

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 15, NUISANCES, ARTICLE I, IN GENERAL, SECTION 15-1, NUISANCE CODE, SECTION 15-7, EMERGENCY ABATEMENT, SECTION 15-45, AMENDMENTS, OF THE BROKEN ARROW CODE OF ORDINANCES; REPEALING ALL ORDINANCES TO THE CONTRARY; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW:

SECTION I. That Chapter 15- Nuisances, Article I- In General, Section 15-1- Nuisance code shall be amended as follows:

Sec. 15-1. - Nuisance code.

- (a) Intent, creation and maintenance of public nuisance prohibited; provisions of chapter not applicable to private nuisances.
 - (1) The intent of this chapter is to safeguard public health, safety and welfare by addressing and removing unsanitary, unsafe and unhealthy conditions, as defined in this Code and the 2015 International Property Maintenance Code, as modified.
 - (2) It shall be unlawful for any person or firm to create or maintain a public nuisance within the city, or to permit a public nuisance to remain on premises under the person or firm's control within the city. Public nuisances are expressly declared to be conditions detrimental to the health, safety, and/or welfare of the public.
 - (3) The public is defined as any number of the inhabitants of the city or any neighborhood generally.
 - (4) The enumeration of certain public nuisances shall be cumulative and not limit other provisions of law or ordinances defining nuisances, either in more general or more specific terms.
 - (5) While the city supports an ongoing commitment to aesthetic values, situations which violate aesthetic standards but which do not create any actual or potential detriment to the health, safety, and/or welfare of the public are not "public nuisances" as the term is used in this chapter. Situations involving private nuisances, including subdivision private covenants, shall not use the provisions of this chapter to interfere with the normal resolution of these problems through civil process or private action.
- (b) Authority of officers to carry out duties of nuisance abatement; appeal of administrative orders.
 - (1) Pursuant to the authority granted by the 11 O.S. § 22-111(A)7, the city hereby designates the city manager as the nuisance hearing officer. The city manager is hereby authorized to designate two alternative hearing officers to preside over the nuisance public hearings in his absence.
 - (2) Pursuant to the authority granted by 11 O.S. § 22-111(A)7, the city hereby designates the employees of the department of community development as the administrative

officers and city health officers (hereafter referred to as neighborhood improvement officers) to carry out the duties of nuisance abatement. Provided that this designation does not diminish the authority granted to state or county health officers, peace or police officers or fire marshals, but instead shall be interpreted as granting concurrent jurisdiction and authority.

- (3) The neighborhood improvement officer acting at his discretion or upon order of the city manager, or designee shall cause public nuisances within the city to be abated in accordance with Oklahoma Statutes and this Code.
- (4) Upon a finding that the condition of the property constitutes an immediate detriment or hazard to the public, and that the property would be benefited by the removal of such conditions, the neighborhood improvement officer and agents of the city may proceed to abate the nuisance immediately without prior notice.
- (5) In cases where it is deemed impractical to summarily abate a nuisance, the city may bring suit in the district court of the county in which the property is located.
- (6) The property owner, or aggrieved person, shall have a right of appeal to the hearing officer where it is alleged there is an error in any notice, order or decision of the neighborhood improvement officer. Such appeal shall be taken by filing written notice of appeal with the city clerk within ten days after the notice or order is rendered, specifying the name and mailing address of the appellant and the grounds thereof.
- (7) An order or decision of the hearing officer may also be appealed to the city council by the person against whom the order was directed, or a successor in interest, where it is alleged there is an error in any order or decision of the hearing officer; such appeal shall be taken by filing written notice of appeal with the city clerk within ten days after the notice or order is rendered, specifying the name and mailing address of the appellant and the grounds thereof.
- (8) Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, with the exception of emergency abatements.

(c) General definition of nuisance. In addition to other public nuisances declared by other sections of this Code, the city hereby declares the following to be public nuisances:

- (1) The sale, or offering for sale, of unwholesome food or drink; or the keeping of a place where such sales or offerings are made.
- (2) The sale, offering for sale, or furnishing of intoxicating liquor in violation of the state statutes or city ordinances; or the keeping of a place where intoxicating liquor is sold, offered for sale, or furnished in violation of the state statutes or city ordinances.
- (3) The exposure, display, sale or distribution of obscene pictures, books, pamphlets, magazines, papers, documents or objects, or the keeping of a place where such are exposed, displayed, sold or distributed.
- (4) The keeping of a place where persons gamble, whether by cards, slot machines, punch boards or otherwise.
- (5) The keeping of a place where prostitution, illicit sexual intercourse or other immoral acts are practiced.

