

*RESOLUTION 98-10*

**Nuisance and Dangerous  
Building Abatement  
Regulation  
of  
Linn County, Kansas**





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**NUISANCE AND DANGEROUS BUILDING  
ABATEMENT REGULATION**

**ARTICLE 1 – GENERAL PROVISIONS**

**Section 1-01 – Legal Authority**

This regulation is adopted under the authority granted to the Board of County Commissioners by K.S.A. 19-101 through 19-101f and amendments thereto.

**Section 1-02 – Declaration of Finding and Policy**

The Board of County Commissioners finds that provisions for adequate and reasonable control over accumulation of articles or dangerous buildings kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public, is necessary and desirable. The adoption of a nuisance and dangerous building abatement regulation to eliminate and prevent the development of conditions that are injurious to the health, safety, and welfare of the inhabitants within Linn County, Kansas, is in the best public interest.

**Section 1-03 – Purpose**

The purpose of this regulation is to protect, preserve, upgrade and promote the environmental quality of Linn County, Kansas, by making it unlawful to maintain conditions which are injurious to the health, safety and welfare of the inhabitants within Linn County and to provide for the uniform administration and enforcement thereof.

**Section 1-04 – Definitions**

- 1) GOVERNING BODY – Board of County Commissioners of Linn County, Kansas.
- 2) PERSON – Any individual, firm, agency, company, association, partnership, business trust, joint stock company or corporation, including municipal corporation.
- 3) COUNTY – Linn County, Kansas
- 4) PUBLIC OFFICER – Any employee designated by the Governing Body charged with administration and enforcement of this act.
- 5) PROPERTY – Any road, highway, park, public or private enclosure, lot or tract of land, whether vacant or occupied and all building, structures or facilities located thereon.
- 6) VEHICLE – Any automobile, truck, tractor, or motorcycle that as originally built contained an engine, regardless of whether it contains an engine at any other time.
- 7) INOPERABLE – Means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed.

## **ARTICLE 2 – UNLAWFUL ACTS**

It shall be unlawful for any person in charge of or in possession of any property in the county to permit a nuisance or dangerous building to be maintained or continued thereon.

### **Section 2-01 – Nuisance**

Nuisance means the accumulation of the following substances thrown, left or deposited on any road, highway, park, public or private enclosure, lot or tract of land, whether vacant or occupied in any unincorporated area of Linn County, Kansas:

- 1) Abandoned or discarded household appliances, including but not limited to refrigerators, freezers, stoves, washers and dryers, used lumber, plastic materials, used furniture;
- 2) Iron, steel, and other old or scrap ferrous or nonferrous material;
- 3) Rags, used batteries, paper, used tires and other rubber materials;
- 4) All dead animals not removed within 24 hours after death;
- 5) Garbage and all other rubbish, debris, or deposits of filth or waste which may constitute a fire or health hazard or become a breeding place for insects, vermin, rodents or reduce the value of private property, interfere with the comfort and well-being of the public or destroy the scenic beauty of the county.
- 6) It is unlawful to possess or have possession of more than five (5) wrecked, inoperable or abandoned vehicles or parts thereof, for any reason, unless they are in possession of licensed salvage control operator. All vehicles must have either:
  - a. Motor vehicle title, current motor vehicle license and insurance, or
  - b. Non-highway vehicle title and be declared on the personal property tax rolls of the owner thereof.
- 7) Any one of the following conditions shall raise the presumption that a 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.
  - c. Absence of one or more parts of the vehicle necessary for lawful operation of the vehicle upon a street or highway.
- 8) The provisions of this section shall not apply to the parking or storage of a vehicle inoperable for a period of thirty (30) consecutive days or less.

### **Section 2-02 – Dangerous Buildings**

Any building or structure that has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered; whenever the building or structure, or any portion thereof, is likely to partially or completely collapse because of:

- 1) Dilapidation, deterioration or decay, or faulty construction,
- 2) The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building,
- 3) Damage by fire, wind, earthquake, or flood,
- 4) Inadequate maintenance, air or sanitation facilities, or as otherwise is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease,
- 5) Such a condition so as to constitute a public nuisance known to the common law or in equity jurisprudence,
- 6) Remains on a site after the demolition or destruction of the building or structure.

