

PASSED AND APPROVED BY BCC

HOME RULE RESOLUTION NO. 2001 - _____

**A RESOLUTION CONCERNING NUISANCES WITHIN
THE UNINCORPORATED AREAS OF SHAWNEE COUNTY**

WHEREAS, the Board of County Commissioners of the County of Shawnee, Kansas, is authorized by K.S.A. 19-101 to exercise the powers of home rule to determine their local affairs and government pursuant to the provisions of K.S.A. 19-101a; and

WHEREAS, the Board of County Commissioners of the County of Shawnee, Kansas, finds it would be in the best interest of the public health, safety, and welfare to adopt a resolution concerning nuisances within the unincorporated areas of Shawnee County; and

WHEREAS, the Board of County Commissioners of the County of Shawnee, Kansas, finds that certain conditions as hereinafter defined cause annoyance, inconvenience, or damage to the public with respect to the public's comfort, health, safety, welfare, and enjoyment of property; and

WHEREAS, the Board of County Commissioners of the County of Shawnee, Kansas, wishes to proscribe those conditions which are injurious to the public and which constitute a public nuisance. It is further the purpose and intent of the Board of County Commissioners of the County of Shawnee, Kansas, to provide for procedures regarding notice, abatement, and prosecution of those individuals who allow nuisance conditions to exist or maintain nuisance conditions.

NOW THEREFORE, the Board of County Commissioners of the County of Shawnee, Kansas, sitting in regular session on this ____ day of _____, 2001, and intending to exercise its powers of home rule legislation pursuant to K.S.A. 19-101a, does hereby resolve the following:

1. For purposes of this resolution, the following words and phrases are defined as follows:

- (a) *Nuisance* is any condition which:
 - (1) Injures or endangers the comfort, repose, health, safety, or welfare of the public;
 - (2) Offends decency;
 - (3) Is offensive to the senses;
 - (4) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch, or drainage;
 - (5) In any way renders another person insecure in life or the use of property; or
 - (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of another.
- (b) *Abandoned vehicle* shall mean any motor vehicle to which the last registered owner of record thereof has relinquished all further dominion and control. Any vehicle which is wrecked or partially wrecked or dismantled or inoperative for a period of thirty (30) days or longer shall in such case constitute a prima facie presumption that the last registered owner thereof has abandoned such vehicle regardless of whether the physical possession of such vehicle remains in technical custody or control of such owner.
- (c) *Owner* shall mean any person who alone or jointly or severally with others:

- (1) Shall have record legal title to any property or structure thereon with or without accompanying actual possession thereof;
 - (2) Shall have charge, care, or control of any property or structure thereon as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner; or
 - (3) In the case of a vehicle, is the last registered owner.
- (d) *Premises* shall mean a lot, plot, or parcel of land including structures located thereon.
 - (e) *Property* means any real property lying within unincorporated areas of Shawnee County which is not a street or highway.
 - (f) *Implement of husbandry* means every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally moved or operated upon the highways.
 - (g) *Vehicle* means a machine other than an implement of husbandry propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners, or slides and transports persons or property or pulls machinery and shall include, without limitation, an automobile, truck trailer, motorcycle, buggy and wagon.
 - (h) *Livestock* means cattle, swine, horses, sheep, goats, poultry, fowl, all creatures of the ratite family that are not indigenous to this state, including but not limited to ostriches, emus and rheas, and domesticated deer, domesticated rabbits, llamas and alpacas.

2. Maintaining a nuisance is, by act or by failure to perform a legal duty, intentionally causing or permitting a nuisance to exist, however, the maintenance of livestock as defined herein shall not be deemed as maintaining a nuisance.

3. Permitting a nuisance to exist is knowingly permitting lots, parcels, or pieces of real property under the control of the offender, including the streets and alleys in front of and abutting such lots and pieces of land to be used or allowed to remain in such condition as to allow a nuisance condition to exist.

4. The maintaining or permitting any of the following conditions to be or remain on any lot or parcel of ground in any platted subdivision of the County or any parcel of land four (4) acres or less adjacent to an occupied residence, located outside the corporate limits of a city, is hereby declared to be and constitute a nuisance. However, this resolution shall be enforceable with regard to abandoned vehicles, when such is found to constitute a nuisance in accordance with this resolution, where such nuisance occurs in any unincorporated area of the County, regardless of the acreage of the property on which such nuisance is located, or whether such property is in a platted subdivision. This enumeration shall not be deemed or construed to be conclusive, limiting, or restrictive.

- (a) Rank grass, weeds or other obnoxious vegetation when such growths reach at least eighteen inches (18") in height.
- (b) Placement, storage, or accumulation of garbage, rubbish, trash, refuse, junk and other materials, metals, plumbing fixtures, appliances, auto parts, junked, wrecked, inoperable or abandoned vehicles, lumber or other litter and furniture, stuffed furniture, clothing, or other household items which creates an unsightly appearance. This provision applies without limitation to homeowners, renters, landlords, tenants, antique dealers, contractors, pawnbrokers, plumbers, precious metal dealers, secondhand goods dealers, or any other business, whether or not outside storage of items and materials is authorized by the zoning ordinances of the County and whether or not the building, land, or property is occupied by human beings.
- (c) Any condition which provides harborage for rats, mice, or other vermin.
- (d) The carcasses of animals or fowl not disposed of within a reasonable time after death.
- (e) The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, industrial wastes, or other substances which are injurious to overland flow or ground water.

