



**BEATRICE**  
CITY • BOARD OF PUBLIC WORKS

# Nuisances & Vacant Buildings

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# Relevant Beatrice City Code Sections

Code of Ordinances:

[https://library.municode.com/ne/beatrice/codes/code\\_of\\_ordinances](https://library.municode.com/ne/beatrice/codes/code_of_ordinances)

- ▶ Chapter 7, Article XII - Vacant Building Code
  - ▶ Article XIII - Adjoining Building Code
- ▶ Chapter 16, Article XVII - Abandoned and Junked Vehicles
- ▶ Chapter 17, Article VII - Nuisances & Offensive Conditions
  - ▶ Division 1 - General Nuisances

# Nuisances Generally

- ▶ Sec. 17-181. Nuisances Generally
  - ▶ Any act, omission, condition or thing which:
    - ▶ Injures or endangers the comfort, repose, health, or safety of others;
    - ▶ Offends decency;
    - ▶ Is offensive to the senses;
    - ▶ Unlawfully interferes with, obstructs, or renders dangerous for passage any stream, public park, parkway, square, street, or highway;
    - ▶ In any way renders other persons insecure in life or the use of property; or
    - ▶ Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others

# Nuisances Enumerated

- ▶ Sec. 17-182. Nuisances Enumerated
  - ▶ This section lists out specific things considered to be nuisances, including but not limited to:
    - ▶ Putrid meats, skins, or other animal parts;
    - ▶ Privies, cesspools, stagnant water or pits not secured to protect from flies rats, or foul smells;
    - ▶ Trash-covered structures;
    - ▶ Liquid household waste, garbage, butchers' trimmings;
    - ▶ Tin cans, bottles, glass, scrap iron or wires, broken stone or cement;
    - ▶ Trash, litter, mattresses, lumber not neatly piled;
    - ▶ Unsightly structures, that tend to depreciate value of surrounding properties;
    - ▶ Non-weather proof furniture on exteriors of buildings;
    - ▶ Weeds, grasses, or worthless vegetation that are twelve (12) inches or more in height.

# Nuisance?



# Nuisance?



# Nuisances - Unlawful Acts

- ▶ 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.
- ▶ Sec. 17-185. 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.
  - ▶ (e) (Unlawful Interference with Abatement) 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).

# Junked Vehicles

## ▶ Sec. 16-621. Definitions

### ▶ Abandoned Vehicle

1. Left unattended or parked illegally for more than forty-eight (48) hours;
2. Qualifies as a **junked vehicle** and left unattended for more than forty-eight (48) hours on public property; or
3. Left more than thirty (30) calendar days in custody of Police Department after letter was sent to last registered owner as required by law.

### ▶ Junked/Inoperable Vehicle

1. Damaged, defective, dismantled, or deteriorated to the extent vehicle is **mechanically inoperable and/or incapable of being drawn under its own power;**
2. **Cannot be legally operated** on public streets, highways, or waterways (lacking equipment or licensure); or
3. **Having no, or expired, license plate(s) and/or in transit decals** (this is a **presumption that can be rebutted** by submission of current plate(s) or licensure; does NOT apply to vehicles for which registration is not required).

### ▶ Responsible Party(ies)

- ▶ **Last-registered owner**, if ascertainable, **AND owner of the property** where vehicle is located.

# Junked Vehicles

- ▶ Definitions Continued

- ▶ Vehicle

- ▶ A thing used for transporting people or goods which is intended to travel by air, land, or water.

- Including, but not limited to:**

- ▶ cars, trucks, vans, sport utility vehicles, semi-trucks, semi-cabs, semi-trailers, buses, motor homes, ATVs, snowmobiles, four-wheelers, golf carts, motorcycles, dirt bikes, mopeds, airplanes, tractors, riding lawnmowers, trailers, campers, boats, and jet skis.

# Junked Vehicles - Example



# Junked Vehicles

- ▶ Unlawful Interference with Abatement
  - ▶ 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 vehicle 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).

