

**RESOLUTION ESTABLISHING THE SEDGWICK COUNTY NUISANCE  
ABATEMENT CODE IN THE UNINCORPORATED AREA  
OF SEDGWICK COUNTY, KANSAS**

RESOLUTION NO. 033-2022

Published on: \_\_\_\_\_

WHEREAS, the Kansas Legislature adopted S.B. 52 (2021), codified at K.S.A. 19-26,115, *et seq.*, which established the Sedgwick county urban area nuisance abatement act; and

WHEREAS, the Sedgwick county urban area nuisance abatement act authorizes Sedgwick County, designated by separate legislation as an urban area, to abate nuisances within the unincorporated area of Sedgwick County; and

WHEREAS, pursuant to K.S.A. 19-101, *et seq.*, the Board of County Commissioners of Sedgwick County, Kansas (“the Board”) has the powers of home rule to determine its local affairs and government; and

WHEREAS, the Board wants to establish the lawful authority to abate nuisances in instances where the property owner has not abated such nuisances, while affording property owners with due process in accordance with the United States Constitution and the Kansas Constitution.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

***SECTION 1.***

This resolution shall be included within the *Sedgwick County Code* in Chapter 19, Article III, entitled Sections 19-41 through 19-56, and such article shall be entitled the “Sedgwick County Nuisance Abatement Code.” The sections that are adopted and included within such article are subsequently included within this resolution.

***SECTION 2.***

*Sections 19-41 through 19-56 of the Sedgwick County Code are created to 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" or "this code".

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

The purpose of this article is to protect the inhabitants of Sedgwick County, by providing for the abatement of public nuisances, as defined herein, which are menaces and dangerous to the health of the inhabitants of Sedgwick County, and to provide for the uniform administration thereof. This article shall be consistent with S.B. 52 (2021), codified at K.S.A. 19-26,115, *et seq.*, which established the Sedgwick county urban area nuisance abatement act. This article is adopted pursuant to K.S.A. 19-101, *et seq.* and the Sedgwick county urban area nuisance abatement act, which specifically authorized the Board of County Commissioners to adopt a resolution to establish any policies, procedures, designated body or other related matters for hearings that property owners or their agents may request pursuant to such act.

**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:

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

*Board of County Commissioners* or *Board* means the Board of County Commissioners of Sedgwick County, Kansas.

*Days* means calendar days.

*MABCD Director* means the director of the Metropolitan Area Building and Construction Department, or his or her authorized representative.

*Metropolitan Area Building and Construction Department* ("MABCD") is the Sedgwick County department chiefly tasked with investigating complaints of public nuisances and taking action under this article.

*Nuisance Appeals Board* means the Sedgwick County Nuisance Appeals Board.

*Preponderance of the evidence* means that evidence which is of greater weight or more convincing than the evidence offered in opposition to it; which shows that a fact is more probably than not true.

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

*Property owner* means the owner(s) of record of the real property.

*Public nuisance* means:

- (1) An activity or condition declared unlawful by the Sedgwick County Nuisance Code; and

- (2) The aforementioned activity or condition is a menace and dangerous to the health of the inhabitants of Sedgwick County.

*Sedgwick County Nuisance Code* means article II of chapter 19 of the Sedgwick County Code.

**Sec. 19-44. - Right of entry by MABCD staff and other code enforcement officers.**

When deemed necessary, MABCD staff and any other code enforcement officers as defined within Section 1-2 of the Sedgwick County Code (“building official”) 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. If said building or private property is occupied, the building official shall present proper credentials to the occupant and request entry. 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.

**Sec. 19-45. – Prior conviction required to initiate a nuisance abatement action.**

Sedgwick County may initiate the nuisance abatement procedure outlined within this article only after Sedgwick County has obtained a conviction for a county code violation resulting from a public nuisance and if the public nuisance continues to exist after the final judgment in the matter. In order to initiate the nuisance abatement procedure, the final judgment for such conviction must have occurred within the 12 months prior to the Board of County Commissioners issuing an order to require that the nuisance be removed or abated.

