

# TITLE IX: GENERAL REGULATIONS

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## CHAPTER 90: LEISURE AND RECREATION

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## *PARKS*

### **§ 90.01 OPERATION AND FUNDING.**

The municipality owns the municipal parks and other recreational areas and operates them through the Park Director. The City Council, for the purpose of defraying the cost of the care, management, and maintenance of the municipal park may each year levy a tax not exceeding the maximum limit prescribed by state law on the taxable value of all taxable property within the corporate limits. The revenue from this tax shall be known as the Park Fund and shall remain in the custody of the Municipal Treasurer. The City Council shall have the authority to adopt rules and regulations for the efficient management of the municipal parks and other recreational areas of the municipality. The Park Director shall not enter into a contract of any nature which involves an expenditure of funds, except for ordinary operating expenses, unless the contract has been approved by resolution of the majority of the members of the City Council prior to the contractual agreement. (Am. Ord. 2496, 12-4-90)

(B) (1) The Board of Public Works of the city, by and through the Municipal Water Department, shall be responsible for management and operation of the facilities and municipal property commonly known as Crystal Springs Park.

(2) The Board of Public Works shall pay all costs of operation and maintenance of that park and shall receive all income generated from operation of the park.

(3) The Board of Public Works shall designate a Utilities Department employee as Park Director, and this employee shall supervise day-to-day operations of the park.

(4) The city wellhead protection plan and maintenance of the quality of the municipal water supply are declared to be priority considerations in management and operational decisions made by the Board of Public Works and its agents pursuant to the powers granted herein, and the maintenance of recreational opportunities shall be incidental to those priorities.

(5) The Board of Public Works shall adopt and promulgate rules and regulations pertaining to operation and use of park facilities. Upon adoption of those rules and regulations and any future amendments thereto, same shall be submitted to the Mayor and City Council for approval, and upon adoption of appropriate resolution by the Mayor and City Council approving same, the rules and regulations shall become effective. Copies of the rules and regulations shall be made available to the public in the City Clerk's office, and where appropriate, the Park Director shall cause notice thereof to be posted at Crystal Springs Park.

(6) It shall be unlawful for any person to violate any rules and regulations adopted and promulgated pursuant to this section with respect to operation and use of Crystal Springs Park.

(7) Any person, or any person's agent or servant, who violates any of the provisions of this section or rules and regulations adopted and promulgated pursuant thereto, unless otherwise specifically provided herein, shall be deemed guilty of an offense.  
(Ord. 2857, 2-18-03) (Am. Ord. 2944, 8-15-06) Penalty, see § 10.99

## **§ 90.02 INJURY TO PROPERTY.**

It shall be unlawful for any person maliciously or willfully to cut down, injure, or destroy any tree, plant, or shrub. It shall be unlawful for any person to injure or destroy any sodded or planted area or injure or destroy any building, structure, equipment, fence, bench, table, or any other property of the municipal parks and recreational areas. No person shall commit any waste on or litter the municipal parks or other public grounds. Penalty, see § 10.99

**§ 90.03** (This Section is reserved)

**§ 90.04** (This Section is reserved)

## **§ 90.05 CRYSTAL SPRINGS; UNLAWFUL ACTS.**

No one but nonprofit organizations shall be granted concessions in Crystal Springs, and it shall be unlawful to construct or attempt to construct any private entrance to the premises; to hunt or trap on the premises; or to commit any waste or litter the premises. Penalty, see § 10.99

## **§ 90.06 CRYSTAL SPRINGS PARK; RULES AND REGULATIONS.**

(A) All provisions of this municipal code and ordinances adopted by the Mayor and City Council shall be in full force and effect at Crystal Springs Park to the extent not inconsistent with these rules and regulations.

(B) (1) No person shall operate a motor vehicle within the park at a speed in excess of the posted speed.

(2) Open fires shall be permitted within the park only where fire rings are provided.

(3) Consumption or possession of alcoholic liquor and beverages is prohibited within the park.

(4) Dogs shall not be permitted to run at large within the park, and shall be restrained securely by chain or leash.

