**ORDINANCE NUMBER 16-006**

An ordinance to add Article XI and Sections 7-350, 7-351, 7-352, 7-353, 7-354, 7-355, 7-356, 7-357, 7-358, 7-359, 7-360, 7-361 and 7-362 to the Beatrice City Code regarding registration of vacant buildings, set fees for inspections, identify exemptions, notate penalties and outline other matters related to vacant 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 XI. and Section 7-350 of the Beatrice City Code be and hereby is added as follows:

**"Article XI. Vacant Building Code**

**Sec. 7-350. Purpose.**

Recognizing that vacant commercial buildings and properties contribute to blight in both discourage economic development, and retard appreciation of property values, endanger public health and safety, attract criminal activity, and create fire hazards, it is the responsibility of property owners to prevent buildings from becoming a burden to the neighborhood and community and a threat to the public health, safety, and welfare. Maintenance of the public health, safety, and welfare thus requires the City to maintain an accurate registration of all vacant commercial buildings and properties."

**SECTION 2.** That Section 7-351 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-351. Public Nuisance.**

Vacant commercial buildings shall constitute 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 7-352 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-352. City Building Inspector Responsible for Enforcement.**

The City Building Inspector or their designees are designated to administer and enforce this Article."

**SECTION 4.** That Section 7-353 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-353. Definitions.**

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

*Building* means a building, accessory structure, mobile or modular structure, or other structure used for commercial or mixed use 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.

*Chronic Vacancy* means any building or property vacant more than one (1) year after initial registration.

*City* means the City of Beatrice.

*Commercial activity* means having the objective of supplying commodities (goods and services), industrial uses, industrial manufacturing, 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 section, 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 vacant 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.

*Secured by other than normal means* means a building secured by means other than those used in the design of the building and in conformity with other applicable building codes.

*Significant fire damage* means fire damage which has damaged the structural integrity of the building or has made the building unfit for human occupancy.

*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.

*Unsecured* means that access to the building or a portion of the building may be obtained through open, unlocked, broken, or missing doors or windows of such building or otherwise allows the entry by unauthorized persons or animals.

*Vacant Building* means a commercial building or property that is unoccupied and is not actively used as a business; unoccupied and secured; unoccupied and unsecured; unoccupied and secured by other than normal means; unoccupied and a dangerous structure; unoccupied and condemned; unoccupied and has city code violations; or condemned and illegally occupied. A building or property will be considered vacant when found to be in one or more of the above conditions for three (3) consecutive months or six (6) of the last twelve (12) months.Vacant building does not include any building being constructed pursuant to a valid building permit issued by the City of Beatrice."

**SECTION 5.** That Section 7-354 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-354. Vacant Building Registration.**
***(a) Registration and maintenance requirements; fees***

(a) The owner shall register with the City not later than thirty (30) calendar days after the effective date of this ordinance or not later than thirty (30) calendar days after any building in the city becomes a vacant building as defined in this Article.

(b) The owner of a vacant 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 vacant 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 building which is vacant. A copy of the notice under this Article shall be recorded by the City Building Inspector or their designee in the records of the Register of Deeds for Gage County, Nebraska and indexed against the premises.

(c) 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; the sale or rental price of the building; and such other information deemed necessary by the City. The form shall also include the period of time the vacant building is expected to remain vacant, and a plan and timetable for either:

(i) returning the vacant building or property to appropriate occupancy or use;

(ii) marketing the property pursuant to the requirements of subsection (d) of this ordinance;

(iii) making any necessary repairs; or

(iv) demolition of the building.

(d) 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 vacant building registration within thirty (30) calendar days of the change. If the plan or timetable for the vacant building is revised in any way, the revisions must be approved by the City Building Inspector.

(e) Pursuant to the registration requirements of this subsection, for every subsequent year a building remains vacant beyond the initial registration, the owner of the vacant building must:

(i) re-register the building, including appropriate fees; and

(ii) submit an updated plan for either returning the vacant building to appropriate occupancy or use, marketing thereof, making necessary repairs, or demolition of the building.

(f) Upon registration, the City shall provide the following incentives toward active marketing of vacant buildings:

(i) If the building requires a zoning change, waive any zoning fees if the request for the zoning change occurs within ninety (90) calendar days of the initial registration of the building; and

(ii) If the building requires remodeling, waive building permit fees if remodeling occurs within ninety (90) calendar days of the initial registration of the building.

(g) If the owner of the vacant 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.

