

ORDINANCE NUMBER 23-24

An ordinance to amend Sections 17-181 through 17-187, inclusive, of the Beatrice City Code; to amend Division 2 of Article VIII, Chapter 17 of the Beatrice City Code; to amend Sections 17-201 through 17-205, inclusive; to repeal Division 3 of Article VIII, Chapter 17, including Sections 17-206 through 17-209, inclusive, of the Beatrice City Code; to repeal conflicting ordinances or parts of ordinances; and to provide for publication in electronic form and for an effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That Section 17-181 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-181. Nuisances generally.

For the purposes of this article, a nuisance generally consists of any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition, or thing:

- (1) Injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any stream, public park, parkway, square, street or highway in the city;
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others."

SECTION 2. That Section 17-182 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-182. Nuisances enumerated.

The maintaining, using, placing, depositing, leaving or permitting to be or remain in or upon any private lot, building, structure or premises, or at in or upon any street, avenue, alley, park or parkway, or at any place within one hundred (100) feet from the water's edge of the Big Blue River at low water mark, or at any other public or private place, of any one (1) or more of the following conditions or things is hereby declared to be and constitute nuisances; provided that this enumeration shall not be deemed to be conclusive:

- (1) Any putrid, unsound or unwholesome meat, hides, skins, feathers, or the whole or any part of any dead animal, fish or fowl;
- (2) Privies, vaults, cesspools, dumps, pits or like places which are not securely protected from flies or rats, or which are foul or malodorous;
- (3) Filthy, littered or trash-covered cellars, house yards, barnyards, stable yards, factory yards, vacant area in rear of stores, vacant lots, houses, buildings or premises;
- (4) Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any provision of this Code or ordinance of the city;
- (5) Liquid household waste, human excreta, garbage, butchers' trimmings and offal, parts of fish or any waste vegetable or animal matter in any quantity; provided nothing contained herein shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the city, nor the dumping of non-putrifying waste in a place and manner approved by the health officer;
- (6) Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same is kept in the containers described in chapter 22 of this Code;
- (7) Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste material, when any of such articles or materials create a condition in which flies or rats may breed or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity thereof, or which are placed on or near the banks of the Big Blue River and tend to obstruct the flow or fill up the bed thereof;
 - (a) Litter shall include, but not be limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended

functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;

- (8) Any unsightly building, billboard or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards or other structures are a fire hazard, a menace to the public health or safety, a menace to the free use of any street, sidewalk or other public way, or are so unsightly as to depreciate the value of property in the vicinity thereof;
- (9) All places used or maintained as junkyards or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors or machinery of any kind, or for the storing or leaving of worn out, wrecked or abandoned automobiles, trucks, tractors or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;
- (10) Stagnant water permitted or maintained on any lot or piece of ground;
- (11) Stockyards, pig pens, cattle pens, chicken pens or any other place, building or enclosure, in which animals or fowl of any kind are confined, or premises on which are stored tankage or any other animal or vegetable matter, when the places in which such animals are confined, or the premises on which such vegetable or animal matter is stored, are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom, to the annoyance of inhabitants of the city, or are maintained and kept in such a manner as to be injurious to the public health;
- (12) Pits or excavations within the city not being used for the purpose of building where such pits or excavations are made and the leaving of any such pits or excavations in an exposed condition for a period of twenty-four (24) hours or longer; or
- (13) Upholstered or other furniture which is designed or manufactured primarily for indoor use with no original outdoor weatherproofing qualities including, but not limited to, upholstered chairs, upholstered couches, and mattresses when used or left on unenclosed exterior porches, balconies, or in an exposed open area including, but not limited to, decks, patios, roofs, yards, driveways, or walkways. Exterior porches shall not include any porch completely covered by a roof, when located at and attached to a building and completely enclosed by fully intact glass and/or fully intact screens which are designed to keep out insects and allow air flow.
- (14) Weeds, grasses, or worthless vegetation that are twelve (12) inches or more in height.

- (a) Weeds shall include, but not be limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), nodding or must thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.) (toun), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosianaceae*)."

SECTION 3. That Section 17-183 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-183. Generally prohibited.

It shall be unlawful for any person, corporation, company, partnership, or association owning or occupying any lot or land within the city, or within two (2) miles of the corporate limits thereof, to cause, permit, maintain, or allow the creation or maintenance of a nuisance."

SECTION 4. That Section 17-184 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-184. Enforcement.

Unless otherwise provided, the Code Enforcement Officer or his or her designee, shall enforce the provisions of this Article against all nuisances."