(5) Operation of motor boats is prohibited, and all other boats or non-motorized vessels shall be launched only at areas designated by the Board of Public Works and where appropriate docks or ramps are provided.

(6) Ice skating within the park is prohibited.

(7) Motor vehicles, including, but not limited to, all-terrain vehicles (ATVs), utility-type vehicles (UTVs), snowmobiles, and unlicensed motor bikes, are prohibited in the park.

(8) No commercial vendors, whether profit or nonprofit, shall conduct business within the park in the absence of specific authorization by the Board of Public Works.

(9) The park is designated a quiet zone from the hours of 10:00 p.m. to 7:00 a.m. During that time, no driver shall make any unnecessary engine noise or sound any horn, and it shall be unlawful to play any music or cause other sounds or noises at a level that disturbs the peace and quiet of park occupants.

(10) The Park Manager, subject to approval of the Board of Public Works, shall determine appropriate fees and camping restrictions and limitations. The Park Manager shall also monitor and regulate usage of facilities to ensure protection of the municipal water supply, preservation of lake water transparencies and habitat, and promotion of the general safety of employees and park visitors.

(11) Motor vehicles shall be operated only on public roads, access to camping areas, and designated parking areas. (Res. 808, 3-15-11, 536, 5-6-03)(Am. Ord. 2944, 8-15-06) Penalty 10.99

## ***SWIMMING POOLS***

### **§ 90.20 OPERATION AND FUNDING.**

The municipality owns and manages the municipal swimming pool. The City Council, for the purpose of defraying the cost of the management, maintenance, and improvements of the swimming pool, may each year levy a tax not exceeding the maximum limit prescribed by state law on the taxable value of all taxable property within the municipality. The revenue from the tax shall be known as the Swimming Pool Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the swimming pool. The Swimming Pool Fund shall at all times be in the custody of the Municipal Treasurer. The Park Director shall manage the swimming pool. The Park Director shall have the power and authority to hire and supervise the swimming pool manager and those employees as he or she may deem necessary and shall pass rules and regulations for the operation of the swimming pool as may be proper for its efficient operation. All actions by the Park Director shall be under the supervision and control of the Mayor and City Council. (Am. Ord. 2498, 12-4-90; 2944, 8-15-06)

### **§ 90.21 ADMISSION CHARGE.**

The Park Director may, for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the swimming pool, make a reasonable admission charge for the use by any person of the municipal swimming pool. The charges shall be on file at the office of the Municipal Clerk and shall also be posted in a conspicuous place at the municipal swimming pool for public inspection. The rates may be structured for classes of persons in a reasonable manner, provided that nothing in this section shall be construed to permit or allow discrimination on the basis of race, sex, religion, color, national origin, or ancestry in the classification of persons for admission charges. (Am. Ord. 2499, 12-4-90; 2944, 8-15-06)

### **§ 90.22 RENTALS.**

The Park Director shall have the authority to rent the municipal swimming pool to those organizations and other persons as he or she may in his or her discretion see fit, subject to the review of the City Council. The Park Director shall prescribe rules and regulations for these rentals and shall require an appropriate number of qualified lifeguards to be in attendance during the rental period. The fees and other costs shall be on file at the office of the Municipal Clerk and posted in a conspicuous place at the municipal swimming pool. (Am. Ord. 2500, 12-4-90; 2944, 8-15-06)

## **§ 90.23 RULES AND REGULATIONS.**

The Park Director shall have the power and authority to enact bylaws, rules, and regulations for the protection of those using the swimming pool and for the efficient management thereof. He or she may provide suitable penalties for the violation of those bylaws, rules, and regulations subject to the review and supervision of the City Council. (Am. Ord. 2501, 12-4-90; 2944, 8-15-06) Penalty, see § 10.99

