

RESOLUTION 10-20-04 (a)

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE OAKLAWN IMPROVEMENT DISTRICT AMENDING AND REPEALING RESOLUTION NO. 12-03-03 PERTAINING TO SECURING THE GENERAL HEALTH OF THE OAKLAWN IMPROVEMENT DISTRICT BY PROVIDING FOR THE PREVENTION, ABATEMENT AND REMOVAL OF NUISANCES.

WITNESSETH:

WHEREAS, the Oaklawn Improvement District (the “District”) is an improvement District that operates and exists under the Improvement District Act (K.S.A. 19-2753, et seg.); and

WHEREAS, nuisances that effect the health, safety and welfare of the citizens of the District exist on certain properties within the District; and

WHEREAS, the Board of Directors of the District (the “Board of Directors”) desire, in order to serve the general health and welfare of the citizens of the District, that such nuisances be removed and abated; and

WHEREAS, the Board of Directors also desire that the District should have the power to remove and abate any nuisances that occur on property within the District in the future; and

WHEREAS, K.S.A. 19-2765 gives the District the authority to abate and remove Nuisances from private property within the District; and

WHEREAS, K.S.A. 19-2765, as amended, requires that before the District removes or abates a nuisance that the District adopt a resolution that provides for such.

NOW, THEREFORE, be it resolved by the Board of Directors of the District as follows:

ARTICLE I. FINDINGS AND PURPOSE

1.01 Findings. The Board of Directors has determined that there exists upon certain properties within the District, conditions that constitute nuisances that detrimentally effect the public health, safety and welfare of the citizens of the District. The Board of Directors has determined that it is in the public interest for the Board of Directors to adopt this Resolution pursuant to authority granted by the state statute under K.S.A. 19-2765 that defines what constitutes a nuisance and provides for the abatement of nuisances within the borders of improvement districts.

1.02 Purpose. The purpose of this Resolution is to protect, preserve, upgrade, and regulate the environmental quality of the District by outlining and defining conditions which constitute nuisances that are injurious to the health, safety, welfare or aesthetic characteristics of neighborhoods of the District, and for the purpose of providing the administration and enforcement thereof.

ARTICLE II. HEALTH NUISANCES

2.01 Nuisance Defined. For the purpose of this Resolution, "Nuisance" is defined to mean, without limitation, any of the following conditions found to exist on private Property:

(a) Filth, excrement, lumber, trash, papers, cartons, boxes, barrels, wood, excelsior, tires, furniture, bedding, rags, leaves, yard trimmings and tree branches, rocks, cans, wire, tin, glass, crockery, plastics, mineral matter, ashes, clinkers, street rubbish and sweepings and/or other such similar items;

(b) Any place or structure or substance which emits or causes any offensive disagreeable or nauseous odors;

(c) Weeds and indigenous grasses that because of height, have a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed twelve inches in height. In addition, weeds which are located in any area which harbors rats, insects, animals, reptiles or any other creature which either may or does constitute a menace to the health, public safety or welfare; and weeds and indigenous grasses which obtain such large growth as to become, when dry, a fire menace to adjacent improved property:

(d) Any man made container that contains stagnant water, e.g. swimming pools, etc;

(e) Abandoned iceboxes, refrigerators, washers, dryers, dishwashers, televisions, sinks, lawnmowers, water heaters or other such items left outside for more than ten (10) days, kept under the control of any person, or any item listed in this subsection (e) not in actual use;

(f) All articles or things whatsoever caused, kept, maintained or permitted by any person to injury, annoyance or inconvenience of the public or of any neighborhood, i.e., floor coverings, sofas, dining tables or other household items left outside for more than ten (10) days;

(g) Salvage material or industrial material, commercial material on any residential areas, except building materials to be used within ninety (90) days for construction on the premises; or

(h) Abandoned structures which have become so dilapidated and deteriorated as to be a potential accident hazard, rodent harborage, attractive nuisance to children, and/or are offensive to the senses.

(i) (1) Abandoned vehicles which is a vehicle that is in a condition of being junked, wrecked, wholly or particularly dismantled, discarded, abandoned or is unusable to perform the function or purpose for which it was originally constructed. Any one of the following conditions shall raise the presumption that a vehicle is an abandoned vehicle:

- (A) Absence of a current registration plate upon the vehicle;
- (B) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
- (C) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon the street or highway.

(2) A vehicle is not an abandoned vehicle if:

- (A) It is enclosed in a garage or other storage building
- (B) The vehicle is being stored on property in connection with a person conducting a business enterprise in non-residential zoned property that is being operated in compliance with existing zoning regulations.

(3) For the purpose of this Resolution, vehicle means, without limitation, any automobile, truck, tractor, or motorcycle which is originally built containing an engine, regardless of whether it contains an engine at any other time.

2.02 Public Officer. The Board of Directors of the District shall designate a Public Officer to be charged with the administration and enforcement of this Resolution.

2.03 Complaints; Inquiry and Inspection. The Public Officer may make such inquiry and inspection when he or she observes conditions on private property which appear to constitute a nuisance(s). If upon making any inquiry and inspection, the Public Officer finds that a nuisance(s) exists on private property then the Public Officer shall make a written report of findings and shall provide such report to the Board of Directors.

