

ORDINANCE NO. 2023-005

AN ORDINANCE AMENDING AND REENACTING SECTIONS ONE AND FOUR, OF ARTICLE VIII, SECTION IV, REGARDING "NUISANCES".

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KILLDEER, NORTH DAKOTA, AS FOLLOWS:

Section 1: Chapter 8, Article 4, Section 1, entitled "Declaration of Nuisances Generally" is hereby amended and reenacted as follows:

8.0401. Declaration of Nuisances Generally.

(A) In addition to such other items or conditions which may be declared to be a nuisance under other chapters of this Code of Ordinances, the following items or conditions designated hereafter are declared to be nuisances.

(1) Nuisances per se:

A. Any accumulation of (i) organic materials or (ii) inorganic materials, or (iii) combination of both, which is located on private property, and which, because of the circumstances in which it is stored or accumulated, presents a hazard to any other property, private, or public. Without limiting the generality of the foregoing, there is included within this category the following substances or items:

1. Garbage, as defined in subsection 7.0301 of the Code of Ordinances;
2. Refuse;
3. Rubbish;
4. Dangerous buildings as defined in subsection 7.0501 of the Code of Ordinances;
5. Noxious weeds;
6. Materials which are subject to special storage requirements under the applicable Fire Code and which in fact are not stored substantially as required therein;
7. Open pits or excavations not barricaded or fenced in a manner sufficient to protect persons, particularly small children, whether or not such persons are trespassers (but excluding those persons working about the premises who assume the risk), from falling therein and injuring themselves, or which collapse or cave in with a reasonable likelihood of damage to property, whether public or private, or injury to persons resulting therefrom;
8. Barbed wire fences, except this clause shall not apply to strands of barbed wire if the lowest strand is located more than six and one-half (6 ½) feet above the adjoining ground level;

9. Mining, manufacturing, food processing or other industrial procedures which (i) violated applicable state or federal pollution regulations, or (ii) which are generally offensive (under a reasonable man standard) to three (3) or more people working or living within close proximity to the source;

10. All species and varieties of elm trees (trees of genus *Ulmus*) infected with the fungus known as Dutch Elm disease (*certostomella Ulmi*) as determined by a laboratory analysis by the section of applied botany and plant pathology, North Dakota State University, or by laboratories approved by said agency.

11. All species and varieties of elm trees that are dead or substantially dead and all dead elm wood to which the bark is still attached which, because of their condition, serve as a breeding place for the European Elm Bark Beetle (*Scolytus multistriatus*), and the native Elm Bark Beetle (*Hylurgopinus rufipes*), or any other carrier of said disease;

12. Privies or septic systems not constructed or operated in accordance with subsection 8.0101, 8.0102, and 8.0103 of the Code of Ordinances; or

13. Nuisance as defined by regulation promulgated by the Southwest District Health Unit pursuant to NDCC 23-05-01 and NDCC 23-14-06 or other equivalent statutes.

14. Weeds and grasses that are eight (8) inches or longer in height. Notwithstanding anything herein to the contrary, weeds and grasses existing as nuisances under this section shall be abated within seven (7) days of receiving notice to abate the nuisance.

Section 2: Chapter 8, Article 4, Section 4, entitled “Hearing on Necessity of Abatement” is hereby amended and reenacted as follows:

8.0404. Hearing on Necessity of Abatement.

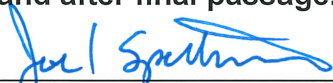
Any owner who shall receive a notice as specified in subsection 8.0402, for any type of nuisance other than as described in 8.0401(A)(1)(14), may, within ten (10) days after its receipt or personal service, apply in writing to the mayor for a hearing on the necessity for the abatement of the nuisance described in such notice. Any owner receiving a notice to abate nuisance as described in 8.0401(A)(1)(14) must request a hearing within two (2) days of receipt of the Notice to Abate Nuisance. Such hearing shall be provided by the President of the City Commission, mayor or the President’s ~~his~~ delegate within fifteen (15) ~~ten (10)~~ business days of the filing of the application unless the owner shall agree to a hearing at a later date. The city shall have the burden of proving by the clear weight of evidence that the conditions of which it complains constitute a nuisance as defined in subsection 8.0401. The president shall either find for the owner, in which case no further action may be taken by the City without the issuance of another notice pursuant to subsection 8.0402, which shall be issued only in the event of a material change in circumstances,

or, the ~~President-mayor~~ shall find for the city in which case the owner shall have an additional ten (10) days from the date of service upon him by mail or in person of a copy of the ~~President's~~ mayor's decision in which he or she may abate the nuisance. If the owner ~~he~~ fails, neglects or refuses to abate the nuisance within that period of time then the city may proceed to enter upon the property and to abate the nuisance and such actions, if reasonable in nature and undertaken in good faith, shall not constitute a trespass or conversational. If the owner is aggrieved by the decision made by the ~~President mayor~~ he or she may, without further administrative review, resort to his or her judicial remedies.

Section 3: Repeal of Ordinances in Effect. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 4: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Ordinance shall continue in full force and effect.

Section 5: Effective Date: This Ordinance shall be in full force and effect from and after final passage.



By: Joel Spethman
City Commission President,
City of Killdeer

ATTEST:



Matt Oase, City Auditor

First Reading: 04-17-2023
Second Reading: 05-01-2023
Final Reading: 05-01-2023