- (6) The keeping of a place where repetitive activities in violation of state statutes or city ordinances are practiced or occur.
- (7) The repeated use of any real property or structure to commit a felony violation of the Oklahoma Uniform Controlled Dangerous Substances Act.
- (8) The public exposure of a person having a contagious disease.
- (9) The continued making of loud or unusual noises that annoy persons of ordinary sensibilities; or the keeping of an animal, which makes such noises.
- (10) The operation or use of any electrical apparatus or machine that materially or unduly interferes with radio or television reception by others.
- (11) Any use of a street or sidewalk, or a place adjacent thereto, which causes crowds of people to gather so as to obstruct traffic on such street or sidewalk, or which otherwise obstructs traffic thereon, except as may be authorized by law or ordinance.
- (12) Permitting solid or liquid waste or other solid or liquid to flow or fall, or ice or snow to fall, from any building or structure upon any street or sidewalk.
- (13) All wells, pools, cisterns, bodies or containers of water in which mosquitoes breed or are likely to breed, or which are so constructed, formed, maintained, conditioned or situated as to endanger public safety.
- (14) Rank or noxious weeds or grass, carcasses, accumulations of manure, refuse or similar hazards, which are or are likely to be breeding places for flies, mosquitoes, rodents, vermin or disease germs; and the premises on which such exist.
- (15) Any building, wall, fence or other structure that has been damaged by fire, decay or otherwise, and that is so situated as to endanger the safety of the public, or which are otherwise built, erected or maintained in violation of any ordinance or code.
- (16) Any pit, hole, trench or similar hazard that is so constructed, formed, maintained, conditioned or situated as to endanger the public safety.
- (17) Any fire or explosion hazard that endangers or is likely to endanger public peace, health, safety or welfare.
- (18) Any occupation or activity that endangers, or is likely to endanger public peace, health, safety or welfare.
- (19) Any vehicle, whether in operating condition or not, or any trailer without a current vehicle plate as required by the state statutes for vehicles used on the public highways, when stored or kept in a residentially zoned district in front of the building line on the lot in question.
- (20) Any inoperable or dismantled vehicle, as defined in section 15-6.
- (21) The outside storage, disposal, or abandonment of any unused freezer, refrigerator or similar device or appliances.
- (22) The operation or use of any electric fence controller, which:
 - a. Has not been approved by Underwriters Laboratories; or
 - b. Has nonfunctioning safety features within the electric fence controller; or

- c. Is operated or used on property that has not been posted so as to notify those persons entering the controlled area in which the electric fence charger is used and present.
- (23) The construction of or maintenance of any fence, wall, or barrier which alone or by trapping debris reduces the carrying capacity of any floodplain or drainage course; provided this chapter shall not prevent the erection of dams by landowners which form ponds, detention areas or retention areas where the water is impounded or retained solely within the landowner's property unless such detention or retention overflows upon and negatively impacts adjacent or abutting property.
- (24) The accumulation of trash, garbage, rubbish or other debris in such quantities and at such locations as to reduce the carrying capacity of any floodplain, drainage course or easement to such an extent as to create a threat of flooding to the persons or property of another at a location off the tract where the accumulation of trash, garbage, rubbish or other debris is located.
- (25) Trees or tree limbs damaged or dead to the extent that a tree, limb or tree part could fall and injure the general public.
- (26) Weeds including, but not limited to, poison ivy, poison oak or poison sumac, and all vegetation at any state of maturity which exceeds a height of 12 inches, except healthy trees, shrubs or produce for human consumption when grown in a tended and cultivated garden, unless such trees, shrubbery or produce by their density or location constitute a detriment to the health, safety or welfare of the public, or creates a fire or traffic hazard, or harbors, conceals or invites deposits or accumulations of trash, or harbors or invites rodents or vermin, or is dead or diseased.
- (27) The existence of graffiti or the act of placing graffiti on any real or personal property, of altering or defacing any real or personal property of another without their consent through the use of paint, spray paint, markers, objects or other substances capable of destroying property, which is offensive to a reasonably sensitive person.
- (28) Trash including, but not limited to, refuse, litter, ashes, leaves, tree limbs or brush, debris, paper, combustible materials, rubbish, offal, or waste, or matter of any kind or form that is uncared for, discarded, or abandoned, including such trash on porches, patios, trailers or similar vehicles and in carports.
- (29) Weeds and grass over 12 inches in height and debris of any type on undeveloped or partially developed property which is within 150 feet from any property zoned for any other use.
- (30) All trees, hedges, signs or other obstructions, or any portion of the same, located within a site-distance triangle (as defined in the Zoning Code) which prevents persons driving vehicles approaching an intersection of streets from having a clear view of traffic approaching such intersection.
- (31) Notwithstanding the provisions above, the city prohibits and prevents all encroachments into and upon the sidewalks, streets, avenues, alleys and other property of the city except as may be authorized by law or ordinance. All such encroachments upon the sidewalks, streets, avenues, alleys and other property of the city, except as may be authorized by law or ordinance shall be removed at the expense of the owner or

occupier of the grounds fronting thereon, or at the expense of the person placing the encroachment there.