2.04 Findings and Notice.

- (a) The Board of Directors, upon receiving a written report from the Public Officer that a nuisance(s) exists on private property, shall based upon the written report make a preliminary determination as to whether a nuisance(s) exists.

- (b) If a preliminary determination is made that a nuisance(s) exists then the owner of the property shall be served a Notice of Violation. The notice

Shall be served by certified mail, postage prepaid, return receipt requested or the notice may be personally served. Such notice shall be served by the Secretary of the Board of Directors. If service can not be made by certified mail or personally served, then notice published once in the official newspaper of the District shall be deemed to be sufficient notice.

2.05 Same; Contents. The notice shall state the condition(s) which constitutes the nuisance(s). The notice shall also inform the owner(s) of that property that:

- (a) He, she, it or they have 10 days from the date of serving the notice to abate nuisance(s) described in the notice; or
- (b) He, she, it or they have 10 days from the date of serving the notice to request a hearing before the Board of Directors as provided by Article II, 2.06. The abatement of the nuisance(s) upon the filing of such request shall be stayed during the period the matter is pending before the Board of Directors.

2.06 Hearing. Request for hearing before the Board of Directors shall be made in writing. The Board of Directors, upon receiving a request for a hearing, shall set the time and place for the hearing to be held. At the hearing the person requesting hearing may be represented by legal counsel, and the person and the District may introduce such witnesses and evidence as both deem necessary and proper. The hearing need not be conducted according to the formal rules of evidence, but shall be conducted in a fair and impartial manner. Upon conclusion of the hearing the Board of Directors shall adopt a resolution of the findings and conclusions regarding whether a nuisance(s) exists on the property in question.

2.07 Right to Appeal Decision. If, following the hearing, a determination is made by the Board of Directors that a nuisance(s) does exist, then the owner(s) of the property has the right to appeal the Board's decision to the Sedgwick County District Court within thirty (30) days of the decision pursuant to K.S.A. 60-2101 (d).

2.08 Abatement. The Public Officer may go upon private property to abate a nuisance(s) under the following circumstances:

- (a) If the owner(s) of the property to whom a notice was served has neither abated the nuisance(s) nor requested a hearing before the Board of Directors within (10) days of being served notice to abate a nuisance(s), then the Public Officer may proceed to abate the nuisance(s) described in the notice. Failure on the part of the owner(s) of the property to timely file an appeal to the Board of Directors shall constitute a waiver of the owner(s) of the property's

right to contest the preliminary determination of the Board of Directors that a nuisance(s) exists on the property.

- (b) If a person to whom notice has been served requests a hearing before the Board of Directors and if upon such hearing the Board of Directors determines that a nuisance(s) exists then the Public Officer may, if an appeal is not taken to the State District Court under K.S.A. 60-2101(d) within 30 days of such determination, proceed to abate the nuisance(s) found to exist by the Board of Directors at such hearing.
- (c) If an appeal is taken under K.S.A. 60-2101(d) then the Public Officer may proceed to abate the nuisance(s) if a final determination is made in a court proceeding that affirms the Board of Directors' determination of the existence of a nuisance(s).

2.09 Costs Assessed. If the Public Officer abates the nuisance(s) then the costs of abating the nuisance(s) shall be billed to the owner of record. If the owner of record does not pay the bill then the clerk of the district, at the time of certifying other taxes to the County Clerk, shall certify the costs to the County Clerk for the purpose of the County Clerk placing the same on the tax rolls in a manner that such will be collected by the County Treasurer and paid to the district as other taxes are collected and paid.

2.10 Determination of Costs. Costs for the abatement and removal of any nuisance(s) shall be as follows:

- (a) If the nuisance(s) is abated by a third party, the costs will be the actual costs to the district;
- (b) If the district employees abated the nuisance(s), then the cost assessed shall be an amount per hour or per lot, whichever is greater, which are set by the Board of Directors of the district and are from time to time adjusted, plus;
- (c) Attorney fees incurred by the district to initiate and prosecute injunctions in Sedgwick County District Court to enforce removal of nuisances found to exist under this resolution.
- (d) An administrative fee which is set by the Board of Directors of the district and which is from time to time adjusted.

2.11 Disposition of Vehicle. Vehicles may be abated by towing them from the property. Whenever any vehicle is towed under the provisions of this Resolution, disposition of this vehicle shall be in compliance with procedures for impoundment, notice and public auction as set forth in K.S.A. 8-1102(a)(2) and amendments thereto.

2.12 Injunction. As an alternative and in lieu of abating a nuisance under this Resolution and under K.S.A. 19-2766(a), the Board of Directors may initiate in the Sedgwick County District Court an injunction to enforce removal of nuisances found to exist under the Resolution.

ARTICLE III. REPEAL OF RESOLUTION

3.10 Repeal. Oaklawn Improvement District Resolution No. 12-03-03 is hereby repealed.

ADOPTED AND APPROVED by the Board of Directors of the District this 20th Day of October, 2004.

OAKLAWN IMPROVEMENT DISTRICT

Andree Sisco - President

Don Winton - Secretary

Dwight Ritter - Treasurer