# Junked Vehicles

- ▶ What is prohibited?
  - ▶ Sec. 16-623.
    - ▶ Unlawful for any person to park, store, or leave a junked vehicle on private property in an area not fully enclosed for more than thirty (30) calendar days.
    - ▶ Past thirty (30) calendar days, such junked vehicle constitutes a nuisance.
    - ▶ Each day a violation of this section exists constitutes a distinct and separate offense.
  - ▶ Compliance
    - ▶ Bring vehicle into a condition such that it is no longer inoperable;
    - ▶ Placed in a proper enclosure;
    - ▶ Removed from the property and disposed of, or removed from the City.
  - ▶ Non-Compliance
    - ▶ Moving a junked vehicle from one location to another, while it is still in violation of this code does not constitute abatement.
    - ▶ Tarping or placing junked vehicles on a trailer does not constitute abatement.

# Junked Vehicles - Exceptions & Exemptions

- ▶ Sec. 16-625. Exception for Enclosures and Screening
  - ▶ Nothing in this [Article] shall be construed to prohibit any person from:
    1. Storing junked vehicles upon private property when completely enclosed within a building; or
    2. Storing up to two (2) junked vehicles when screened from view by a solid fence, privacy fence, or wall.
- ▶ Sec. 16-626. Exemptions (Permits)
  - ▶ Business Exemption Permit - must have a clear relationship between JV and the business
    - ▶ Businesses not required to apply for a permit:
      - ▶ Car dealerships, auto junk and salvage yards, auto repair and auto body shops, vehicle storage facilities, vehicle towing companies.
    - ▶ Expire after one (1) year
  - ▶ Hobbyist Permit - maximum of two (2) vehicles, does not exempt parts
    - ▶ Expires after one hundred eighty (180) calendar days
  - ▶ Racecar Permit - must be apparent that the vehicle is used as a racecar (max two (2) vehicles)
    - ▶ Expires after one (1) year

# Notice - Nuisances

- ▶ Notice to Abate - Nuisances

- ▶ Methods

- ▶ Written notice to owner/occupant via

- ▶ First-class Mail;

- ▶ Personal Service;

- ▶ Posting on the Property;

- ▶ Publish in Local Newspaper for three (3) consecutive weeks

- ▶ **Continuing Notice**

- ▶ Notices sent pursuant to this section constitute a continuing notice for one (1) year from the date of service.

- ▶ Within this one (1) year period, no further notice or opportunity to abate is necessary (except for weeds, grasses, or worthless vegetation)

# Notice - Initial Notices/Warnings

- ▶ Notice to Remove (Warning) - Junked Vehicles
  - ▶ Methods
    - ▶ Written notice to owner/occupant via
      - ▶ First-class Mail;
      - ▶ Personal Service;
      - ▶ Posting on the Property;
      - ▶ Publish in Local Newspaper for three (3) consecutive weeks
    - ▶ **Continuing Notice**
      - ▶ Notices sent pursuant to this section constitute a continuing notice for one (1) year from the date of service.
      - ▶ Within this one (1) year period, no further notice or opportunity to abate is necessary

# Notice

- ▶ Notice & Warnings - Substance of Notice
  - ▶ Nuisances (Notice to Abate) Description of the condition or thing that constitutes a nuisance
    1. Timeline to Abate - five (5) calendar days
    2. Warning of Failure to Comply
      - a. Criminal and/or civil complaint;
      - b. Abatement of nuisance(s) at owner/occupant's costs.
    3. Appeal Process
  - ▶ Junked Vehicles (Warning) (Not appealable)
    1. Description of vehicle which constitutes a nuisance
    2. Timeline to Abate - thirty (30) calendar days (new cars)
    3. Warning of Failure to Comply - criminal complaint and/or notice to remove and abate, at RP's costs
    4. Continuing Notice

