

ORDINANCE NO. 86-O-406

AN ORDINANCE DECLARING CERTAIN NUISANCES, PROVIDING FOR THEIR PENALIZATION AND ABATEMENT, REPEALING CERTAIN ORDINANCES AND SECTIONS THEREOF, AND DECLARING AN EMERGENCY.

Sections:

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The City of Brookings ordains as follows:

Section 1. Definitions.

- A. Livestock. Refers to horses, mules, asses, cattle, llamas, emus, sheep, swine, goats and poultry, including turkeys, of any age or sex.
- B. Person. A natural person, firm, partnership, association or corporation.
- C. Person in charge of property. An agent, occupant, lessee, contract purchaser, tenant or other person having possession or control of property.
- D. Person responsible for abatement. The person responsible for abating a nuisance and liable for any penalties imposed hereunder shall include, jointly and severally, the following:
- (1) The owner.
 - (2) The person in charge of property.
 - (3) The person who caused to come into or continue in existence a nuisance as defined in this chapter.
- E. Public place. A building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.

F. Public nuisance. It is expressly found and determined by the city of Brookings that the conditions and objects specifically enumerated within this chapter do, in one or more particulars, promote blight, deterioration, unsightliness, plundering, fire hazards, hazards to the health and safety of minors, disruption of the public peace, harborage for rodents, insects and vermin, and circumstances generally injurious or detrimental to the health, safety and general welfare of the inhabitants and occupants of the city of Brookings.

[Section 1 amended by Ordinance No. 93-O-406.A, effective July 13, 1993]

Section 2. Control of Domestic Animals.

A. No person shall permit any cow, horse, goat, sheep, or other domestic animal kept in any enclosed or unenclosed lot or tract of land within the corporate limits of the city of Brookings to leave said place where said animal is so kept and wander at large within the corporate limits of the city.

B. The owner or keeper of any dog or other domestic animal shall not allow such animal to be a public nuisance. A dog or other such animal is deemed herein to be a public nuisance if it bites a person, chases persons or vehicles, damages or destroys property of persons other than the animal's owner, scatters garbage, trespasses on private property of persons other than the animal's owner, disturbs any person or neighborhood by frequent or prolonged barking, yelping, howling or any other such noise making, defecates on the property of another or of the public, or is a female in heat and running at large. Such animal shall not be considered a public nuisance if it bites a person who wrongfully is assaulting the animal or the animal's owner or if it bites a person trespassing upon premises owned or occupied by said animal's owner.

C. No person owning or harboring or having the care or custody of a vicious dog or other animal shall permit such animal to go unconfined beyond the premises of such person unless such an animal is securely leashed and muzzled or otherwise restrained. Vicious as herein defined means any dog or other animal or fowl with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals, any animal which attacks a human being or domestic animal without provocation, or any dog or other such animal owned or harbored primarily or in part for the purpose of dog or animal fighting.

D. No person shall own or harbor any dog for the purpose of dog fighting or train, torment, badger, bait or use any dog for the purpose of dog fighting or for the purpose of causing or encouraging said dog to unprovoked or willfully provoked attacks upon human beings or domestic animals.

E. No dog is allowed to run at large within the corporate limits of the city of Brookings. When a dog is found running at large it may be taken up and impounded by the Brookings Police Department or said office's designee and, if so impounded, said animal shall be held in any reasonable and adequate shelter which can be provided for such purposes. A reasonable effort shall be made to notify the dog's owner before it is removed from impoundment. If no owner appears to redeem his/her dog within five days after impoundment, the dog may be released to a responsible person upon receiving assurance from that person that he or she will properly license and care for the dog and not allow the

dog to run at large or become a nuisance, and upon payment of a sum which will cover the cost of keeping the dog during the impoundment. Any owner redeeming his/her dog shall pay, in addition to any fine imposed, a reasonable charge for the expense of keeping the dog during its confinement. If no owner is found for the dog nor any responsible person found within the above-allotted time to whom the dog can be released, then the Brookings Police Department shall have total discretion and control of the further disposition of the animal.