**Sec. 19-46. - Abatement procedure; notice and order.**

- (a) If a public nuisance continues to exist after the final judgment in the matter described within Section 19-45, the MABCD Director can initiate a nuisance abatement action by filing with the Sedgwick County Clerk a statement in writing describing a nuisance and declaring that such nuisance is a menace and dangerous to the health of inhabitants of Sedgwick County.
- (b) When the MABCD Director initiates a nuisance abatement action, the item shall be placed on an agenda for the Board of County Commissioners. The item shall be placed upon an agenda consistent with any resolution and/or policy the County has governing Board of County Commissioners meeting agendas. MABCD staff shall mail written notice regarding such agenda item to the property owner at their last known mailing address and the address of record listed for the property owner within the transfer record not less than fifteen (15) days prior to such item being considered by the Board of County Commissioners. This written notice shall also be sent to the holder of any mortgage, deed of trust, other encumbrance of record, or a lease of record regarding the property. This written notice shall include the following details:
  - (1) The street address, legal description, property identification number (PIN number), or other description sufficient for identification of the premises upon which the public nuisance is located;
  - (2) A brief statement and concise description of the conditions found on said property;
  - (3) The findings of the MABCD Director and the prior County Court conviction(s) related to the property;

- (4) The action(s) required to be taken to abate the public nuisance as determined by the MABCD Director;
- (5) An explanation of the action proposed to be taken by the Board of County Commissioners, which shall describe that the Board may issue an order for the property owner to abate the nuisance and, if the property owner should fail to do so in a timely fashion, the nuisance may be abated by the County at the expense of the property owner. Also, the explanation shall mention that if the costs would remain unpaid, such costs could be assessed against the property.
- (c) During the meeting of the Board of County Commissioners regarding the proposed nuisance abatement action described in Section 19-46(b) or any subsequent meeting regarding such topic if the item should be deferred or continued, the Board may make a determination that a public nuisance exists on the property by adopting a resolution. Alternatively, the board may also take no action or approve a resolution to establish a determination that a public nuisance does not exist on the property. If the Board approves a resolution that determines a public nuisance exists on the property, the Board may also issue an order requiring that the public nuisance be removed or abated by the property owner, which may include but not be limited to requiring the repair or demolition of any structure. The order shall state that all costs associated with the abatement shall be paid by the property owner on which the public nuisance is located.
- (d) Within any order issued by the Board pursuant to Section 19-46(c), the Board shall order the owner of the property to remove and abate the public nuisance within not less than ten (10) days, with a date specified within such order. The order may provide the authority for the Board or the MABCD Director to utilize discretion to grant extensions of the time period indicated within such order. Any such order shall inform the property owner that if the nuisance is not abated within the time specified, the nuisance may be abated by Sedgwick County as provided herein at the cost of the property owner and the expense thereof may be made a lien upon the property involved if it is not paid in a timely fashion by the property owner.
- (e) Except as indicated within Section 19-46(h), any order issued by the Board pursuant to Section 19-46(c) shall be served on the property owner by personal service in accordance with K.S.A. 60-303, and amendments thereto.
- (f) Within any order issued by the Board pursuant to Section 19-46(c), the order shall state that before the expiration of the timeframe or any extended timeframe contemplated within Section 19-46(d), the property owner, an agent of the owner, or an individual in possession of the affected property who has been served with a notice and order may request an appeal hearing before the Sedgwick County Nuisance Appeals Board (“Nuisance Appeals Board”), as described within Section 19-47, the body designated by the Board of County Commissioners to hold public hearings regarding nuisance appeals. Any such request for an appeal hearing shall be filed in writing with the Sedgwick County Clerk by close of business on the date indicated within the applicable order. The Sedgwick County Clerk would provide notice of the appeal to the MABCD Director as soon as possible after the request for a hearing has been filed. The individual filing the request for an appeal hearing should provide their mailing address for notice purposes. There is not any fee for a party to file a request for an appeal hearing.
- (g) All orders and notices required to be served within this section shall be served on the owner of record or, if there is more than one owner of record, then on at least one (1) such owner.

- (h) If the property owner has failed to accept delivery or otherwise failed to effectuate receipt of a notice sent pursuant to this section during the preceding 24-month period, the Board of County Commissioners may provide notice of the issuance of any further orders to abate or remove a nuisance from the property in the manner provided in this subsection or as stated within Section 19-49(c) regarding specific notices described in that subsection.

