

ORDINANCE NUMBER 16-005

An ordinance to add Article XII and Sections 7-370, 7-371, 7-372, 7-373, 7-374, 7-375, 7-376, 7-377, 7-378, 7-379, 7-380, and 7-381 to the Beatrice City Code regarding voluntary registration of adjoining buildings, set fees for inspections, identify exemptions, notate penalties and outline other matters related to adjoining buildings; and to provide for publication in pamphlet 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 Article XII. and Section 7-370 of the Beatrice City Code be and hereby is added as follows:

“Article XII. Adjoining Building Code

Sec. 7-370. Purpose.

Recognizing that buildings that are in disrepair or dilapidated and adjoining to neighboring buildings endanger public health, safety, and welfare. Maintenance of the public health, safety, and welfare thus requires the City to inspect ~~all~~ adjoining commercial buildings.”

SECTION 2. That Section 7-371 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-371. Public Nuisance.

An adjoining building in disrepair or in a dilapidated state constitutes a public nuisance. The City of Beatrice is given the power and authority pursuant to Nebraska Revised Statute 18-1720 to define, regulate, suppress and prevent such nuisances.”

SECTION 3. That Section 7-372 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-372. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

Adjoining Building means:

- (1) any commercial building which touches, abuts, or adjoins another building were the owner of the two buildings are different people or entities; or
- (2) any commercial building with an exterior wall whose height (in feet) is greater than the distance (in feet) from the base of the exterior wall to the base of any surrounding building were the owner of the two buildings are different people or entities;

Building means a building, accessory structure, mobile or modular structure, or other structure adapted to permanent occupancy for residential or commercial purposes.

Building Inspector means the Chief Building Inspector, the Building Inspector, the Code Enforcement Officer, or any of their designees.

~~*Calendar Year* means a period of one year starting January 1 of the given year and ends on December 31st of the same given year.~~

City means the City of Beatrice.

Commercial activity means having the objective of supplying commodities (goods and services) and ancillary business functions.

Commercial building means a building with more than fifty percent (50%) of its floor space used for commercial activity. For the purposes of this Article, floor space shall be designated as the area on the main or street level of the building.

~~*Dangerous structure* means a structure that is potentially hazardous to persons or property, including, but not limited to: (a) a structure that is in danger of partial or complete collapse; (b) a structure with any exterior parts that are loose or in danger of falling; or (c) a structure with any parts, such as floors, porches, railings, stairs, ramps, balconies, or roofs, that are accessible and that are either collapsed, in danger of collapsing or unable to support the weight of normally imposed loads.~~

Owner means the person, persons, or entity shown to be the owner or owners of record on the records of the Gage County Register of Deeds; those identified as the owner or owners on a adjoining building registration form; ~~holder of an unrecorded contract for deed, a mortgagor or vendor in possession, assignee of rents, receiver, executor, trustee, lessee, other person, firm or corporation in control of the freehold of the~~

~~premises; or lessor state therein. Any such person, persons, or entity, shall have a joint and several obligation for compliance with the provisions of this Article.~~

~~*Unoccupied* means a building which is not being used for a legal use or occupancy. The storage of products and materials does not constitute occupancy unless authorized by the zoning ordinance of the city.”~~

SECTION 4. That Section 7-373 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-373. Adjoining Building Registration, Exceptions, Voluntary Registration.

- ~~(a) — The owner shall register with the City not later than thirty (30) calendar days after the effective date of this ordinance any adjoining building in the city as defined in this Article.~~
- ~~(b) — The owner of an adjoining building must register the building with the City within thirty (30) calendar days of written notice provided to the owner or the owner’s resident agent of the existence of the adjoining building. Such notice shall be served on the owner or resident agent by personal service or by certified mail, return receipt requested. If the owner is a non-resident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the property or the adjoining building. A copy of the notice under Section 7-373(b) shall be recorded by the Director in the records of the Register of Deeds for Gage County, Nebraska and indexed against the premises.~~
- ~~The required registration shall be submitted on the form provided by the City. The form shall include but not be limited to: the name, current mailing address, phone number and any other contact information of the owner; the names and addresses of all known lien holders and all other parties with a legal or equitable ownership interest in the building; the common address of the building; and such other information deemed necessary by the City.~~
- ~~(c) — All applicable laws and codes shall be complied with by the owner. The owner shall notify the City of any changes in information supplied as part of the adjoining building registration within thirty (30) calendar days of the change.~~
- ~~(d) — If the owner of the adjoining building does not reside in Gage County for at least one hundred eighty (180) days in a calendar year, then they must provide the information for a resident agent with authority to act with respect to the property, including name, current mailing address, phone number, and any other contact information of the owner’s agent.~~