F. No person shall own, harbor, take care of, or have in custody any dog without it being licensed with Curry County. Said person is responsible for payment of licensing fees, as well as securing any and all shots, vaccinations, or records which may be needed to license the animal. [Subsection F, Section 2 as added by Ordinance No. 93-O-406.A, effective July 13, 1993]

G. No person shall permit the carcass of any animal owned or controlled by him to remain upon the public streets or ways to be exposed on private property for a period of time any longer than is necessary to remove the said carcass. It shall be the duty of such owner or occupant forthwith to cause such carcass to be buried or have other disposition made of the same.

Section 3. Public Health. No owner or person in charge of property shall cause or permit to be or remain on public or private property the following objects or conditions:

A. Privies. Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the Health Division regulations.

B. Debris. Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the city.

C. Stagnant Water. An open pit, quarry, cistern, well, cesspool or other excavation in which stagnant water affords a breeding place for mosquitos and other insect pests.

D. Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.

E. Food. Decayed or unwholesome food which is offered for human consumption, or which causes an offensive odor. [Subsection E, Section 3 as amended by Ordinance No. 93-O-406.A, effective July 13, 1993]

F. Odor. Premises which are in such a state or condition as to cause an offensive odor; premises which are in an unsanitary condition. [Subsection F, Section 3 as amended by Ordinance No. 93-O-406.A, effective July 13, 1993]

G. Surface drainage. Drainage of liquid wastes from private premises.

H. Cesspools. Cesspools or septic tanks which are in an unsanitary condition or which cause an offensive odor.

I. Garbage containers. Garbage and noncombustible refuse that is not stored in flytight, watertight, and rodent-proof containers that are kept clean and in good repair.

J. Livestock and pets. The keeping of livestock and pets or buildings for the purpose of housing such livestock or pets in such a manner as to be a breeding place or likely breeding place for rodents or pests.

K. Sanitation. A business or residence that is kept or maintained in such a condition as to permit rats, rodents, vermin, or other pests to burrow or live therein.

Section 4. Hazards. No owner or person in charge of property shall permit thereon:

A. Unguarded machinery, equipment or other devices which are attractive, dangerous and accessible to children.

B. Lumber, logs, or piling places or stored in a manner so as to be attractive, dangerous, and accessible to children.

C. An open pit, quarry, cistern, well, cesspool or other excavation without safeguards or barriers to prevent such places from being used by children. Any such opening or hole having a depth of four feet or more and a top width of 12 inches or more shall be covered or fenced with suitable protective construction.

D. Any junk unless such is completely enclosed within a building or kept in a duly licensed junkyard or automobile wrecking house. The term "junk" as used in this section includes all motor vehicles, machinery, or appliances, and any parts thereof or therefor; discarded or abandoned vehicles or components thereof; and old iron or other metal, glass, paper or discarded materials. "Discarded" shall mean any vehicle which does not have properly affixed thereto an unexpired license plate and is either inoperative, wrecked, dismantled (or partially so,), or abandoned.

Section 5. Noxious Vegetation.

A. No owner or person in charge of property may allow noxious vegetation to be on the property or in the right-of-way of a public thoroughfare abutting on the property, between May 15th and October 31st of any year. It shall be the duty of an owner or person in charge of property to cut down or to destroy grass, shrubbery, brush, bushes, weeds, or other noxious vegetation as often as needed to prevent them from becoming unsightly, from becoming a fire hazard, or in the case of weeds or other noxious vegetation, from maturing or from going to seed.

B. Between April 15th and May 15th of each year, the city recorder may cause to be published three times in a newspaper of general circulation in the city a copy of

Section 10.08.020 of this chapter as a notice to all owners and persons in charge of property of their duty to keep their property free from noxious vegetation. The notice shall state that the city intends to abate all such nuisances 10 or more days after the date of the final publication of the notice and to charge the cost of doing so on any particular parcel of property to the owner thereof, the person in charge thereof or the property itself. In addition to the abatement costs will be an administrative charge as outlined in Section 10, Subsection F. [Subsection B, Section 5 as amended by Ordinance No. 93-O-406.A, effective July 13, 1993]

C. The General Abatement Procedure as outlined in Section 10 of this ordinance may be followed by the city in addition to or in lieu of the procedure set forth in Section 5, Subsection B. [Subsection C, Section 5 as added by Ordinance No. 93-O-406.A, effective July 13, 1993]

D. If the notice provided for in Subsection (B) of this section is used, it shall be in lieu of the premises-posted and mailed written notice required under this ordinance.