# Appeals/Abatement - Nuisances

- ▶ Nuisances
  - ▶ After notice is served, owners/occupants have five (5) calendar days to request an appeal hearing.
- ▶ Appeal
  - ▶ Request for appeal must be made in writing and be accompanied by a filing fee (\$100.00).
    - ▶ No fee = invalid request for appeal.
  - ▶ Appeal shall be held within fourteen (14) business days after receipt of appeal request and fee.
  - ▶ Appeal hearing is before the City Administrator or his/her designee.
  - ▶ Decision on the appeal must be rendered within five (5) business days after conclusion of the hearing.
  - ▶ If appeal fails, City may:
    - ▶ Abate the nuisance at occupant/owner's costs;
    - ▶ File a criminal complaint; and/or
    - ▶ File a civil complaint.

# Notice of Intention to Remove/Abate: Junked Vehicles

- ▶ If the responsible party(ies) fail to abate the nuisance within the thirty (30) calendar day period (described in the Warning), City may file a criminal complaint and/or send a Notice of City's Intention to Remove/Abate.
- ▶ Notice of Intention to Remove/Abate must include (continuing notice):
  1. Description of the junked vehicle;
  2. Timeline - responsible party(ies) have seven (7) calendar days to abate;
  3. Failure to Comply - City can remove and impound junked vehicle;
  4. Costs - RP will be responsible for ALL costs associated with removal and storage.
- ▶ Service of Notice
  1. Certified Mail;
  2. Personal Service;
  3. Posting on and/or near the vehicle(s) in question; or
  4. Posting on front entrance of property.

# Appeals/Abatement - Junked Vehicles

- ▶ Cannot appeal Warning, can only appeal Notice to Remove/Abate
- ▶ RP may request in writing, accompanied by appeal fee (\$100), an appeal hearing within seven (7) calendar days given for compliance in the Notice to Remove/Abate.
  - ▶ No fee = invalid request for appeal.
- ▶ Upon receipt of request and appeal fee, seven (7) day compliance period is tolled.
- ▶ Appeal shall be held within twenty (20) business days after receipt of appeal request and fee.
- ▶ Appeal hearing is before the City Administrator or his/her designee.
- ▶ Appeal hearings are limited to the following issues:
  1. Whether the appellant qualifies as a RP;
  2. Whether the vehicle is junked or inoperable;
  3. Whether RP is covered under an exemption.

# Appeals - Junked Vehicles

- ▶ If appeal fails:
  - ▶ Filing fee is forfeited;
  - ▶ RP has the remainder of tolled compliance period to comply;
  - ▶ City may, remove and store the vehicle at RP's costs if no compliance;
  - ▶ File a criminal complaint; and/or
  - ▶ File a civil complaint.
- ▶ If appeal is upheld:
  - ▶ Filing fee is refunded to RP; and
  - ▶ Notice to Remove/Abate is reversed.

# Assessment of Costs

## ▶ Nuisances

- ▶ If City abates, and if after two (2) months from abatement the costs remain unpaid by owner/occupant, City may:
  1. Levy and assess costs and expenses in the same manner as special assessments;
  2. Recover costs via civil action.

## ▶ Junked Vehicles

1. If vehicle is removed and impounded, RP must pay all costs of removal and storage (for each day stored) to release vehicle.
2. If after thirty (30) calendar days, RP fails to pay costs, title of vehicle vests in the City and may be sold.
3. Penalties in a criminal case can be assessed for each day of non-compliance.

# Vacant Building Code

- ▶ Sec. 7-351. Public Nuisance
  - ▶ Vacant commercial buildings are deemed to be a public nuisance.
  
