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## **CHAPTER 3 – MISDEMEANORS**

### **Article 1 – General Misdemeanors**

#### **SECTION 3-101: OBSTRUCTING AN OFFICER**

It shall be unlawful for any person to use or threaten to use violence, force, physical interference, or obstacle to intentionally obstruct, impair, or hinder the enforcement of the penal law or the preservation of the peace by a law enforcement officer acting under color of his or her official authority or a police animal assisting a peace officer acting pursuant to the peace officer's official authority. "Police animal" shall mean a horse or dog owned or controlled by the state or any county, city or village for the purpose of assisting a peace officer acting pursuant to his or her official authority. (Neb. Rev. Stat. §28-906)

### **SECTION 3-102: HINDERING OR RESISTING ARREST**

It shall be unlawful for any person in this village to hinder, obstruct, or resist any law enforcement officer in making any arrest or performing any duty of his or her office. (Neb. Rev. Stat. §28-904)

### **SECTION 3-103: IMPERSONATING OFFICER**

It shall be unlawful for any person to falsely pretend to be a law enforcement officer and perform any act in that pretended capacity. (Neb. Rev. Stat. §28-610)

### **SECTION 3-104: FALSE REPORTING**

It shall be unlawful for any person to:

A. Furnish material information he or she knows to be false to any law enforcement officer or other official with the intent to instigate an investigation of an alleged criminal matter or impede the investigation of an actual criminal matter;

B. Furnish information he or she knows to be false, alleging the existence of (1) a need for the assistance of an emergency medical service or out-of-hospital emergency care provider or (2) an emergency in which human life or property are in jeopardy to any hospital, emergency medical service, or other person or governmental agency;

C. Furnish any information or cause such information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means knowing the same to be false concerning the need for assistance of a fire department or any personnel or equipment of such department;

D. Furnish any information he or she knows to be false concerning the location of any explosive in any building or other property to any person;

E. Furnish material information he or she knows to be false to any governmental department or agency with the intent to instigate an investigation or to impede an ongoing investigation and which actually results in causing or impeding such investigation.  
(Neb. Rev. Stat. §28-907)

### **SECTION 3-105: RESISTING ARREST WITHOUT THE USE OF A DEADLY OR DANGEROUS WEAPON**

A. It shall be unlawful for any person to intentionally prevent or attempt to prevent a law enforcement officer, acting under color of his or her official authority, from effecting an arrest on said person or on another by (1) using or threatening to use physical force or violence against the said officer or another; (2) using any other means which creates a substantial risk of causing physical injury to the officer or another; or (3) employing means which require substantial force to overcome resistance to effecting the arrest; provided, this section shall apply only to those actions taken to resist arrest without the use of a deadly or dangerous weapon.

B. It is an affirmative defense to prosecution under this section if the officer involved was out of uniform and did not identify himself or herself as a law enforcement officer by showing his or her credentials to the person whose arrest was attempted.  
(Neb. Rev. Stat. §28-904)

### **SECTION 3-106: CONCEALED WEAPONS**

Except as otherwise provided in this section, any person who carries a weapon or weap-

ons concealed on or about his or her person such as a revolver, pistol, Bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other deadly weapon commits the offense of carrying a concealed weapon. This section shall not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon which the offender is carrying is a handgun as defined in Neb. Rev. Stat. §69-2429. (Neb. Rev. Stat. §§17-556, 28-1202)

### **SECTION 3-107: DISCHARGE OF FIREARM; DANGEROUS PROJECTILES**

A. It shall be unlawful for any person, except an officer of the law in the performance of his or her official duty, to fire or discharge any gun or pistol within the village; provided, nothing herein shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have written permission from the Village Board. (Neb. Rev. Stat. §17-556)

B. It shall be unlawful for any person to discharge a slingshot, paint ball gun, blow gun, air rifle, or other like instrument capable of launching a dangerous projectile therefrom at any time or under any circumstances. (Neb. Rev. Stat. §17-207)

### **SECTION 3-108: STALKING**

A. Any person who willfully harasses another person or a family or household member of such person with the intent to injure, terrify, threaten, or intimidate commits the offense of stalking.

B. For purposes of this section, the following definitions shall apply:

1. "Harass" means to engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose;
2. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning, contacting, or otherwise communicating with the person;
3. "Family or household member" means a spouse or former spouse of the victim, children of the victim, a person presently residing with the victim or who has resided with the victim in the past, a person who had a child in common with the victim, other persons related to the victim by consanguinity or affinity, or any person presently involved in a dating relationship with the victim or who has been involved in a dating relationship with the victim. For purposes of this subdivision, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement but does not include a casual relationship or an ordinary association between persons in a business or social context.

(Neb. Rev. Stat. §§28-311.02, 28-311.03, 28-311.04)

### **SECTION 3-109: CRIMINAL TRESPASS**

A. A person commits first degree criminal trespass if he or she:

1. Enters or secretly remains in any building or occupied structure or any separately secured or occupied portion thereof, knowing that he or she is not licensed or privileged to do so; or

2. Enters or remains in or on a public power infrastructure facility knowing that he or she does not have the consent of a person who has the right to give consent to be in or on the facility. For purposes of this section, "public power infrastructure facility" shall mean a power plant, an electrical station or sub-station, or any other facility which is used by a public power supplier as defined in Neb. Rev. Stat. §70-2103 to support the generation, transmission, or distribution of electricity and which is surrounded by a fence or is otherwise enclosed.

B. A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

1. Actual communication to the actor; or
2. Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
3. Fencing or other enclosure manifestly designed to exclude intruders except as otherwise provided in subsection (A).

(Neb. Rev. Stat. §§28-520, 28-521)

### **SECTION 3-110: PUBLIC INDECENCY**

It shall be unlawful for any person 18 years of age or over to perform, procure, or assist any other person to perform in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

A. An act of sexual penetration as defined by Neb. Rev. Stat. §28-318(5);

B. An exposure of the genitals of the body done with intent to affront or alarm any person; or

C. A lewd fondling or caressing of the body of any other person of the same or opposite sex.

(Neb. Rev. Stat. §28-806)

### **SECTION 3-111: PUBLIC NUDITY; AIDING AND ABETTING**

A. It shall be unlawful for any person to intentionally expose his or her genitals, pubic area, or buttocks while employed in providing any service, product, or entertainment in any business or commercial establishment.

B. It shall be unlawful for anyone to aid, abet, assist, or direct another person to intentionally expose his or her genitals, pubic area, or buttocks while employed in providing any service, product, or entertainment in any business or commercial establishment.