~~(e) Any subsequent owner of an adjoining building must register or re-register the building with the City within thirty (30) calendar days of any transfer of any ownership interest in the adjoining building.~~

~~(f)(d)~~ The owner of an adjoining building ~~shall be required to~~ may acquire and maintain liability insurance in an amount not less than \$1,000,000 for any adjoining buildings including but not limited to commercial, industrial, and mixed use residential/commercial. The liability insurance ~~required~~ noted herein shall provide coverage for any damage to any person or any property caused by any physical condition of or in the adjoining building. All adjoining buildings properly registered annually with the City of Beatrice, including the provision of the Certificate of Insurance set out in this section, shall be exempt from the specific inspection requirements of Beatrice City Code Sections 7-374 and 7-376. A copy of the Certificate of Insurance shall be attached to the registration outlined herein registration form maintained and kept in the office of the City Building Inspector. The owner shall provide written notice to the City Building Inspector within thirty (30) calendar days of any lapse, cancellation, or change in coverage related to the insurance policy outlined herein. The City Building Inspector at any time may verify or request verification that the liability insurance coverage outlined herein is still valid. Voluntary registration and proof of insurance shall not exempt any adjoining building from an inspection based upon emergency or visual observation pursuant to any other applicable city code.

~~(e)~~ All buildings owned by government entities including the United States Federal Government, State of Nebraska, and any political subdivisions thereof shall be exemption from all sections of this Article.

~~(g)~~ ”

SECTION 5. That Section 7-374 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-374. Adjoining Building Inspection.

Any owner of an adjoining building shall allow the City Building Inspector or their designee to inspect their property pursuant to this Article and any other applicable City Code.”

SECTION 6. That Section 7-375 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-375. Duty to Maintain.

The owner of an adjoining building and property shall keep the building secure, safe, and properly maintained in compliance with all federal, state and local ordinances and regulations.”

SECTION 7. That Section 7-376 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-376. ~~Annual~~ Inspection.

- (a) The City Building Inspector shall schedule and notify the property owner of a primary inspection of the property. At least ten (10) calendar days advance written notice of the inspection shall be provided to the property owner and/or tenant in accordance with applicable law. If the owner and/or tenant of an adjoining building refuses to consent to an inspection, the City Building Inspector shall obtain a warrant for the inspection in accordance with applicable law.
- (b) The primary inspection will be conducted to determine if the adjoining building satisfies applicable requirements of the International Property Maintenance Code, other building codes, and ordinances adopted or amended from time to time by the City of Beatrice, as such requirements, codes, and ordinances relate to the structural elements of the adjoining building. The structural elements of the adjoining building shall include, but not be limited to the foundation, walls, floors, joists, ceiling, and roof of the adjoining building. The City Building Inspector shall be authorized to take such actions as the City Building Inspector determines necessary or appropriate to implement, administer, and carry out the inspection requirements of this Article, including, but not limited to, scheduling inspections for the efficient use of City resources.
- (c) When the primary inspection of an adjoining building reveals any violation of applicable structural requirements, a notice shall be provided to the property owner identifying the violations and such violations shall be corrected pursuant to all applicable building codes adopted by the City.
- (d) The primary inspection shall be conducted at no charge. Follow up inspections after the primary inspection also shall be conducted at no charge if violations have been corrected. If any violation has not been corrected, a fee as established by resolution adopted by the City Council shall be charged for inspections after the primary inspection.
- (e) Inspections may also be conducted at other times as the City Building Inspector determines necessary, including inspections on a complaint-basis.

- (f) Inspections provided under this Article shall be in addition and supplemental to any other inspection or access authorized under applicable law.
- (g) The primary function of the inspection shall be related to the structural elements of the adjoining building. Peripheral observation, identification, or inspection of obvious violations of applicable requirements of the International Property Maintenance Code, other building codes, and ordinances adopted or amended from time to time by the City of Beatrice may also occur.
- (h) An adjoining building found to be in compliance at the primary annual inspection shall not be subject to the annual inspection requirements of this Section for a period of three (3) years. Such relief from inspection shall not limit the City's ability to inspect the property pursuant to any other applicable requirements of the International Property Maintenance Code, other building codes, and ordinances adopted or amended from time to time by the City of Beatrice."

SECTION 8. That Section 7-377 of the Beatrice City Code be and hereby is added as follows:

"Sec. 7-377. Adjoining Building Inspection Access.