### **ARTICLE 3 – NOTICES AND ORDERS**

#### **Section 3-01 – Inquiry**

The Public Officer may make such inquiry and inspection when he/she observes conditions which appear to constitute a nuisance or dangerous building as defined in Sections 2-01 and 2-02, or upon receiving a complaint(s) in writing, signed by two or more persons, describing the existence of such complaint(s) or is informed that a nuisance or dangerous building may exist by the public health, police or fire authority.

#### **Section 3-02 – Right of Entry**

The Public Officer shall have the right of access and entry upon private property for the purpose of making inquiry and inspection to determine if a nuisance or dangerous building exists. No person shall willfully or lawfully impede or obstruct the Public Officer or his authorized representative in the discharge of official duties under the provisions of this act.

#### **Section 3-03 – Notice and Order**

The Public Officer shall issue a notice and order directed to the record owner of the property. The notice and order shall contain:

- 1) The street address and a legal description sufficient for identification of the premises upon which the nuisance and/or dangerous building is located.
- 2) A brief statement and concise description of the conditions found.
- 3) A statement of the action required to be taken as determined by the Public Official:
  - a. If the conditions are in violation of Section 2-01, the nuisance must be abated within thirty (30) days from the date of service of the notice; and the parties receiving such notice shall have ten (10) days from the date of service of the notice to request a hearing before the Governing Body.
  - b. If the Public Official has determined a violation(s) of Section 2-02 exists and that the building or structure must be vacated, the order shall require that the building or structure

shall be vacated within a time certain from the date of the order as determined by the Public Official to be reasonable.

- c. If the Public Official has determined a violation of Section 2-02 and that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed 30 days from the date of the order); and, that the demolition be completed within such time as the Public Official shall determine is reasonable.
- 4) Statements advising that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official to the Governing Body, provided the appeal is made in writing as provided in this Regulation and filed with the Public Official within 10 days from the date of service of such notice and order; and that failure to appeal will constitute a waiver of all rights to an administrative hearing and determination of the matter.

### **Section 3-04 – Service of Notice and Order**

- 1) The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following, if known to the Public Official or disclosed from official public records:
  - a. The holder of any mortgage or deed of trust or other lien or encumbrance of record.
  - b. The owner or holder of any lease of record.
  - c. The holder of any other estate or legal interest of record in or to the property.
- 2) The failure of the Public Official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

### **Section 3-05 – Method of Service**

- 1) Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last equalized assessment roll of the county or as known to the Public Official.
- 2) If the person in charge or possession of the real property is a resident of Linn County, Kansas, then written notice may be personally served by the Public Official or a police officer.
- 3) If no address of any such person so appears or is known to the Public Official, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the property involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

### **Section 3-06 – Vacation and Demolition**

The following standards shall be followed by the Public Official (and by the Governing Body if an appeal is taken) in ordering the vacation or demolition of any dangerous building or structure:

- 1) Any building declared a dangerous building under this code shall be made to comply with one of the following:
  - a. The building shall be demolished at the option of the building owner; or
  - b. If the building does not constitute an immediate danger to the life, limb, property or safety of the public, it may be vacated, secured and maintained against entry.
- 2) If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

**Section 3-07 – Notice to Vacate**

- 1) Posting: Every notice to vacate shall, in addition to being served as provided in Section 3-04, be posted at or upon each exit of the building and shall be in substantially the following form:

**DO NOT ENTER**

**UNSAFE TO OCCUPY**

**It is a misdemeanor to occupy this building, or to remove or  
deface this notice.**

**Public Official of Linn County, Kansas**

**Section 3-08 – Compliance**

Whenever such notice is posted, the building official shall include a notification thereof in the notice and order issued under Section 3-03, reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building, which has been so posted, except that entry may be made to demolish or remove such building. No person shall remove or deface any such notice after it is posted until the required demolition or removal has been completed.