### **SECTION 3-112: INDECENT EXPOSURE OF PERSON; PUBLIC URINATION; INDECENT BOOK, PICTURE, PLAY OR DESIGN**

It shall be unlawful for any person within this village to make an indecent exposure of his or her person; to urinate or defecate in public view; to commit any indecent or lewd act; to sell or offer for sale or to dispense of in any manner any obscene, lewd or indecent book, picture or other publication or thing; to exhibit or perform any indecent, immoral, lewd or obscene play or other representation; or in any public place to write, draw, or make any profane, obscene, indecent or lewd work, sentence, figure or design. (Ord. No.

### **SECTION 3-113: SEXUAL PREDATORS; RESIDENCY RESTRICTIONS**

A. For purposes of this section:

1. "Child care facility" means a facility licensed pursuant to the Child Care Licensing Act;
2. "Reside" means to sleep, live, or dwell at a place, which may include more than one location and may be mobile or transitory;
3. "Residence" means a place where an individual sleeps, lives, or dwells, which may include more than one location and may be mobile or transitory;
4. "School" means a public, private, denominational, or parochial school which meets the requirements for state accreditation or approval;
5. "Sex offender" means an individual who has been convicted of a crime listed in Neb. Rev. Stat. §29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act; and
6. "Sexual predator" means an individual required to register under the Sex Offender Registration Act, who has committed an aggravated offense as defined in Neb. Rev. Stat. §29-4001.01 and who has victimized a person 18 years of age or younger.

B. It is unlawful for any sexual predator to reside within 500 feet from a school or child care facility. For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the residence to the nearest outer boundary line of the school or child care facility.

C. This ordinance shall not apply to a sexual predator who (1) resides within a prison or correctional or treatment facility operated by the state or a political subdivision; (2) established a residence before July 1, 2006, and has not moved from that residence; or (3) established a residence after July 1, 2006, and the school or child care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location.

Neb. Rev. Stat. §§29-4016, 29-4017) (Ord. No. 209, 8/29/06)

### **SECTION 3-114: DEVICES PROHIBITED IN RESTROOMS, LOCKER ROOMS, ETC.**

It shall be unlawful for any person to use any electronic, mechanical, digital, voltaic or other device, instrument, or means capable of recording, producing, duplicating, reproducing, storing, copying, transmitting or displaying any visual, video, photographic, electronic, digital, recorded or other visual image, picture or representation, including but not limited to any camera, photographic camera, video camera, fiber optic camera, motion picture camera, television camera, camcorder or videotaping device or any cell phone of any type or kind regardless of its capacity or lack thereof to produce a visual image, in any restroom, locker room, lavatory, bathroom, shower facility or dressing room in any building owned, leased to, or under the control of the village. (Ord. No. 198, 5/4/04)

### **SECTION 3-115: WINDOW PEEPING**

It shall be unlawful for any person to go upon the premises of another and look or peep into any window, door, or other opening in any building located thereon which is occupied

as a place of abode.

### **SECTION 3-116: CRIMINAL MISCHIEF**

It shall be unlawful for any person to damage property of another intentionally or recklessly, tamper with property of another intentionally or recklessly so as to endanger any person or property or cause another to suffer pecuniary loss by deception or threat intentionally or maliciously, provided that the value of the property involved is under \$5,000.00. (Neb. Rev. Stat. §28-519)

### **SECTION 3-117: THEFT**

A. For purposes of this section the definitions found in Neb. Rev. Stat. §28-509 shall apply; and the offenses described in subsections (B) through (H) shall exist when the value of the thing involved is under \$500.00.

B. A person commits theft if he or she takes or exercises control over movable property of another with the intent to deprive him or her thereof. A person commits theft if he or she transfers immovable property of another or any interest therein with the intent to benefit himself or herself or another not entitled thereto. Except as provided for rental or lease of a motor vehicle in Neb. Rev. Stat. §28-511(4), it shall be presumed that a lessee's failure to return leased or rented movable property to the lessor after the expiration of a written lease or written rental agreement is done with intent to deprive if such lessee has been mailed notice by certified mail that such lease or rental agreement has expired and he or she has failed within ten days after such notice to return such property.

C. A person commits theft if he or she obtains property of another by deception as defined in Neb. Rev. Stat. §28-512.

D. A person commits theft if he or she obtains property of another by threatening to:

1. Inflict bodily injury on anyone or commit any other criminal offense;
2. Accuse anyone of a criminal offense;
3. Expose any secret tending to subject any person to hatred, contempt or ridicule or to impair his or her credit or business repute;
4. Take or withhold action as an official or cause an official to take or withhold action;
5. Bring about or continue to strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
6. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

E. It is an affirmative defense to prosecution based on subdivisions (D)(2) through (4) herein that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

F. A person who comes into control of property of another that he or she knows to

have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he or she fails to take reasonable measures to restore the property to a person entitled to have it.

G. A person commits theft if he or she obtains services, which he or she knows are available only for compensation, by deception or threat or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone service, electric service, cable television service, or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other movable property. When compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to presumption that the service was obtained by deception as to intention to pay. Further, a person commits theft if, having control over the disposition of services of others to which he or she is not entitled, he or she diverts such services to his or her own benefit or to the benefit of another not entitled thereto.

H. A person commits theft if he or she receives, retains or disposes of stolen movable property of another knowing that it has been stolen, or believing that it has been stolen, unless the property is received, retained, or disposed with intention to restore it to the owner.

(Neb. Rev. Stat. §§28-511 through 28-515, 28-517, 28-518)

### **SECTION 3-118: THREATS; ASSAULT IN THE THIRD DEGREE**

It shall be unlawful for any person to intentionally, knowingly, or recklessly cause bodily injury to another person or threaten another in a menacing manner. It shall further be unlawful for any person to commit the above act in a fight or scuffle entered into by mutual consent. (Neb. Rev. Stat. §28-310)

### **SECTION 3-119: DISORDERLY CONDUCT**

Any person who shall knowingly start a fight, fight, commit assault or battery, make unnecessary noise, or otherwise conduct himself in such a way as to breach the peace shall be deemed to be guilty of an offense. (Neb. Rev. Stat. §17-556)

### **SECTION 3-120: DISTURBING AN ASSEMBLY**

It shall be unlawful for any person or persons to disturb, interrupt, or interfere with any lawful assembly of people, whether religious or otherwise, by loud and unnecessary noise, threatening behavior, or indecent and shocking behavior. (Neb. Rev. Stat. §17-556)

### **SECTION 3-121: DISTURBING THE PEACE**

It shall be unlawful for any person to intentionally disturb the peace and quiet of any person, family or neighborhood. (Neb. Rev. Stat. §§17-556, 28-1322)

### **SECTION 3-122: LOUD MUSIC, RECORDINGS, RADIOS AND SIMILAR DEVICES; EXCEPTIONS**

It shall be unlawful for any person to operate any radio, tape player, compact disc player, stereophonic sound system, or similar device which reproduces or amplifies radio broadcasts or musical recordings in or upon any street, alley, or other public place in such a manner as to be audible to other persons more than 50 feet from the source. Persons operating such devices while participating in licensed or permitted activities, such as pa-



rades, shall not be deemed in violation of this section.

