

**RESOLUTION**

No. 187-01

DATE EFFECTIVE: 12-12-2001

**A RESOLUTION AMENDING CHAPTER 19 OF THE *SEDGWICK COUNTY CODE*, PROVIDING FOR THE ABATEMENT OF PUBLIC NUISANCES BY THE DEPARTMENT OF CODE ENFORCEMENT; ESTABLISHING HEARING PANEL TO HEAR APPEALS OF NUISANCE ABATEMENT DETERMINATIONS AND ASSESSMENTS.**

**WHEREAS**, the Board of County Commissioners finds that provision for abatement of public nuisances kept, maintained, or permitted by any person to the injury of the public is necessary and desirable; and

**WHEREAS**, the adoption of a public nuisance abatement code to eliminate and prevent such nuisances that are injurious to the health, safety and welfare of the inhabitants within Sedgwick County, Kansas, is in the best public interest; and

**WHEREAS**, the Board of County Commissioners is authorized and empowered to adopt such resolutions pursuant to K.S.A. 19-101 through 19-101f and amendments thereto; and

**WHEREAS**, the Board of County Commissioners has determined the need to amend Chapter 19, of the *Sedgwick County Code* by the adoption of this Nuisance Abatement Code.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, that:**

**SECTION 1: RESERVATION OF SECTIONS**

Sections 19-25 to 19-40 in Article II of Chapter 19, are hereby reserved.

**SECTION 2: AMENDMENTS TO CHAPTER 19**

**Chapter 19 of the Sedgwick County Code is amended by the addition of the following article and shall read as follows:**

**ARTICLE III. NUISANCE ABATEMENT**

**Sec. 19-41. Title.**

This code shall be known as the “*Nuisance Abatement Code*” and may be cited as such, and may also be referred to herein as “this Article.”

**Sec. 19-42. Purpose.**

The purpose of this Article is to protect the inhabitants of Sedgwick County, Kansas, by providing for the abatement of public nuisances, as defined herein, which are injurious to the health, safety and welfare of the inhabitants within Sedgwick County, and to provide for the uniform administration thereof.

**Sec. 19-43. 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. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. Words in the singular include the plural and the plural the singular. Words in the masculine gender include the feminine and the feminine the masculine:

(a) *Abatement* means the repair, removal, stoppage, prostration, or destruction, whether by breaking or pulling it down, or otherwise destroying, or effacing it, of that which causes or constitutes a public nuisance.

(b) *“Health Officer”* means the local health officer appointed pursuant to Charter Resolution No. 54, effective January 1, 2002, or his or her authorized representative.

(c) *“Public Nuisance”* means any of the following:

(1) An activity or condition declared unlawful by Article II of Chapter 19 of this Code (Nuisance Code), but only if the property owner or occupant has been convicted in Sedgwick County Court for said violation within the preceding 12 months, or if the Sedgwick County Health Officer has determined that said activity or condition constitutes an imminent threat to the health or safety of any person.

(2) A continuing use of any property in violation of any regulation of the Wichita-Sedgwick County Unified Zoning Code as adopted by Sedgwick County, but only if the property owner or occupant has been convicted in Sedgwick County Court for said violation within the preceding 12 months.

(3) A continuing use of any property in violation of Chapter 24 of this Code (*Solid Waste Code*).

(d) *“Property”* means any real property, premises, structure or location on which a public nuisance is alleged to exist.

(e) *“Summary abatement”* means abatement of the nuisance by the County, or a contractor employed by the County, by removal, repair, or other acts without notice to the owner, agent, or occupant of the property, except for the notice required by this Article.

**Sec. 19-44. Right of Entry by the Department of Code Enforcement.**

Code Enforcement Officers shall have the right of access and entry upon and into buildings and private property for the purpose of making inquiry and inspection to determine if a public nuisance exists, provided that if said building or private property is occupied that credentials be presented to the occupant and entry requested. If said building or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry. No person shall wilfully or unlawfully impede or obstruct any Code Enforcement Officer in the discharge of official duties under the provisions of this Chapter. A violation of this section is a Class H violation as set forth in Chapter 8 of this Code, and shall be subject to prosecution as set forth therein.