- ▶ Sec. 7-353. Definitions
  - ▶ Vacant Building - a commercial building or property that:
    1. Is unoccupied
    2. Is without a tenant for a period of ninety (90) consecutive calendar days;
    3. Has had minimal or no utility usage for a period of ninety (90) consecutive calendar days; or
    4. Is not "for sale," "for rent," or "for lease". The owner has the obligation to produce evidence of active marketing the sale, rent or lease. Such evidence may include one of the following: listing with a licensed real estate broker, advertisement in a newspaper of general circulation within the city, or listing on a recognized online website.
      - ▶ Good faith = sale price is not more than 150% of the assessed value

# Vacant Building Code

- ▶ Sec. 7-354. Vacant Building Registration
  - ▶ Owners of vacant buildings must register their buildings with the City after City serves notice of the building's vacant status.
  - ▶ Upon registration, owners of vacant buildings must pay a registration fee annually until the building is:
    - ▶ Returned to appropriate occupancy or use;
    - ▶ Marketed for sale in good faith;
    - ▶ Being repaired to bring the property up to code; or
    - ▶ Demolished

# Vacant Building Code

- ▶ Sec. 7-354. Vacant Building Registration Continued
  - ▶ Owners of vacant buildings must annually submit a plan with a timetable to get the building off of the registry.
  - ▶ If the owner of the vacant building doesn't reside in Gage County for at least 180 days in the calendar year, they are required to provide the information for a resident agent with authority to act on their behalf.
  - ▶ Subsequent owners of a vacant building must register or re-register the building within thirty (30) calendar days of transfer of ownership.
  - ▶ If a vacant building poses an immediate danger to the health, safety, or general welfare of any person(s), and owner fails to remedy the situation after a reasonable time after notice by the City, the City can make the repair(s), and assess the costs to the owner.

# Vacant Building Code - Practical Considerations

- ▶ Basically, the only useful criteria for determining whether a building is vacant is the utilities element. All others are too vague and/or hard to prove.
- ▶ If the property owners cannot afford to bring their property up to code or to get it into a state that allows it to be used or sold, they cannot pay the accumulating registration fees.
- ▶ Same point for demolition.
- ▶ Cannot force a property owner to sell or rent.
- ▶ The City of Beatrice is one of the most litigious cities of the first class in Nebraska.
  - ▶ The time, resources, and costs to litigate each and every lawsuit, if enforced properly may not be worth it.
    - ▶ Do you have enough staff?
    - ▶ Do you have enough time and resources?
    - ▶ Would this take up too much of your city/village/department's budget?

# Vacant Building Code - Practical Considerations Continued

- ▶ Because subsequent property owners are forced to register or re-register vacant buildings, this has a chilling effect on potential purchasers.
- ▶ City has to “babysit” property owners to ensure they submit all of the required plans and timetables, along with ensuring that they pay all fees.
- ▶ Your city/village will have to decide whether you have the resources, staff, and time to enforce these codes consistently and/or go through with litigation as it arises.

# Adjoining Property Code

- ▶ Sec. 7-371. Declares an adjoining building in disrepair or in a dilapidated state a nuisance.
- ▶ Sec. 7-372. Defines an Adjoining Building as:
  1. Any commercial building which touches, abuts, or adjoins another building; 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.
- ▶ Sec. 7-373. Owners of Adjoining Buildings are required to register their building with the Community Development Department and pay a registration fee.
  - ▶ Said fee is waived if the owner provides proof of insurance in an amount not less than one million dollars (\$1 million).
  - ▶ Requires that their buildings be inspected every four (4) years.
- ▶ This is typically used far more than the Vacant Property Code to get into vacant commercial buildings since the Vacant Building Property Code is not as practical for the City to use.

# Nuisance Properties - Condemnation & Demolition

- ▶ 2015 International Property Maintenance Code
- ▶ Condemnation
  - ▶ When a property becomes unfit/unsafe for human occupancy.
    - ▶ Either as a result of structural deficiencies; or
    - ▶ Interior conditions become a hazard to human health and safety.
  - ▶ Culminates in a Certificate of Substandard Building being filed with the Register of Deeds Office.
    - ▶ Property cannot be sold without the express permission of the City, or until the building receives a Release of Substandard Building, which will be recorded in the Deeds Office and state how the issues were rectified (e.g., repairs, or demolition).