### **SECTION 3-123: EXCESSIVE NOISE**

It is hereby determined to be unlawful to operate industrial equipment, heavy machinery, jack hammers and other industrial equipment emitting loud noise, or to race automobile engines, within the village between the hours of 8:00 p.m. and 7:00 a.m. in such a manner as to disturb the comfort, repose, peace and quiet of residents of the village unless such activity has been approved in advance by the Village Board.

### **SECTION 3-124: MISREPRESENTATION BY MINOR; TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS**

Any person under the age of 18 years who shall obtain cigars, tobacco, cigarettes, or cigarette material, vapor products, or alternative nicotine products from a licensee by representing that he or she is of the age of 18 years or over is guilty of an offense. (Neb. Rev. Stat. §28-1427)

### **SECTION 3-125: MINORS; VENDORS; TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS**

A. Any minor under the age of 18 years who shall smoke cigarettes or cigars, use vapor products or alternative nicotine products, or use tobacco in any form whatever shall be guilty of an offense. Any minor charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, vapor products, alternative nicotine products, or tobacco.

B. Any person who shall sell, give, or furnish in any way any tobacco in any form whatever or any cigarettes or cigarette paper, vapor products, or alternative nicotine products to any minor under 18 years of age is guilty of an offense.  
(Neb. Rev. Stat. §§28-1418, 28-1419)

### **SECTION 3-126: CURFEW**

A. It shall be unlawful for any person under 16 years of age to loiter, idle, wander, stroll, play or be in or upon the public streets, public places and public buildings; places of amusement and entertainment; vacant buildings or vacant lots; or to operate any bicycle or other vehicle in, upon, over, or through the streets or other public places of the village between the hours of 11:00 p.m. of any day to 5:00 a.m. of the following day unless such person is accompanied by a parent, guardian or other adult person having the legal care and custody of said minor person or unless the minor person is upon an emergency errand or legitimate business directed by his or her parents, guardian or legal custodian, except as provided in subsection (B).

B. Nothing herein contained shall prohibit said minor person(s) from attending special school functions or adult-supervised entertainment conducted by any school, church or fraternal organization which continue beyond the curfew hours as set out in subsection (A). In all such cases the hours herein prohibited shall be extended for those minors attending said special social functions or entertainment one hour after the closing of such special function.

C. Every member of the police force, while on duty, shall be authorized to detain any such minor willfully violating the provisions of this article and, upon apprehension of said minor, shall forthwith notify by telephone or other appropriate means the parents or legal guardians or person in custody of said minor child.

D. It shall be unlawful for the parent, guardian or other adult person having the care and custody of minors under the age of 16 years to allow or permit said minor persons to do any of the acts or things prohibited by subsections (A) or (B) of this article.

### **SECTION 3-127: LITTERING**

A. Any person who deposits, throws, discards, scatters, or otherwise disposes of any litter, refuse, waste matter, or other thing on any public or private property or in any waters commits the offense of littering unless (1) such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or (2) the litter is placed in a receptacle or container installed on such property for such purpose.

B. Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this section, the operator of such motor vehicle or watercraft commits the offense of littering.

C. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

1. "Litter" shall include all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state but does not include wastes of primary processes of farming or manufacturing.
2. "Waste material" shall mean any material appearing in a place or in a context not associated with that material's function or origin.

(Neb. Rev. Stat. §§17-123.01, 28-523)

### **SECTION 3-128: POSTING NOTICES**

No person in the village shall fasten any poster or other advertising device in any way upon public or private property in the village unless legally authorized to do so.

### **SECTION 3-129: POSTED ADVERTISEMENTS**

It shall be unlawful for any person to wrongfully and maliciously tear, deface, remove, or cover up the posted advertisement or bill of any person, firm, or corporation when said bill or advertisement is rightfully and lawfully posted and the same remains of value.

### **SECTION 3-130: APPLIANCE OUTDOORS**

It shall be unlawful for any person to permit a refrigerator, icebox, freezer, or any other dangerous appliance to be in the open and accessible to children, whether on private or public property, unless he or she shall first remove all doors, lids and locks and make the same reasonably safe. (Neb. Rev. Stat. §18-1720)

### **SECTION 3-131: OBSTRUCTING WATER FLOW**

It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe or hydrant.

### **SECTION 3-132: INJURY TO PLANTS AND TREES**

It shall be unlawful for any person to purposely or carelessly and without lawful authority to cut down, carry away, injure, break down, or destroy any trees or their fruit or any

shrub, plant, flower, or grass on any public or private property. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by it, shall make an application to the Village Board and the written permit of the board in accordance with its decision to allow such an action shall constitute the only lawful authority on the part of the company to do so.

### **SECTION 3-133: PARKS; INJURY TO PROPERTY; LITTERING**

It shall be unlawful for any person to maliciously or willfully cut down, injure, or destroy any tree, plant, or shrub; to injure or destroy any sodded or planted area; or to injure or destroy any building, structure, equipment, fence, bench, table, or any other property of the village parks and recreational areas. No person shall commit any waste on or litter the village parks or other public grounds. (Neb. Rev. Stat. §§17-563, 28-523)

### **SECTION 3-134: BIG SPRINGS LAKE PARK; PROHIBITIONS**

It shall be unlawful for any person to swim, wade, ice skate or ice fish within or on the waters of the lake located at Big Springs Lake Park. (Ord Nos. 228, 5/3/11; 229, 6/7/11)

### **SECTION 3-135: MALICIOUS DESTRUCTION OF PROPERTY**

It shall be unlawful for any person within the corporate limits to purposely, willfully or maliciously injure in any manner or destroy any real or personal property of any description belonging to another.

### **SECTION 3-136: PROHIBITED FENCES**

It shall be unlawful for any person to erect or cause to be erected and maintain any barbed wire or electric fence within the corporate limits where such fence abuts a public sidewalk, street, or alley.

### **SECTION 3-137: HEDGES, VEGETATION OBSTRUCTING VIEW**

The growing or maintaining or permitting the growing of hedges, corn, or other vegetation so tall as to obstruct the view of any private building, business building, street intersection, or private drive is declared to be a nuisance and is hereby prohibited.

## **Article 2 – Animals**

### **SECTION 3-201: DEFINITION**

For the purpose of this article, the following definition shall apply unless the context clearly indicates or requires a different meaning.

“Owner” shall mean any person, partnership, or corporation owning, keeping, or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.

