

ORDINANCE RECORD

No. 728-REDFIELD & COMPANY INC., OMAHA

ORDINANCE NO. 1352

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND MUNICIPAL CODE SECTIONS 92.15, 92.16, 92.17, 92.18, AND 92.21; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Municipal Code Section 92.15 is hereby amended to read as follows:

§ 92.15 DEFINITION.

(A) *General definition.* A nuisance consists in doing any unlawful act, omitting to perform a duty or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (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, 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.

('79 Code, § 4-301)

B) *Specific definition.* The maintaining, using, placing, depositing, leaving or permitting of any of the following specific acts, omissions, places, conditions and things are hereby declared to be nuisances:

- (1) Any odorous, putrid, unsound or unwholesome grain, meat, hides, skins, feathers, vegetable matter 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, houseyards, barnyards, stable-yards, factory-yards, mill yards, vacant areas in rear of stores, granaries, 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 ordinance of the city;
- (5) Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish or any waste vegetable or animal matter in any quantity, provided that nothing herein contained 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-putrefying 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 be kept in covered bins or galvanized iron receptacles;
- (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 materials when any of the articles or materials create a condition or harborage in which flies, rats, or rodents may breed or multiply, or which may be a fire danger or which are so unsightly as to depreciate property values in the

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vicinity thereof;

(8) Any unsafe or unsightly building, billboard or other structure, 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 either a fire hazard, a menace to the public health or safety or are so unsightly as to depreciate the value of property in the vicinity thereof;

(9) All places used or maintained as junk yards, dumping grounds or for the wrecking and dissembling 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. Stagnant water is defined as water which stands upon premises in such a manner, and over such a period of time, that it is likely to become a breeding place for mosquitoes;

(11) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located 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; or

(12) All other things specifically designated as nuisances elsewhere in this code or applicable state law.

(13) Storage, accumulation, keeping, placing or allowing to remain of trash, garbage, scrap and wrecked, worn-out, broken or inoperative or partially destroyed or disassembled personal or real property of any kind, including any motor vehicles, tractors, trailers, machinery and equipment;

(14) Any lots or pieces of ground within the city or within the city's extraterritorial zoning jurisdiction that have (or have on adjoining streets or alleys) any growth in excess of 12 inches of weeds, grasses or other worthless vegetation or nuisance thereon, excluding city approved plantings, structures, devices or facilities for purposes of weed or erosion control, neighborhood enhancement and/or wildlife promotion or storm water quality, detention, management or control. Without limiting the foregoing provisions of this division (14), it shall be the duty of any person owning, leasing, occupying, or controlling any lot or piece of ground in the jurisdiction to prevent the growth of noxious weeds or other worthless vegetation thereon, including without limitation, cockleburs, thistles, ragweed, burdock, and wild lettuce thereon.

('79 Code, § 4-301.01) (Ord. 646, passed 5-7-96; Am. Ord. 1257, passed 7-7-15)

Statutory reference:

Authority to regulate and abate nuisances, see Neb. RS 18-1720

Cross reference:

Stagnant waters, weeds and litter, see § 133.01

SECTION 2. Municipal Code Section 92.16 is hereby amended to read as follows:

§ 92.16 MAINTAINING A NUISANCE PROHIBITED.

It shall be unlawful for any person by act or omission to erect, keep up or continue, maintain, allow or permit any nuisance within the city or within the city's extraterritorial zoning jurisdiction.

('79 Code, § 4-301.02) (Ord. 646, passed 5-7-96) Penalty, see § 92.99

SECTION 3. Municipal Code Section 92.17 is hereby amended to read as follows:

§ 92.17 ABATEMENT PROCEDURE.

(A) (1) Whenever a nuisance exists as defined in this subchapter, the city may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

(2) Whenever, in any action, it is established that a nuisance exists, the court

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may together with the fine or penalty imposed, enter an order of abatement as part of the judgement in the case.
('79 Code, § 4-502)

(B) (1) It shall be the duty of every owner or occupant of real estate in the city to keep such real estate free of public nuisances. Upon determination by the Chief building official, Code enforcement officer, or other City representative that the owner or occupant has failed to keep such real estate free of public nuisances, notice to abate and remove such nuisance shall be given to the owner or the owner's or occupant's duly authorized agent and to the occupant, if any, by personal service, first-class mail, or certified mail. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Such notice shall:

(a) Describe the condition as found by the Chief building official, Code enforcement officer, or other City representative and state that the condition has been declared a public nuisance and that the condition must be remedied. The notice shall specify the period of time within which the nuisance must be abated or removed, and

(b) Advise of the right to appeal the determination of the City and request a hearing before the Board of Health, for matters involving public health, or the City Administrator, for all other matters, and the manner in which such hearing may be requested. Any such appeal and request for hearing shall be in writing and filed with the City Clerk in the manner described in subsection (B)(2) below.

(2) Within five days after the receipt of the notice described in subsection (B)(1), the owner or occupant of the real estate may request a hearing with the Board of Health, for matters involving public health, or the City Administrator, for all other matters, to appeal the decision to abate or remove the nuisance by filing a written appeal with the office of the City Clerk. If the owner or occupant requests in writing a hearing, the City Administrator or his or her designee shall fix a time and place at which a hearing will be held. The hearing on the appeal shall be held within 14 days after the filing of the appeal. Notice of the hearing shall be given by personal service, first-class mail, or certified mail and require the owner or occupant to appear at the specified time and place to show cause why such condition should not be found to be a public nuisance and remedied. Upon the date fixed for the hearing and pursuant to the notice, Board of Health for matters involving public health, or the City Administrator (or any other appointed officer of the City designated by the City Administrator, Mayor or City Council) for all other matters, shall hear all objections made by the owner or occupant and shall hear evidence submitted by the Chief building official, Code enforcement officer, or other proper City representative. A decision on the appeal will be rendered within five business days after the conclusion of the hearing. If after consideration of all the evidence the appeal fails, the City may have such work done to abate or remove the nuisance.