### ***MUSEUM***

## **§ 90.35 ESTABLISHMENT; OPERATION AND FUNDING.**

For the support and maintenance of the Public Museum, the City Council may levy a tax on all real and personal within the corporate limits subject to taxation which tax shall not exceed the maximum limit prescribed by state law. All revenue from the tax shall be known as the Museum Fund. The Museum Board shall have the power and authority to operate and manage the Museum. The Museum shall be free for the use of the public, subject to those reasonable regulations as the Museum Board may adopt. The title of all property donated or devised shall vest in the Museum Board and their successors in office. Whereas the city, prior to the effective date of the applicable laws of the state, had established a Museum, no election is necessary for its establishment. (Neb. RS 51-501 through 51-513)

### ***MUNICIPAL LIBRARY***

## **§ 90.50 OPERATION AND FUNDING.**

(A) The city owns the Municipal Library and manages it through the Library Board.

(B) The City Council, for the purpose of defraying the cost of the management, purchases, improvements, and maintenance of the Library, may each year levy a tax not exceeding the maximum limit prescribed by state law, on the taxable value of all taxable property within the city. The amount collected from the levy shall be known as the Library Fund. (Neb. RS 51-201)

(C) The Fund shall also include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Municipal Library.

(D) All taxes levied or collected and all funds donated or in any way acquired for the erection, maintenance, or support of the Municipal Library shall be kept for the use of the Library separate and apart from all other funds of the city, shall be drawn upon and paid out by the City Treasurer upon vouchers signed by the president of the Library Board and authenticated by the secretary of the Board, and shall not be used or disbursed for any other purpose or in any other manner. The City Council may establish a public library sinking fund for major capital expenditures. (Neb. RS 51-209)

(E) Any money collected by the Library shall be turned over monthly by the Librarian to the City Treasurer along with a report of the sources of the revenue.

## **§ 90.51 LIBRARY BOARD; GENERAL POWERS AND DUTIES.**

(A) The Library Board shall have the power to make and adopt such bylaws, rules, and regulations for its own guidance and for the government of the library and reading room as it may deem expedient, not inconsistent with Neb. RS 51-201 through 51-219. (Neb. RS 51-205)

(B) The Library Board shall have exclusive control of expenditures, of all money collected or donated to the credit of the Library Fund, of the renting and construction of any Library building, and the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose. (Neb. RS 51-207)

(C) The Library Board shall have the power to appoint a suitable Librarian and assistants, to fix their compensation, and to remove such appointees at pleasure. The City Council shall approve any personnel administrative or compensation policy or procedure before implementation of such policy or procedure by the library board. The Library Board shall have the power to establish rules and regulations for the government of the Library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency. It shall have the power to fix and impose, by general rules, penalties and forfeitures for trespasses upon or injury to the Library grounds, rooms, books, or other property, for failure to return any book, or for violation of any bylaw, rule, or regulation. The Board shall have and exercise such power as may be necessary to carry out the spirit and intent of Neb. RS 51-201 through 51-219 in establishing and maintaining the Library and reading room. (Neb. RS 51-211)

## **§ 90.52 GROUNDS AND BUILDING.**

(A) The Library Board may purchase or lease grounds, exercise the power of eminent domain, and condemn real estate for the purpose of securing a site for a Library building. The procedure to condemn property shall be exercised in the manner set forth in Neb. RS 76-704 through 76-724. (Neb. RS 51-210)

(B) The Board may erect, lease, or occupy an appropriate building for the use of the Library. (Neb. RS 51-211)

## **§ 90.53 SALE AND CONVEYANCE OF REAL ESTATE.**

The Library Board may, by resolution, direct the sale and conveyance of any real estate owned by the Board or by the Municipal Library, which is not used for Library purposes, or of any real estate so donated or devised to the Board or to the Library upon such terms as the Board may deem best and as otherwise provided in Neb. RS 51-216. (Neb. RS 51-216)

## **§ 90.54 MORTGAGES; RELEASE OR RENEWAL.**

The president of the Library Board shall have the power to release, upon full payment, any mortgage constituting a credit to the Library Fund and standing in the name of the Library Board. The signature of the president on any such release shall be authenticated by the secretary of the Board. The president and secretary in like manner, upon resolution duly passed and adopted by the Board, may renew any such mortgage. (Neb. RS 51-206)