### **SECTION 3-202: RUNNING AT LARGE**

A. *Animals.* It shall be unlawful for the owner, keeper, or harbinger of any animal, or any person having the charge, custody, or control thereof, to permit a horse, mule, cow, sheep, goat, swine, or other animal to be driven or run at large on any of the public ways and property, or upon the property of another, or to be tethered or staked out in such a manner so as to allow such animal to reach or pass into any public way.

B. *Fowls*. It shall be unlawful for any person to allow poultry, chickens, turkeys, geese, or any other fowls to run at large within the corporate limits.  
(Ord. No. 247, 11/4/14)

### **SECTION 3-203: LIVESTOCK AND FOWLS PROHIBITED; EXCEPTION FOR HENS**

A. It shall be unlawful for any person to keep or maintain within the corporate limits any horse, mule, sheep, cow, goat, swine, or other livestock.

B. It shall be unlawful for any person to keep or maintain within the corporate limits any poultry, chickens, turkeys, geese, or any other fowls, except that a resident may apply for and obtain a permit from the village to house humanely up to five female chickens within the village limits.  
(Ord. No. 247, 11/4/14)

### **SECTION 3-204: ABANDONMENT, NEGLECT, AND CRUELTY**

A person commits cruelty to animals if he or she abandons, cruelly mistreats, or cruelly neglects an animal. "Abandon" shall mean to leave any animal for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health. "Cruelly mistreat" shall mean to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise set upon any animal. "Cruelly neglect" shall mean to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health. (Ord. No. 247, 11/4/14)

### **SECTION 3-205: OWNERS; EXCRETA; TRASH OR GARBAGE**

The owner of every animal shall be responsible for the removal of any excreta deposited on public walks, recreation areas, or private property by his or her animal(s) or deposited as a result of the owner's cleaning of an animal cage, pen, or other animal facility. The owner of any animal shall be responsible for the removal of any trash or garbage that is scattered or removed from its rightful place by his or her animal. (Ord. No. 247, 11/4/14)

### **SECTION 3-206: CITATION**

The designated animal control officer or any law enforcement officer may issue a citation for any violation of this article. The citation shall describe the violation and instruct the owner to report to the village clerk's office in regard to the violation.

A. The violator appearing before the village clerk and desiring to plead guilty and waive court appearance shall present the official citation and pay the clerk the fine noted on the citation, provided that the fine is paid within 30 days, excluding weekends and legal holidays.

B. Any person who violates this section within one year of having been convicted of a first offense shall be fined for successor charges as stated in Section 3-207.

C. If the violator fails to appear within the above stated time period, a complaint will issue in the Deuel County Court for said offense

D. It shall be the duty of the person so designated by the Village Board to cause any dog found to be running at large within the village to be impounded.  
(Ord. No. 247, 11/4/14)

### **SECTION 3-207: PENALTY**

A. Any person violating or refusing to obey any of the provisions of this chapter 3 for which a penalty is not otherwise provided shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be fined the amount of \$25 for a first offense, the amount of \$50 for a second offense, \$100 for a third offense, \$250 for a fourth offense, and \$500 for the fifth or subsequent offense.

B. The court may, as a part of a judgment of conviction, order the offending animal destroyed; and shall, upon conviction of a third or subsequent offense, so order the destruction of the offending animal, except for good cause shown. The Village, upon motion and notice, may request the destruction of the offending animal upon conviction of any offense under this chapter.

C. The court may, as a part of the judgment of conviction, order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted.

D. Conviction under this chapter may be based solely upon the sworn testimony of any sheriff, deputy sheriff, police officer, animal control officer, or other peace officer. Photographic evidence of the offending animal shall be sufficient to state a prima facie case of a violation under this chapter. Impounding of the offending animal shall not be necessary to obtain conviction under this chapter, though nothing contained herein shall be construed to prohibit the impounding of an offending animal pursuant to this chapter. (Ord. No. 247, 11/4/14)

### **SECTION 3-208: ENFORCEMENT POWERS: IMMUNITY**

A. Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

B. Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner as prescribed by law.

C. Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence. (Ord. No. 247, 11/4/14)

## **Article 3 – Dogs and Cats**

### **SECTION 3-301: CATS; LICENSE REQUIRED**

A. It shall be unlawful for any person in the village to own, keep, or harbor a cat over the age of three months without having licensed said cat. Application for the said license shall be made to the village clerk and shall include the name and address of the owner of the cat, such description as may be required for the purpose of identification, and the number of the registration issued. Upon the payment of a fee for each neutered male or spayed female and a higher fee for each unneutered male or unspayed female, the village clerk shall furnish to the registrant a receipt showing the proof of such payment, a metallic tag bearing the registration number and the registration year. The license renewal shall be due on May 1 each year, and the renewal fee shall be delinquent on April 30 each year.

B. Said license shall not be transferable and no refund will be allowed in the case of the death, sale, or other disposition of the licensed cat. No license shall be issued

without presentation of a certificate for a rabies shot effective for the ensuing year. In the event that the license tag is lost and upon satisfactory evidence that the original tag was issued in accordance with provisions herein, the village clerk shall issue a duplicate or new tag for the balance of the year for which the tax has been paid and may charge and collect a fee for each duplicate or new tag so issued. All license fees and collections shall be immediately credited to the general fund. It shall be the duty of the clerk to issue tags of a suitable design that are different in appearance each year.

C. The fees in subsections (A) and (B) shall be as set by resolution by the Village Board and kept on file in the office of the village clerk.

(Ord. No. 247, 11/4/14)

### **SECTION 3-302: CATS; RABIES INOCULATION REQUIRED**

Each cat harbored within the village limits shall be inoculated against rabies upon reaching the age of six months; and it shall be the duty of the owner of such cat to cause such inoculation accordingly. Upon such inoculation, the veterinarian who performed the inoculation shall sign and deliver to the owner of such cat a certificate showing such inoculation against rabies, the date thereof and the effective period of such immunization. (Ord. No. 247, 11/4/14)

### **SECTION 3-303: CATS; RABID; QUARANTINE; DISPOSAL; REPORTS**

A. The owner of any cat which has contracted rabies, which has been subject to same, which is suspected of having rabies or which shall have bitten any person shall, upon demand of the law enforcement authority, produce and surrender said cat to such department to be held in quarantine for observation for a period of time to be determined by the enforcement officer; and if upon examination said cat shall prove to be infected with rabies, said cat shall be disposed of.

B. It shall be unlawful for any person to knowingly keep and harbor any cat infected with rabies or known to have been bitten by a rabid animal, or to fail to report to the law enforcement or health department the existence of a cat which he or she knows to be infected with rabies.

