ORDINANCE NO. 2141

AN ORDINANCE AMENDING CHAPTER VII, ARTICLE 2 OF THE BELOIT CITY CODE BY MAKING CERTAIN ACTS UNLAWFUL WHICH ARE INJURIOUS TO THE HEALTH, SAFETY, WELFARE, AND AESTHETIC CHARACTERISTICS OF THE NEIGHBORHOODS OF THE CITY OF BELOIT, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BELOIT, KANSAS:

Section 1: Chapter VII, Article 2 of the Beloit City Code is hereby amended as follows:

7-201. LEGISLATIVE FINDING OF FACT. The governing body has found that there exists within the city unsightly and hazardous conditions due to: dilapidation, deterioration or disrepair of walls, siding, fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment, supplies, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on the adjoining properties, the neighborhood and the city, or are injurious to the health and safety of the residents of the city. The governing body desires to promote the public health, safety and welfare by the repair, removal, abatement, and regulation of such conditions in the manner hereafter provided.

7-202. PURPOSE. The purpose of this ordinance is to protect, preserve, upgrade, and regulate the environmental quality of industrial, commercial and residential neighborhoods in this city, by outlawing conditions which are injurious to the health, safety, welfare or aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof.

7-203. RULES OF CONSTRUCTION. For the purpose of this ordinance, the following rules of construction shall apply:
(1) Any part thereof - Whenever the words premises, structure, building or yard are used they shall be construed as though they were followed by the words "or any part thereof."
(2) Gender - Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.
(3) Number - Words of number shall be construed to mean singular or plural, as may be applicable.
(4) Tense - Words of tense shall be construed to mean present or future, as may be applicable.
(5) Shall - The word shall is mandatory and not permissive.

7-204. DEFINITIONS. The words and phrases listed below when used in this ordinance shall have the following meanings:
(1) Abandoned Motor Vehicle - any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of the ordinance; or incapable of moving under its own power; or in a junked or wrecked condition.
(2) Accessory Structure - a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.

(3) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.
(4) Dilapidation, Deterioration or Disrepair - shall mean any condition characterized by, but not limited to: holes, breaks, rot, decay, crumbling, cracking, peeling or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.
(5) Exterior - those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to: sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.
(6) Garbage - without limitation any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.
(7) Person - any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.
(8) Premises - any lot, plot or parcel of land including the structures thereon. Premises shall also mean any lot, plot or parcel of land without any structures thereon.
(9) Refuse - garbage and trash.
(10) Residential - used or intended to be used primarily for human habitation.
(11) Structure - anything constructed or erected which requires location on the ground or is attached to something having a location on the ground including any appurtenances belonging thereto.
(12) Trash - combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, or tree branches and non-combustible waste consisting of, but not limited to: metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings.
(13) Weathered - deterioration caused by exposure to the elements.
(14) Yard - the area of the premises not occupied by any structure.

7-205. PUBLIC OFFICER. The governing body shall designate a public officer to be charged with the administration and enforcement of this ordinance.

7-206. ENFORCEMENT STANDARDS. No person shall be found in violation of this ordinance unless the public officer, after a reasonable inquiry and inspection of the premises, believes that conditions exist of a quality and appearance not commensurate with the character of the neighborhood. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood. Such evidence shall include conditions declared unlawful under Section 7-207 but shall not include conditions which are not readily visible from any public place or from any surrounding private property.

7-207. UNLAWFUL ACTS. It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions which are injurious to the health, safety or general welfare of the residents of the community or conditions which are detrimental to adjoining property, the neighborhood or the city. For the purpose of fair and efficient enforcement and administration, such unlawful conditions shall be classified as follows:
(a) Exterior conditions (yard) shall include, but not be limited to, the scattering over or the parking, leaving, depositing or accumulation on the yard of any of the following:

(1) lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk or refuse;
(2) abandoned motor vehicles; or
(3) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property.
(4) nauseous substances, carcasses of dead animals or places where animals are kept in an offensive manner.

(b) Exterior conditions (structure) shall include, but not be limited to, deteriorated, dilapidated, or unsightly:
(1) exteriors of any structure;
(2) exteriors of any accessory structure; or
(3) fences, walls, or retaining walls.

7-208. ORDER OF VIOLATION. (a) The governing body, or its designee, shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of Section 7-207 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. The order shall state:

(a) The condition which has caused the violation of this ordinance; and

(b) That the person in violation shall have:
(1) 10 days from the receipt of the order to alleviate the exterior conditions (yard) violation; and/or;
(2) 45 days from the receipt of the order to alleviate the exterior conditions (structure) violation; or in the alternative to subsections (1) and (2) above,
(3) 10 days from the receipt of the order, plus any additional time granted under subsection (c), to request, as provided in Section 7-211 a hearing before the governing body or its designated representative on the matter; and;

(c) Provided, however, that the governing body, or its designee, shall grant one or more extensions to the time periods stated in subsections (2) and (3), above, if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions which have caused the violation of this ordinance; and,

(d) That failure to alleviate the condition or to request a hearing may result in prosecution under Section 7-209 and/or abatement of the condition by the city according to Section 7-210 with the costs assessed against the property under Section 7-213. (K.S.A. 12-1617e)

7-209. PENALTY. The public officer may file a complaint in the municipal court against any person found to be in violation of Section 7-207, provided however, that such person shall first have been sent a notice as provided in Section 7-208 and that the person has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 7-208. Upon such complaint in the municipal court, any person found to be in violation of Section 7-207 shall upon conviction be punished by a fine of not less than $50 nor more than $100, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment, for each offense. For the purposes of this ordinance, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

7-210. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 7-209, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom an order has been served pursuant to Section 7-208 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 7-208, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in Section 7-213.

A copy of the resolution shall be served upon the person in violation in one of the following ways:
(a) Personal service upon the person in violation;
(b) Certified mail, return receipt requested; or
(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.
(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail

7-211. HEARING. If a hearing is requested within the 10 day period as provided in Section 7-208 such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence.

Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in Section 7-210.

7-212. APPEALS. Any person affected by any determination of the governing body under Sections 7-210 or 7-211 may appeal such determination in the manner provided by K.S.A. 60-2101.

7-213. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to Section 7-210, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

7-214. CONSTRUCTION. Nothing in this ordinance shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its laws nor to prevent or punish violations thereof. The powers conferred by this ordinance shall be in addition to and supplemental to the powers conferred by the Kansas Constitution, by any other law or by ordinance.

Section 2: This Ordinance shall take effect and be in full force from and after its passage and one publication in the official city newspaper.

PASSED and ADOPTED by the Governing Body and signed by the Mayor this 11th day of February, 2014.

Tom Naasz

Tom Naasz, Mayor

ATTEST:

Amanda J. Lomax

Amanda J. Lomax, City Clerk