**Sec. 19-45. Inspection by the Department of Code Enforcement.**

Whenever a complaint is made to the Department of Code Enforcement alleging the existence of any public nuisance, as defined in this Article, in the unincorporated area of the County, the Department of Code Enforcement shall inspect the property on which it is alleged that such public nuisances exist. If after inspecting the property the Department of Code Enforcement determines the existence of a public nuisance requiring abatement and that public health, safety or welfare may be in immediate danger therefrom, then summary abatement procedures may be followed. If after inspecting the property the Department of Code Enforcement determines the existence of a public nuisance requiring abatement, but the nature thereof is not such as to require the summary abatement of such nuisance, then regular abatement procedures may be followed

**Sec. 19-46. Summary Abatement.**

(a) If after inspecting the property on which the nuisance is reported the Department of Code Enforcement determines that summary abatement procedures should be implemented due to the existence of a public nuisance placing the public health, safety or welfare in imminent danger, the Department of Code Enforcement may board-up, erect barricades, or cause the property to be vacated, taken down, repaired, removed, 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.

(b) Following any summary abatement action, the Department of Code Enforcement shall cause to be posted on the property liable for the abatement a notice describing the action taken to abate the nuisance, and the costs associated with such action as provided in Sec. 19-51.

(c) If additional abatement is deemed necessary following summary abatement, the Department of Code Enforcement shall thereupon follow the regular abatement procedure set forth herein.

**Sec. 19-47. Regular Abatement Procedure; Notice and Order.**

(a) *Notice and Order.* The Department of Code Enforcement shall cause a written notice and order to be served upon the owner of the property where the nuisance is located, on any occupants of same, and on any other person, corporation, or entity in violation. If the County proposes to impose a lien on the property, the Department of Code Enforcement shall also serve one copy on each of the following if known or disclosed from official public records: (A) the holder of any mortgage, deed of trust, or other encumbrance of record; and (B) the owner or holder of any lease of record. The notice and order shall state clearly and concisely the following information:

- (1) The street address or other description sufficient for identification of the premises upon which the nuisance is located;
- (2) A brief statement and concise description of the conditions found on said property;
- (3) The findings of the Department of Code Enforcement with respect to the existence of a public nuisance;
- (4) The action(s) required to be taken to abate the nuisance as determined by the Department of Code Enforcement;
- (5) That the nuisance must be abated within thirty (30) days from the date of service of the notice;
- (6) That unless the owner of the described property shall cause the abatement of the public nuisance, pursuant to the orders contained in the notice, the nuisance shall be abated by the County at the expense of the owner; and
- (7) That any owner or occupant may appeal the notice and order or any action of the Department of Code Enforcement by requesting a hearing, provided the appeal is made in writing, accompanied by an appeal fee in the amount of \$25.00, and filed with the Department of Code Enforcement within thirty (30) days from the date of service of the notice, and that failure to appeal will constitute a waiver of all rights to an administrative hearing and determination of the matter.

(b) *Method of Service.*

- (1) Unless otherwise provided in this section, service shall be made by either personal service or by certified mail, return receipt requested. Service by certified mail shall be effective on the date of mailing. Service on any property owner in violation is deemed complete when it is served at the address listed by the property owner on the last assessment roll of the county, or as known to the Department of Code Enforcement. If the party entitled to service has a property manager or rental agency overseeing the premises, substituted service may be made upon the property manager or rental agency.
- (2) If neither personal service nor service by certified mail are reasonably feasible, substituted service of the notice and order may be made by the Department of Code Enforcement posting the notice and order on the premises and mailing a copy of the notice and order

to the person, corporation, or entity in violation at the address of the property on which the violation has occurred or is occurring.

- (3) If service of the notice and order is unable to otherwise be obtained, the Department of Code Enforcement shall cause a copy of the notice and order to be published in a newspaper of general circulation in the area of the affected property, once a week for two consecutive weeks.

(c) The failure of the Department of Code Enforcement to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this Article. Further, the failure of any person to receive notice as provided in this section shall not affect the validity of any proceedings taken under this Article.

(d) Any person who is the record owner of the premises, location or structure at the time an order pursuant to this Article is issued and served upon him, shall be responsible for complying with that order, and liable for any costs incurred by the County therewith, notwithstanding the fact that he may convey his interests in the property to another after such order was issued and served.

**Sec. 19-48. Same; Abatement by Owner.**

(a) Within thirty (30) days after the posting and mailing of a notice to abate a nuisance, the owner, agent of the owner, or individual in possession of the affected property shall remove and abate such nuisance or show that no nuisance in fact exists. Such showing shall be made by filing with the Department of Code Enforcement an acknowledged and sworn written statement that the nuisance described in the notice to abate no longer exists. After receipt of such statement, the Department of Code Enforcement shall reinspect the affected property, and if after the reinspection it is determined that the nuisance described in the notice to abate continues to exist, shall issue another written notice. This determination may be appealed as provided in Sec. 19-49.