(1) When the property owner has failed to accept delivery or to effectuate the receipt of a notice during the preceding 24-month period, the Board of County Commissioners may provide notices of orders indicated within this section by methods including, but not limited to: door hangers, conspicuously posting notice of the order on the property, personal notification, telephone communication or first class mail.

(2) When the property is unoccupied, the owner is a nonresident, and the property owner has failed to accept delivery or otherwise failed to effectuate receipt of a notice during the preceding 24-month period, notice provided by this section shall be given by telephone communication or first class mail.

- (i) Failure of any person to file a request for an appeal hearing in accordance with the provisions of this article and within the timeframe noted within this article shall constitute a waiver of all rights to a hearing and adjudication on the matter. If no timely appeal is filed, the order from the Board of County Commissioners shall become final.

**Sec. 19-47. – Sedgwick County Nuisance Appeals Board.**

- (a) The Board of County Commissioners establishes the Sedgwick County Nuisance Appeals Board (“Nuisance Appeals Board”) and designates the Nuisance Appeals Board to hear any appeal that may be filed in response to an order issued by the Board of County Commissioners pursuant to Section 19-46(c) or an appeal of abatement costs that may be filed pursuant to Section 19-50.
- (b) The Nuisance Appeals Board shall include five (5) members appointed by the Board of County Commissioners. Each County Commissioner shall be able to recommend one (1) member for appointment to the Nuisance Appeals Board. Members of the Nuisance Appeals Board shall serve at the pleasure of the Board of County Commissioners and may be removed from the Nuisance Appeals Board by a simple majority vote of the Board of County Commissioners.

**Sec. 19-48. – Appeal hearing by the Nuisance Appeals Board.**

- (a) An appeal hearing by the Nuisance Appeals Board regarding an order issued pursuant to Section 19-46(c) is initiated by a request for an appeal hearing has been filed in a timely manner consistent with the requirements stated in Section 19-46(f).
- (b) The appeal hearing shall be conducted as follows:
  - (1) An appeal hearing by the Nuisance Appeals Board shall be scheduled for a date no sooner than twenty (20) days following a request for an appeal hearing.
  - (2) Written notice of the time and place of the appeal hearing shall be sent by first class mail at the address provided within the appeal hearing request at least fifteen (15) days before the date set for the appeal hearing. All abatement activity

pursuant to this article shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

- (3) The Nuisance Appeals Board shall select one (1) of its members to sit as the presiding member for the appeal hearing.
  - (4) At the scheduled time for the appeal hearing, after having first administered an oath or affirmation to all witnesses to testify truthfully, the Nuisance Appeals Board shall proceed to hear testimony and take evidence from any representatives of the County, the property owner, and any other competent persons with respect to the determination of whether a public nuisance exists.
  - (5) All relevant evidence shall be admissible and hearsay evidence may be used, in the Nuisance Appeals Board's discretion, for the purpose of supplementing and explaining other evidence.
  - (6) The Nuisance Appeals Board may, upon the request of the property owner or the County, grant continuances of the appeal hearing for good cause shown, or upon the Nuisance Appeals Board's own motion.
  - (7) The Nuisance Appeals Board may adopt hearing procedures for appeal hearings, as long as such procedures are not inconsistent with the requirements of this article or the Sedgwick county urban area nuisance abatement act. In order for Nuisance Appeals Board appeal hearing procedures to become effective, they must also be approved by a resolution of the Board of County Commissioners.
- (c) Within thirty (30) days following the appeal hearing, the Nuisance Appeals Board shall both publicly vote upon the matter and make a written determination of whether a public nuisance exists, as defined herein. If it is shown by a preponderance of the evidence that the condition of the property constitutes a public nuisance, the Nuisance Appeals Board shall declare the property to be a public nuisance within an order and such order shall require the abatement of the nuisance and such order may amend or modify the order of the Board of County Commissioners, or extend the time for compliance by such length of time as the Nuisance Appeals Board may determine. The order shall inform the property owner that if the nuisance is not abated within the time specified, the nuisance may be abated by Sedgwick County as provided herein at the cost of the property owner and the expense thereof may be made a lien upon the property involved if it is not paid in a timely fashion by the property owner. The Nuisance Appeals Board shall send the property owner copies of any written determination and order issued pursuant to this subsection by first class mail at the address the property owner included on their request for an appeal hearing.
- (d) The decision of the Nuisance Appeals Board shall be considered a final order of an agency of the County, and shall not be appealable to the Board of County Commissioners. Any appeal of a decision of the Nuisance Appeals Board would be completed pursuant to Section 19-53.