(h) Any subsequent owner of a vacant 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 vacant building. The new owner(s) shall comply with the approved plan and timetable submitted by the previous owner until any proposed changes are submitted and meet the approval of the City.

(i) The owner of a vacant building shall keep the building and any adjoining property secure, safe, and properly maintained in compliance with all federal, state and local ordinances and regulations.

(j) The building shall not be used for storage unless specifically allowed pursuant to the City of Beatrice Zoning Ordinance."

**SECTION 6.** That Section 7-355 of the Beatrice City Code be and hereby is added as follows:

"**Sec. 7-355. Vacant Building Fees.**

(a) The owner of a vacant building shall pay a registration fee as established by resolution adopted by the City Council for the period the building remains a vacant building. This fee includes the initial inspection of the property by the City Building Inspector.

(b) The registration fee shall be paid at the time of registration.

(c) The fees shall be paid in full prior to the issuance of any building permits. Demolition permit fees shall be waived for any properly registered vacant building.

(d) Fees associated with this Article shall be paid directly to the City of Beatrice. In the event that fees are unpaid, the City Attorney shall institute appropriate action against the owner for the recovery of such costs.

(e) An owner who acquires a vacant building for which the registration fee has already been paid for the calendar year period shall register the change of ownership with the City, but is not liable for an additional registration fee for that calendar year."

**SECTION 7.** That Section 7-356 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-356. Exceptions.**

(a) The owner of a vacant building that meets one of the exceptions set forth below shall be required to have the building inspected and to register the building with the City but the registration fee is waived:

(1) A building that is vacant because it has suffered significant fire damage within the previous ninety (90) calendar days;

(2) All vacant buildings which are being actively marketed as "for sale" by a licensed real estate broker or by the owner and advertised as such in a newspaper or listed on a recognized online website. The owner has the obligation to produce evidence of active marketing in order to obtain this exemption. In the event that the active "for sale" marketing ceases, the vacant building in question shall be subject to the registration fees provided for above and shall immediately be due and owing;

(3) All vacant buildings which are actively marketed as "for rent" in a newspaper or in an recognized online website listing. It is the obligation of the owner to produce evidence of active marketing to claim this exemption. In the event that active rental marketing ceases, the vacant building in question shall be subject to the registration fees provided for above and shall immediately be due and owing; or

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

**SECTION 8.** That Section 7-357 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-357. Inspections.**

(a) The City shall inspect a vacant building upon registration to assure compliance with the provisions of this Article, the current adopted version of the International Property Maintenance Code, and all other applicable building codes of the City. Upon registration the vacant building will be inspected by the City Building Inspector and a report will be provided to the owner noting code deficiencies, if any. The owner will be required to make necessary repairs based upon the requirements of the relevant City building codes.

(b) A vacant building shall be inspected annually near the registration renewal date. The city reserves the right to inspect a vacant building at any reasonable time as conditions warrant.

(c) The City Building Inspector or their appointee may inspect or cause to be inspected any premises in the City for the purposes of enforcing and assuring compliance with the provisions of this chapter and safeguarding the health, safety and welfare of the general public. Upon the request of the City designated officer, an owner shall provide access to all interior portions of any vacant building or suspected vacant building in order to permit a complete inspection;

(d) The State Fire Marshall or their designee is authorized to enter and inspect, or cause to be inspected, all vacant buildings and premises for the purpose of conducting an annual fire code compliance inspection.

(e) A vacant 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 9.** That Section 7-358 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-358. Emergency Repairs.**

Where any vacant building poses an immediate danger to the health, safety, or general welfare of any person or persons, and the owner fails to remedy the situation in a reasonable time after notice by the City to do so, the City may summarily repair such building or structure."

**SECTION 10.** That Section 7-359 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-359. Appeal Hearing.**

(a) Upon receiving notice declaring a building vacant, 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. Such appeal shall request a hearing before the Board of Appeals to present reasons why the building should not be declared vacant. The appeal fee shall be set by resolution of the City Council. 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 register the vacant building; 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 by stayed."

**SECTION 11.** That Section 7-360 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-360. Penalties.**

(a) Any person or entity who fails to register a vacant 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) 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 a misdemeanor 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.

(c) Any and all civil penalties assessed under this Article 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) 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 12.** That Section 7-361 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-361. 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 13.** That Section 7-362 of the Beatrice City Code be and hereby is added as follows:

**"Sec. 7-362. 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 21st day of March, 2016.

Stan Wirth, Mayor

Attest:

Erin Saathoff, City Clerk