

RESOLUTION 2009-29

BARTON COUNTY NUISANCE CODE AND RESCINDING RESOLUTION 2009-25, SAME, ADOPTED SEPTEMBER 28, 2009

WHEREAS, it is a duty of the Board of County Commissioners of Barton County, Kansas, to provide for the physical protection and well-being of the citizens of the County; and

WHEREAS, one part of that duty is to provide for the abatement of nuisances, to include inoperable vehicles, salvage material, garbage, weeds and other noxious vegetation; and

WHEREAS, to further assure the continued relief from nuisances, those persons found to violate the well being of others through the collection of nuisances upon private property, shall be penalized for their actions through the County system.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Barton County, that the following Nuisance Code shall be in effect:

SECTION 1 Definitions.

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

Agricultural activities includes but not limited to the following: the use of any equipment, building and land for the purpose of growing plants, crops, trees and other agricultural or forestry products or for the purpose of raising livestock, poultry, or dairy products.

County means all of Barton County other than the land areas within corporate city limits.

Inoperable vehicle means any vehicle that is unable to operate or move under its own power. This term shall also mean any vehicle that is in an abandoned, wrecked, dismantled, scrapped, junked or partially dismantled condition which includes having uninflated tires, no wheels, or lacking other parts necessary for the normal operation of the vehicle. It shall also mean any vehicle that because of mechanical defects, a wrecked or partially wrecked frame or dismantled parts, cannot be operated in a normal and safe manner. An inoperable vehicle shall not include vehicles that need only the installation of a battery or the addition of fuel to operate.

Property means any real property within Barton County which is not a street or highway.

Recycling facility means a fixed location that utilizes machinery and equipment for processing only recyclables and is licensed as a solid waste processing facility pursuant to K.S.A. 65-3401 et seq.

Salvage material means material, including but not limited to, scrap brass, scrap copper, scrap iron, scrap lead, scrap tin, scrap zinc and all other scrap metals and alloys, bones, rags, used cloth, used rope, used rubber, used tinfoil, used bottles, playground equipment, old or used machinery of any type, used tools, used appliances, used fixtures, used furniture, used utensils; used lumber, used boxes or crates (fabricated of any material), used pipe or pipe fittings, used conduit or conduit fittings, used automotive parts, used tires, and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition.

Salvage yard means any property licensed by the State of Kansas for operation as a salvage yard pursuant to K.S.A. 8-2401 et seq. and amendments thereto.

Solid waste means garbage, refuse and other discarded materials including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Solid waste does not include hazardous wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments thereto, recyclables or the waste of domestic animals as described by subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

Weeds or other noxious vegetation means all grasses over eighteen (18) inches in height included in the family Gramineae; and noxious weeds such kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea repens*), hoary cress (*Cardaria draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), bur ragweed (*Ambrosia grayii*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans L.*), Johnson grass (*Sorghum halepense*) and sericea lespedeza (*Lespedez cuneata*) as included in K.S.A. 2-1314 and amendments thereto and shall also include poison ivy/oak/sumac (*Toxicodendron*). This term does not include grasses and other vegetation, excluding noxious weeds, that are utilized for agricultural activities, conservation practices, landscaping, gardening or xeriscape purposes.

SECTION 2 Activities or conditions prohibited; enumeration.

- (a) It is unlawful for any person to maintain, or permit to be maintained, any activity or condition described in this section, in Barton County.
- (1) To the extent they constitute a threat to the health or safety of any person:
- a. Open basement structures, excavations, swimming pools, storm cellars, industrial tanks, or other excavations or structures;
 - b. Outdoor storage of salvage material, except as follows:
 1. At a salvage yard or recycling facility; or
 2. Building materials if they are to be used within one hundred eighty (180) days for construction on the property they are stored, if accompanied by an occupancy or building permit;
 - c. Minor auxiliary or accessory buildings or structures such as privies, sheds, barns, garages, tool houses, vacant houses or commercial structures, which have become so dilapidated or deteriorated as to constitute a threat to any person's health or safety;
 - d. Sources of danger for children through entrapment in areas of confinement that cannot be opened from the inside, through a danger of the item falling or turning over, or through possible injury from exposed surfaces of metal, glass or other rigid materials;
 - e. Existing or potential breeding grounds or habitat of rats, mice, snakes, mosquitoes or other vermin, rodents, insects or other disease vectors;
 - f. Heavy growth of weeds or other noxious vegetation;
 - g. Storage of solid waste, including bulky waste, or storage of combustible or hazardous materials;
 - h. Potential sources of contamination of the soil from petroleum products or other toxic liquids being discharged or leaking from the item;

