RESOLUTION NO. 120706-70

RESOLUTION CONCERNING NUISANCE WEEDS WITHIN THE UNINCORPORATED AREAS OF RILEY COUNTY

WHEREAS, the Board of Commissioners of Riley County, Kansas, is authorized by K.S.A. 19-101 to exercise the powers of home rule to determine their local affairs and government pursuant to the provisions of K.S.A. 19-101a; and

WHEREAS, the Board of Commissioners of Riley County, Kansas, finds it would be in the best interest of the public health, safety, and welfare to adopt a resolution concerning nuisance weeds within the unincorporated areas of Riley County; and

WHEREAS, the Board of Commissioners of Riley County, Kansas, finds that certain conditions as hereinafter defined cause annoyance, inconvenience, or damage to the public with respect to the public's comfort, health, safety, welfare, and enjoyment of property; and

WHEREAS, the Board of Commissioners of Riley County, Kansas, wishes to proscribe those conditions which are injurious to the public and which constitute a public nuisance. It is further the purpose and intent of the Board of Commissioners of Riley County, Kansas, to provide for procedures regarding notice, abatement, and prosecution of those individuals who allow nuisance weed conditions to exist or maintain nuisance weed conditions.

NOW, THERFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF RILEY COUNTY KANSAS:

Section 1. Definitions. For purposes of this resolution, the following words and phrases are defined as follows:

(a) *Owner* shall mean any person, firm, corporation, partnership or other business entity who alone or jointly or severally:

(1) Shall have record legal title to any property with or without accompanying actual possession thereof;

(2) Shall have charge, care, or control of any property as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

(b) *Property* means a lot, plot, and parcel of land or any real property, including any vacant and vacated real property, lying within unincorporated areas of Riley County which is not a street, road or highway.

(c) *Nuisance* means all grass, weeds and obnoxious vegetative growths which blossom, mature or obtain a size in excess of 12 inches, or a size sufficient to interfere in any manner with the health, safety and welfare of the public, or a size sufficient to scatter the seeds therefrom upon the same or adjacent property. Native and ornamental plantings that exhibit evidence of care shall be exempted from the provisions of this resolution.

(d) *Agriculture Use:* The use of a tract of land as a principal business enterprise for growing farm crops in the open, the raising of such stock and poultry as are incidental to the farming operation, dairying, pasturage, horticulture, floriculture, the raising of nursery stock and accessory uses, including the structures for carrying out agricultural operations and the residence of the persons, and their families, who own or operate the farm. The term "Agricultural Use" shall not include the following:

(1) Commercial greenhouses, nurseries and hydroponic farms with the exceptions that the growing of nursery stock and related items and the structures required for the growing of nursery stock are permitted.

(2) The feeding of garbage to animals, the raising of furbearing animals as a principal business use, or the operation of a Feed Lot as defined by the Statutes of the State of Kansas.

Section 2. Exemptions. This resolution shall not apply to the use of land or buildings for agricultural use.

Section 3. Maintain Nuisance. Maintaining a nuisance is, by act or by failure to perform a legal duty, intentionally causing or permitting a nuisance to exist.

Section 4. Permit Nuisance. Permitting a nuisance to exist is knowingly permitting lots, plots, parcels or pieces of real property under the control of the owner to be used or allowed to remain in such condition as to allow a nuisance condition to exist.

Section 5. Size Limitation of Nuisance. The maintaining or permitting of a nuisance on any lot, plot, parcel or piece of real property less than two (2) acres is hereby declared to be and constitute a nuisance.

Residential zoning of two (2) acres or more is compatible with density zoning principles and allows for livestock with associated feed production.

Section 6. Enforcing Officer. The Riley County Noxious Weed Office, in accordance with K.S.A. 2-1330, is hereby authorized to inspect and examine at any and all times all lots, plots, parcels or pieces of real property within the unincorporated areas of the County in connection with the administration of state weed law.

Section 7. Procedure. For the purposes of implementing this resolution, the following procedure is designated:

(a) A notice and order shall state that the nuisance must be abated within ten (10) days from the date of service of the notice and order.

(b) The notice and order shall be mailed by United States mail, certified postage prepaid to the owner.

(c) The owner receiving such notice and order shall have ten (10) days from either the date of service of the notice and order, the date of refusing service of the notice and order or the date of return service of the notice and order, to file a written request of hearing before the Board of Commissioners with the County Clerk.

(d) Upon receipt of a written request of hearing, the County Clerk shall present it at the next regular or special meeting of the Board of Commissioners. As soon as practicable after receiving the written request of hearing, the Board of Commissioners shall fix a date, time and place for the hearing. Such date shall not be more than twenty-one (21) days from the date the written request of hearing was filed with the County Clerk.

(e) Written notice of the time and place of the hearing shall be given at least seven (7) days prior to the date of the hearing to each owner by the County Clerk either by causing a copy of such notice to be delivered to the owner personally or by mailing a copy by certified mail, postage prepaid with return receipt requested.

(f) If the nuisance is not abated as directed and no request for hearing is made, the Riley County Noxious Weed Office shall levy an administrative penalty of two hundred fifty ($250.00) and/or abate the nuisance and assess the penalty and costs of the abatement to the owner and against the property if the assessment is not paid, in accordance with this resolution.

(g) All funds collected by the Riley County Noxious Weed Office shall be deposited with the County Treasurer for the General Fund.

Section 8. Same; Hearing /Appeal Stay. Enforcement of any notice and order pursuant to this resolution shall be stayed during the pending of a hearing or an appeal which is properly and timely filed.