**ARTICLE 4 – APPEAL**

**Section 4-01 – Form of Appeal**

- 1) Any person receiving notice and order under Section 3-03 may appeal any action of the Public Official under this regulation by filing at the office of the County Clerk a written appeal.
- 2) The appeal shall be filed within ten (10) days from the date of the service of such order or action of the Public Official.

**Section 4-02 – Processing of Appeal**

- 1) Upon receipt of any appeal filed pursuant to this section, the County Clerk shall present it at the next regular or special meeting of the Governing Body.
- 2) As soon as practicable after receiving the written appeal, the Governing Body shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than 10 days or more than 60 days from the date the appeal was filed with the County Clerk.

- 3) Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the County Clerk either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

**Section 4-03 – Effect of Failure to Appeal**

Failure of any person to file an appeal in accordance with the provisions of Section 4-01 shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.

**Section 4-04 – Staying of Order Under Appeal**

Except for vacation orders made pursuant to Section 3-07, enforcement of any notice and order of the Public Official issued under this regulation shall be stayed during the pending of an appeal therefrom which is properly and timely filed.

**ARTICLE 5 – ENFORCEMENT**

**Section 5-01 – Compliance**

- 1) General – After any order of the Public Official of the Governing Body made pursuant to this regulation shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a penalty as provided in Article 8.
- 2) Failure to Obey Order – If, after any order of the Public Official or Governing Body made pursuant to this regulation has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, and such required action is not commenced within 30 days after any final notice and order is issued, the Public Official may:
  - a. Cause such person to be prosecuted under Section 8-01 or,
  - b. Institute any appropriate action to abate such nuisance or dangerous building;
  - c. The Public Official may present a resolution to the Governing Body for adoption authorizing the Public Officer or his agents to abate the conditions causing the violation not less than fifteen (15) days after passage of the resolution.
  - d. The Public Official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto. No person shall occupy any building that has been posted as specified in this section. No person shall remove or deface any such notice so posted until demolition or removal ordered by the Public Official has been completed.
- 3) Any such abatement or demolition or removal work as required in Section 5-01, (C) and (D) shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such property, or from the demolition thereof, over and above the cost of the demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

**Section 5-02 – Extension of Time to Perform Work**

Upon receipt of an application, and agreement, from the person required to conform to the order if allowed additional time, the Public Official may grant an extension of time, not to exceed an additional 120 days, within which to complete said nuisance abatement or demolition; if the Public Official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property.

The Public Official's authority to extend time is limited to the physical nuisance abatement or demolition of the premises and will not in any way affect the time to appeal the notice and order.

**Section 5-03 – Interference with Nuisance Abatement or Demolition Work Prohibited**

No person shall obstruct, impede, or interfere with any officer, employee, contractor or authorized representative of the County or with any person who owns or holds any estate or interest in any property which has been ordered abated or demolished under the provisions of this regulation; or with any person to whom such property has been lawfully sold pursuant to the provisions of this regulation, whenever such officer, employee, contractor or authorized representative of the County, person having an interest or estate in such property, or purchaser is engaged in the work of abating or demolishing any such building, pursuant to the provisions of this regulation, or in performing any necessary act preliminary to or incidental to such work as authorized or directed pursuant to this regulation.

**ARTICLE 6 – PERFORMANCE OF WORK**

**Section 6-01 – Procedure**

- 1) When any work or demolition is to be done pursuant to Section 5-1, 3, of this regulation, the Public Official shall issue an order therefore to the County Engineer and the work shall be accomplished by personnel of the County or by private contract under the direction of said County Engineer.
- 2) When the Public Official is authorized to abate the condition, the following procedure shall be observed:
  - a. Items confiscated, which have no practical value to the person in violation, shall be disposed of by the County.
  - b. The County shall place items confiscated, which might reasonably be of some value to the person in violation, in storage. The person in violation shall be informed by certified mail, restricted delivery, postage prepaid, return receipt requested, of the disposition or storage of any items confiscated and the person in violation shall be further informed that such items shall be stored for a period of thirty (30) days and further, that these items may be claimed by said person upon payment to the County for expenses.
  - c. If the items are not claimed within the thirty (30) day period, then the county shall sell the items and deduct the expenses for abatement, returning the amount in excess of expenses, if any to the person in violation.
- 3) Said County Engineer therefore may prepare plans and specifications, or the same may employ such assistance on a contract basis as deemed reasonably necessary.
- 4) If any part of the work is to be accomplished by private contract, standard public works contractual procedures shall be followed.