Any of the above shall constitute a public nuisance and shall be abated as set out in section 15-2 unless otherwise stated in this chapter.

(d) Definitions.

- (1) *Boarding and securing* or *boarded and secured* means the closing, boarding or locking of any or all exterior openings so as to prevent entry into the structure.
- (2) *Unsecured building* shall mean any structure which is not occupied by a legal or equitable owner thereof, or by a lessee of a legal or equitable owner, and into which there are one or more unsecured openings, such as broken windows, unlocked windows, broken doors, unlocked doors, holes in exterior walls, holes in the roof, broken basement or cellar hatchways, unlocked basement or cellar hatchways or other similarly unsecured openings which would facilitate an unauthorized entry into the structure.
- (3) *Weed* includes, but is not limited to, poison ivy, poison oak, or poison sumac and all vegetation at any state of maturity which:
 - a. Exceeds 12 inches in height, except healthy trees, shrubs, or produce for human consumption, grown in a tended and cultivated garden unless such trees and shrubbery by their density or location constitute a detriment to the health, benefit and welfare of the public and community or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the mowing of said weeds;
 - b. Regardless of height, harbors, conceals, or invites deposits or accumulation of refuse or trash;
 - c. Harbors rodents or vermin;
 - d. Gives off unpleasant or noxious odors;
 - e. Constitutes a fire or traffic hazard; or
 - f. Is dead or diseased.

The term "weed" shall not include tended crops on land zoned for agricultural use which are planted more than 150 feet from a parcel zoned for other than agricultural use.

- (4) *Mowing and maintenance responsibility* means any owner, tenant or other person responsible for private property shall mow and maintain the entire property including all yards, right-of-ways, easements and alleys unless the right-of-ways, easements and alleys are expressly designated to be maintained by a designated government authority.
- (5) *Trash* means any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, or waste, or matter of any kind or form which is uncared for, discarded, or abandoned.
- (6) *Owner* means the owner of record as shown by the most current tax rolls of the county treasurer's office.
- (7) *Cleaning* means the removal of trash from property.

- (8) *Advertising* means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner or tenant of the property, or an agent of such owner or tenant, for the purpose of promoting products or services or conveying information to the public.
- (9) *Graffiti* means, without limitation, any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fence, gate, building or other structure; provided, this definition shall not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, or by an authorized agent for such owner or tenant.
- (10) *Removal, remove or removed* , when used in relation to the eradication of graffiti, means the act of taking graffiti off of, or masking the presence of graffiti on a rock, tree, wall, bridge, fence, gate, building or other structure.
- (11) *Dilapidated building* means:
 - a. A structure which, through neglect or injury, lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that the structure is a hazard to the health, safety, or welfare of the general public.
 - b. A structure which is unfit for human occupancy due to the lack of necessary repairs and is considered uninhabitable or is a hazard to the health, safety, and welfare of the general public.
 - c. A structure which is determined by the city to be an unsecured building, as defined by 11 O.S. § 22-112.1, more than three times within any 12-month period.
 - d. A structure which has been boarded and secured, as defined by 11 O.S. § 22-112.1, for more than 36 consecutive months.
 - e. Unfit for human occupancy means a structure that due to lack of necessary repairs is considered uninhabitable and is a hazard to the health, safety, and welfare of the general public.
- (12) *Mortgage holder* means mortgage holder of record as shown by the most current county clerk records.
- (13) *Person* shall mean any person, firm, partnership, association, corporation, company or organization of any kind.
- (14) *Vehicle* shall mean any motor vehicle, automobile, truck, trailer, motorcycle, recreational vehicle, tractor, buggy, wagon, or self-propelled farm or construction equipment. Vehicle in the singular shall be interpreted as meaning the plural when multiple inoperable vehicles exist on a property.
- (15) *Public property* shall mean any property owned or controlled by the city, Tulsa County Commissioners, Wagoner County Commissioners, the State of Oklahoma or United States Government.
- (16) *Private property* shall mean any real property, which is not public property.

(17) *Dismantled, junked, abandoned or inoperable vehicles* shall be deemed to include the major parts thereof, including bodies, engines, transmissions, frames and rear ends.

