

KEITH COUNTY NUISANCE REGULATIONS

RESOLUTION NO. 2020-13

ARTICLE 1. AUTHORITY

- 1.1 Nebraska Revised Statute Section 23-174.10 authorizes Nebraska counties to adopt regulations to promote the public health, safety, and welfare of the county.
- 1.2 This regulation is meant to be read in conjunction with the adopted Keith County Zoning Regulations and is not meant to replace them. This nuisance regulation is definitive to nuisances, abatement, and enforcement.
- 1.3 A conflict between the zoning regulation and this nuisance regulation shall be resolved by the zoning administrator/nuisance officer whose decision may be appealed to the Keith County Commissioners.
- 1.4 This Nuisance Regulation affects and encompasses all of Keith County except it does not extend into the limits of incorporated cities or villages.

ARTICLE 2. DEFINITION OF NUISANCE

- 2.1 A nuisance exists when a person fails to perform a duty or permits any conditions or thing to exist, which act, omission, condition or thing either:
 - 2.1.1 Injures or endangers the comfort, repose, health, or safety of others;
 - 2.1.2 Offends decency.
 - 2.1.3 Is offensive to the senses;
 - 2.1.4 In any way renders other persons insecure in life or the use of property; or
 - 2.1.5 Essentially interferes with the comfortable enjoyment of life and property; or
 - 2.1.6 Tends to depreciate the value of the property of others.

ARTICLE 3. ENFORCEMENT

- 3.1 NUISANCE OFFICER. The County shall appoint an individual or organization to identify and enforce abatement of nuisances within the County. Said individual or

organization shall be identified as the "Nuisance Officer" and said appointment shall be identified by resolution of the County.

3.2 IDENTIFYING POTENTIAL NUISANCES. Nuisances shall be identified as follows:

3.2.1 Citizens may submit complaints of nuisances which shall be in written form, signed by the complainant, and with documentation indicating the violation. This complaint shall be submitted to the Nuisance Officer.

3.2.2 The Governing Board (Board of Commissioners) may by majority direct the Nuisance Officer to investigate an alleged nuisance.

3.2.3 The Nuisance Officer may identify that in its opinion a nuisance exists.

3.3 IDENTIFYING NUISANCES. The Nuisance Officer shall investigate potential nuisances.

3.3.1 If the Nuisance Officer confirms that a nuisance appears to exist, the Nuisance Officer shall document said nuisance with photographs and other evidence pertinent to the situation. Nuisance Officer will also obtain the legal description of the property and identify the current owners and, if reasonably possible, the occupants of the property upon which the nuisance exists.

3.3.2 Nuisance Officer shall present this information to the Governing Body at a regular or special meeting for its confirmation by resolution that a nuisance exists.

3.3.3 The Board of Commissioners, by majority, shall by resolution determine that a nuisance exists and direct the Nuisance Officer to proceed with notification.

3.3.4 Because of the widely varied types of areas and uses of property within Keith County, the Board of Commissioners shall take into consideration in enforcing these regulations the following: the nature of the area as to rural, urban or recreational in nature; population density; agricultural; legitimate complaints; and the neighbors in close proximity.

3.4 NOTICES. After a nuisance is declared by the Board of Commissioners, the County Clerk notifies the Nuisance Officer to serve notice upon the violator(s).

3.4.1 The Nuisance Officer shall prepare and serve notice which shall describe the found nuisance and state the required date of abatement and removal of the nuisance shall be accomplished. The notice shall also provide information as to how the

interested parties may request a hearing before the Governing Body described in paragraph 4 herein.

3.4.2 The notice shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, said notice shall be given by a single publication in a newspaper of general circulation in the County, and by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The date of service is determined by the later of certified mail receipt, personal service or publication date.

ARTICLE 4. ENFORCEMENT

4.1 DUE PROCESS. The alleged violations of this Nuisance Regulation may be enforced by: (1) administrative procedures; (2) Penal prosecutions through the Courts, and/or; (3) by civil procedures in the Courts. Any of these procedures, or any combination of these procedures may be used to enforce the nuisance regulations of the County and to give due process to the violator.

4.2 ADMINISTRATIVE ENFORCEMENT—The County may proceed with abatement of the nuisance, sanitation, and/or health violation with or without court involvement after the following procedure is followed:

4.2.1 The accused violator (owner/agent/occupant) may request in writing a hearing before the Governing Body of the County within five (5) days after notice of violation is served or published.

4.2.2. If no request for a hearing is received in the required time period, the Governing Body at its discretion may cause a hearing to be held in exceptional cases.

