

Session of 2019

HOUSE BILL No. 2314

By Committee on Commerce, Labor and Economic Development

2-13

and counties

1 AN ACT concerning cities, relating to the rehabilitation of abandoned
2 property; amending K.S.A. 2018 Supp. 12-1750 and 12-1756a and
3 repealing the existing sections; also repealing K.S.A. 2018 Supp. 12-
4 1756e.

abatement of nuisances, Sedgwick county urban area nuisance act;

5
6 *Be it enacted by the Legislature of the State of Kansas:*

See Insert HB 2238 AHC

7 Section 1. K.S.A. 2018 Supp. 12-1750 is hereby amended to read as
8 follows: 12-1750. As used in this act:

- 9 (a) "Structure" means any building, wall or other structure.
- 10 (b) "Enforcing officer" means the building inspector or other officer
11 designated by ordinance and charged with the administration of the
12 provisions of this act.
- 13 (c) "Abandoned property" means:
- 14 (1) Any residential real estate for which taxes are delinquent for the
15 preceding two years and ~~which~~ that has been unoccupied continuously by
16 persons legally in possession for the preceding 90 days; ~~or~~
- 17 (2) *any residential real estate that has been unoccupied continuously*
18 *by persons legally in possession for the preceding 365 days and that has a*
19 *blighting influence on surrounding properties, unless the exterior of the*
20 *property is being maintained and the property is either the subject of a*
21 *probate action, action to quiet title or other ownership dispute, or the*
22 *property is subject to a mortgage; or*
- 23 (3) commercial real estate for which the taxes are delinquent for the
24 preceding two years and which has a blighting influence on surrounding
25 properties. "Commercial real estate" means any real estate for ~~which~~ that
26 the present *approved* use is other than one to four residential units or for
27 agricultural purposes.
- 28 (d) "Blighting influence" means conditions in such structure ~~which~~
29 *that* are dangerous or injurious to the health, safety or ~~morals~~ *welfare*
30 of the occupants of such buildings or other residents of the municipality ~~or~~
31 ~~which have an adverse impact on properties in the area.~~ Such conditions
32 may include, but are not limited to, the following: Defects increasing the
33 hazards of fire, accident, or other calamities; air pollution; ~~light or lack of~~
34 sanitary facilities; dilapidation; disrepair; structural defects; ~~uncleanliness;~~
35 ~~dead and dying trees, limbs or other unsightly natural growth or unsightly~~
36 ~~appearances that constitute a blight to adjoining property, the~~

1 neighborhood or the city; walls, sidings or exteriors of a quality and
 2 appearance not commensurate with the character of the properties in the
 3 neighborhood; unsightly stored or parked material, equipment, supplies,
 4 machinery, trucks or automobiles or parts thereof; vermin infestation;
 5 ~~inadequate drainage~~; or any violation of health, fire, building or property
 6 maintenance codes or zoning regulations that constitute a health or safety
 7 threat.

8 (e) "Organization" means any nonprofit corporation organized under
 9 the laws of this state ~~and which that~~ has among its purposes the
 10 improvement of housing and has been in existence for a period of three
 11 years or more.

12 (f) "Rehabilitation" means the process of improving the property into
 13 compliance with applicable fire, housing and building codes.

14 (g) "Parties in interest" means any owner or owners of record,
 15 judgment creditor, tax purchaser or other party having any legal or
 16 equitable title or interest in the property.

17 (h) "Last known address" includes the address where the property is
 18 located, or the address as listed in the tax records.

