

Chapter 46

ENVIRONMENT*

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*Cross reference—Health and sanitation, ch. 54.

State law reference—Public health and safety, 63 O.S.

ARTICLE I. IN GENERAL

Sec. 46-1. Standard specifications for storm drainage.

Ordinance No. 974, providing standard specifications for storm drainage, applying to all subdividing and developing of land within the corporate limits of the city, requiring and regulating primary and secondary drainage canals and surface drainage bridges, culverts, closed and open storm sewers and drainage and requiring and regulating drainage canals and storm sewers outside addition boundaries and prescribing penalties for the violations of its provisions and declaring it an emergency, is hereby recognized as continuing in full force and effect to the same extent as if set out at length in this article. (Code 1974, § 31-1)

Secs. 46-2—46-25. Reserved.

ARTICLE II. NUISANCES*

Sec. 46-26. Enumeration.

In addition to any other public nuisances declared by other sections of this Code, the following are determined to be and shall constitute public nuisances:

- (1) Any condition or act annoying, injuring or endangering the safety, health, comfort and repose of any considerable number of persons in the city.
- (2) Any condition or act which in any way renders any considerable number of persons insecure in life or in the use of property.
- (3) The accumulation of liquid household waste, stagnant or standing pools of water, growing weeds, or other conditions which afford breeding places for flies, mosquitoes or vermin.

***Cross references**—Animals, ch. 10; dangerous buildings, § 18-376 et seq.

State law reference—Nuisances generally, 50 O.S.

- (4) Dense smoke, noxious fumes and odors, gas, soot or cinders which affect a considerable number of persons as to health and comfort.
 - (5) All acts, omission of acts, occupations and uses of property which are a menace to the public health.
 - (6) All places where drunks, persons of lewd or disreputable character or flagrant violators of the law congregate.
 - (7) Any vehicle used for indecent or immoral practices or purposes.
 - (8) All indecent or obscene pictures, books, pamphlets, magazines or newspapers.
 - (9) The placing or leaving, upon or in any public park or watershed, or waters supplying water to the city, of any rubbish, refuse, tin cans, garbage, dead animals or organic waste of any kind.
 - (10) Polluting or contaminating the public water supply.
 - (11) Any livestock grazing or running at large upon the watersheds of the city.
 - (12) Obstructing any existing drainage channel which provides for runoff of stormwater.
 - (13) Permitting trees, grass, weeds, or any other vegetation to grow to the extent that water flow is obstructed; excepting that easements dedicated for surface water drainage across privately owned property shall be deemed a public way and major maintenance of the easement, when required, shall be performed by the city at no cost to the owner.
 - (14) All violations of this Code.
- (Code 1974, §§ 17-5, 17-6)

Sec. 46-27. Creation or maintenance prohibited.

It shall be unlawful for any person to create or maintain a public nuisance within the city, or to permit a public nuisance to remain on-premises under his control within the city. Under section 1-3 of the City Charter, the city shall have the power to ordain and to enforce local legislation for

the proper organization and functioning of the city government, for the preservation and enforcement of good government and order, for the protection of health, life, morals and property, and for the prevention, abatement, and removal of nuisances, and otherwise for the promotion of the common welfare.

(Code 1974, § 71-1)

Sec. 46-28. Abatement—Generally.

(a) The city council is empowered to summarily abate, or have summarily abated by the codes department, any nuisance referred to in this chapter or any other chapter of the Code, whenever it is practical to do so, following the procedures outlined in this chapter.

(b) All expenses incurred in abating a nuisance under this section shall be paid by the owner or person creating or maintaining such nuisance.

(Code 1974, § 17-4)

Sec. 46-29. Same—By suit in district court.

If abatement of any nuisance is deemed impractical by the city council, the council shall, by resolution, direct the bringing of a suit in the district court for the abatement of the public nuisance, as authorized by 50 O.S. § 17.

(Code 1974, § 17-7)

Sec. 46-30. Same—Health nuisances.

(a) Pursuant to the authority granted by 63 O.S. § 1-1011, the codes administrator shall have the authority to order the owner or occupant of any private premises in the city to remove from such premises at his own 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 condition adversely affecting the public health within 24 hours, or within such other time as might be reasonable. Failure to do so shall constitute an offense.

(b) The order shall be in writing and may be served personally on the owner or occupant of the premises, or authorized agent thereof, by the health officer (codes administrator), his designee

(codes inspectors) or by a police officer; or a copy thereof may be left at the last usual place of abode of the owner, occupant or agent, if known and within the state.

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

(d) If an order given pursuant to subsection (a) is not complied with, the health officer (codes administrator) may cause the order to be executed and complied with, and the cost thereof shall be certified to the chief financial officer, and the cost of removing or abating the public nuisance including an administrative fee of \$100.00 shall be added to the water bill or other city utility bill of the owner or occupant if he is a user of water from the city water system or other utility service.