E. As used in this section, the term "noxious vegetation" means weeds or grass more than 12 inches high, poison oak, gorse, berry bushes that extend across a property line or into a public thoroughfare, and any such other vegetation that is a health hazard or a fire hazard due to proximity to other combustibles.

Section 6. Scattering rubbish. No person shall deposit upon public or private property any kind of rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal or vehicle upon a public way.

Section 7. Trees and fences. No owner or person in charge of property that abuts upon a street or public sidewalk shall:

A. Permit trees or bushes on his property to interfere with street or sidewalk traffic. It shall be the duty of an owner or person in charge of property that abuts upon a street or public sidewalk to keep all trees and bushes on his premises, including the adjoining parking strip, trimmed to a height of not less than eight feet above the sidewalk and not less than 12 feet above the roadway.

B. Allow to stand a dead or decaying tree that is a hazard to the public or to persons or property on or near the property.

C. Allow to stand a tree that has been identified as a high potential blowdown hazard by a professional engineer or forester, as designated by the City. [As added by Ordinance No. 94-O-406.B, effective July 26, 1994]

D. Allow or permit any trees, shrubs or hedges, signs, fences or other objects to remain or be located in any manner along a street which would obstruct a driver's or cyclist's view of traffic, control signs or signals, or in any other wise create a hazard to vehicular or pedestrian traffic.

E. Construct or maintain a barbed-wire fence thereon, or permit barbed-wire to remain as part of a fence along a sidewalk or public way; except such wire may be placed above the top of other fencing not less than six feet, six inches high.

F. Construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person.

Section 8. Surface waters and drainage. No owner or person in charges of property shall:

A. Suffer or permit rainwater, ice or snow to fall from any building or structure onto a street or public sidewalk or to flow across the sidewalk.

B. Fail to install and maintain a proper state of repair adequate drainpipes or a drainage system, so that any overflow water accumulating on the roof or about the building is not carried across or upon the sidewalk.

Section 9. Noise prevention.

A. It shall be unlawful for any person to create, assist in creating, permit, continue, or permit the continuation of any unreasonably loud, disturbing, or unnecessary noise; and further, no person shall conduct or maintain any condition, activity, operation, vocation or avocation which causes unreasonably offensive noise to either the neighborhood or the public at large.

B. The following acts are declared to be violations of this chapter, but said enumeration shall not be deemed to be exclusive:

- (1) The use of any automobile or other vehicle, engine, stationary or moving instrument, device or thing so out of repair or used in such manner as to create a loud or unnecessary grating, grinding, rattling or other such noise.
- (2) The sounding of any horn or signaling device on any automobile or other vehicle on any street or public place, except as a necessary warning of danger to property or person or as so used on emergency equipment.
- (3) Entertainment devices used in an abusive manner for the creation of prolonged and excessively loud noise.
- (4) The use of an electrical, mechanical or other device, apparatus, instrument or machine that causes interference with radio or television reception by radio or television receiver of good engineering design unless said device or apparatus is duly licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

Section 10. General abatement procedure.

A. Upon determination by the city manager or his designee that a nuisance exists, the city shall cause a notice to be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance. At the time of posting, the city shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, or personally delivered to the person responsible, at his last known address.