(b) The Department of Code Enforcement, upon written application by the owner within the thirty (30) day period after the notice has been served, may grant additional time for the owner to effect the abatement of the public nuisance, provided that such extension is limited to a specific time period.

**Sec. 19-49. Appeal of determination procedure; Hearing Panel**

(a) *Right of Appeal.* The owner, agent of the owner, or individual in possession of the affected property who has been served with a notice and order pursuant to Sec. 19-47 or Sec. 19-48, may within thirty (30) calendar days after the date of service of such notice, appeal that determination by filing a written request to the Department of Code Enforcement for a hearing on the question of whether a public nuisance exists, as defined herein. A hearing shall be scheduled by the Department of Code Enforcement for a date no sooner than twenty (20) days following a request for an appeal hearing. Written notice of the time and place of the hearing shall be given to each appellant by first class mail at the address provided with the written appeal request, and shall be mailed at least fifteen (15) days before the date set for hearing. All abatement activity pursuant to this Article shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

(b) *Appeal Fee.* Any person, corporation, or entity seeking to appeal a notice and order shall be required to pay to the Department of Code Enforcement, at the time the appeal is requested, an appeal fee in the amount of \$25.00.

(c) *Hearing Panel.* Appeals under this Article shall be heard by a Hearing Panel consisting of five (5) members who shall be appointed by the Board of County Commissioners to hear such nuisance abatement appeals, and who shall serve at the pleasure of the Board of County Commissioners.

- (1) Each county commissioner shall appoint one (1) member to the hearing panel.
- (2) A member may also be a county employee, but in that event the member shall not have had within the past 12 months any personal responsibility for the investigation, prosecution or enforcement of nuisances under this chapter and shall not have had any personal involvement in the appeal to be heard.
- (3) The members appointed shall serve for a period of three (3) years from the date of appointment. If the commissioner appointing a board member leaves office for any reason, the term shall expire, except that a member may serve until a successor has been duly appointed.
- (4) In the event of the death, resignation or disqualification of any member, such member's successor shall be appointed as provided in this section to fill only the unexpired term caused by such vacancy.

(d) *Conduct of Appeal Hearing.* A minimum of three (3) members must be present, to conduct an appeal hearing. The Hearing Panel shall select one of its members to sit as the presiding member for the hearing. At the scheduled time for the hearing, after having first administered an oath or affirmation to all witnesses to testify truthfully, the Hearing Panel shall proceed to hear testimony and take evidence from any representatives of the County, the appellant, and any other competent persons with respect to the determination of whether a public nuisance exists, as defined herein. All relevant evidence shall be admissible and hearsay evidence may be used, in the Hearing Panel's discretion, for the purpose of supplementing and explaining other evidence. The Hearing Panel may, upon request of the appellant or upon request of the County, grant continuances of the appeal hearing for good cause shown, or upon the Hearing Panel's own motion.

(e) *Determination.* Within thirty (30) days following the hearing, the Hearing Panel shall make a written determination of whether a public nuisance exists, as defined herein, and may amend or modify the notice and order, or extend the time for compliance with the Department of Code Enforcement's order by such length of time as the Hearing Panel may determine. If it is shown by a preponderance of all the evidence that the condition of the property constitutes a public nuisance, the determination shall declare the property to be a public nuisance and shall order and require the appellant to abate the nuisance not later than 30 calendar days after the issuance of the decision or, if 30 calendar days is insufficient to abate the nuisance, within such other time as specified by the Hearing Panel. The determination shall inform the appellant that if the nuisance is not abated within the time specified, the nuisance may be abated by the County as provided herein, and the expense thereof made a lien upon the property involved. If

the Hearing Panel decides that the condition of the property does not constitute a public nuisance by a preponderance of the evidence, this finding shall be stated in the determination and no further action shall be taken by the Department of Code Enforcement with respect to the abatement of that condition on the property, and the appellant shall be entitled to the return of the appeal fee. A copy of this determination shall be furnished to the appellant.

(f) *Finality of Hearing Panel's Determination.* The decision of the Hearing Panel shall be considered a final order of an agency of Sedgwick County, and shall not be appealable to the Board of County Commissioners.

(g) *Failure to Appeal.* Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of all rights to a hearing and adjudication of the notice and order or any portion thereof. If no appeal is filed, the notice and order of the Department of Code Enforcement shall become final upon the expiration of 30 calendar days after the date of service of said notice and order as provided herein.