- (f) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- (g) Any building where exterior surfaces, other than decay-resistant surfaces, are not protected from the weather, elements and decay by paint or other protective covering or treatment.
- (h) Any vacant or unoccupied structure, which is not secured or is in a condition that allows access by any person.
- (i) Any structure which has been burnt and which has not been removed or repaired within a reasonable time after the fire giving rise to the damage.

5. No person, firm, corporation, partnership, or other business entity shall, knowingly or unknowingly, maintain or permit a nuisance to exist. However, with regard to vehicles, except as provided in this resolution, it shall be unlawful to permit rusted, wrecked, junked, partially dismantled, inoperative, or abandoned vehicles to be parked, stored, or left on any property within unincorporated areas of Shawnee County for a period in excess of thirty (30) days unless such vehicle is:

- (a) Completely enclosed within a building or surrounded by a lawful and aesthetically pleasing wood, brick, or stone fence, or screened by natural objects, plantings, or other appropriate means so that the vehicle will not be visible from the main traveled way of any adjoining street or highway; and
- (b) Kept and maintained on racks or blocks with at least eighteen inches (18") of clearance between the bottom of the vehicle and the ground so as to prevent rodent harborage and breeding; or
- (c) So stored or parked on private property in connection with and as necessary to a duly licensed business or commercial enterprise operated and conducted pursuant to law.

6. Violation of this resolution shall be a Class B misdemeanor.

7. The Shawnee County Health Agency, in accordance with K.S.A. 65-159, is hereby authorized to inspect and examine at any and all times all buildings, lots, parcels, or pieces of real property within the unincorporated areas of the County for the purpose of determining the conditions which may affect the public health, safety, and welfare as a nuisance.

8. When the Shawnee County Health Agency or Shawnee County Noxious Weed Division determines that a nuisance exists with respect to rank grass, weeds or other vegetation, then the determining agency shall forthwith issue notice requiring the owner or agent of the owner of the premises, to remove and abate from said premises the nuisance as described within ten (10) days, said notice to be served by personal service or restricted mail. If the property is unoccupied and the owner a non-resident, notice shall be sent by restricted mail to his or her last known address. If the owner or agent shall fail to comply with the requirements of said notice, then the County shall proceed to have the nuisance abated and rank grass, weeds or other vegetation cut.

9. With regard to all other nuisances not described in paragraph eight (8) of this resolution, where a violation of this resolution is found by the Shawnee County Health Agency, a violation notice shall be sent to the person, firm, corporation, partnership, or other business entity or individual known to be in violation, which notice shall be in writing and contain:

- (a) An order to abate the nuisance within ten (10) calendar days of the date of the violation notice or request a hearing within ten (10) calendar days of the date of the violation notice. A list of persons to contact shall be included;
- (b) The location of the nuisance, if such nuisance is stationary;

- (c) A description of what constitutes the nuisance;
- (d) A statement that if the nuisance is not abated as directed and no request for hearing is made within ten (10) calendar days of the date of the violation notice, the County shall seek the remedy of an administrative penalty of Fifty and No/100 Dollars (\$50.00) per day and/or abate the nuisance and assess the costs of the abatement to the landowner and against the property if the assessment is not paid, in accordance with this resolution;
- (e) A statement that the administrative penalty will continue to accrue for each day the nuisance condition continues to exist past the ten (10) day abatement period, for a period of not to exceed five (5) calendar days;
- (f) A statement that the owner, occupant, person in lawful possession, or agent may stop the accrual of the administrative penalty by abating the nuisance and advising the Shawnee County Health Agency of the abatement. A list of persons to contact will be included;
- (g) A statement that if the nuisance is not abated following the administrative penalty period, the County may seek the remedy of prosecution and enforcement for failure to comply with the administrative order and for maintaining a nuisance under this resolution and will abate such nuisance and assess the cost thereof against the property and pursue any other remedies available;
- (h) Notification to the responsible party of his/her right to a hearing as herein provided, prior to the County abating said alleged violation; and
- (i) Where the notice requires removal of abandoned, junk, dismantled, or unlicensed vehicles from private property, such notice is to be made to:
 - (1) The landowner;
 - (2) The person in lawful possession or charge of the property upon which such vehicle is located; and
 - (3) The most recent registered owner of the vehicle, which is in violation of this resolution.

10. There shall be an administrative penalty assessed for each day a nuisance condition continues to exist after expiration of the ten (10) calendar days allowed for

abatement of the nuisance. The administrative penalty shall be in the amount of Fifty and No/100 Dollars (\$50.00) per day and shall in no event exceed five (5) days. Ten (10) calendar days shall be calculated based upon the date of the violation notice.