(Ord. No. 247, 11/4/14)

### **SECTION 3-304: DOGS; LICENSING; TAGS**

A. Any person who shall own, keep, or harbor a dog over the age of three months within the village shall, within 30 days after acquisition of the dog, acquire a license for each such dog annually by or before May 1 of each year. The tax shall be delinquent from and after May 10, provided that the possessor of any dog brought into or harbored within the corporate limits subsequent to May 1 of any year shall be liable for the payment of the dog tax levied herein and such tax shall be delinquent if not paid within ten days thereafter.

B. The owner shall state at the time the application is made upon a printed form provided for such purpose his or her name and address and the name, breed, color, and sex of each dog owned and kept by the owner. A certificate verifying that the dog has had a rabies shot, effective for the ensuing year of the license, shall be presented when the license is applied for, and no license or tag shall be issued until the certificate is shown.

C. Licenses shall be issued by the village clerk upon the payment of a license fee for each neutered male and spayed female and a higher fee for each unneutered male and unspayed female. Said fee shall be set by resolution by the Village Board and kept

on file in the village office. The license shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog.

D. Upon payment of the license fee, the village clerk shall issue to the owner of a dog a license certificate and a metallic tag for each dog so licensed. The tag shall be properly attached to the collar or harness of each dog so licensed and shall entitle the owner to keep or harbor the said dog until April 30 following such licensing

E. Every dog must wear an identification tag on a collar or harness at all times when off the premises of the owner. In the absence of a tag, a dog shall be regarded as a stray whenever off its owner's property.

(Ord. No. 247, 11/4/14)

### **SECTION 3-305: DOGS; LOST TAGS**

In the event that a license tag is lost and upon satisfactory evidence that the original tag was issued in accordance with the provisions herein, the person designated by the licensing authority shall issue a duplicate or new tag for the balance of the year for which the license tax has been paid and shall charge and collect a fee set by resolution of the Village Board for each duplicate or new tag so issued. All license fees and collections shall be immediately credited to the general fund. It shall be the duty of the person designated by the licensing authority to issue tags of a suitable design that are different in appearance each year. (Ord. No. 247, 11/4/14)

### **SECTION 3-306: DOGS; WRONGFUL LICENSING**

A. It shall be unlawful for the owner, keeper, or harbinger of any dog to permit or allow such dog to wear any license, metallic tag, or other municipal identification than that issued by the person designated by the licensing authority for dogs, nor shall the owner, keeper, or harbinger wrongfully and knowingly license an unneutered dog with a license prescribed for a neutered dog

B. A dog shall be presumed unspayed or unneutered unless the designated person is shown a certificate by a licensed veterinarian that the animal is permanently sterilized. A portion of the fee as set by resolution by the Village Board shall be held in trust for the owner of any unspayed or unneutered dog. This trust shall be refunded at any time during the six-month period after the fee is paid by showing to the designated person a certification by a licensed veterinarian that said animal is permanently sterilized. If not claimed during the six-month period, said trust shall become the property of the village. After the expiration of the six-month period, any claim that an animal has died or become lost or stolen shall not in itself be cause to refund the trust.

(Ord. No. 247, 11/4/14)

### **SECTION 3-307: DOGS; REMOVAL OF TAGS**

It shall be unlawful for any person to remove or cause to be removed the collar, harness, or metallic tag from any licensed dog without the consent of the owner, keeper, or possessor thereof. (Ord. No. 247, 11/4/14)

### **SECTION 3-308: DOGS; RABIES THREAT; PROCLAMATION; INSPECTION**

A. It shall be the duty of the licensing authority whenever in its opinion the danger to the public safety from rabid dogs is great or imminent to issue a proclamation ordering all persons owning, keeping, or harboring any dog to muzzle the same or to confine it for a period of not less than 30 days or more than 90 days from the date of such proclamation or until such danger is past. The dogs may be harbored by any good and sufficient means

in a house, garage, or yard on the premises wherein the said owner may reside. Upon issuing the proclamation, it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided.

B. Any dog suspected of being afflicted with rabies or any dog not vaccinated in accordance with the provisions of this chapter which has bitten any person and caused an abrasion of the skin shall be seized and impounded under the supervision of the Board of Health for a period of not less than ten days. If, upon examination by a veterinarian, the dog has no clinical signs of rabies at the end of such impoundment, it may be released to the owner or, in the case of an unlicensed dog, it shall be disposed of in accordance with the provisions herein. If the owner of the said dog has proof of vaccination, it shall be confined by the owner or some other responsible person for a period of at least ten days, at which time the dog shall be examined by a licensed veterinarian at the owner's expense. If no signs of rabies are observed, the dog may be released from confinement. (Ord. No. 247, 11/4/14)

### **SECTION 3-309: DOGS; RUNNING AT LARGE**

All dogs shall be kept under restraint. It shall be unlawful for the owner of any dog to allow such dog to run at large at any time within the corporate limits of the village. (Ord. No. 247, 11/4/14)

### **SECTION 3-310: DOGS; KILLING AND POISONING**

It shall be unlawful to kill or to administer or cause to be administered poison of any sort to a dog or in any manner to injure, maim, or destroy or in any manner attempt to injure, maim, or destroy any dog that is the property of another person or to place any poison or poisoned food where the same is accessible to a dog, provided that this section shall not apply to municipal police officers or any person so designated by the licensing authority acting within their power and duty. (Ord. No. 247, 11/4/14)

### **SECTION 3-311: DOGS; BARKING AND OFFENSIVE BEHAVIOR**

It shall be unlawful for any person to own, keep, or harbor any dog which by loud, continued, or frequent barking, howling, or yelping shall annoy or disturb any neighborhood or person or which habitually barks at or chases pedestrians, drivers, or owners of horses or vehicles while they are on any public sidewalks, streets, or alleys in the village. (Ord. No. 247, 11/4/14)

### **SECTION 3-312: DOGS; FIGHTING**

It shall be unlawful for any person, by agreement or otherwise, to set dogs to fighting or by any gesture or word to encourage the same to fight. (Ord. No. 247, 11/4/14)

### **SECTION 3-313: DOGS; LIABILITY OF OWNER**

It shall be unlawful for any person to allow a dog owned, kept, or harbored by the owner or under his or her charge or control to injure or destroy any real or personal property of any description belonging to another person. The owner or possessor of any such dog, in addition to the usual judgment upon conviction, may be made to be liable to the persons so injured in an amount equal to the value of the damage so sustained. (Ord. No. 247, 11/4/14)

### **SECTION 3-314: DOGS; IMPOUNDING**

A. It shall be the duty of the person designated by the licensing authority to capture, secure, and remove in a humane manner to any animal shelter or veterinarian any dog



violating any of the provisions of this article. The dogs so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day. Each impounded dog shall be kept and maintained at the pound for a period of not less than five days after public notice has been given, unless reclaimed earlier by the owner. Notice of impoundment of all animals, including any significant marks or identification, shall be posted at three places in the village. If the owner of the dog is known, the clerk may also attempt to personally notify the owner of the impoundment.