## **§ 90.55 COST OF USE.**

(A) Except as provided in division (B) of this section, the Municipal Library and reading room shall be free of charge for the use of the inhabitants of the city, subject always to such reasonable regulations as the Library Board may adopt to render the Library of the greatest use to

the inhabitants of the city. The Library Board or Librarian may exclude from the use of the Library and reading rooms any person who willfully violates or refuses to comply with rules and regulations established for the government thereof. (Neb. RS 51-212)

(B) The Library shall make its basic services available without charge to all residents of the city. The Board may fix and impose reasonable fees, not to exceed the Library's actual cost, for nonbasic services. (Neb. RS 51-211)

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

***BASIC SERVICES.*** Include, but are not limited to, free loan of circulating print and nonprint materials from the local collection and general reference and information services.

***NONBASIC SERVICES.*** Include, but are not limited to, use of:

- (a) Photocopying equipment;
- (b) Media equipment;
- (c) Telephones, facsimile equipment, and other telecommunications equipment;
- (d) Personal computers; and
- (e) Videocassette recording and playing equipment.

(Neb. RS 51-201.01)

#### **§ 90.56 DISCRIMINATION PROHIBITED.**

No library service shall be denied to any person because of race, sex, religion, age, color, national origin, ancestry, physical handicap, or marital status. (Neb. RS 51-211)

#### **§ 90.57 ANNUAL REPORT.**

The Library Board shall, on or before the second Monday in February in each year, make a report to the City Council of the condition of its trust on the last day of the prior fiscal year. The report shall show all money received and credited or expended; the number of materials held, including books, videos and audio materials, software programs, and materials in other formats; the number of periodic subscriptions on record, including newspapers; the number of materials added and the number withdrawn from the collection during the year; the number of materials circulated during the year; and other statistics, information, and suggestions as the Library Board may deem of general interest or as the City Council may require. The report shall be verified by affidavit of the president and secretary of Library Board. (Neb. RS 51-213)

#### **§ 90.58 PENALTIES; RECOVERY; DISPOSITION.**

Penalties imposed or accruing by any bylaw or regulation of the Library Board and any court costs and attorney's fees may be recovered in a civil action before any court having jurisdiction, such action to be instituted in the name of the Library Board. Money, other than any court costs and attorney's fees, collected in such actions shall be placed in the treasury of the city to the credit of the Library Fund. Attorney's fees collected pursuant to this section shall be placed in the treasury of the city and credited to the budget of the City Attorney's office. (Neb. RS 51-214)

## **§ 90.59 DONATIONS.**

Any person may make donation of money, lands, or other property for the benefit of the Municipal Library. The title to property so donated may be made to and shall vest in the Library Board and their successors in office, and the Board shall thereby become the owners thereof in trust to the uses of the Municipal Library. (Neb. RS 51-215)

## **§ 90.60 IMPROPER BOOK REMOVAL.**

It shall be unlawful for any person not authorized by the regulations made by the Library Board to take a book from the Library without the consent of the Librarian or an authorized employee of the Library. Any person removing a book from the Library without properly checking it out shall be deemed to be guilty of an offense.

Penalty, see § 10.99

## **CHAPTER 91: FIRE REGULATIONS**

### Section

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## ***FIRE PREVENTION***

### **§ 91.01 FIRE PREVENTION CODE.**

The rules and regulations promulgated by the office of the State Fire Marshal of this state relating to fire prevention are incorporated by reference into this code and made a part of this chapter as though spread at large herein together with all subsequent amendments thereto. One copy of the Fire Prevention Code shall be on file with the Municipal Clerk and shall be available for public inspection at any reasonable time.

### **§ 91.02 FIRE CODE ENFORCEMENT.**

It shall be the duty of all municipal officials to enforce the incorporated fire code provisions, and all infractions shall be immediately brought to the attention of the Fire Chief or principal appointed City public safety officer.