**Sec. 19-49. – Property owner abatement; failure to comply with the order; County abatement; and costs.**

- (a) If the property owner completes work that they believe amounts to a removal and/or abatement of the public nuisance, they may then show that no public nuisance exists. Such showing shall be made by filing with the MABCD an acknowledged and sworn written statement that the public nuisance that has previously been described for the

property no longer exists. After MABCD staff receives such statement, MABCD staff shall reinspect the affected property, and provide a written statement regarding MABCD staff's opinion as to whether the property still constitutes a public nuisance. Such written statement shall be sent to the property owner via first class mail at the address the property owner included within their request for an appeal hearing.

- (b) If the property owner fails to comply with the order for a period longer than that named in the order or any extensions of such time period, the Board of County Commissioners may proceed to order the repair or demolition of any structure and have the items described in the order removed and abated from the lot or parcel of ground. The work to complete the abatement may be completed by Sedgwick County staff, Sedgwick County's contractor, or a combination of Sedgwick County staff and a contractor. Sedgwick County and/or its contractor is authorized to dispose of any personal property that is part of the public nuisance. To the extent practical, the disposition of any such personal property shall occur pursuant to Sedgwick County's Disposition of Surplus Property Policy, approved through Resolution No. 119-2004, or any future amended and applicable version of such policy. Notwithstanding the foregoing, in no event shall any County departments be able to claim property prior to sale or disposal. The selected sale or disposal method must be intended to return the most financial benefit for the property.
- (c) MABCD staff shall keep an itemized account of the expenses incurred by the County in the abatement of any public nuisance. After Sedgwick County abates or removes the nuisance, Sedgwick County shall give notice to the property owner by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by Sedgwick County. The payment of any abatement costs owed by the property owner to the County are due and payable within 60 days following the mailing of the notice. If the cost of the removal or abatement is not paid within the aforementioned 60-day timeframe, the cost shall be assessed and charged against the lot or parcel of land on which the public nuisance was located.
- (d) The notice of costs referenced within Section 19-49(c) shall state:
- (1) The common or legal description of the property, or both;
  - (2) The nature of the public nuisance, including a statement of any County Court conviction(s);
  - (3) The nature of the work performed to abate the public nuisance;
  - (4) The amount of costs incurred for the abatement of the public nuisance;
  - (5) The amount of any proceeds the County received from any sale of property as provided in this article, which shall be subtracted from the total costs of the abatement the property owner owes to the County;
  - (6) The total costs of the abatement owed by the property owner to the County;
  - (7) That the payment of the costs is due and payable within 60 days following the mailing of the notice;
  - (8) That failure to pay the entire amount within 60 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 be considered as nonpayment under this section; and
  - (9) That an appeal of the proposed assessment must be made in writing and filed with the Sedgwick County Clerk within 60 days from the date of mailing such notice.

- (e) If the abatement cost is to be assessed against a property pursuant to Section 19-49(c), MABCD staff shall deliver the notice of the assessment to the county clerk in writing, including the amount of such assessment and the property to which such assessment should apply. Then, the county clerk, at the time of certifying other county taxes, shall certify the costs, and the county clerk shall extend the cost on the tax roll of the county against the lot or parcel of land. Such cost shall be collected by the county treasurer.
- (f) If the value of the property removed or abated is greater than the cost of the removal or abatement incurred by Sedgwick County, the County shall pay the property owner the difference. If the value of the property is contested, the property owner may request a hearing before the Nuisance Abatement Appeals Board prior to the expiration of the 60 day timeline to pay. The property owner's request for a costs appeal hearing would need to be filed in writing with the Sedgwick County Clerk. If the property owner does not file a request for a costs appeal properly or within a timely fashion, any appeal rights shall be considered waived. The appeals procedures for a costs appeal hearing are included within Section 19-50.