19 (i) *The provisions of subsection (c)(2) shall expire on July 1, 2023.*

20 Sec. 2. K.S.A. 2018 Supp. 12-1756a is hereby amended to read as
 21 follows: 12-1756a. (a) (1) An organization may file a petition with the
 22 district court for an order for temporary possession of property if:

23 ~~(1)(A)~~ The property meets the definition of abandoned as set forth in
 24 K.S.A. 12-1750, and amendments thereto;

25 ~~(2)(B)~~ the organization intends to rehabilitate the property and use
 26 the property as housing ~~or~~ *if the petition is filed prior to July 1, 2023, for*
 27 ~~ancillary~~ facilities relating to housing, including infrastructure, parks and
 28 parking facilities; and

29 ~~(3)(C)~~ the organization has sent notice to the enforcing officer and
 30 the parties in interest of the property, by certified or registered mail, mailed
 31 to their last known address and posted on the property at least 20 days but
 32 not more than 60 days before the date the petition is filed, of the
 33 organization's intent to file a petition for possession under K.S.A. 12-1750
 34 through ~~12-1756e~~ 12-1756d, and amendments thereto.

35 (2) *Prior to July 1, 2023, the governing body of any city may file a*
 36 *petition with the district court for an order for temporary possession of*
 37 *property if:*

38 (A) *The property meets the definition of abandoned in K.S.A. 12-*
 39 *1750, and amendments thereto;*

40 (B) *the governing body of the city filing a petition under this section*
 41 *has designated an organization to rehabilitate the property;*

42 (C) *such designated organization intends to rehabilitate the property*
 43 *and use the property ~~as housing or~~ for ~~ancillary~~ facilities related to*

, except that

only

public

sale and for

public

1 housing, including, but not limited to, infrastructure, open space, parks or
2 parking facilities;

3 (D) the governing body of the city filing the petition under this
4 section has sent notice to the enforcing officer and the parties in interest of
5 the property, by certified or registered mail, mailed to their last known
6 address and posted on their property at least 20 days but not more than 60
7 days before the date the petition is filed, of the governing body's intent to
8 file a petition for temporary possession under K.S.A. 12-1750 through 12-
9 1756d, and amendments thereto; and

sale and for

10 (E) the governing body of the city filing the petition under this section
11 has formally approved the filing of the petition.

12 (b) (1) The proceeding shall be commenced by filing a verified
13 petition in the district court in the county in which the property is located.
14 The petition shall state that the conditions specified in subsection (a) exist.
15 All parties in interest of the property shall be named as defendants in the
16 petition.

17 (2) The petition shall include the following information:

18 (A) The history of municipal utility service for the property for the
19 preceding 365 days or longer;

20 (B) the history of property tax payments for the preceding three years
21 or longer;

22 (C) the history of code violations for the preceding two years or
23 longer and efforts by the city to remedy the code violations;

24 (D) the history of attempts to notify the last known owner or owners
25 of any enforcement action or actions; and

26 (E) the history of actions taken by other governmental entities
27 regarding the property, including, but not limited to, tax liens or
28 bankruptcy proceedings.

29 (3) Summons shall be issued and service shall be made pursuant to
30 K.S.A. 60-303, and amendments thereto. Service may be made by
31 publication if the organization or the governing body of a city with due
32 diligence is unable to make service of summons upon a defendant pursuant
33 to subsection (a)(3) of K.S.A. 60-307(a)(3), and amendments thereto.

34 (c) Any defendant may file as part of such defendant's answer, as an
35 affirmative defense, a plan for the rehabilitation of the property and
36 evidence of capacity and resources necessary to complete rehabilitation of
37 the property. The court shall grant the defendant 90 days to bring the
38 property into compliance with applicable fire, housing and building codes
39 and to pay all delinquent ad valorem property tax. For good cause shown,
40 the court may extend the ninety-day compliance period for an additional
41 90 days. If the property is brought into such compliance within the ninety-
42 day period or extension of time thereof, the petition shall be dismissed. If
43 the defendant fails to bring the property into such compliance within the

1 ninety-day period or extension of time thereof, or if the defendant's plan is
2 otherwise insufficient, the defendant's affirmative defense shall be
3 stricken. *In no case shall the defendant's affirmative defense be stricken*
4 *solely on the basis of delinquent property taxes.*

5 (d) At the hearing on the organization's a petition filed in accordance
6 with, and as permitted by, subsection (a), the petitioning organization or
7 governing body of a city shall submit to the court a plan for the
8 rehabilitation of the property and present evidence that the organization
9 has adequate resources to rehabilitate and thereafter manage the property.
10 For the purpose of developing such a plan, representatives of the
11 organization or the governing body of a city may be permitted entry onto
12 the property by the court at such times and on such terms as the court may
13 deem appropriate.