SECTION 5. That Section 17-185 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-185. Jurisdiction.

If any nuisance is found outside the limits of the city which shall constitute a menace to the health and safety of the inhabitants of the city or the inhabitants of the territory adjacent to the city limits and within two (2) miles thereof, the jurisdiction of the Code Enforcement Officer or his or her designee, shall extend to, and the territorial application of this article shall include, all territory adjacent to the city limits and within two (2) miles thereof."

SECTION 6. That Section 17-186 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-186. Nuisance and weed control.

- (a) **Duty Against Nuisances.** Every owner or occupant of any lot or land within the city or within two (2) miles of the corporate limits thereof shall keep said premises owned or leased by him or her and the streets, roads, or alleys abutting on such lot or land free from nuisances.
- (b) **Notice to Abate.** When a nuisance is found to exist on any lot or land within the city or within two (2) miles of the corporate limits thereof, the City shall issue written notice to abate the nuisance to the owner and/or occupant. Such notice shall be sent via first-class mail or personal service. If service by first-class mail or personal service is unsuccessful, then the City may post the notice to abate in a conspicuous place on the real property where such nuisance is located, or publish notice in a local newspaper for three (3) consecutive weeks. The notice to abate shall include:
 - (1) A description of the condition or thing which constitutes a nuisance pursuant to this Article;
 - (2) A statement that a five (5) calendar day period of compliance is afforded to abate or remove the nuisance;
 - (3) A warning that upon failure to comply, the City may cause a criminal and/or civil complaint to be filed against the owner and/or occupant for the violation of this Article and/or that the City is authorized to remove and abate the nuisance at the owner and/or occupant's costs; and
 - (4) The process by which the owner and/or occupant may request an appeal hearing.

A notice to abate issued pursuant to this section shall be deemed a continuing notice regarding the nuisance(s) described for a period of one (1) year from the date of service. Within said one (1) year period, no further notice or opportunity to abate is necessary in order for the city or its designee to take action as described in this Article, except for the notice to abate weeds, grasses, or worthless vegetation.

- (c) **Appeal Procedure.** Within five (5) calendar days after receipt, posting or publication of such notice to abate, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city clerk. Requests for appeal hearings shall be accompanied by a filing fee in an amount established by resolution adopted by the city council. A hearing on the appeal shall be held within fourteen (14) business days after filing the appeal and shall be conducted by the city administrator or his or her designee. Requests for an appeal hearing that are not accompanied by the required filing fee or that are received after the expiration of the five (5) calendar day period of compliance shall be considered invalid. The city administrator or his or her designee shall render a decision on the appeal within five (5) business days after the conclusion of the hearing. If the appeal fails, the city may remove and/or abate the nuisance, file a

criminal complaint, and/or file a civil complaint and assess the costs of abatement to the owner or occupant, or both, or take any other actions authorized by this Article.

- (d) **Abatement; Citation.** Within five (5) calendar days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground has not requested an appeal hearing with the city as outlined above or fails to comply with the notice to abate and remove the nuisance, the City or its designee shall have the right to enter upon the property where such nuisance exists and remove and/or abate the nuisance. It shall be unlawful for any person, corporation, company, partnership, or association to interfere with, hinder, or refuse to allow the City or its designee to enter upon private property for the purpose of removing or abating a nuisance under the provisions of this Article. For any violation of this subsection, the City may also cause a criminal and/or civil complaint to be filed against such person, corporation, partnership or association committing the unlawful act(s). The costs and expenses of any such work shall be paid by said owner or occupant. If unpaid for two (2) months after such work is done, the city may either (i) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (ii) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.
- (e) **Penalty.** Any owner or occupant of a lot or piece of ground who shall fail or refuse to perform such duty as set forth in this section shall be guilty of a class V misdemeanor and upon conviction thereof shall be subject to a maximum fine of one hundred dollars (\$100.00). Each day the violation of this section continues shall constitute separate and distinct offense and shall be punishable as such."

SECTION 7. That Section 17-187 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-187. Abatement by city authorized.

Whenever a nuisance exists, the city may proceed by a suit in equity in the county district court to enjoin and abate the same, in the manner provided by law; or it may elect to enforce the provisions of this article by complaint and warrant."

SECTION 8. That Division 2 of Article VIII, Chapter 17 of the Beatrice City Code be and is hereby amended to read as follows:

"DIVISION 2. -GARBAGE"

SECTION 9. That Section 17-201 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-201. Definitions.

For the purpose of this division, the following definitions shall apply:

Garbage, as used in this division, shall mean all animal, fruit or vegetable waste residue which is produced by preparation, dressing, use, cooking, dealing in or storage of meats, fish, fowl, fruits, vegetables, cereals or grains for human consumption, and coffee or tea grounds."

