



Jim Howell
Commissioner – Fifth District
Board of County Commissioners
Sedgwick County, Kansas

Date: January 22, 2021

To: Chair McGinn, Senate Committee on Local Government

Re: SB 52; Creating the Sedgwick County Urban Area Nuisance Abatement act

From: James M. Howell, Sedgwick County Commissioner, Fifth District

Chair McGinn and members of the committee, my name is Jim Howell and I am a County Commissioner in Sedgwick County. I am writing on behalf of the Board of County Commissioners of Sedgwick County to indicate the Board's support for SB 52, the Creating Sedgwick county urban area nuisance abatement act.

Much like many of you, I firmly embrace and respect the rights of private property owners to utilize and enjoy their property. Consistent with that, it is my belief that a property owner's right to enjoy their property should not endanger their neighbors' health, safety, or enjoyment of their own property. The purpose of SB 52 is to provide Sedgwick County with a tool to remedy nuisance conditions that persist to the detriment of surrounding property owners.

Within Sedgwick County, approximately 40,000 people live outside of city limits. As a result, the nuisance properties that Sedgwick County receives the most complaints about are not isolated farmhouses, but rather homes in neighborhoods with residences in close proximity to one another. Quite often, these homes are located in improvement districts that are just as densely populated as residential neighborhoods within the city limits of Wichita. This proximity means that the hazards and impacts on neighbors can be significant.

This bill is narrowly focused. SB 52 would only apply to the unincorporated area of Sedgwick County. Because Sedgwick County is an urban area, this bill would not affect any other counties. Also, Sedgwick County recognizes the importance of agriculture and would not utilize any authority granted by this bill to impact agricultural operations. Instead, there is specific language suggested by the Kansas Livestock Association that would prevent agricultural activities from being subject to nuisance abatement. Lastly, Sedgwick County would intend to utilize any nuisance abatement powers sparingly and on the properties that would be most concerning from a public health and safety standpoint.

You may be wondering, "why is Sedgwick County asking for this power?" In order to answer that question, it is important to understand the existing tools and why they are sometimes inadequate. Up until 2012, many counties, including Sedgwick County, believed that they could lawfully abate, or clean-

up, nuisance conditions on properties. However, in 2012, the Kansas Court of Appeals held that counties lack the statutory authority to utilize self-help powers to abate nuisances. This is in contrast with cities and improvement districts, which are all specifically authorized to abate nuisances. As a result, Sedgwick County's sole methods to address nuisance conditions include court citations for code violations and court orders for property owners to abate nuisances on their own. While court fines and court orders can effectively aid in the resolution of many nuisance properties when a property owner is willing and able to rectify a nuisance situation, there are also several instances in which these tools are ineffective and inadequate because, at some point, physical work must be performed onsite in order to abate a nuisance. Neither a judge's gavel nor any amount of fines can act as a proxy for the hands-on work needed to clean-up nuisance properties.

Sedgwick County firmly believes in providing constitutional due process rights to property owners. While SB 52 would give Sedgwick County the ability to abate a nuisance if the property owner would fail to do so on their own, this would not happen overnight. Instead, there are a number of steps that would have to occur first. These steps are listed below.

1. Complaint is received by Sedgwick County staff (note: all prosecution matters are complaint-driven).
2. Sedgwick County staff investigates the complaint.
3. If it is determined the property is in violation of the code, a written notice of code violation is mailed to the owner of record, which provides them notice of the alleged nuisance and a timeframe to remedy the nuisance.
4. If the nuisance condition persists beyond the timeframe in the notice of code violation, Sedgwick County staff will write a citation for a county code violation. The citation is served on the owner of record and they are given a date to appear for a first appearance in front of the Sedgwick County Court judge.
5. In court, the property owner would have the option of either setting their case for a trial at a future date or else they could enter into a plea agreement.
6. If the property owner is found guilty of the code violation, whether through a trial or a plea, the Sedgwick County Court judge will generally provide the property owner with time to clean-up the nuisance.
7. If the code violation case would be finalized without the property owner having abated the nuisance and if the nuisance condition would be deemed sufficiently dangerous and unsafe by Sedgwick County staff, within 12 months of such conviction the nuisance abatement process could be initiated.
8. The Sedgwick County Board of County Commissioners would order the property owner to remove or abate the nuisance by a specified date at least 10 days after such order. A copy of the order would be served on the property owner.
9. Prior to the date specified in the order, the property owner would have an opportunity to either abate the nuisance or to request a due process hearing before the Board of County Commissioners or any body designated by the Board of County Commissioners (for example, a nuisance appeals board).
10. If the property owner would request a due process hearing, the hearing would be scheduled in front of the Board of County Commissioners or its designee. During that hearing, both the

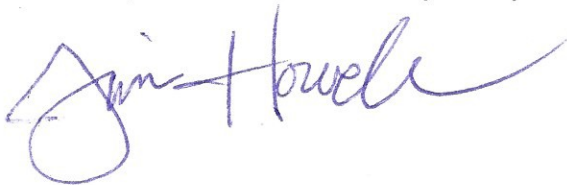
property owner and County staff would have an opportunity to present testimony and evidence and the designated hearing body would determine whether a nuisance exists.

11. If the property owner would either fail to request a due process hearing in a timely fashion or if the hearing body for the due process hearing would find that a public nuisance exists, the Board of County Commissioners would be authorized to enter a new order for County staff and/or a third party contractor to abate the nuisance, including the potential repair or demolition of any structure.

These steps exceed the requirements of constitutional due process. Furthermore, these steps afford a property owner numerous opportunities to both challenge the determination that a nuisance exists and also to clean-up any nuisance.

Another relevant feature of SB 52 is that if the property owner would fail to pay the County for the costs of abating a nuisance on their property, those costs could be assessed against the property. This would be a financially responsible approach to ensure that the costs would be borne by the property benefited by such action, as opposed to such costs being borne by all taxpayers in Sedgwick County.

Senate Bill 52 would afford Sedgwick County an effective method to better protect the health and safety of residents in the unincorporated area of Sedgwick County. Its enactment is unanimously supported by the Board of County Commissioners. Thank you very much for your careful consideration of this matter.



James M. Howell
Sedgwick County Commissioner – Fifth District