

## CHAPTER 7. NUISANCES

Article 1. Prohibiting Nuisances within the County

Article 2 Noise Control

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### ARTICLE 1. PROHIBITING THE MAINTENANCE, COMMISSION AND CAUSING OF NUISANCES WITHIN THE COUNTY

- 7-101. NUISANCES DEFINED AND PROHIBITED. It shall be unlawful for any person to permit, cause, keep or maintain any nuisance, or cause to be committed, caused, kept or maintained any nuisance within Douglas County. Anything which is dangerous to or violates the health, peace, or welfare of any citizen of Douglas County, Kansas, is hereby deemed and declared to be a nuisance. (HR 93-6-5, Sec. 1)
- 7-102. EXEMPTIONS. The following activities shall not be deemed a nuisance as defined herein:
- (a) Any activity normally associated with the operation of an agricultural, farming or ranching business; and
  - (b) The normal operation of any industrial business which is being carried on in an area zoned for such use or for which a conditional use permit has been issued by the Board. (HR 93-6-5, Sec. 2)
- 7-103. ABATEMENT; NOTICE. Whenever the Board determines that any nuisance, as herein defined, exists on any premises within the County, it shall be the duty of the Board (or its designated representative) to notify in writing the owner or occupant thereof of the existence of such a nuisance, specifying the measures necessary to abate such nuisance and requiring its abatement. The notice to abate such nuisance must be served on the occupant of the premises personally, or if there is no such occupant, then the notice must be sent to the owner or agent of the owner of such premises by United States mail, postage prepaid, to the address of such owner or agent. (HR 93-6-5, Sec. 3)
- 7-104. ABATEMENT; DUTY OF OWNER; FAILURE TO COMPLY. Upon receipt of the notice specified by 7-103, above, it shall be the duty of the owner or occupant receiving notice to abate the nuisance within the time specified in the notice and it shall be unlawful for any such occupant or owner to fail to take remedial action. In the event such occupant, owner or agent shall fail, neglect or refuse to comply with the terms of the notice, or in case the Board or its designated representative after having used due diligence, is unable to locate any occupant, owner or agent, the Board shall have the authority to take remedial action. (HR 93-6-5, Sec. 4)

7-105. ENFORCEMENT. (a) Injunction. The Board may bring an action in the District Court of Douglas County to enjoin the nuisance and upon a finding that a nuisance exists the Court shall make an order enjoining the nuisance and granting such further relief as is necessary to protect the interest of the citizens of Douglas County, Kansas.

(b) Temporary Abatement. In the event that the Sheriff of Douglas County, Kansas, determines that an emergency exists wherein a nuisance, as defined herein, presents an immediate risk to the health, peace, or welfare of any citizen of Douglas County, Kansas, and irreparable harm may occur if the nuisance is not immediately abated, he may enter upon the premises and temporarily abate the nuisance in such manner as he believes will best protect the citizens of the County. Before any permanent abatement takes place the notice procedures set forth herein shall be followed. (HR 93-6-5, Sec. 5)

## **ARTICLE 2. NOISE CONTROL**

7-201. NOISE DISTURBANCE PROHIBITED. No person or group of persons, regardless of number, shall make, continue, or cause to be made, or assist in making or continuing to make, any Noise Disturbance in the unincorporated areas of Douglas County. Any person creating any such Noise Disturbance and/or permitting such Noise Disturbance to be created in, or emanate from, any property under his or her care, custody or control shall be presumed responsible for any such noise. (HR 11-7-3, Sec 1)

7-202. NOISE DISTURBANCE DEFINED. For the purposes of this Article, a "Noise Disturbance" shall mean any sound, including but not limited sounds emitted from any mechanical or electronic device under the control of a person, which, because of its volume level, duration or character, (i) annoys, disturbs, injures, or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities, and (ii) interferes seriously with neighboring residents' reasonable use and enjoyment of their properties. (HR 10-6-3, Sec 1)

7-203. EXEMPTIONS. The prohibitions of Section 7-201 shall not apply to any of the following:

- (a) Any activity normally associated with the operation of an agricultural, farming or ranching business; and
- (b) The normal operations of any industrial business being carried on in an area zoned for such use or for which a conditional use permit has been issued by the Board of County Commissioners; (HR 10-6-3, Sec 1) and
- (c) Governmental operations, safety signals, warning devices, emergency signaling devices, or operation of emergency vehicles; and
- (d) Emergency work necessary to restore property to a safe condition, including but not limited to work necessary to repair or restore services provided by public service or utility companies such as water, gas,

telephone, and electricity, or to protect a person and property from eminent danger; and

(e) Railroads or lawfully operated aircraft; and

(f) The lawful discharge of firearms between the hours of 7:00 a.m. and 10:00 p.m. or in connection with lawful hunting activities (HR 11-7-3, Sec 2); and

(g) Otherwise lawful discharge of fireworks; and

(h) Engine noise from normal and otherwise lawful operation of motor vehicles on public roads, or on private roads and private drives while traveling directly to and from a public road (the operation or permitting the use or operation of any motor vehicle, including but not limited to a motorcycle, sports utility vehicle, three wheeler, four wheeler, or other all terrain vehicle on private property for entertainment purposes is not exempt); and

(i) Activities of a temporary duration, including but not limited to musical or theatrical productions, sporting events, fireworks displays and temporary business uses, that are specifically approved by a permit or authorization approved by the Board of County Commissioners or by an authorized officer or employee of Douglas County; provided, however, that a Noise Disturbance from construction, excavation or demolition activities shall not be exempt under this Section simply by the issuance of a building, excavation or demolition permit. (HR 10-6-3, Sec 1)

7-204. INTERPRETATION AND SEVERABILITY: This Article is supplementary to other provisions or remedies authorized or prescribed by any other applicable law or rule or regulation enacted thereunder. The invalidity of any particular provision of this Article shall not affect the validity of any other provision. This Article shall be liberally construed to the fullest extent permitted by law to effectuate the broad remedial purposes for which it is intended. (HR 10-6-3, Sec 1)

7-205. ENFORCEMENT AND PENALTIES: The violation of Section 7-201 shall cause such person to be subject to one or more of the following enforcement provisions:

(a) Criminal Proceedings. Any person who violates any provision of this Article shall be guilty of a misdemeanor, punishable as follows:

1. First offense in a twelve-month period, a fine of \$100.
2. Second offense in a twelve-month period, a fine of not less than \$100 or more than \$250, or up to 30 days confinement in the county jail, or both.
3. Third and subsequent offense in a twelve-month period, a fine of not less than \$250 or more than \$500, or up to 90 days confinement in the county jail, or both.

(b) Commencement of Prosecution. The prosecution for the violation of this Article shall be commenced by the filing of a complaint with the district court or the service of the complaint and a notice to appear upon the accused person.

(c) Continuing Violation. Each day that any violation occurs shall constitute and shall be punishable as a separate offense. If any person is found guilty of a violation hereunder and it shall appear to the court that the violation complained of is recurring or continuing, then in addition to the penalty set forth, the court shall enter such order as it deems appropriate to enjoin or otherwise cause the violation to be abated.

(d) Other remedies. No provision of this Article shall be construed to impair any common law or statutory cause of action or other legal remedy of any person for injury or damage arising from the commission of any act that would constitute a violation of this Article. (HR 10-6-3, Sec 1)