- 5) The Linn County Appraiser shall be notified in writing after demolition is completed so that structure can be removed from the tax roll.

### **Section 6-02 – Costs**

The expenses incurred in the abatement of a nuisance or dangerous building shall be paid from the General Fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the governing body of this jurisdiction shall determine is appropriate.

## **ARTICLE 7 – RECOVERY OF COST OR REPAIR OR DEMOLITION**

### **Section 7-01 – Account of Expense, Filing of Report**

The County Engineer shall keep an itemized account of the expense incurred by the County in the abatement or demolition of any property done pursuant to the provisions of Section 5-01 of this regulation. Upon the completion of the work, said County Engineer shall prepare and file with the Public Official a report specifying the work done, the itemized and total cost of the work, a description of the real property, and the names and addresses of the persons entitled to notice pursuant to Section 3-04.

### **Section 7-02 – Notice of Hearing**

- 1) Upon receipt of said report, the Public Official shall present it to the Governing Body for consideration. The governing body of this jurisdiction shall fix a time, date and place for hearing said report and any protests or objections thereto.
- 2) The Public Official shall cause notice of said hearing to be posted upon the property involved, published once in the official county newspaper, and served by certified mail, postage prepaid, addressed to the owner of the property as the owner's name and address appears on the last equalized assessment roll of the county.
- 3) Such notice shall be given at least 10 days prior to the date set for the hearing and shall specify the day, hour and place when the governing body will hear and pass upon the County Engineer's report, together with any objections or protests which may be filed as hereinafter provided by an person interested in or affected by the proposed charge.

### **Section 7-03 – Protests and Objections**

Any person interested in or affected by the proposed charge may file written protests or objections with the County Clerk at any time prior to the time set for the hearing on the report of the County Engineer. Each such protest or objection must contain a description of the property in which the signer thereof is interested and grounds of such protest or objection. The County Clerk shall endorse on every such protest or objection the date of receipt. The County Clerk shall present such protests or objection to the Governing Body at the time set for the hearing, and no other protests or objections shall be considered.

#### **Section 7-04 – Hearing of Protests**

Upon the day and hour fixed for the hearing, the Governing Body shall hear and pass upon the report of the County Engineer together with any such objections or protests.

The Governing Body may make such revision, correction or modification in the report or the charge as it may deem just; and when the Governing Body is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected.

The decision of the Governing Body on the report and charge, and on all protests or objections, shall be final and conclusive.

#### **Section 7-05 – Personal Obligation or Special Assessment**

- 1) General – The Governing Body may thereupon order that said charge shall be made a personal obligation of the property owner or assess said charge against the property involved.
- 2) Personal Obligation – If the Governing Body orders that the charge shall be a personal obligation of the property owner, it shall direct the Linn County Counselor to collect the same on behalf of this jurisdiction by use of all appropriate legal remedies.
- 3) Special Assessment – If the Governing Body orders that the charge shall be assessed against the property, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property.

#### **Section 7-06 – Contest**

The validity of any assessment made under the provisions of this section shall not be contested in any action or proceeding unless the same is commenced within 30 days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected to Linn County District court within thirty (30) days after the entry of such judgment.

#### **Section 7-07 – Authority for Installment Payment of Assessments with Interest**

The Governing Body, in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not to exceed five equal annual installments. The Governing Body's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be by a resolution adopted prior to the confirmation of the assessment.

#### **Section 7-08 – Lien of Assessment**

- 1) Priority – Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

- 2) Interest – All such assessments remaining unpaid after 30 days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of 7% per annum from and after said date.