B. Any dog may be reclaimed by its owner during the period of impoundment by payment of the animal shelter's or veterinarian's daily boarding fee and a general impoundment fee, plus an amount for restitution to the village to reimburse the cost of employing a humane officer. The day on which the animal was impounded shall count as one day and any part of any day during which the animal is impounded shall also count as a full day. The impoundment fees plus restitution for the humane officer shall be as set by resolution by the Village Board and kept on file in the village office.

C. Unclaimed impounded animals shall be kept for no more than five days and will become the property of the Village Board or of the Humane Society and shall be placed for adoption in a suitable home or humanely destroyed. Stray animals that are roaming at large, remaining on private property without consent of the owner or tenant, or remaining on or frequenting public property are deemed to be the property of the Village Board. If the stray animal cannot be captured by conventional means, every police or humane officer is authorized to use any means necessary to remove the animal. Before releasing the animal before impoundment, it shall have a rabies shot at the owner's expense and the owner shall pay the cost of impounding the animal. The owner shall also be required to purchase a tag from the village clerk.

(Ord. No. 247, 11/4/14)

### **SECTION 3-315: DOGS; PENALTIES**

In addition to any other penalty provided by this article (Dogs), any person or owner of a dog who shall violate any provision of this article shall be fined \$25.00 for the first offense, \$50.00 for the second offense, and \$75.00 for a third offense which occurs within a 24-month period. Each day's violation of this article shall constitute a separate offense. (Ord. No. 244, 8/6/13)

## **Article 4 – Nuisances**

(Ord. Nos. 219, 12/2/08; 254, 7/5/16; 259, 12/5/17)

### **SECTION 3-401: PUBLIC NUISANCES PROHIBITED**

It shall be the duty of every owner, occupant, lessee, or mortgagee of real estate in the village to keep such real estate free of public nuisances. The Village of Big Springs, by this article, defines its authority to define, regulate, suppress and prevent nuisances and to declare what shall be a nuisance for its jurisdiction and to provide services to abate same for the health and sanitation of the village. (Neb. Rev. Stat. §§17-207, 18-1720)

### **SECTION 3-402: DEFINITIONS**

A. A nuisance consist in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing:

1. Injures or endangers the comfort, repose, health, or safety of others; or
2. Offends decency; or

3. Is offensive to the senses; or
4. Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the village; or
5. In any way renders other persons insecure in life or the use of property; or
6. Essentially interferes with the comfortable enjoyment of life and property; or
7. Tends to depreciate the value of the property of others.

B. "Nuisance" includes but is not limited to the maintaining, using, placing, depositing, leaving or permitting of any of the following specific acts, omissions, places, conditions and things, unless it is specifically authorized by resolution or ordinance of the village:

1. Any odorous, putrid, unsound or unwholesome grain, meat, hides, skins, feathers, vegetable matter or the whole or any part of any dead animal, fish or fowl.
2. The emission of smoke, dust, fumes, gases, mists, odors, or polluted air from any source that is injurious or dangerous to human health and safety.
3. Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats or other insects and rodents or which are foul or malodorous.
4. Filthy, littered, or trash-covered cellars, house yards, barnyards, stable-yards, factory yards, mill yards, vacant areas behind stores, granaries, vacant lots, houses, buildings, or premises.
5. Dead animals generally or dead animals buried within the corporate limits.
6. Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the village.
7. Hauling any garbage, waste, or refuse matter through the streets, alleys, and public ways except when the same is loaded and conveyed in such a way when none of the contents shall be spilled.
8. Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity. Nothing herein contained shall prevent the temporary retention of waste in receptacles nor the dumping of non-putrefying waste in a place and manner approved by the village.
9. Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles.
10. Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition in which flies or rats or other insects or rodents may breed or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity.

11. Any unsafe building, unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards, or other structures are a fire hazard, or a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity.
12. All places used or maintained as junk yards or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof.
13. Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the village or are maintained and kept in such a manner as to be injurious to the public health.
14. Dead or diseased trees within the rights of way of streets within the corporate limits of the village, or on private property within the one-mile zoning jurisdiction beyond the corporate limits. (Neb. Rev. Stat. §17-555)
15. Undrained lots which hold or may hold stagnant water or any other nuisance.
16. Any condition which allows the perpetuating of insects and rodents.
17. Storage, accumulation, keeping, placing, or allowing to remain trash, garbage, scrap and wrecked, worn-out, broken or inoperative or partially destroyed or disassembled personal or real property of any kind, including any junk or abandoned motor vehicles, tractors, trailers, machinery, and equipment.
18. Any vehicle which is not properly registered or is inoperable, wrecked, junked, or partially dismantled and remaining longer than 30 days on private property. This does not apply to a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the lawful operation of such business enterprise (such as a licensed salvage dealer, motor vehicle dealer or farm implement dealer), or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner, and so long as the premises which said vehicle is located is not a nuisance and is maintained in a healthful and safe condition. This subsection shall not apply to such motor vehicle, motor vehicle body, or motor vehicle chassis or parts therefrom kept in a completely enclosed building or any complete vehicle that is covered completely with a fitted cover. Such fitted cover shall be constructed of a nontransparent material and shall completely cover the vehicle. A "fitted covering" shall be defined as a covering made specifically to cover a motor vehicle and not made for any other purpose. Said covering shall be attached in such a man-

ner as to prevent it from being removed by adverse weather conditions. If such covering is removed for any reason or by adverse weather, it shall be restored immediately. (Ord. No. 254, 7/5/16)

19. Lots, pieces of ground, and the adjoining streets and alleys with growth of weeds or noxious growth.

20. All other things specifically designated as nuisances elsewhere in this code. (Neb. Rev. Stat. §18-1720)

C. *Litter*. "Litter" includes but is not limited to (1) trash, rubbish, refuse, garbage, paper, rags, and ashes; (2) wood, plaster, cement, brick, or stone building rubble; (3) grass, leaves, and worthless vegetation; (4) offal and dead animals; and (5) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk. (Neb. Rev. Stat. §17-536[a]).

D. *Weeds*. "Weeds" includes but is not limited to bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.), hemp plant (*Cannabis sativa*), ragweed (*Ambrosiaceae*), or any noxious weed that is designated and listed as noxious in rules and regulations adopted and promulgated by the state director of agriculture. (Neb. Rev. Stat. §§2-946.02, 2-953, 17-563[b]).