**Section 19-50. – Appeals procedures for costs disputes.**

- (a) If a timely request for a costs appeal hearing is filed, a costs appeal hearing shall be scheduled to occur in front of the Nuisance Appeals Board on a date no sooner than twenty (20) days following the date the request for a costs appeal hearing was filed. Written notice of the time and place of the costs appeal hearing shall be given by first class mail at the address provided with the request for a costs appeal hearing, and shall be mailed at least fifteen (15) days before the date set for hearing. The costs appeal hearing shall be conducted by the Nuisance Appeals Board in the manner set forth in Section 19-48(b)(3) through (7).
- (b) Within thirty (30) days following the appeal hearing, the Nuisance Appeals Board shall both publicly vote upon the matter and make a written determination of whether the proposed assessment costs are proper. A copy of the written determination shall be furnished to the property owner. If the Nuisance Appeals Board determines that the proposed assessment costs, or any portion of it, is proper and authorized, the Nuisance Appeals Board shall issue an order and so certify to the Sedgwick County Clerk who shall apply the special assessments to the property in the same manner as within Section 19-49(e). If the Nuisance Appeals Board determines that the proposed assessment costs are not proper, the amount of such proposed assessment costs can be either reduced or eliminated.
- (c) The decision of the Nuisance Appeals Board on a costs appeal hearing shall be considered a final order of an agency of the County, and shall not be appealable to the Board of County Commissioners. Any appeal of a decision of the Nuisance Appeals Board would be completed pursuant to Section 19-53.

**Section 19-51. – Motor vehicles; special procedures.**

- (a) Sedgwick County may remove and abate from property, other than public property or property open to the use by the public, a motor vehicle determined to be a public nuisance. Disposition of such vehicles shall be in compliance with the procedures for impoundment, notice and public auction provided by K.S.A. 8-1102(a)(2), and amendments thereto.
- (b) Following any sale by public auction of a vehicle determined to be a public nuisance, the purchaser may file proof with the division of vehicles, and the division shall issue a certificate of title to the purchaser of the motor vehicle. If a public auction is conducted, but



no responsible bid is received, Sedgwick County may file proof with the division of vehicles, and the division shall issue a certificate of title of the motor vehicle to the County. Any person whose motor vehicle has been disposed of pursuant to this section shall be eligible for a refund of the tax imposed pursuant to K.S.A. 79-5101 et seq., and amendments thereto. The amount of the refund shall be determined in the manner provided by K.S.A. 79-5107, and amendments thereto.

**Sec. 19-52. – Limitations of usage.**

This article may not be utilized to abate public nuisances that involve land, structures, machinery and equipment or motor vehicles used for an agricultural activity. For purposes of this section, the term “agricultural activity” means the same as defined in K.S.A. 2-3203, and amendments thereto, except such term shall also include real and personal property, machinery, equipment, stored grain and agricultural input products owned or maintained by commercial grain elevators and agribusiness facilities.

**Sec. 19-53. – Appeals.**

Any final decision of the Nuisance Appeals Board is subject to review in accordance with the Kansas Judicial Review Act, or other Kansas law.

**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.

**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.

**Sec. 19-56. – Potential expiration of authority.**

The Sedgwick County urban area nuisance abatement act is set to expire on July 1, 2024. As a result, unless the duration of such act is extended or reinstated through subsequent legislative enactment, the legal authority for this article will expire on July 1, 2024.

***SECTION 3.***

This resolution shall be published once in the official county newspaper upon its approval. This resolution shall become effective upon such publication.

Commissioners present and voting were:

PETER F. MEITZNER  
SARAH LOPEZ  
DAVID T. DENNIS  
LACEY D. CRUSE  
JAMES M. HOWELL

Aye  
Aye Aye  
Aye Aye  
Aye

Dated this 2<sup>nd</sup> day of March, 2022.

ATTEST:

[Signature]  
KELLY B. ARNOLD, County Clerk



BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

[Signature]  
DAVID T. DENNIS, Chairman  
Commissioner, Third District

[Signature]  
SARAH LOPEZ, Chair Pro Tem  
Commissioner, Second District

APPROVED AS TO FORM:

Justin M. Waggoner  
JUSTIN M. WAGGONER  
Assistant County Counselor

[Signature]  
PETER F. MEITZNER  
Commissioner, First District

[Signature]  
LACEY D. CRUSE  
Commissioner, Fourth District

[Signature]  
JAMES M. HOWELL  
Commissioner, Fifth District