

HOUSE BILL No. 2690

By Representative Xu

2-4

AN ACT concerning cities and counties; relating to interior inspections and abatement of nuisances in residential property; allowing cities to abate nuisances that involve certain interior code violations or delegate such authority to the county; authorizing inspections without consent of the occupant pursuant to an administrative warrant or if there is probable cause of imminent danger related to public health and safety; amending K.S.A. 12-1617e and 12-16,138 and repealing the existing sections.

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

Section 1. K.S.A. 12-1617e is hereby amended to read as follows: 12-1617e. (a) The governing body of any city may have removed or abated from any lot or parcel of ground within the city any and all nuisances, including rank grass, weeds or other vegetation. *If such lot or parcel of ground contains a dwelling unit as defined in K.S.A. 58-2543, and amendments thereto, the governing body of a city may abate nuisances that involve any violation of building and housing codes materially affecting health and safety as described in K.S.A. 58-2553, and amendments thereto. A city may delegate authority to abate such nuisances to the county in which the the dwelling unit is located if the county accepts such authority.* The governing body may have drained any pond or ponds of water, at the cost and expense of the owner of the property on which the nuisance is located, whenever the city, county or joint board of health or other agency as may be designated by the governing body of the city files with the clerk of such city its statement in writing that such nuisance, rank vegetation or pond of water, describing the same and where located, is a menace and dangerous to the health of the inhabitants of the city, or of any neighborhood, family or resident of the city. The governing body of the city, by resolution, also may make such determination.

(b) Except as provided by subsection (c), the governing body of the city shall order the owner or agent of the owner of the property to remove and abate from the property the thing or things therein described as a nuisance within a time, not exceeding 10 days, to be specified in the order. The governing body of the city shall grant extensions of such ten-day time period if the owner or agent of the property demonstrates that due

1 diligence is being exercised in abating the nuisance. The order shall state
2 that before the expiration of the waiting period or any extension thereof,
3 the recipient thereof may request a hearing before the governing body or
4 its designated representative. The order shall be served on the owner or
5 agent of such property by certified mail, return receipt requested, or by
6 personal service. If the property is unoccupied and the owner is a
7 nonresident, then by mailing the order by certified mail, return receipt
8 requested, to the last known address of the owner.

9 (c) If the owner or agent of the owner of the property has failed to
10 accept delivery or otherwise failed to effectuate receipt of a notice sent
11 pursuant to this section during the preceding twenty-four month period, the
12 governing body of a city may provide notice of the issuance of any further
13 orders to abate or remove a nuisance from such property in the manner
14 provided by subsection (b) or as provided in this subsection. Except as
15 specifically provided in this subsection, the governing body may provide
16 notice of the order by such methods including, but not limited to, door
17 hangers, conspicuously posting notice of such order on the property,
18 personal notification, telephone communication or first class mail. If the
19 property is unoccupied and the owner is a nonresident, notice provided by
20 this section shall be given by telephone communication or first class mail.

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

42 (e) Any city may remove and abate from property other than public
43 property or property open to use by the public a motor vehicle determined

1 to be a nuisance. Disposition of such vehicle shall be in compliance with
2 the procedures for impoundment, notice and public auction provided by
3 ~~paragraph (2) of subsection (a) of K.S.A. 8-1102(a)(2), and amendments~~
4 thereto. Following any sale by public auction of a vehicle determined to be
5 a nuisance, the purchaser may file proof thereof with the division of
6 vehicles, and the division shall issue a certificate of title to the purchaser
7 of such motor vehicle. If a public auction is conducted, but no responsible
8 bid received, the city may file proof thereof with the division of vehicles,
9 and the division shall issue a certificate of title of such motor vehicle to the
10 city. Any person whose motor vehicle has been disposed of pursuant to this
11 subsection shall be eligible for a refund of the tax imposed pursuant to
12 K.S.A. 79-5101 et seq., and amendments thereto. The amount of such
13 refund shall be determined in the manner provided by K.S.A. 79-5107, and
14 amendments thereto.

15 Sec. 2. K.S.A. 12-16,138 is hereby amended to read as follows: 12-
16 16,138. (a) *(1)* No city or county shall adopt, enforce or maintain a
17 residential property licensing ordinance or resolution which includes a
18 requirement for periodic interior inspections of privately owned residential
19 property for city or county code violations unless:

20 (A) The lawful occupant has consented to such interior inspections;

21 (B) *the inspection is conducted pursuant to an administrative*
22 *warrant; or*

23 (C) *there is probable cause of imminent danger related to health and*
24 *safety on the property and notice is provided that is reasonable under the*
25 *circumstances.*

26 (2) This subsection shall not apply to inspections of mixed-use
27 residential and commercial property. This subsection shall not prohibit a
28 city or county from conducting plan reviews, periodic construction
29 inspections or final occupancy inspections as required by building permits.

30 (b) Any lawful occupant residing in privately owned residential
31 housing located within the corporate limits of a city may request an
32 inspection at any time by the city or, if the property is located in the
33 unincorporated area of the county, by the county to determine code
34 violations.

35 Sec. 3. K.S.A. 12-1617e and 12-16,138 are hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
37 publication in the statute book.