14 (e) The court shall make its own determination as to whether the
15 property is in fact abandoned consistent with the terms of K.S.A. 12-1750
16 through ~~12-1756e~~ 12-1756d, and amendments thereto.

17 (f) If ~~the court approves the petition, the court shall~~ may enter an
18 order approving the rehabilitation plan and granting temporary possession
19 of the property to the ~~petitioning organization or~~ governing body of a city.
20 The organization, subject to court approval, may enter into leases or other
21 agreements in relation to the property. ~~Whether the court approves or~~
22 ~~denies the petition, the organization shall provide the governing body of a~~
23 ~~city a copy of the order within 30 days of the organization's receipt or~~
24 ~~knowledge of such order.~~

25 (g) (1) *Not less than 365 days nor more than 730 days after receiving*
26 *temporary possession of property by an order of the court upon a petition*
27 *for temporary possession, an organization shall seek quiet title to such*
28 *property by petition to the court. The petitioner for quiet title shall send*
29 *notice of intent to file the petition to the parties of interest of the property,*
30 *by certified or registered mail, mailed to their last known address at least*
31 *20 days but not more than 60 days before the date the petition is filed.*

32 (2) *Upon a finding by the court that the property has been*
33 *rehabilitated in accordance with the approved rehabilitation plan, the*
34 *court shall grant the petition for quiet title. If no petition for quiet title is*
35 *filed as permitted by this subsection or a petition for quiet title is filed as*
36 *permitted by this subsection but the court finds that the organization that*
37 *filed the petition has not rehabilitated the property in accordance with the*
38 *rehabilitation plan approved by the court, the property shall*
39 *be sold by either the board of county commissioners or the governing body*
40 *of a city in the manner prescribed for sale of property at a judicial tax*
41 *foreclosure sale pursuant to K.S.A. 79-2801 et seq., and amendments*
42 *thereto.*

43 Sec. 3. K.S.A. 2018 Supp. 12-1750, 12-1756a and 12-1756e are

or designated

(f) If the court determines the property is abandoned, consistent with the terms of K.S.A. 12-1750 through 12-1756d, and amendments thereto, the court shall order the property immediately sold without delay by public auction in the manner prescribed for sale of property at a judicial tax foreclosure sale pursuant to K.S.A. 79-2801 et seq., and amendments thereto. Proceeds of the sale shall be first allocated to court costs, fees and sale costs and then to satisfy any property tax debt. Any proceeds remaining shall be retained by the court
no private party purchases the property at the public auction pursuant to subsection (f) and if

Upon receipt by order of the court of temporary possession of the property by the governing body of a city, the petitioning or designated organization shall implement a plan of rehabilitation or of partial rehabilitation that may be completed within one year. At the end of the one-year period, the court shall order the property sold without delay by public auction in the manner prescribed for sale of property at a judicial tax foreclosure sale pursuant to K.S.A. 79-2801 et seq., and amendments thereto. The court shall set a minimum bid in the amount of the costs incurred by the petitioning or designated organization. Proceeds of the sale shall go to the petitioning or designated organization. The court shall assess costs of the sale and court costs against the governing body of the city.

If no private party purchases the property at the public auction pursuant to subsection (g), the court shall award temporary possession of the property to the designated or petitioning organization. The designated or petitioning organization shall complete rehabilitation of the property, if necessary, pursuant to the rehabilitation plan approved by the court.

a designated or petitioning

may be demolished by the city or may

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly

- 1 hereby repealed.
- 2 Sec. 4. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

New Section 1. (a) Sections 1 through 5, and amendments thereto, shall be known and may be cited as the Sedgwick county urban area nuisance act.

(b) Sedgwick county has been declared an urban area under K.S.A. 19-2654, and amendments thereto, as permitted by section 17 of article 2 of the constitution of the state of Kansas.