(3) If the owner or occupant of the real estate within five days after receipt of the notice described in subsection (B)(1) does not request a hearing, or fails to comply with the order to abate or remove the nuisance within the required time, the City may have the work done.

(4) The costs and expenses of any work of the City to abate or remove a nuisance pursuant to this Section 92.17 shall be paid by the owner. Any such costs or expenses that are unpaid shall be subject to collection or assessment by the City in accordance with applicable law, including without limitation, Neb. Res. Stat. Section 16-230 for removal or abatement of nuisances relating to drainage, weeds or litter.

(5) Unless otherwise specified by applicable law, notice for purposes of this section shall be deemed to be received upon deposit in the United States mail, postage prepaid, if by first-class mail, or upon actual receipt, if by personal service or certified mail. ('79 Code, § 4-302)

(C) Notwithstanding anything in this Section 92.17 or elsewhere in this Code to the contrary:

(a) If the Chief building official, Code enforcement officer, or other proper City representative determines that any public nuisance constitutes an immediate danger to life, safety, health, or property, the city may remove or abate the nuisance (or cause it to be removed or abated) and assess the cost thereof to the property creating the nuisance or on which the nuisance arises, to the extent necessary or appropriate to eliminate the immediacy and/or magnitude of the danger, upon 48 hours personal or

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certified written notice to the owner or tenant of the subject property (or the owner's or tenant's duly authorized representative) or, in light of the immediacy or magnitude of the danger, such lesser notice that can reasonably be provided under the circumstances; and, in the event any public nuisance is within the scope of the Nebraska Statutes, including without limitation, Neb. Rev. Stat. Section 16-230 or 18-1752, the city shall proceed in accordance with the applicable provision or provisions thereof; and the city shall further have the option to proceed in accordance with any other applicable ordinance or state law, as amended from time to time, with respect to any public nuisance.

(b) Unless otherwise provided by state law, the city shall have the option to proceed under one or more applicable ordinances or state laws with respect to any public nuisance. (Ord. 1274, passed 4-5-18)

Statutory reference:

Authority to regulate and abate nuisances, see Neb. RS 18-1720

Authority to repair and remove buildings and the like, see Neb. RS 18-1722

SECTION 3. Municipal Code Section 92.18 is hereby amended to read as follows:

§ 92.18 JURISDICTION.

The Mayor and Chief of Police of the city are directed to enforce this city code against all nuisances. The jurisdiction of the Mayor, Chief of Police and court shall extend to and the territorial application of this chapter shall include all thereof and all territory within the corporate limits of the City or within its extraterritorial zoning jurisdiction.

('79 Code, § 4-303)

Statutory reference:

Authority to regulate and abate nuisances, see Neb. RS 18-1720

Zoning jurisdiction, see Neb. RS 16-901

SECTION 4. Municipal Code Section 92.21 is hereby amended to read as follows:

§ 92.21 DEAD OR DISEASED TREES.

(A) It is hereby declared a nuisance for a property owner to permit, allow or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city or within the city's extraterritorial zoning jurisdiction.

(B) It is hereby declared a nuisance for a property owner to permit, allow or maintain any dead or diseased trees on private property within the corporate limits of the city or within the city's extraterritorial zoning jurisdiction.

(C) Upon determination by the Chief building official, Code enforcement officer, or other proper City representative that the owner or occupant has failed to keep such real estate free of nuisances, notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any. Such notice shall include the information and shall be given in the manner required by Code Section 92.17. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after the receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate and remove the nuisance by filing a written appeal with the office of the City Clerk. A hearing to appeal shall be held within 14 days after the filing of the appeal and shall be conducted by the City Administrator or any other appointed officer of the city from time to time designated by the City Administrator, Mayor or City Council. The hearing officer, based on all information presented at the hearing, shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done to abate and remove the dead or diseased trees. If the owner or occupant of the lot or piece of ground within five days after receipt of such notice does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance within the required time, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. The city may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefitted as a special assessment. Unless otherwise specified by applicable law, notice for purposes of this section shall be deemed to be received upon deposit in the United States mail, postage prepaid, if by first-class mail, or upon actual receipt, if by personal service or certified mail.

('79 Code, § 4-306) (Ord. 630, passed 9-5-95) (Ord. 1274, passed 4-5-16)

Statutory reference:

Authority to regulate and abate dead and diseased trees, see Neb. RS 16-207

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Nuisances prohibited, see Neb. 28-1321
Cross reference:

Tree management, see Chapter 94

SECTION 5. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof, are hereby repealed.

SECTION 6. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 7. Effective Date. This Ordinance shall be in force and take effect from and after passage, approval and publication in pamphlet form as provided by law.

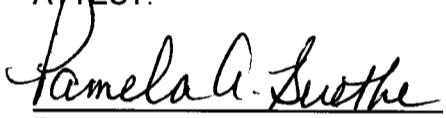
PASSED AND APPROVED THIS 2ND DAY OF JULY 2019.

CITY OF LA VISTA



Douglas Kindig, Mayor

ATTEST:



Pamela A. Buethe

Pamela A. Buethe, CMC
City Clerk