- (a) It shall be the responsibility of the property owner or the property owner's agent to be present at the building on the date and time of all inspections to provide access for the inspection. Failure to be present at any inspection will result in a rescheduling fee as established by resolution adopted by the City Council.
- (b) If any property owner, tenant, or other person lawfully in control of an adjoining building contained therein fails or refuses to consent to access and entry to the rental property or rental dwelling under its/his/her ownership or control for any inspection pursuant to this Article, the City Building Inspector shall apply for and obtain a warrant or other appropriate court order authorizing such inspections in accordance with applicable law. Obstruction by a property owner, tenant, or other person of an inspection authorized by a legally enforceable warrant or other court order, shall be grounds for denial or revocation of the occupancy permit or renewal thereof, in addition to any other rights or remedies of the City under applicable law.
- (c) Access requirements of this Article shall be in addition and supplemental to any other access authorized under applicable law."

SECTION 9. That Section 7-378 of the Beatrice City Code be and hereby is added as follows:

"Sec. 7-378. Appeal Hearing.

- (a) Upon receiving notice of determination of an adjoining building, the owner of the building may appeal such decision within twenty (20) calendar days of receipt of the notice. Such appeal shall be in writing to the City Clerk accompanied by a non-refundable appeal fee. The appeal fee shall be set by resolution of the City Council. Such appeal shall request a hearing before the Board of Appeals to present reasons why the building should not be declared adjoining. The Board of Appeals shall set such hearing within twenty (20) business days from the date of receipt the written request.
- (b) A written notice of the Board of Appeals decision following the hearing shall be sent to the property owner by certified mail or shall be provided at the conclusion of the meeting. If the Board of Appeals rejects the appeal, the owner shall have thirty (30) calendar days from the decision to allow for inspection or register the adjoining building with the proper insurance certificate; provided, the property owner may appeal such decision, within thirty (30) calendar days of the Board of Appeals decision, to the appropriate court for adjudication during which proceedings the decision of the Board of Appeals shall be stayed.”

SECTION 10. That Section 7-379 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-379. Violations.

- ~~(a) — Any person or entity who fails to register an adjoining building pursuant to the timeline requirements established in this Article shall pay a late registration fee as established by resolution adopted by the City Council.~~
- ~~(b)~~(a) Any person upon whom a duty is placed by the provisions of this Article who shall fail, neglect, or refuse to perform such duty, or who shall violate a provision of this Article shall be deemed guilty of an misdemeanor infraction and upon conviction thereof shall be fined in any sum not to exceed \$500.00 ~~or be imprisoned in the county jail for a period not to exceed six (6) months, or both,~~ except that each person so convicted shall be fined in a sum of not less than \$200.00 for the first offense, not less than \$300.00 for the second offense, and not less than \$400.00 for the third offense and each offense thereafter. The penalty herein provided shall be cumulative with and in addition to the revocation, cancellation, or forfeiture of any license, permit, or right elsewhere provided for or as provided by law. Each day that a violation of this Article continues shall constitute a separate and distinct offense and shall be punishable as such.
- ~~(e)~~(b) Any and all civil penalties assessed under this section shall be billed to the owner or other responsible party. Failure or refusal to pay any and all such penalties permits the City to pursue any and all available legal remedies for the enforcement and collection of such penalties; including but not limited to, civil

actions being filed in district court, suits or actions being maintained in any court of competent jurisdiction, abatement of nuisances maintained in violation of this Ordinance, institution of injunction, mandamus, or other appropriate action or proceedings to enforce the penalty provisions of this Ordinance.

| ~~(d)~~(c) This ordinance in no way limits the penalties, actions or abatement procedures which may be taken by the City for a violation of any other ordinance of the City or statute of the State of Nebraska.”

SECTION 11. That Section 7-380 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-380. Savings Clause.

Should any paragraph, section or subsection of this ordinance be declared to be invalid by a court of competent jurisdiction, the decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.”

SECTION 12. That Section 7-381 of the Beatrice City Code be and hereby is added as follows:

“Sec. 7-381. Alternative procedures.

Nothing in this article shall be deemed to abolish or impair existing remedies of the City authorized by this Code.”

SECTION 13. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 14. That this ordinance shall be in full force and effect on July 5, 2016, after its passage, approval, and publication in pamphlet form as provided by law.

PASSED AND APPROVED this ___ day of _____, 2016.

Stan Wirth, Mayor

Attest:

Erin Saathoff, City Clerk

DRAFT