SECTION II. That Chapter 15- Nuisances, Article I- In General, Section 15-7- Emergency abatement shall be amended as follows:

Sec. 15-7. - Emergency abatement.

- (a) Immediate abatement. If such nuisance exists in a condition which will cause imminent danger or peril to life or property, or in such a condition so menacing to the public health, peace or safety, the neighborhood improvement officer may proceed to abate the nuisance immediately without prior notice; provided, however, that notice and an opportunity to be heard shall be afforded the property owner as soon as possible after abatement.
- (b) Emergency abatement procedures.
 - (1) Upon determination that a nuisance constitutes an emergency, the neighborhood improvement officer shall prepare an emergency order of abatement, to be mailed to the property owner and mortgage holder. The neighborhood improvement officer will submit to the director of development services a copy of the order, along with justification for the emergency abatement.
 - (2) The director of community development will approve or deny the request; if approved, the director will submit his recommendation to the city manager, or designee.
 - (3) Upon approval of the city manager, or designee, a copy of the emergency order, along with the approval, will be forwarded for commencement of the emergency abatement; said abatement shall begin upon receipt or as soon as practical within 24 hours of receipt.
 - (4) At the time of the emergency abatement, the neighborhood improvement officer will post a copy of the emergency order of abatement conspicuously upon the property. The abatement crew will obtain photographs of the property immediately prior to commencement of the abatement and after abatement is completed.
 - (5) At the conclusion of the emergency abatement, all costs will be submitted for invoicing pursuant to subsection 15-2(a)(6)—(8).

SECTION III. That Chapter 15- Nuisances, Article I- In General, Section 15-45- Amendments shall be amended as follows:

Sec. 15-45. - Amendments.

The 2015 International Property Maintenance Code adopted in section 15-44 is hereby amended as set forth in the following subsections:

(1) Subsection 101.1 is amended by inserting the phrase, "The City of Broken Arrow, Oklahoma" in lieu of the phrase, "[name of jurisdiction]."

- (2) Section 103.1 is amended by inserting the phrase, " Department of Community Development" in lieu of the phrase, "Department of Property Maintenance Inspections."
- (3) Subsection 103.2 shall be deleted.
- (4) Subsection 103.3 shall be deleted.
- (5) Subsection 103.5 shall be deleted.
- (6) Subsection 107.1 shall be amended to state: Notice to person(s) responsible: Whenever the code official determines there has been a violation of this code, or has grounds to believe that a violation has occurred, a notice or order to Correct and Repair shall be given in the manner prescribed in Sections 107.2 and 107.3 to the person(s) responsible for the violation as specified in this code. Notices for demolition shall comply with Section 15-4 of the Municipal Code.
- (7) Section 107.5 shall be amended to state: Penalty: Penalties for noncompliance with notices and orders shall be set forth in Section 106.4 and Section 15-8 of the Municipal Code.
- (8) Subsection 108.3 shall be amended to state: Notice: Whenever the code official has condemned a structure under the provisions of this chapter, and the owner or responsible person(s) have not complied with the notice or order to correct and repair, and demolition or razing of the structure is deemed appropriate, the code official shall proceed in the manner prescribed by Section 15-4 of the Municipal Code.
- (9) Subsection 111.1 shall be amended to state: Appeal: An aggrieved person may file an appeal of the code official's decision, notice or order. Said right of appeal shall be in conformance with Section 15-1 of the Municipal Code.
- (10) Subsections 111.2 through 111.8 shall be deleted in their entirety.
- (11) Subsection 112.4 shall be amended to state: Failure to comply: Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as set forth in Section 15-8 of the Municipal Code.
- (12) Subsections 302.4, 302.8 and 302.9 shall be deleted.
- (13) Subsection 304.14 shall be amended by inserting the dates March 1 to December 1.
- (14) Subsection 506.2 shall be amended to state: Maintenance: Every plumbing stack, vent, cleanout, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects. Every cleanout, waste and sewer line shall be maintained properly sealed so as to prevent infiltration of the sanitary sewer system by stormwater or groundwater.
- (15) Subsection 602.3 shall be amended by inserting the dates October 1 to April
- (16) Subsection 602.4 shall be amended by inserting the dates October 1 to April 1.

SECTION IV. Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION V. An emergency exists for the preservation of the public health, peace, and safety and therefore this ordinance shall become effective from and after the time of its passage and approval.

PASSED AND APPROVED and the emergency clause ruled upon separately this _____ day of _____, 2019.

ATTEST:

MAYOR

(Seal) CITY CLERK