E. *Noxious Growths*. "Noxious growths" shall mean any weeds, grasses or other rank growth of worthless vegetation which exceeds (1) twelve (12) inches in height; or (2) eight (8) inches in height on any lot or piece of ground located within the corporate limits of the village which has previously been declared a nuisance for noxious growths.

### **SECTION 3-403: ABATEMENT SERVICES; NOTICE PROCEDURE**

A. *Nuisance Officer*. The village shall appoint an individual or organization to identify and enforce abatement of nuisances within the village. Said individual or organization shall be identified as the "nuisance officer" and said appointment shall be identified by resolution of the village.

#### **B. *Identifying Nuisances***

1. The village may identify suspected nuisances, in which case the village clerk shall, upon direction of the Village Board, notify the nuisance officer of the suspected location, person or persons in violation of any provision of this article and provide the address of such alleged nuisance.
2. The village may request that the nuisance officer audit the village for nuisances in the village as defined by the village code. The nuisance officer shall then view the property or area for any violations of the nuisance regulations of the village. The nuisance officer shall not go upon private property for said audit unless granted permission by the resident/owner of any suspect property.

C. *Confirming, Documenting and Presenting Nuisances.* The nuisance officer shall identify and confirm that in his or her opinion a nuisance exists as defined by federal, state or village law.

1. Upon confirming that a nuisance appears to exist, the nuisance officer shall document said nuisance with photographs and other evidence pertinent to the situation. He or she will also obtain the legal description of the property and identify the current owners and, if possible, the occupants of the property upon which the nuisance exists.
2. The nuisance officer shall then present this information to the Village Board at the regular or special meeting for its confirmation that a nuisance exists.

### **SECTION 3-404: ENFORCEMENT PROCEDURES**

The nuisance, health and/or sanitation violation shall be brought to the Village Board by the nuisance officer or Board of Health or upon the Village Board's own action. The board then may declare by resolution a nuisance, health and/or sanitation violation. The nuisance, health, and/or sanitation ordinances may be enforced by (A) village administrative procedures; (B) penal prosecutions through the courts; and/or (C) by civil procedures in the courts. Any of these procedures or any combination thereof may be used to enforce the nuisance, health and/or sanitation ordinances of the village.

A. *Administrative Procedure.* The village may proceed with abatement of the nuisance, sanitation, and/or health violation with or without court involvement after the following procedure is followed:

1. After a nuisance is declared, the village clerk shall notify the nuisance officer to serve notice upon the violator(s).
2. The nuisance officer shall prepare and serve notice, which shall describe the found nuisance and state the required date when abatement and removal of the nuisance are to be accomplished. The notice shall also provide information as to how the interested parties may request a hearing before the Village Board as described in subsection (4) below.
3. The notice shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, said notice shall be given by a single publication in a newspaper of general circulation in the village or county of the village and by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The date of service is determined by the later of certified mail receipt, personal service, or publication date.
4. The accused violator (owner/agent/occupant) may request in writing a hearing before the Village Board within five days after the notice of violation is served or published. For a tree nuisance violation, the period for requesting a hearing is extended to 30 days after service.
5. If no request for a hearing is received in the required time period, the Village Board may cause a hearing to be held. This option is at the sole discretion of the board, to be used in exceptional cases.
6. If a hearing is requested, the village clerk shall fix a date for said hearing, to be no later than 15 days from receipt of the request for the hearing. Notice of

said hearing, stating the date and time, shall be served upon the agent, owner, and occupant of the nuisance property by certified and regular mail.

7. The hearing shall be a “show cause” hearing in which the agent, owner, occupant of the nuisance property (“objecting party”) shall provide evidence why the alleged condition should not be found to be a public nuisance and remedied. The hearing shall be heard before a quorum of the Village Board. The board chairman may conduct the hearing or may appoint another person as the hearing officer to conduct the hearing. Said hearing officer may be the village attorney or the enforcement officer. At the hearing, the hearing officer shall mark and receive evidence which was presented when the finding of a nuisance was made, relevant evidence of the nuisance since that time, and evidence that the notices were properly given. The objecting party shall then provide his or her evidence. The rules of evidence are not required at said hearing but all evidence must be relevant to the particular nuisance being heard. Testimony shall be under oath as administered by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.
8. No later than 14 days after the hearing and consideration of the evidence, the Village Board may by majority vote rescind the resolution of violation. If the resolution of violation is not rescinded, it shall stand. Furthermore, if the objecting party or designated agent fails to appear at the hearing or does not provide evidence, the nuisance shall stand. If the resolution is not rescinded, the Village Board may by resolution extend the date that owner, occupant, lessee, or mortgagee shall abate and remedy said public nuisance; but in no case shall this time exceed 60 days. The findings of the Village Board shall be made no later than 14 days after the hearing, and notice of its finding shall be served upon the objecting party by regular U.S. Mail within five days of the finding. The finding of this hearing shall be final, provided that an interested party or parties may appeal such decision to the appropriate court for adjudication.
9. If the nuisance officer determines that the nuisance is not remedied and abated within the time period designated, the village shall cause abatement of the nuisance.
10. If an interested party properly appeals to an appropriate court the findings and orders of the village, the village’s actions shall be stayed during and until such time that the legal proceedings are completed or dismissed. In cases of appeal from an action of the village condemning real property as a nuisance or as dangerous under its police powers, the owners of the adjoining property may intervene in the action at any time before trial. (Neb. Rev. Stat. §19-710)

B. *Penal Court Enforcement Procedure.* If the declared nuisance, health, and/or sanitation violation is not abated within 15 days after the notice is served upon the owner and/or occupant, and the village clerk has not received a request for hearing, the nuisance officer may cause issue of a citation for the code violation

1. The citation shall be prosecuted to the appropriate court by the village attorney or other designated prosecutor for the village.
2. A person or persons found guilty of these violations shall be guilty of a misdemeanor and fined up to \$500.00 per each offense.

3. Each day that the nuisance, as identified in the nuisance resolution and notice, is not abated shall be a separate offense and subject to a separate fine.

C. *Civil Court Procedure.* The Village Board may instruct the village attorney by resolution to file a civil action for the abatement of a nuisance. Said civil suit may commence after 15 days' notice has been served in accordance with Section 3-404(A) and (B) and may be filed and prosecuted at the same time any other enforcement procedure has commenced, has been terminated or is in progress.