### **§ 91.03 FIRE LIMITS DEFINED.**

The following described territory in the municipality shall be and constitute the fire limits: Business "A" and Business "B" Zoning Districts. (Neb. Rev. Stat. 17-549)

### **§ 91.04 FIRE LIMITS BUILDING MATERIALS.**

Within the fire limits set forth in § 91.03, no structure shall be built, altered, moved, or enlarged unless that structure will be enclosed with walls constructed wholly of stone, well-burned brick, terra cotta, concrete, or other such noncombustible materials as will satisfy the Fire Chief or principal appointed City public safety officer that the structure will be reasonably fireproof. Penalty, see § 10.99 (Neb. Rev. Stat. 17-549)

### **§ 91.05 LUMBER YARDS.**

It shall be unlawful for any person to locate, establish, or maintain any lumber yard or place for the piling, storing, keeping, or selling any lumber, or to keep any lime, lath, shingles, hay, straw, or other combustible materials on any lot or parcel of ground within the fire limits, unless the same is securely kept in a building constructed of brick, stone, concrete, or other noncombustible material; provided, the foregoing shall not apply to lumber yards now built and in use. (Neb. RS 17-549; 17-550) Penalty, see § 10.99

### **§ 91.06 PERMITTED REPAIRS.**

It shall be unlawful for any person to repair, alter, or add to any building in the fire limits where the repair is less than 50% of the building unless that person shall first submit an application to the Building Inspector to make those repairs, alterations, or to add to any building and shall state on the application that the material used will be noncombustible and approved by the Fire Chief or principal appointed City public safety officer. Repairs in the form of patching and other minor repairs shall not require a permit. In the event that the repairs, alteration, or addition is to involve more than 50% of the building, the owner shall be required to apply for a new building permit which shall state that the building, when completed, shall be fireproof and made of noncombustible materials. (Neb. RS 17-550) Penalty, see § 10.99

### **§ 91.07 REMOVAL REQUIRED.**

In the event that any wooden or combustible building or structure, or any noncombustible building which stands within the fire limits is damaged to the extent of 50% or more of its value, exclusive of the foundation, it shall not be repaired or rebuilt, but shall be taken down and removed within 60 days from the date of the fire or other casualty. (Neb. RS 17-550) Penalty, see § 10.99

### **§ 91.08 REPAIR REQUIRED.**

In the event that a building within the fire limits becomes damaged to the extent of less than 50% of its value, exclusive of the foundation, it shall be the duty of the owner, lessee, or occupant to remove or repair the building in accordance with the provisions of this chapter. It shall be unlawful for any person to allow a building to stand in the damaged or decayed condition. Any such building shall be removed or repaired within 30 days after receiving notice to do so by the City Council. (Neb. RS 17-550) Penalty, see § 10.99

### **§ 91.09 OPEN BURNING BAN; WAIVER.**

(A) There shall be a statewide open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land.

(B) The Fire Chief or principal appointed City public safety officer of the Municipal Fire Department or his or her designee may waive an open burning ban under division (A) of this section for an area under his or her jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the Fire Chief or principal appointed City public safety officer or his or her designee to a person desiring to conduct open burning shall be in writing, signed by the Fire Chief or principal appointed City public safety officer or his or her designee, and on a form provided by the State Fire Marshal.

(C) The Municipal Fire Chief or principal appointed City public safety officer or his or her designee may waive the open burning ban in his or her jurisdiction when conditions are acceptable to the Chief or his or her designee. Anyone burning in that jurisdiction when the open burning ban has been waived shall notify the Fire Department of his or her intention to burn.

(D) The Municipal Fire Chief or principal appointed City public safety officer may adopt and promulgate rules and regulations listing the conditions acceptable for issuing a permit to conduct open burning under division (B) of this section.

(E) The Municipal Fire Department may charge a fee not to exceed \$10 for each such permit issued. This fee shall be remitted to the City Council for inclusion in the general funds allocated to the Fire Department. These funds shall not reduce the tax requirements for the Fire Department. No such fee shall be collected from any state or political subdivision to which such a permit is issued to conduct open burning under division (B) of this section in the course of that state's or political subdivision's official duties.