# Nuisance Properties - Condemnation & Demolition

- ▶ Most of the time, these determinations of condemnation are made by observing the exteriors of buildings.
  - ▶ E.g., if cracks in the foundation are observed, significant fire damage to the building, other structural deficiencies rendering the property unsafe for human habitation, etc.
- ▶ However, sometimes the City can gain access to the interior of buildings, where conditions may justify condemnation of the buildings.
  - ▶ E.g., hazards to human health and safety such as large accumulations of garbage, hazardous materials, or even human waste.

# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition

- ▶ How does the City gain access to the interior of buildings for purposes of condemnation?
  - ▶ Inspection Warrants
  - ▶ Waiver of Inspection Warrants
  - ▶ Police photos or bodycam footage
- ▶ Inspection Warrants
  - ▶ Details! Details! Details!
    - ▶ In attempting to acquire an inspection warrant, **taking pictures of everything and documenting every step** in the process is vitally important.
    - ▶ **Pictures speak louder than words**, and this helps judges to justify issuing inspection warrants.
    - ▶ This is also particularly helpful if later on down the road litigation arises from a condemnation and/or demolition of a property, as these will become exhibits in later lawsuits.

# Nuisance Properties - Condemnation & Demolition

- ▶ Bodycam Footage from Police
  - ▶ If police enter into a building for unrelated matters, it is important to have them take as many pictures and/or videos as possible to show the condition of interiors.

# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Nuisance Properties - Condemnation & Demolition



# Practical Considerations

- ▶ Nuisances Generally (Including Junked Vehicles)
  - ▶ Extensions
    - ▶ Extensions can be a great tool to work with people who may not have the means to make major steps towards abating nuisances.
    - ▶ These need to be well documented as well as any progress made (or not made).
    - ▶ Weather can be a big factor in determining whether or not to grant an extension.
    - ▶ Is the property owner/occupant a repeat offender?
    - ▶ How big is the mess that needs to be cleaned up?

# Practical Considerations

- ▶ Nuisances & Nuisance Properties
  - ▶ Does the property owner have the financial means to make the necessary repairs or abatements?
    - ▶ If not, then does your city/village/department have the funds to make the repairs or abatements at their own costs?
    - ▶ Does repayment need to be made on an installment plan?
    - ▶ Could real or personal property be exchanged to decrease the costs of repairs, demo, or abatements?
  - ▶ How likely is the property owner to sue in the event of abatement, condemnation, or demolition?
  - ▶ How well documented is your file on the property/nuisance case?
  - ▶ Does your city/village/department have the staff, resources, time, and/or political willpower to litigate lawsuits to completion if litigation is threatened or commenced?

# Practical Considerations



# Practical Considerations



# Practical Considerations



## Practical Considerations

- ▶ It took 20 truck loads, carrying approximately 40 tons of junk, and dozens of man hours to clean this property (tens of thousands of dollars).
- ▶ This does NOT include landfill costs (thousands to tens of thousands of dollars).
- ▶ This does NOT include the costs of litigation.

# Litigation/Collections

- ▶ If you are willing and able to pursue litigation, can you justify all of the costs if you lose on a procedural or technical error?
- ▶ Assuming you win the litigation, or are successful at assessing the costs to the owner/property, does the owner/occupant have the means to pay all of the costs and expenses? Are they “judgment proof”?
- ▶ Can you justify the costs and expenses of an appeal for either side?
- ▶ Appeal Hearing → Transcripts
  - ▶ State law requires a transcript (NOT minutes) to proceed on a successful petition in error for code enforcement disputes.
  - ▶ Do you anticipate wanting to sue after an appeal hearing? If so, you’ll want to create a transcript.
  - ▶ If not, you are not required to create a transcript on the date of appeal, nor after the appeal.
- ▶ Do you have the resources, and/or funding to proceed with collection efforts for costs and expenses of code enforcement?
- ▶ Is the owner/occupant you are enforcing against highly litigious? A man or woman of “principal”?