(e) The cost, including the administrative fee, shall be treated as a part of the utility bill to which it is added, and shall become due and payable, and be subject to the same regulations relating to delinquency in payment, as the utility bill itself. If the owner or occupant is not a user of any city utility service, the cost, including the administrative fee, after certification to the chief financial officer, may be collected in any manner in which any other debt due the city may be collected.

(Code 1974, § 17-8; Ord. No. 2462, § 1, 4-23-13)

Sec. 46-31. Same—Procedures cumulative.

The various procedures prescribed by this article and by other ordinances for abating public nuisances shall be cumulative one to the other, and the city may elect to follow any such procedure which is applicable in abating any particular nuisance.

(Code 1974, § 17-9)

Sec. 46-32. Declaration of synthetic cannabinoids and incense as a public nuisance.

It is hereby declared by the City of McAlester that the use, possession, sale or display of all

forms of synthetic cannabinoids and incense as defined herein, is a public nuisance, which poses an immediate threat to the public health and safety of the citizens of the City of McAlester, Oklahoma.

(Ord. No. 2509, § 2, 7-8-14)

Sec. 46-33. Definitions.

As used in this article the following terms shall be defined as follows:

- (1) "*Incense*" shall mean any loose leaf incense, herbal incense, granular incense or aromatic plant material containing any chemical compound, synthetic or natural, which imitates the effects of any controlled substance in granular, loose leaf or powder form which may be used or converted into a form intended for introduction into the human body.
- (2) "*Synthetic cannabinoids*" shall mean, unless specifically excepted or unless listed in state statute, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical groups or any of those groups which contain any synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical groups:
 - a. *Naphthoylindoles*: Any compound containing a 3-(1-naphthoyl) indole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl) methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl) methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthoylindoles include, but are not limited to, 1-[2-(4-morpholinyl) ethyl]-3-(1-naphthoyl) indole (JWH-200); 1-(5-fluoropentyl)-3-(1-naphthoyl) indole (AM2201), 1-pentyl-3-(1-naphthoyl) indole (JWH-018), and 1-butyl-3-(1-naphthoyl) indole (JWH-073).
 - b. *Naphthylmethylindoles*: Any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl) methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl) methyl, (tetrahydropyran-4-yl) methyl, ((N-methyl)-3-morpholinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthylmethylindoles include, but are not limited to, (1-pentylindol-3-yl)(1-naphthyl) methane (JWH-175).
 - c. *Naphthoylpyrroles*: Any compound containing a 3-(1-naphthoyl) pyrrole structure with or without substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl) methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl) methyl, (tetrahydropyran-4-yl) methyl, ((N-methyl)-3-morpholinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted on the pyrrole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthoylpyrroles include, but are not limited to, 1-hexyl-2-phenyl-4-(1-naphthoyl) pyrrole (JWH-147).
 - d. *Naphthylmethylindenenes*: Any compound containing a naphthylmethylideneindene structure with or without substitution at

the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl) methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl) methyl, (tetrahydropyran-4-yl) methyl, ((N-methyl)-3-morpholinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted on the indene group to any extent or whether or not substituted on the naphthyl group to any extent. Naphthylmethylindenes include, but are not limited to, (1-[(3-pentyl)-1H-inden-1-ylidene] methyl] naphthalene (JWH-176).

- e. *Phenylacetylindoles*: Any compound containing a 3-phenylacetylindole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl) methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl) methyl, (tetrahydropyran-4-yl) methyl, ((N-methyl)-3-morpholinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the phenyl group to any extent. Phenylacetylindoles include, but are not limited to, 1-pentyl-3-(2-methoxyphenylacetyl) indole (JWH-250), and 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl) indole (RCS-8); 1-pentyl-3-(2-chlorophenylacetyl) indole (JWH-203).

- f. *Cyclohexylphenols*: Any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with or without substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl) methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl) methyl, ((N-

methyl)-3-morpholinyl) methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the cyclohexyl group to any extent. Cyclohexylphenols include, but are not limited to, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (some trade or other names: CP-47,497) and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (some trade or other names: cannabicyclohexanol; CP-47,497 C8 homologue).

- g. *Benzoylindoles*: Any compound containing a 3-(1-naphthoyl) indole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl) methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl) methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl) methyl or 2-(4-morpholinyl) ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the phenyl group to any extent. Benzoylindoles include, but are not limited to, 1-pentyl-3-(4-methoxybenzoyl) indole (RCS-4), 1-[2-(4-morpholinyl) ethyl]-2-methyl-3-(4-methoxybenzoyl) indole (Pravadoline or WIN 48, 098).

(Ord. No. 2509, § 1, 7-8-14)

Sec. 46-34. Possession, use, sale or display of synthetic cannabinoids or incense.