11. For purposes of implementing this resolution, the County shall designate a hearing officer, procedure, and penalties for failure to comply with an administrative order pursuant to this resolution as follows:

- (a) The designated hearing officer shall have the duty and authority to enter such administrative orders as are necessary to the enforcement of this resolution.
- (b) The administrative hearing officer, upon request of the Shawnee County Health Agency, or designee, shall review the violation notice and all relevant information. If the hearing officer determines after such review that: (1) a nuisance condition exists; (2) no request for a hearing has been made by the owner, occupant, or agent or other responsible party; and 3) the nuisance condition remains unabated, then the hearing officer may enter an administrative order.
- (c) The administrative order shall contain: (1) a finding of whether the County properly sent notice to the owner, occupant, agent or other responsible party in accordance with the provisions; (2) a finding of the nuisance conditions which exist; (3) the failure of the owner, occupant, agent, or other responsible party to abate or otherwise remove the nuisance conditions; and (4) an administrative penalty not to exceed Fifty and No/100 Dollars (\$50.00) per day for each day the nuisance condition exists past the ten (10) day notification period, not to exceed a total of five (5) days.
- (d) If the owner, occupant, agent, or other responsible party requests a hearing within ten (10) calendar days of the date of the violation notice, the administrative hearing officer shall schedule a hearing. Written notice of the hearing date and time shall be provided to the owner. At the hearing, the owner shall be given the opportunity to present information relevant to the violation notice. The Shawnee County Health Agency or designee of the County shall be given the opportunity to present information relevant to the violation notice. The hearing may be continued to a later time in exceptional cases where additional information is needed, as determined

by the hearing officer. After all information has been offered, the hearing officer shall render a written decision.

- (e) The administrative hearing officer may modify an order, including the administrative penalty in cases of undue hardship or in cases presenting extenuating circumstances.
- (f) It shall be unlawful for any person to whom an administrative order is issued to fail to comply with the provisions of the administrative order.

12. The violation notice may be served personally on the owner, occupant, or agent of the real property, or may be served by registered first class mail, return receipt requested, upon the owner, occupant, or agent, or in the case of a vehicle, the landowner, person in lawful possession, or the most recent registered owner. When notice is required to be given to the landowner, it shall be sufficient to give notice to the individual or entity to whom ad valorem property tax statements are mailed by the County. When notice is required to be given to the registered owner of any vehicle, it shall be sufficient to send notice to the owner at his/her last known address of record listed at the state department of motor vehicles. A record proof of mailing shall be maintained by the Shawnee County Health Agency or designee. If the address or whereabouts of the owner, occupant, or agent or party responsible cannot be determined after due diligence, then the violation notice shall be published in the official County newspaper and posted in not less than three (3) conspicuous locations on the real property subject to the allegation of violation. If the nuisance violation relates to improvements such as buildings or structures, the notice shall also be posted on the building or structure.

13. The following abatement procedures shall be authorized where the owner, occupant, or agent or responsible party fails to abate a public nuisance:

- (a) Upon failure of a person to abate a violation upon whom notice to abate a violation has been served pursuant to the provisions of this resolution, in addition to the remedy of prosecution and enforcement, the Shawnee County Health Agency or designee or other duly designated officer of the County shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.
- (b) Any and all costs incurred by the County in the abatement of a nuisance under the provisions of this resolution shall be assessed against each lot or piece of ground chargeable therewith, as a service assessment as provided by law. In such case, if the assessment remains unpaid by December 31 of each year, the Shawnee County Health Agency shall immediately notify or cause to be notified, such owner and/or taxpayer with an itemized statement of costs incurred in abating the violation. Such statement will further explain that if the amount contained therein is not paid to the County Treasurer within thirty (30) days from the date of such notice, a penalty charge of ten percent (10%) of the amount remaining unpaid shall be added to the account of the total amount thereof and shall become a lien upon such real estate. The unpaid balance of such account shall draw interest from the date such account became delinquent at the rate prescribed for delinquent taxes pursuant to K.S.A. 79-2968 and amendments thereto. A copy of the statement, together with proof of notification, shall at the same time be filed with the County Register of Deeds and the County Clerk, and if such amount is not paid within the next thirty (30) days, the County Clerk shall spread the amount of such statement upon the tax rolls prepared by the Clerk and such amount shall become a lien against the entire tract of land owned by such person, and shall be collected and disposed of in the same manner as other taxes. If any land subject to a lien imposed by this resolution is sold or transferred, the entire remaining unpaid balance of such account plus any accrued interest and penalties shall become due and payable prior to the sale or transfer of ownership of the property.

14. Any person who believes the decision of the hearing officer was rendered contrary to law may appeal the administrative order to the District Court within ten (10) days from the decision by the administrative hearing officer.

15. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this resolution or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not

affect the validity or effectiveness of the remaining portions of this resolution or any part thereof.

16. Shawnee County Home Rule Resolution Nos. HR-97-4 and HR-81-13 are hereby rescinded.

**BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS**

Vic Miller, Chairman

Marice A. Kane, Vice-Chair

Theodore D. Ensley, Member

ATTEST:

Cynthia A. Beck, Shawnee County Clerk

APPROVED AS TO FORM AND LEGALITY BY THE SHAWNEE COUNTY COUNSELOR'S OFFICE DATE _____ BY _____