- i. Any item that due to its defective, deteriorated or obsolete condition in any way constitutes a threat to any person's health or safety; or
 - j. Any other activity or condition of like character that constitutes a threat to the health or safety of any person.
- (2) Inoperable vehicles parked or stored or left on any private property in the county, unless such vehicles are completely enclosed within a building, unless the parking or storing of such vehicles is necessary to the operation of a lawful business or commercial enterprise. Further, any one of the following conditions shall raise the presumption that vehicle is inoperable:
- a. Absence of a current registration plate on the vehicle,
 - b. Placement of the vehicle or parts thereof upon jacks, blocks, chairs or other supports, or
 - c. Absence of one or more parts of the vehicle necessary for lawful operation of the vehicle upon a street or highway.
- (b) Subsections (a)(1)e. and (a)(1)f. of this Resolution shall not apply to composting activities conducted in such a manner as to comply with applicable federal, state and local regulations.
- (c) Subsections (a)(1)b. and (a)(2) of this Resolution shall not apply to salvage material or inoperable vehicles if the following standards apply:
- (1) The inoperable vehicles or salvage material are the personal property of the owner or occupant of the property;
 - (2) The owner or occupant of the property must comply with the Junkyard and Salvage Control Act, K.S.A. 68-2201 et seq.
 - (3) All areas used for the storage of inoperable vehicles or salvage material are screened in such a manner that the vehicles are not visible from ground level view from the street or neighboring property, as follows:
 - a. Screening may be provided by decorative fencing or walls, evergreen vegetation, or landscaped earth berms, and shall be not less than six (6) feet in height. Fences or walls shall not have cracks and openings in excess of five (5) percent of the area of such fence or wall, and shall not be more than eight (8) feet in height. Landscaped earth berms must be placed in such a manner as to have a slope sufficient for mowing.
 - b. Screening fences and walls shall be constructed of standard building materials customarily used for fence and wall construction such as brick, stone, concrete masonry, stucco, concrete, or wood, and shall be of neutral color so as to not be visually obtrusive.
 - c. If adequate screening exists on either side of property line that meets or exceeds the standards of this section, additional screening shall not be required. However, if at any time the existing screening fails to meet the requirements of this section, compliance must be obtained by the property owner.

- (4) All inoperable vehicles or salvage material must be properly screened behind the front setback, which is the area between the primary residence or structure and the street right-of-way line of the property; provided that for purposes of this subsection, the maximum distance of the front setback shall be one hundred (100) feet from the street right-of-way.
- (d) Subsections (a)(1)b and (a)(2) of this Resolution shall not apply to salvage material; inoperable vehicles; equipment; and/or buildings or improvements used for or in connection with agricultural activities.

SECTION 3 Enforcement and penalties.

- (a) The Barton County Environmental Manager shall be responsible to investigate alleged violations of the Nuisance Code. The Environmental Manager shall report to the Barton County Commissioners, in writing, concerning investigations of alleged violations. The Commissioners, upon receiving a report from the Environmental Manager, shall determine what action, if any, to take. Permissible actions include to take no action, to refer the matter to the County Attorney for prosecution or to abate the nuisance as set forth in Section 4.
- (b) The penalty imposed for violations of this Resolution shall be in accordance with the penalties established by Kansas law for a Class B misdemeanor.

SECTION 4 Civil Remedy; Notice and Abatement

(a) Civil Remedy

If the Commissioners elect to pursue the civil remedy to abate the nuisance, the Commissioners shall direct the Environmental Manager to serve on the owner a notice of such violation.

(b) Notice

The notice shall be served by registered mail, postage prepaid, return receipt requested; provided, that if the owner or his or her agent in charge of the property is a resident of Barton County, Kansas, the notice may be personally served by the County Environmental Manager or a law enforcement officer.

The notice shall state the condition(s) which is (are) in violation of this Resolution. The notice shall also inform the owner (the party) that:

- (1) The party shall have 15 days from the date of serving the notice to abate the condition(s) in violation; or
- (2) The party shall have 15 days from the date of serving the notice to request a hearing, before the Commission.
- (3) Failure to abate the condition(s) or to request a hearing within the time allowed may result in abatement of the condition(s) by the County as provided by herein.

(c) Abatement

If a person to whom a notice has been sent pursuant to this Resolution has neither alleviated the conditions causing the alleged violation nor requested a hearing before the Commission within the time periods specified, the Environmental Manager shall present a resolution to the Commission for adoption authorizing the Environmental Manager or other agents of the County to abate the conditions causing the violation at the end of 15 days after passage of the resolution. The resolution shall further provide that the costs incurred by the County shall be charged against the lot or parcel of ground on which the nuisance was located as provided herein.

A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (1) Personal service upon the person in violation;
- (2) Service by registered mail, postage prepaid, return receipt requested; or
- (3) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the Environmental Manager and filed with the County Clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official County newspaper and by posting a copy of the resolution on the premises where such condition exists.

(d) Hearing

If a hearing is requested within the 15-day period as provided herein, such request shall be made in writing to the Commission. Failure to make a timely request shall constitute a waiver of the person's right to a hearing. The hearing shall be held by the Commission as soon as possible after the filing of the request, and the person shall be advised by the County of the time and place of the hearing at least five days in advance thereof. At any such hearing the person may be represented by counsel, and the person and the County may introduce such witnesses and evidence as is deemed necessary and proper by the Commission. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the Commission shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the manner provided in Section 3(e).

(e) Costs

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, the Environmental Manager 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 KSA 79-2968 and amendments thereto. A copy of the statement, together with proof of notification, shall at the same time be filed with the Register of Deeds and the County Clerk, and if such amount is not paid within the next thirty (30) days, the County Clerk shall add the amount of such statement to 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 article 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.

SECTION 5 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.

FURTHER, that Resolution 2009-25, Same, Adopted September 28, 2009, shall be rescinded; and

FURTHER, that this Resolution shall become effective upon its publication in the official County paper.

ADOPTED this 2nd day of November, 2009.

BOARD OF COUNTY COMMISSIONERS

Jennifer Schartz
Jennifer Schartz, Chairman
John Edmonds
John Edmonds, Commissioner

Kirby Krier
Kirby Krier, Commissioner

Homer Kruckenberg
Homer Kruckenberg, Commissioner

Kenny Schremmer
Kenny Schremmer, Commissioner

ATTEST:

Donna Zimmerman
Donna Zimmerman,
County Clerk



APPROVED AS TO FORM:

Richard A. Boeckman
Richard A. Boeckman,
County Counselor