(a) Pursuant to the declaration as a public nuisance of all forms of synthetic cannabinoids and incense as defined by this section, the following activities shall deemed a violation punishable by fine as established within this section:

- (1) To appear or be upon or in any street, alley, place of business, or other public place while under the influence of synthetic cannabinoids or incense;

- (2) To use, have, or possess synthetic cannabinoids/incense upon or in any street, alley, place of business, or other public place within the city;
- (3) To use synthetic cannabinoids or incense in any place within the city; or
- (4) To sell, display or otherwise transfer synthetic cannabinoids or incense, as defined by this section, within the city.

(b) *Factors that may be considered in determining violation:* In determining whether a product or sale is prohibited by this article, statements on package labeling such as "Not For Human Consumption" shall not be considered conclusive for purpose of determining whether a violation has occurred when other relevant factors (viewed alone or in totality) indicate that the product is intended to be consumed or ingested by humans, or is a product regulated by this article. Other relevant factors that may be used to determine whether a product or sale is prohibited by this section include, but are not limited to: verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the product; aspects of the packaging or labeling suggest the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other effects on the body; the cost of the product is disproportionately higher than other products marketed for the same use; the product contains a warning label stating or suggesting that the product is in compliance with state laws regulating controlled substances; the product's name or packaging uses images or slang referencing an illicit street drug; illicit or underground methods of sale or delivery are employed by the seller or provider; the product resembles an illicit street drug such as cocaine, methamphetamine or marijuana. (Ord. No. 2509, § 3, 7-8-14)

Sec. 46-35. Enforcement.

Any violation of this section may be enforced by any law or code enforcement officer of the city. Any incense or synthetic cannabinoid, as defined by the section, may be seized and held by the city as evidence to be used in any further proceeding. (Ord. No. 2509, § 4, 7-8-14)

Sec. 46-36. Penalty for violation.

A person charged with a violation of this section shall upon first conviction be punished by a fine of \$100.00. Upon second conviction the person shall be punished by a fine of \$300.00. Upon a third and subsequent conviction, the person shall be punished by a fine of \$500.00. (Ord. No. 2509, § 5, 7-8-14)

Secs. 46-37—46-50. Reserved.

ARTICLE III. LOT CLEANING*

Sec. 46-51. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative officer means the codes department and code administrator designated by the city council to carry out the duties of abating detrimental accumulations of trash or growth of weeds and grass.

Cleaning means the removal of trash from property.

Owner means the owner of record as shown by the most current tax rolls of the county treasurer.

Trash means any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, of-fal, or waste, or matter of any kind or form which is uncared for, discarded or abandoned.

Weed includes but is not limited to poison ivy, poison oak, or poison sumac and all vegetation at any state of maturity which:

- (1) Exceeds 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 and welfare of the public and community, or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the mowing of such weeds.

*State law reference—Lot cleaning, 11 O.S. § 22-111.

- (2) Regardless of height, harbors, conceals or invites deposits or accumulation of refuse or trash.
- (3) Harbors rodents or vermin.
- (4) Gives off unpleasant or noxious odors.
- (5) Constitutes a fire or traffic hazard.
- (6) Is dead or diseased.

The term "weed" shall not include tended crops on land zoned for agricultural use which are planted more than 150 feet from a parcel zoned for other than agricultural use.

(Code 1974, § 17-17)

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, 11 O.S. § 22-111(D).

Sec. 46-52. Application.

The provisions of this article shall not apply to any property zoned and used for agricultural purposes.

(Code 1974, § 17-17(6))

State law reference—Similar provisions, 11 O.S. § 22-111(E).

Sec. 46-53. Prohibited; responsibilities.

It shall be unlawful for any owner or person otherwise in possession or control of any lot, tract or parcel of land situated wholly or in part within the corporate limits of the city to allow trash or weeds to grow, stand or accumulate upon premises, including abutting right-of-way, and it shall be the duty of such owner to remove or destroy any such trash or weeds. The city will cause property within its municipal limits to be cleaned of trash and weeds or grass to be cut or mowed in accordance with established procedures.

(Code 1974, § 17-18; Ord. No. 2462, § 2, 4-23-13)

Sec. 46-54. Reporting accumulation; inspection, determination.

Any officer or employee of the city who discovers an accumulation of trash or weeds upon any premises within the corporate limits of the city shall report such condition to the nuisance abate-

ment officer of the codes department, who thereupon shall make an inspection and determination of violation.

(Code 1974, § 17-19)

Sec. 46-55. Designation of administrative officer.

The city designates the codes administrator as the administrative officer responsible for carrying out the duties of the city council regarding public nuisance abatement procedures. The property owner shall have a right of appeal to the city council from any order of the code administrator. Such appeal shall be taken by filing written notice of appeal with the city clerk within ten days after the administrative order is rendered.

(Code 1974, § 17-20)

Chapters 47-49

RESERVED