SECTION 10. That Section 17-202 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-202. Duty to remove garbage.

It shall be the duty of every owner or tenant of any lot or land within the city or within two (2) miles of the corporate limits thereof to keep said premises owned or leased by him or her and the streets, roads or alleys abutting on such lot or land free from garbage. It shall be unlawful for such owner or tenants of such lot or land to permit, keep or maintain thereon any such condition liable to become putrid or injurious to the public health, or any condition liable to produce any disease or which is conducive to the breeding and existence of rats, mice, flies, mosquitoes, bacteria or any other rodents or insects. The maintenance or permitting of any of the foregoing conditions upon any such lot or land or the streets, roads or alleys abutting thereon is hereby declared to be a public nuisance and shall constitute a misdemeanor."

SECTION 11. That Section 17-203 of the Beatrice City Code be and is hereby amended to read as follows:

"Sec. 17-203. Notice to abate; removal.

Whenever it shall come to the knowledge of the chief building inspector that there exists a public nuisance as defined in section 17-206 of this division, the chief building inspector shall cause notice to abate and remove such public nuisance within five (5) days to be served upon the owner or his authorized agent and upon the tenant of said premises, if any. Such notice shall be served either in person or by mailing such notice by certified mail. If the owner or tenant shall have failed or refused to abate and remove such public nuisance at the expiration of the date fixed in such notice, the chief building inspector shall cause such nuisance to be removed from such lot or land and from any roads, streets or alleys abutting thereon."

SECTION 12. That Section 17-204 of the Beatrice City Code be and is hereby amended to read as follows:

“Sec. 17-204. Removal of immediate hazards.

If the chief building inspector determines that there exist upon any lot or land the conditions described in section 17-206 of this division in such a manner as to constitute an immediate nuisance and hazard to public health and safety, he shall request the mayor to declare that such an immediate public nuisance exists, and after any such declaration, the chief building inspector shall cause to be issued a written notice to abate and remove such public nuisance from such lot or land within twenty-four (24) hours. Such notice shall be served by personal service or by certified mail upon the owner or his authorized agent and to any tenant of the premises, if any. If such owner or tenant shall have failed or refused to abate and remove such nuisance at the expiration of twenty-four (24) hours from delivery of the notice, the chief building inspector shall cause such nuisance to be removed from such lot or land and from any roads, streets or alleys abutting thereon within twenty-four (24) hours thereafter.”

SECTION 13. That Section 17-205 of the Beatrice City Code be and is hereby amended to read as follows:

“Sec. 17-205. Assessment of cost.

The chief building inspector shall, not later than the fifteenth day of September of each year, report to the city council on all real estate cleared of a public nuisance since September first of the previous year under the provisions of this division together with the costs thereof. Whereupon, the city council, after public hearing at a regular council meeting, shall by ordinance assess the costs against such real estate. Notice of the time of such meeting of the city council for making such assessment and for the purpose of such public hearing shall be published once in a newspaper published of general circulation in the city at least five (5) days before such meeting of the council is held, and notice shall be mailed to the owner of such real estate by certified mail five (5) days before such hearing. Any such assessment, when assessed as provided in this section, shall be a lien upon such real estate from the date of assessment and shall be collected in the same manner as other taxes of the city.”


SECTION 14. That Division 3 of Article VIII, Chapter 17, including Sections 17-206 through 17-209, inclusive, of the Beatrice City Code be and are repealed.

SECTION 15. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 16. That this ordinance shall be in full force and effect from and after its passage, approval, and publication in electronic form as provided by law.

PASSED AND APPROVED this 2nd day of October, 2023.

Attest:


Erin Saathoff, CMC, City Clerk


Robert Morgan, Mayor





MEMORANDUM

TO: Mayor & City Council

DATE SUBMITTED: August 29, 2023

FROM: Taylor Rivera
City Attorney

FOR AGENDA OF: September 5, 2023

SUBJECT: Amendment – Nuisance Codes

EXHIBIT(S): Redline Ordinance

The City Council formed a Codes Committee earlier this year. At the recommendation of the Codes Committee, a review of the City's nuisance codes was conducted. The proposed amendment to the nuisance codes is intended to clean up a few areas that have not been updated for many years, to make the code reflect current-day practices, and to make the notice procedures uniform with the rest of the City Codes. Additionally, today the nuisance codes address weeds in both Division 1 and Division 2 of Article 17. As such, the proposed amendment will repeal the redundant weeds language.