Section 9. Same; County Counselor Duties. The Riley County Counselor shall enforce the provisions of this resolution and is hereby authorized to file appropriate actions for such enforcement, upon request of the Riley County Noxious Weed Office or the Board of Commissioners and upon showing that there are sufficient grounds for such action. In addition to other remedies, any action in equity is appropriate for enforcement of this resolution.

Section 10. Same; Contents of Notice and Order. When the Riley County Noxious Weed Office determines that a nuisance exists with respect to grass, weeds or other vegetation, then said office shall forthwith issue a notice and order requiring the owner of the property to remove or abate the nuisance from said property. The notice and order shall contain:

(a) The street address or complete legal description sufficient for identification of the property upon which the nuisance is located.

(b) A brief statement and concise description of the conditions found.

(c) A statement that the nuisance must be abated within ten (10) days from the date of service of the notice and order.

(d) The notice and order shall be mailed by United States mail, certified postage prepaid to the owner.

(e) The owner receiving such notice and order shall have ten (10) days from either the date of service of the notice and order, the date of refusing service of the notice and order or the date of return service of the notice and order, to file a written request of hearing before the Board of Commissioners with the County Clerk.

(f) Upon receipt of a written request of hearing, the County Clerk shall present it at the next regular or special meeting of the Board of Commissioners. As soon as practicable after receiving the written request of hearing, the Board of Commissioners shall fix a date, time and place for the hearing. Such date shall not be more than twenty-one (21) days from the date the written request of hearing was filed with the County Clerk.

(g) Written notice of the time and place of the hearing shall be given at least seven (7) days prior to the date of the hearing to each owner by the County Clerk either by causing a copy of such notice to be delivered to the owner personally or by mailing a copy by certified mail, postage prepaid with return receipt requested.

(h) Failure to request a hearing shall constitute a waiver of the right to an administrative hearing and will result a determination of the matter.

(i) Appeal of any decision by the Board of Commissioners shall be to district court pursuant to K.S.A. 60-2101(d). Failure to appeal shall constitute a waiver of all appellate rights.

(j) A statement that if the nuisance is not abated as directed and no request for hearing is made, the Riley County Noxious Weed Office shall levy an administrative penalty of two hundred fifty ($250.00) and/or abate the nuisance and assess the penalty and costs of the abatement to the owner and against the property if the assessment is not paid, in accordance with this resolution.

(k) All funds collected by the Riley County Noxious Weed Office shall be deposited with the County Treasurer for the General Fund.

Section 11. Same; Penalty. Upon the conclusion of a Board of Commissioner's hearing, there shall be an administrative penalty levied if a nuisance condition is found to exist. The owner shall have fourteen (14) days after the hearing to abate the nuisance and set aside the administrative penalty. The administrative penalty shall not be less than $250.00 but not more than $500.00. If administrative penalty is not paid, it shall be assessed against the owner's property in accordance with this resolution.

Section 12. Same; Abatement. The following abatement procedures shall be authorized where the owner, occupant, agent or responsible party fails to abate a nuisance:

(a) Upon failure of a person to abate a violation upon whom notice and order to abate a violation has been served pursuant to the provisions of this resolution in addition to the remedy of enforcement, the Riley County Noxious Weed Office or designee or other duly designated officer of the County shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.

(b) Any and all costs and fees incurred by the County in the abatement of a nuisance and penalties levied on the owner under the provisions of this resolution shall be assessed against each lot or piece of ground chargeable therewith, as a service assessment as provided by law. In such case, if the assessment remains unpaid by December 31 of each year, the Riley County Noxious Weed Office shall immediately notify or cause to be notified, such owner and/or taxpayer with an itemized statement of costs incurred in abating the violation. Such statement will further explain that if the amount contained therein is not paid to the Riley County Noxious Weed Office within thirty (30) days from the date of such notice, a penalty charge of ten percent (10%) of the amount remaining unpaid shall be added to the account of the total amount thereof and shall become a lien upon such real estate.

The unpaid balance of such account shall draw interest from the date such account became delinquent taxes pursuant to K.S.A. 79-2968 and amendments thereto. A copy of the statement, together with proof of notification, shall at the same time be filed by the Riley County Noxious Weed Office with the County Register of Deeds and the County Clerk, and if such amount is not paid within the next thirty (30) days, the County Clerk shall spread the amount of such statement upon the tax rolls prepared by the Clerk and such amount shall become a lien against the entire tract of land owned by such person, and shall be collected and disposed of in the same manner as other taxes. If any land subject to a lien imposed by this resolution is sold or transferred, the entire remaining unpaid balance of such account plus any accrued interest, costs, fees, and penalties shall become due and payable prior to the sale or transfer of ownership of the property. All funds collected by the Riley County Noxious Weed Office shall be deposited with the Riley County Treasurer for the General Fund.

Section 13. Release of Lien. Upon owner's payment in full of all costs and fees incurred by the County in the abatement of a nuisance, penalties levied on the owner, and lien release recording fees, the Riley County Noxious Weed Office is authorized to release any lien on the owner's property.

Section 14. Appeal. Appeal of any decision by the Board of Commissioners shall be to district court pursuant to K.S.A. 60-2101 (d).

Section 15. Validity. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this resolution or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions or any part thereof.

Section 16. Effective Date. This resolution shall take effect and be in force from and after its publication in the official County newspaper.

ADOPTED THIS 7th DAY OF December, 2006.

THE BOARD OF COMMISSIONERS
Of Riley County, Kansas

Chairman

Member

Member

ATTEST:

RICH VARGO, Riley County Clerk

COUNTY CLERK
Seal
RILEY COUNTY, KANSAS