4.2.3 If a hearing is requested, the County Clerk shall fix date of said hearing to be no later than 15 days from receipt of the request for the hearing. Notice of said hearing and with the date and time shall be served upon the agent, owner, and of the nuisance property by certified and regular mail.

4.2.4 The Hearing shall be a "show cause" hearing in which the agent, owner, occupant of the nuisance property (objecting property) shall provide evidence why the alleged condition should not be found to be a public nuisance and remedied. This hearing shall be heard before a quorum of the governing body. The presiding official of the Governing Body may conduct the hearing or said presiding official may appoint another person as the hearing officer to conduct the hearing who has no conflict in the issue. At the hearing the hearing officer shall mark and receive evidence which was presented when the finding of a nuisance was made, relevant evidence of the nuisance since that time, and evidence that the notices were properly given. The objecting party shall then provide its evidence. The rules of evidence is not required at said hearing, but all evidence must be relevant to the particular nuisance being heard. Testimony shall be under oath as administered by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.

4.2.5 No later than 14 days after the hearing and consideration of the evidence, the Governing Board may by majority vote rescind the resolution of violation. If the resolution of violation is not rescinded, it shall stand. Furthermore, if the Objector or its designated agent fails to appear at the hearing or does not provide evidence, the nuisance shall stand. If the resolution is not rescinded, the Governing Board may, by resolution, extend the date that owner, occupant, lessee, or mortgagee shall abate and remedy the said public nuisance, but in no case shall this time exceed 60 days. The findings of the Governing Board shall be made no later than 14 days after the hearing and notice of its finding shall be served upon the Objecting party by regular US Mail within 5 days of the finding. The finding of this hearing is final, provided that an interested party or parties may appeal such decision to the appropriate court for adjudication.

4.2.6 If an interested party properly appeals to an appropriate court the findings and orders of the County, the County actions shall be stayed during and until such time that the legal proceedings are completed or dismissed.

4.3 PENAL COURT ENFORCEMENT. If the declared nuisance, health, and/or sanitation are not abated within fifteen (15) days that the notice is served upon the owner and/or occupant, and the County Clerk has not received a request for hearing, the Nuisance Officer may cause issue of a citation for the code violation pursuant to Nebraska Revised Statute Section 23-114.05.

4.3.1. The citation shall be prosecuted to the appropriate court by the County Attorney or other designated prosecutor for the County.

4.3.2 A person or persons found guilty of these violations shall be guilty of a misdemeanor and fined up to \$500.00 per each offense.

4.3.3 Each day that the nuisance as identified in the nuisance resolution and notice, is not abated shall be a separate offense and subject to a separate fine.

4.4 CIVIL ENFORCEMENT. The Governing Board may instruct by resolution the County Attorney to file a civil action for the abatement of a nuisance. Said civil suit may commence after fifteen (15) day notice has been served and may be filed and prosecuted the same as any other civil matter is prosecuted.

4.5 ABATEMENT. If the Nuisance Officer determines the nuisance is not remedied and abated within the time period designated by the Governing Body, the County shall cause the abatement of the nuisance.

4.5.1 The Governing Board may by majority vote instruct the Nuisance Officer to direct the abatement or it may direct another party to abate the nuisance.

4.6 EXPENSES.

4.6.1 When the County has affected the abatement of the nuisance violation and has incurred expenses and costs thereof, the actual cost thereof shall be charged to the owner of such property. The billing shall be calculated at the actual cost of abating the nuisance plus a twenty-five dollar (\$25.00) administrative fee.

4.6.2 This billing shall be submitted to the last known address of the Owner of the nuisance property as found in the County Treasurer's office by regular US Mail.

4.6.3 If said costs are not paid within two months after the work is done and one month after the expenses and costs are submitted to the owner and/or occupant, the

County may levy and assess the expenses and costs upon the real estate benefitted by the actions in the same manner as other special assessments are levied and assessed, and the County may collect said assessments in the same procedure as other special assessments are collected. The County may also recover said expenses and costs of abating the nuisance violation(s) in a civil action in the courts of the appropriate county in Nebraska.

ARTICLE 5. REPEAL OF PRIOR RESOLUTIONS

5.0 Prior Resolutions in conflict with this Resolution or inconsistent with the provisions of this Resolution are repealed to the extent necessary to give this Resolution full force and effect.

ARTICLE 6. EFFECTIVE DATE

6.0 This Resolution shall be full force and effect after its passage according to law.

Dated this 27th day of May, 2020.

KEITH COUNTY BOARD OF COMMISSIONERS
(Governing Body for Keith County)

Chairman