(c) Before any nuisance abatement process shall be commenced under this act, Sedgwick county first shall have obtained a conviction for a county code violation resulting from such nuisance within the 12-month period prior to the issuance of any order as provided in section 2, and amendments thereto.

(d) The board of county commissioners may order the removal or abatement of any nuisance from any lot or parcel of ground within the unincorporated area of the county. The board may order:

- (1) The draining of any pond or other body of water; or  reinserted subparagraph (1)
- (2) the repair or demolition of any structure, or the removal or abatement of any other type of nuisance.

The order shall provide that all costs associated with the abatement shall be paid by the owner of the property on which the nuisance is located.

New Sec. 2. (a) Whenever the board of county commissioners or other agency designated by the board files with the Sedgwick county clerk a statement in writing describing a nuisance and declaring that such is a menace and dangerous to the health of the inhabitants of the county, the board of county commissioners, by resolution, may make such determination.

(b) Except as provided by subsection (c), the board of county commissioners shall order the owner of the property to remove and abate the nuisance within not less than 10 days, to be specified in the order. The governing body or its designated representative shall grant extensions of the time period indicated in the order if the owner or agent of the property demonstrates that due diligence is being exercised in abating the nuisance. The order shall state that before the expiration of the waiting period or any extension, the recipient may request a hearing before the governing body or its designated representative. The order shall be served on the owner or agent of the property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(c) If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice sent pursuant to this section during the preceding 24-month period, the governing body may provide notice of the issuance of any further orders to abate or remove a nuisance from the property in the manner provided by subsection (d) or as provided in this subsection. The governing body may provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of the order on the property, personal notification, telephone communication or first class mail. If the

property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(d) If the owner or agent fails to comply with the requirement of the order for a period longer than that named in the order or any extensions of such time period, the board of county commissioners may proceed to repair or demolish any structure and have the things described in the order removed and abated from the lot or parcel of ground. If the county abates or removes the nuisance, the county shall give notice to the owner or agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the county. The notice also shall state that payment of the cost is due and payable within 30 days following receipt of the notice.

(e) If the cost of the removal or abatement is not paid within the 30-day period, the cost shall be assessed and charged against the lot or parcel of land on which the nuisance was located. If the cost is to be assessed, the county clerk, at the time of certifying other county taxes, shall certify the costs, and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of land, and it shall be collected by the county treasurer.

(f) In assessing the cost of removal and abatement of a nuisance, the county shall subtract from the total cost of the abatement or removal incurred by the county the value of the property removed or abated. If the value of the property removed or abated is greater than the cost of the abatement or removal incurred by the county, the county shall pay the owner the difference. If the

value of the property is contested, the property owner may request a hearing before the governing body or its designated representative prior to the 30 days following receipt of notice of costs due and payable under subsection (d).

New Sec. 3. Sedgwick county may remove and abate from property, other than public property or property open to the use by the public, a motor vehicle determined to be a nuisance. Disposition of such vehicles shall be in compliance with the procedures for impoundment, notice and public auction provided by K.S.A. 8-1102(a)(2), and amendments thereto. Following any sale by public auction of a vehicle determined to be a nuisance, the purchaser may file proof with the division of vehicles, and the division shall issue a certificate of title to the purchaser of the motor vehicle. If a public auction is conducted, but no responsible bid is received, the county may file proof with the division of vehicles, and the division shall issue a certificate of title of the motor vehicle to the county. Any person whose motor vehicle has been disposed of pursuant to this section shall be eligible for a refund of the tax imposed pursuant to K.S.A. 79-5101 et seq., and amendments thereto. The amount of the refund shall be determined in the manner provided by K.S.A. 79-5107, and amendments thereto.

New Sec. 4. The governing body may adopt a resolution to establish any policies, procedures, designated body or other related matters for hearings that property owners or their agents may request pursuant to this act.

New Sec. 5. Nothing in the Sedgwick county urban area nuisance act shall apply to land, structures, machinery and equipment, or motor vehicles used for agricultural purposes.