B. The notice to abate shall contain:

- (1) A general description, location or address of the real property on which the nuisance exists.
- (2) A direction to abate the nuisance within 10 days from the date of the notice.
- (3) A description of the nuisance.
- (4) A statement that, unless the nuisance is removed, the city may abate the nuisance and charge the person responsible for abatement and administrative costs. [Paragraph 4, Subsection B, Section 10 as amended by Ordinance No. 93-O-406.A, effective July 13, 1993]
- (5) A statement that failure to abate a nuisance may warrant imposition of a penalty.
- (6) A statement that the person responsible may protest the order to abate by giving notice to the city manager or his designee within 10 days from the date of the notice.
- (7) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

C. Within the 10-day period after the posting and mailing of such notice, the person responsible shall either remove and abate the nuisance or file his written statement setting forth his grounds for failing to do so and requesting a hearing thereon.

D. If a written statement of objection is so filed within said period of time there shall forthwith be scheduled a hearing on such objections before a hearings officer appointed by the mayor. After hearing all relevant evidence and argument presented by both the person responsible and the city manager or his designee, the hearings officer shall determine whether or not a nuisance in fact exists and his determination shall be deemed final. Hearing before such a hearings officer shall only be required in those instances where a written statement of objection and a request for a hearing has been filed as provided herein.

E. If the hearings officer determines that a nuisance does in fact exist, the person responsible shall forthwith remove or abate the nuisance within two days after said determination. If, within such time, the nuisance has not been so abated or removed by the person responsible, the city may cause the nuisance forthwith abated. The city, its officers and employees, so charged with said abatement of the nuisance shall have the right at all reasonable times to enter into or upon the property to investigate and cause the removal of the nuisance.

F. The city shall keep an accurate record of the expense incurred in abating the nuisance, and shall additionally include a charge of \$150 or 15% of the abatement expenses, whichever is greater, for administrative overhead. Any bill unpaid from 30 days of mailing shall carry interest at the statutory rate per annum, and be added to the bill each 30 days.

The city recorder, by registered or certified mail, postage prepaid, shall forward to the person responsible a notice stating:

- (1) The total cost of abatement, including the administrative overhead.
- (2) That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.
- (3) That if the person responsible objects to the cost of the abatement as indicated, he/she may file a notice of objection with the city recorder not more than 10 days from the date of the notice.

[Section 10, Subsection F amended by Ordinance No. 93-O-406.A, effective July 13, 1993.]

G. Upon the expiration of 10 days after the date of the assessment notice, the council, in the regular course of business, shall hear and determine the objections, if any, to the costs assessed. If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs, as stated or as determined by the council, shall be made by Resolution and shall thereupon be entered in the docket of the city liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated. The lien shall be enforced and shall bear interest at the statutory rate. The interest shall commence to run from the date of the entry of the lien in the lien docket. An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

Section 11. Summary abatement. The procedure provided by this chapter is not exclusive, but is in addition to procedures provided by other chapters and the general police powers of the city; and the city manager, the chief of the fire department, the chief of the police department and the building/fire safety officer may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property.

Section 12. Penalties.

A. Any person or persons who shall be convicted of being the creator or keeper of a nuisance, or otherwise guilty of a violation of any of the provisions of this ordinance, commits a civil infraction and shall be fined not less than \$10.00 nor more than \$100.00 for the first offense, and not less than \$25.00 nor more than \$500.00 for the second and all subsequent offenses. Each day's violation of a provision of this ordinance constitutes a separate offense.

B. The abatement of a nuisance is not a penalty for violating this ordinance, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement of a nuisance forthwith upon notice and/or citation is to be deemed and considered a mitigating circumstance in the reduction of penalties which might otherwise be assessed.

C. Citations for any of such violations may be issued by the chief of police, the building/fire safety officer, or the city manager or his designee.

Section 13. Severability. The sections and subsections of this ordinance are hereby declared severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 14. Repeal. The following ordinances and sections thereof are hereby and herein repealed, as follows: 53-O-047, 55-O-068, 58-O-113, 59-O-147, 60-O-151, 70-O-211, Section 2 of Ordinance No. 85-O-390, and Sections 49, 79, 81, 94, 95 and 103 of Ordinance No. 51-O-013.

Section 15. [Emergency Clause]

Adopted November 17, 1986.