#### **Sec. 19-50. Abatement by County.**

(a) Should any public nuisance not be abated by the owner at the expiration of time stated in the notice and order, or within such additional time as the Department of Code Enforcement or the Hearing Panel may grant following an appeal, the Department of Code Enforcement shall have the authority to enter upon the property and abate the public nuisance found thereon, unless the Hearing Panel shall direct otherwise in a written determination.

(b) In abating such nuisances, the Department of Code Enforcement may go to whatever extent may be necessary to complete the abatement of the public nuisance in a reasonable manner, and the following procedure shall be observed:

- (1) Items removed from the property which have no practical value to the owner shall be disposed of by the County.
- (2) The County shall place items removed from the property which might reasonably be of some value to the owner, in storage. The owner shall be informed by certified mail, restricted delivery, return receipt requested, of the disposition or storage of any items so removed and stored, and the owner shall be further informed that such items shall be stored for a period of thirty (30) days and further, that the items may be claimed by said person upon payment to the County for its expenses associated with the abatement.
- (3) If the items are not claimed within the thirty (30) day period, then the County shall sell the items at private or public sale at the best price obtainable and shall keep an accounting of the proceeds thereof.
- (4) The proceeds, if any, obtained from the sale of such items shall be deposited to the General Fund of the County. Should the proceeds of the sale of such items exceed the cost of abatement, the surplus, if any, shall be paid to the owner of said items when a proper claim to the excess is established with the Department of Code Enforcement.

(c) In abating a public nuisance, the Department of Code Enforcement may call upon any of the County departments or divisions for whatever assistance shall be deemed necessary or may by private contract cause the abatement of the public nuisance. If any part of the work is to be accomplished by private contract, standard county procurement procedures shall be followed.

(d) The Sedgwick County Appraiser shall be notified in writing after demolition of any structures is completed so that any such structure can be removed from the tax roll.

(e) No person shall obstruct, impede or interfere with any officer, employee, contractor, or authorized representative of the County or with any person who owns or holds any estate or interest in any property which has been ordered abated, whenever such person is engaged in the work of abating any public nuisance pursuant to the provisions of this Article, or in performing any necessary act preliminary to or incidental to such work. A violation of this subsection is a Class H violation as set forth in Chapter 8 of the County Code, and shall be subject to prosecution as set forth therein. If necessary, law enforcement officers shall assist in keeping the peace during such abatement.

(f) Neither the County nor any of its employees shall be liable for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate nuisances.

(g) The abatement of nuisances pursuant to this Article shall not be a defense for not complying with the provisions of the Sedgwick County Code.

**Sec. 19-51. Assessment; Notice of Costs; Appeal.**

(a) The Department of Code Enforcement shall keep an itemized account of the expenses incurred by the County in the abatement of any public nuisance. Following an abatement, the Department of Code Enforcement shall cause an assessment entitled "Notice of Costs" to be mailed to the property owner by certified mail, return receipt requested. The Notice of Costs shall also be posted on the property. The owner shall have thirty (30) days from the date of the Notice to make full payment. The Notice of Costs shall state:

- (1) The common or legal description of the property, or both;
- (2) The nature of the nuisance, including a statement of relevant code sections;
- (3) The nature of the work performed to abate the nuisance;
- (4) The amount of the costs incurred for the abatement of the nuisance either in a lump sum or in itemized form;
- (5) The amount of any proceeds received from any sale of property as provided in this Article, if any;

- (6) That failure to pay the entire amount within thirty (30) days shall allow the County to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both. Partial payments will not be accepted and shall be considered as nonpayment under this section; and
- (7) That an appeal of the proposed assessment must be made in writing and received by the Department of Code Enforcement within thirty (30) days from the date of mailing such notice, along with a \$25.00 appeal fee.

(b) Upon the expiration of the thirty (30) day period, if no appeal has been received by the Department of Code Enforcement, a copy of the Notice of Costs shall be forwarded to the County Clerk who shall enter that amount on the County assessment roll, which shall constitute a special assessment against and a lien upon the property and collected as any other assessment by the County.