## **SECTION 3-405: SPECIAL PROCEDURES; UNSAFE BUILDINGS AND TREES**

### *A. Unsafe Buildings.*

1. If the nuisance officer or designated official of the Village Board determines that any building, shed, fence, or other manmade structure which is dangerous to the public health because of its condition and which may cause or aid in the spread of diseases or injury to the health of the occupants of it or neighboring structures; which because of faulty construction, age, lack of proper repair, or any other cause is especially liable to fire and constitutes or creates a fire hazard; which by reason of faulty construction or any other cause is liable to cause injury or damage by the collapse or fall of all or any part of such structure, the written determination shall be filed with the village clerk. "Unsafe building" is also any building that is declared unsafe by the village or one that is defined as unsafe by the International Property Maintenance Code (in its amended and current form), and any structure declared by the village to be dangerous to the public health of its residents.
2. The nuisance officer shall thereupon serve notice upon the owner and occupant of the premises. The violator is given 30 days to remedy the nuisance. The clerk or nuisance officer shall also cause the property to be posted of the violation and shall file a copy of such determination in the office of the county register of deeds. If the unsafe building or structure is an immediate danger to the health, safety, or general welfare of any person or persons and the owner fails to remedy the situation in a reasonable time after notice, the village may summarily repair or demolish and remove such building or structure.

B. *Nuisance Trees.* Notice to abate and remove tree violations and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within 30 days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the village may have such work completed by the village or by a third party, and the owner or occupant shall be responsible for any charges or fees related to such work.

## **SECTION 3-406: SPECIAL PROCEDURES; VEHICLES**

A. *Notice to Remove; Private Property.* Notice of removal may be given to the owner or occupant of the private property upon which such vehicle is located and such notice shall request that said vehicle be removed from said property within 30 days of the date of said notice. The said notice shall advise that upon failure to comply with the notice to remove, the village or its designee may issue a citation or shall undertake such removal with the cost of removal to be levied against the owner of the vehicle or the owner or occupant of the property.

B. *Removal after Notice.* (1) Upon the notice to remove, the owner of the vehicle and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. In the event of removal and disposition by the village, the owner, or occupant of the private property, where the same is located, shall be liable for the expenses incurred. (2) If the violation described in the notice has not been remedied within the 30-day period of compliance, the nuisance officer or his designee shall have the right to take possession of said vehicle and remove it from the premises. It shall be unlawful for any person to interfere with, hinder, or refuse to allow such person or persons to enter upon private property for the purpose of removing a vehicle under the provisions of this article.

C. *Valuation and Title.* If an abandoned vehicle, at the time of abandonment, has no number plates of the current year affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of \$100.00 or less, title shall immediately be vested in the village.

D. *Duties of Nuisance Officer.* Except for vehicles governed by (C) above, the nuisance officer or designated official shall:

1. Make an inquiry concerning the last-registered owner of such vehicle;
2. Notify the last-registered owner, if any, that the vehicle in question has been recovered as an abandoned vehicle and that, if unclaimed, it will be sold at public auction after five days from the date such notice was mailed. (If the village is notified that a lien or mortgage exists on said vehicle, such notice shall also be sent the lien holder or mortgagee); and
3. Proceed to obtain title of the abandoned vehicle in the village's name, pursuant to Neb. Rev. Stat. §60-1903.

E. *Proceeds of Sale; Disposition.* Any proceeds from the sale of an abandoned vehicle less any expenses incurred by the village shall be held by the village without interest, for the benefit of the owner of such vehicle for a period of two years. If not claimed within such two-year period, such proceeds shall be paid into the general fund of the village

F. *Liability for Removal.* Neither the owner, lessee, nor occupant of the premises from which any abandoned vehicle shall be removed nor the village shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the village or its contractual agent, or as a result of any subsequent disposition.

G. *Cost of Removal and Storage.* The last registered owner of an abandoned vehicle shall be liable to the village for the costs of removal and storage of such vehicle.

H. *Redemption of Impounded Vehicles.* The owner of any vehicle seized under the provisions of this article may redeem such vehicle at any time after its removal but prior to the sale or destruction thereof upon proof of ownership, presentment of a valid registration certificate, current license plates, and payment to the nuisance officer or designated official of such sum as said officer/official may determine and fix for the actual and reasonable expense of removal, and any preliminary sale advertising expenses, including a reasonable amount for storage for each vehicle redeemed.

## **SECTION 3-407: SPECIAL PROCEDURES; WEEDS OR NOXIOUS GROWTH**

A. Excessive growth and weeds are subject to abatement as follows, as well as being described elsewhere in this article. The village superintendent or any agent of the



village authorized to act as the nuisance officer may identify these types of nuisances and act upon them as follows:

1. Obtain photographs of the alleged nuisance and store same in a file at the village clerk's office;
2. Notify the owner/occupant/agent of the property of the identified nuisance. Notification shall be made by: (a) mailing the notice by certified and first class mail to the address identified by the assessor's office for said tract of land as well as to the occupant at the address of the identified property, if different than the owner as identified by the assessor's office for said property; or (b) personal service of the notice upon the owner/occupant/agent by any employee of the village; or (c) posting the tract of land along with either (a) or (b) above.
3. The notice shall state that the owner/resident has five days from the notice date, as identified in (4) below, to request a hearing in front of the Village Board and if no request is received in a timely manner, said hearing shall be deemed waived. The procedure for the hearing is stated in Section 3-404(A) herein.
4. The owner/occupant is considered to have received the notice and the notice date is the earlier of five days after personal service is made, or the property is posted, or the date of receipt of certified mail;
5. The village shall abate or have abated the nuisance as soon as possible after the notice date at owner/occupant's expense (Section 3-408).

B. If a hearing is requested and the Village Board finds that a nuisance exists or no hearing is requested, the village shall immediately abate or have abated said nuisance at owner/occupant's expense (Section 3-408). (Neb. Rev. Stat. §17-563)

### **SECTION 3-408: EXPENSES**

A. When the village has effected the abatement of the nuisance, health and/or sanitation violation through either village employees or through contract with a third party and has incurred expenses and costs thereof, the actual cost shall be charged to the owner, agent, occupant or person in possession, charge or control of such property. The billing shall be calculated at the actual cost of abating the nuisance plus a \$25.00 administrative fee.

B. This billing shall be submitted to the last known address of the owner of the nuisance property, as found in the county treasurer's office, by regular U.S. Mail.

C. If said costs are not paid within two months after the work is done and one month after expenses and costs are submitted to the owner and/or occupant, the village may levy and assess the expenses and costs upon the real estate benefited by the actions in the same manner as other special assessments are levied and assessed, and the village may collect said assessments in the same procedure as other special assessments. The village may also recover said expenses and costs of abating the nuisance, health and/or sanitation violation(s) in a civil action in the courts of the appropriate county.

## **Article 5 – Penal Provisions**

### **SECTION 3-501: VIOLATION; PENALTY**

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this chapter, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.

### **SECTION 3-502: ABATEMENT OF NUISANCE**

Whenever a nuisance exists as defined in this chapter, the village may proceed by a suit in equity to enjoin and abate the same in the manner provided by law. Whenever in any action it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (Neb. Rev. Stat. §§18-1720, 18-1722)