawful for the owner, occupant or custodian of any unsafe or dangerous structure to permit such structure to remain in such an unsafe or dangerous condition or to occupy, permit occupation or otherwise utilize such a structure while it remains in an unsafe or dangerous condition. It is unlawful for the owner or custodian or any abandoned

property to permit such property to remain as abandoned property, whether as the result of unpaid taxes or such property having a blighting influence (as defined in K.S.A. 12-1750, as amended).

**Sec. 10-530. Determination.**

- (a) When the enforcing officer shall file with the city commission a statement in writing that any structure is unsafe or dangerous or is abandoned property, describing the structure and where located, the city commission shall by resolution fix a time and place at which the owner, the owner's agent, any lienholder of record, and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished, or rehabilitated in the case of abandoned property.
- (b) The resolution provided for in subsection (a) of this section shall be published once each week for two consecutive weeks on the same day of each week. At least thirty (30) days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three days after its first publication to each such owner, agent, lienholder or occupant at their last-known place of residence and shall be marked "deliver to addressee only."
- (c) On the date fixed for hearing under this section or any adjournment thereof, the city commission shall hear all evidence submitted by the owner, the owner's agent, lienholders of record and occupants having an interest in such structure, as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the city commission finds that such structure is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe or secure. If the city commission finds that such structure is abandoned property, the governing body may authorize the rehabilitation of such property as provided by K.S.A. 12-1756a, as amended. Such resolution shall be published once in the official city newspaper and a copy thereof mailed to the owners, agents, lienholders of record and occupants in the same manner provided in the notice of hearing. The resolution shall fix a reasonable time within which the repair or the removal of such structure shall be commenced, and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated, or fails to diligently prosecute such repair or removal until the work is completed, the city commission will cause the structure to be repaired or razed and removed in the case of unsafe or dangerous structures, or rehabilitated in the case of abandoned property.

**Sec. 10-531. Posting of notice.**

In addition to the notice provisions established in this article or in the International Property Maintenance Code, as adopted by the city, the enforcing officer may place a notice on the particular structures found by the enforcing officer or the city commission to be unsafe or dangerous, or abandoned, in substantially the following form: "This structure has been found by the City of Leavenworth to

be unsafe or dangerous, or abandoned. This notice is to remain on this structure and shall not be removed until it is repaired or demolished in accordance with the notice which has been given the owner, the owner's agent, any lienholder of record and any occupant of this structure." No person shall deface or remove the placard from any structure which has been condemned as unsafe or dangerous and placarded as such, except as provided in this article or the International Property Maintenance Code. The enforcing officer shall remove such placard when the defect upon which the condemnation and placarding action were based has been eliminated.

**Sec. 10-532. Vacation of premises.**

Any structure condemned as unsafe or dangerous, and so designated by the enforcing officer, shall be vacated within such time period established in the resolution of condemnation described in section 10-530(c) above or, in the absence of a time period, within thirty (30) days after publication and mailing of such resolution as provided in this article. No structure which has been condemned as an unsafe or dangerous structure shall again be used for human habitation until approval is secured from, and any above-described placard is removed by, the enforcing officer or the city commission.

**Sec. 10-533 Excavation fill.**

It shall be the duty of the property owner, representative, or the tenant, upon removal of a structure, to fill any basement, after removing all concrete footings and foundation walls, or other excavation located upon the premises and take any other action necessary to leave such premises in a safe condition, including grading and seeding or sodding of the area, removal of dirt or mud from roads, streets, alleys, or sidewalks, to allow for proper drainage of the site, and to remove any and all refuse, trash, debris, brush and limbs, or materials from the site.

**Sec. 10-534. Abatement by city; collection of costs.**

- (a) If the owner of any structure determined to be unsafe or dangerous fails to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute such repair or removal thereafter, the city may proceed to raze and remove the structure, make the premises safe and secure, or let the same to contract. The city shall keep an account of the cost of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the costs of removing such structure and making the premises secure. All moneys in excess of that necessary to pay such costs shall, after payment of all costs, be paid to the owner of the premises upon which the structure was located.
- (b) The city shall give notice to the owner of such structure by restricted mail of the total cost incurred by the city in removing such structure and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within thirty (30) days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys

received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and 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 such lot or parcel of land. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full. Whenever any structure is removed from any premises under the provisions of this article, the city clerk shall certify to the county appraiser that such structure, describing the same, has been removed.

- (c) If there is no salvageable material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the costs of the work and the cost of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this article the city commission shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 12-1,115, and amendments thereto, when and if paid, shall be placed in the general fund of the city.

**Sec. 10-535. Casualty insurance proceeds.**

See Article V (Casualty Insurance Proceeds) of Chapter 20 (Fire Prevention and Protection) of the Leavenworth Code of Ordinances, as amended, the terms of which are incorporated herein by this reference.

**Sec. 10-536. Immediate hazard.**

- (a) Notwithstanding anything in this article to the contrary, when, in the opinion of the enforcing officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay, and such

action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any such action shall be assessed against the property and paid in the manner provided by this article and K.S.A. 12-1755, as amended.

- (b) An immediate hazard may include, but is not limited to, imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life or safety is endangered by the occupation of the structure, or when there is an actual or potential danger to the building occupants or those in proximity thereto because of explosives, fumes, gases, vapors, or operation of defective or dangerous equipment.
- (c) It shall be unlawful for any person to enter a structure that has been deemed an immediate hazard except for the purposes of securing the structure, making the required repairs, removing the hazardous condition, or demolishing the structure.

**Sec. 10-537. Right of entry; unlawful interference.**

Any authorized officer or agent of the city, pursuant to this article, shall be allowed to enter onto any land within the city limits to investigate violations of this article or for the abatement of violations pursuant to this article. It shall be unlawful for any person to interfere with a public officer or agent of the city in performing his or her duties pursuant to this article whether investigating or abating violations. Any person who interferes with an officer or agent of the City pursuant to this article shall be punished as provided in this article.

**Sec. 10-538 Enforcement in municipal court.**

In addition to, or as an alternative to, any enforcement of this article as provided herein, or enforcement of any other portion of the Leavenworth Code of Ordinances that incorporates by reference the enforcement provisions of this article, if an authorized public officer determines that a violation of this article (or other portion of the code that incorporates by reference this article) exists, he or she may issue a notice to appear in municipal court for such violation. No other procedures are required as a prerequisite to the issuance of a notice to appear. The imposition of any removal and abatement action described in this article shall not preclude any appropriate prosecution or penalties. Likewise, the imposition of any prosecution or penalties shall not preclude any appropriate action described in this article or otherwise provided by applicable law to remove or abate a nuisance, an unsafe or dangerous structure, abandoned property, or to collect removal and abatement costs.

**Sec. 10-539 Penalties.**

Any person who violates this article shall be punished as provided in section 1-10 of the Leavenworth Code of Ordinances, as amended. Each day the violation continues after notice from the enforcing officer to cease violation shall be deemed a separate and distinct offense and punishable as such.

**Secs. 10-540—10-567. Reserved.**

**Section 2.** Article XI of Chapter 10 of the Leavenworth Code of Ordinances, including Sections 10-527 through 10-567, inclusive, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

**Section 3.** This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the 16th day of January, 2024.

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Griff Martin, Mayor

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ATTEST:

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Sarah Bodensteiner, City Clerk