**Section 7-09 – Report to Linn County Clerk and Treasurer: Addition of Assessment to Tax Bill**

After confirmation of the report, certified copies of the assessment shall be given to the Linn County Clerk, who shall add the amount of assessment to the next regular tax bill levied against the parcel.

**Section 7-10 – Collection of Assessment: Penalties for Foreclosure**

The Linn County Treasurer shall collect the assessment at the same time and in the same manner as ordinary property taxes. The Assessment shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

If the Governing Body has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary property taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provide for ordinary property taxes.

**Section 7-11 – Repayment**

All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the Linn County Treasurer, who shall credit the same to the General Fund.

**ARTICLE 8 – PENALTY**

**Section 8-01 – Penalty**

Should any person fail to comply with the notice and order or request a hearing thereon, the Public Official, through the Linn County Counselor, may cause a complaint to be filed in the District of Linn County, Kansas, against such alleged violator and, upon conviction of any violation of the provision of Article 2 such person shall be fined in an amount not to exceed Two Hundred Dollars (\$200.00) or to be imprisoned not to exceed ten (10) days, or both fined and imprisoned. Any violation of the provisions of this regulation shall be deemed a Class C Misdemeanor. Each day during or on which a violation occurs or continues, after notice has been served, shall constitute an additional or separate offense.

**ARTICLE 9 – VALIDITY**

**Section 9-01 – Validity**

This act shall take precedence over any and all regulations that may conflict herewith and any part of any resolution that conflicts herewith is hereby repealed.

**Section 9-02 – County Counselor Authorized**

The Linn County Counselor shall enforce the provisions of this act and is hereby authorized to file appropriate actions for such enforcement, upon request of the Public Official or the Governing Board and upon showing that there are sufficient grounds for such action. In addition to other remedies, actions of injunction, mandamus and quo warranto are appropriate for enforcement of this act.

**Section 9-03 – Effective Date**

This regulation shall take effect and be in force from and after its publication in the Official County newspaper.

Passed this 20<sup>th</sup> day of July, 1998.

BOARD OF COUNTY COMMISSIONERS  
Linn County, Kansas

Martin J. Read  
Martin J. Read, Chairman

Charles Trask  
Charles Trask, Vice Chairman

Harold Mooney Jr.  
Harold Mooney Jr., Member



ATTEST:

Donald L. Proffitt  
Donald L. Proffitt, County Clerk

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF LINN COUNTY, KANSAS

RESOLUTION NO. 98-10

*A Resolution amending the Nuisance Abatement Act of Linn County, Kansas.*

*This regulation is adopted under the authority granted to the Board of County Commissioners by K.S.A. 19-101 through 19-101f and amendments thereto.*

*The Board of County Commissioners finds that provisions for adequate and reasonable control over accumulation of articles or dangerous buildings kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public, is necessary and desirable. The adoption of a nuisance and dangerous building abatement regulation to eliminate and prevent the development of conditions that are injurious to the health, safety and welfare of the inhabitants within Linn County, Kansas, is in the best public interest.*

*WHEREAS, the Board of County Commissioners of Linn County, Kansas, desires to include dangerous structures in the Nuisance Abatement Act.*

*THEREFORE BE IT RESOLVED that the Nuisance Abatement Act of Linn County, Kansas, shall be amended to include dangerous structures and shall hereby be called the Nuisance and Dangerous Building Abatement Regulation.*

*This amendment shall take effect and be in force from and after its publication in the official county newspaper.*

*Passed by the Board of County Commissions, Linn County, Kansas, this 20<sup>th</sup> day of July, 1998.*

BOARD OF COUNTY COMMISSIONERS  
LINN COUNTY, KANSAS

*Marty Read*  
Marty Read, Chairman

*Charlie Trask*  
Charlie Trask, Vice Chairman

*Harold Mooney Jr.*  
Harold Mooney Jr., Member



TEST:  
*Donald L. Proffitt*  
Donald L. Proffitt, County Clerk