(c) If a written appeal of the proposed assessment, accompanied by an appeal fee in the amount of \$25.00, is received by the Department of Code Enforcement prior to the expiration of the thirty (30) day period, an appeal of assessment hearing shall thereafter be scheduled by the Department of Code Enforcement for a date no sooner than twenty (20) days following the date the appeal was received. Written notice of the time and place of the hearing shall be given to each appellant by first class mail at the address provided with the written appeal request, and shall be mailed at least fifteen (15) days before the date set for hearing. The appeal hearing shall be conducted by the Hearing Panel described in Sec. 19-49(c), and the hearing shall be conducted in the manner set forth in Sec. 19-49(d). Within thirty (30) days following the hearing, the Hearing Panel shall make a written determination of whether the proposed assessment complies with subsections (d) or (e) herein, and whether the amount of the charges in the notice shall either be canceled, reduced, or remain the same. A copy of this determination shall be furnished to the person making the objections. If the Hearing Panel determines that the proposed assessment fails to substantially comply with subsection (d), the Hearing Panel may cancel the proposed assessment, and appellant shall be entitled to the return of the appeal fee. If after the hearing the Hearing Panel determines that the proposed assessment, or any part of it, is proper and authorized, the Hearing Panel shall so certify to the County Clerk who shall enter a lien in such amount as determined by the Hearing Panel on the County assessment roll thirty (30) days after receipt of said certification, which shall therefore constitute a special assessment against and a lien upon the property, and collected as any other assessment by the County. The decision of the Hearing Panel shall be considered a final order of an agency of Sedgwick County.

(d) The Hearing Panel may reduce or cancel a proposed assessment if it is determined that any of the following did not substantially conform to the provisions of this Article:

- (1) The notice to remove the nuisance;
- (2) The work performed in abating the nuisance; or
- (3) The computation of charges incurred abating the nuisance.

(e) If after a lien has been entered in the assessment roll there is a written request of an owner who alleges that the owner did not receive notice of the proposed assessment, the County Clerk shall refer

the matter for appeal procedures pursuant to subsection (c). The lien may be canceled or reduced by the Hearing Panel if, after hearing, it is determined:

- (1) The owner did not receive notice of the proposed assessment;
- (2) The owner did not previously have knowledge of the lien or of the nuisance abatement work constituting the basis of the lien; and
- (3) The owner could not, in the exercise of reasonable care or diligence, have had such knowledge; and
- (4) The circumstances are such that a reduction or cancellation of the charges would have been appropriate had the matter been reviewed prior to assessment.

Thirty (30) days following receipt of a certification from the Hearing Panel, pursuant to subsection (c), the County Clerk shall cancel or reduce the lien as directed.

(f) Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(g) All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of interest determined pursuant to K.S.A. § 16-204(e).

(h) Nothing in this section shall limit the County from utilizing other collection methods to recoup abatement costs.

**Sec. 19-52. Addition of Assessment to Tax Bill and Collection.**

(i) After receipt of same, the County Clerk shall add the amount of the assessment to the next regular tax bill levied against the parcel.

(j) The County Treasurer shall collect the assessment at the same time and in the same manner as ordinary property taxes. The assessment shall be subject to the same penalties and procedures and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

(k) The Board of County Commissioners, in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not to exceed five (5) equal annual installments. Such determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be by a resolution. Such installments shall be collected in the same manner as ordinary property taxes in successive years. If any installment is delinquent, the

amount thereof is subject to the same penalties and procedure for sale as provided for ordinary property taxes.

**Sec. 19-53. Personal Liability of Owner.**

The person who is the owner of the property at the time at which the notice required under Sec. 19-47 of this Article is posted shall be personally liable for the amount of the assessment, including all interest, civil penalties, and other charges.

**Sec. 19-54. Savings clause.**

If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article. The Board of County Commissioners declares that it would have adopted this Article and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion thereof would be declared invalid or unconstitutional.

**Sec. 19-55. Other remedies unaffected.**

Nothing in this Article shall be construed to limit or forbid the County or any other person from pursuing any other remedies available at law or in equity to enforce the provisions of this Article, or to abate the public nuisances described.

**SECTION 3: PUBLICATION**

The Sedgwick County Clerk is directed to publish this resolution once in the official county newspaper.

**SECTION 4: EFFECTIVE DATE**

This resolution shall take effect upon its publication once in the official county newspaper.

Commissioners present and voting were:

BETSY GWIN	_____
TIM R. NORTON	_____
THOMAS G. WINTERS	_____
CAROLYN McGINN	_____
BEN SCIORTINO	_____

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

ATTEST:

\_\_\_\_\_  
 CAROLYN McGINN  
 Chair - Fourth District

\_\_\_\_\_  
 DON BRACE, County Clerk

\_\_\_\_\_  
 BEN SCIORTINO  
 Vice Chair - Fifth District

\_\_\_\_\_  
 BETSY GWIN  
 Commissioner - First District

\_APPROVED AS TO FORM:

\_\_\_\_\_  
 TIM R. NORTON  
 Commissioner - Second District

\_\_\_\_\_  
 AARON T. BLASE  
 Assistant County Counselor

\_\_\_\_\_  
 THOMAS G. WINTERS  
 Commissioner - Third District