(Am. Ord. 2636, 2-21-95) Penalty, see § 10.99

#### **§ 91.10 PROHIBITED STOVES.**

It shall be unlawful for any person to permit or allow to be burned any flammable substance in any stove not tested and approved for the specific fuel used by a nationally recognized testing laboratory. (Neb. RS 17-549) Penalty, see § 10.99

#### **§ 91.11 RIGHT OF ENTRY.**

It shall be the duty of the owner, lessee, or occupant of any building or structure, except the interiors of private dwellings, to allow the Fire Chief or principal appointed City public safety officer to inspect, or cause to be inspected, as often as necessary that structure for the purpose of ascertaining and enumerating all conditions therein that are likely to cause fire, or any other violations of the provisions of the municipal ordinances affecting the hazard of fire. (Neb. RS 81-512) Penalty, see § 10.99

### ***FIRES***

#### **§ 91.25 PRESERVATION OF PROPERTY.**

(A) The Fire Chief or principal appointed City public safety officer, or any officer in charge of the Fire Department, shall have the authority and power to cause the removal of property whenever it shall become necessary for the preservation of more valuable property, the protection of human life, or to prevent the spreading of fire to adjoining property. The Fire Chief may direct the municipal firefighters to remove any building, structure, or fence for the purpose of checking the progress of any fire. The Fire Chief or principal appointed City public safety officer shall have the authority to blow up, or cause to be blown up, with explosives any building or structure during the progress of a fire for the purpose of checking the progress of the same.

(B) Any official of the Municipal Fire Department shall have the power during the time of a fire to cause the removal of any private or public property whenever it shall become necessary to do so for the preservation of the property from fire, to prevent the spreading of fire, or to protect adjoining property. These officials may direct the municipal firefighters to remove any building, structure, or fence for the purpose of checking the progress of any fire, and the official in charge of the firefighting effort shall have the power to blow up, or cause to be blown up, with powder or otherwise, any building or erection during the progress of a fire for the purpose of extinguishing or checking the same.

### **§ 91.26 DISORDERLY SPECTATOR.**

It shall be unlawful for any person during the time of a fire and for a period of 36 hours after its extinguishment to hinder, resist, or refuse to obey the Municipal Fire Chief or principal appointed City public safety officer, or to act in a noisy or disorderly manner. The Fire Chief or principal appointed City public safety officer or any officer in charge of the Fire Department shall have the power and authority during that time to arrest, if they are a certified law enforcement officer, or command any such person to assist them in the performance of their official duties. (Neb. RS 28-908) (Am. Ord. 2944, 8-15-06) Penalty, see § 10.99

### **§ 91.27 EQUIPMENT; TAMPERING UNLAWFUL.**

It shall be unlawful for any person except the Fire Chief or principal appointed City public safety officer and the members of the Municipal Fire Department to molest, destroy, handle, or in any other way to interfere with the use and storage of any of the fire trucks and other apparatus belonging to the municipality. (Neb. RS 28-519) Penalty, see § 10.99

### **§ 91.28 INTERFERENCE UNLAWFUL.**

It shall be unlawful for any person or persons to hinder or obstruct the Municipal Fire Chief or the members of the Fire Department in the performance of their duty. (Neb. RS 28-908) Penalty, see § 10.99

### **§ 91.29 OBSTRUCTION OF FIRE HYDRANT.**

It shall be unlawful for any person to obstruct the use of a fire hydrant, or have or place any material within 15 feet of the hydrant. Any vehicle or material found as an obstruction may be immediately removed by the Fire Chief or principal appointed City public safety officer or any member of the Fire Department, at the risk, cost, and expense of the owner or claimant. (Neb. RS 39-672) Penalty, see § 10.99

### **§ 91.30 ASSISTANCE; REFUSAL UNLAWFUL.**

(A) It shall be unlawful for any person to refuse, after the command of the Fire Chief or principal appointed City public safety officer or any officer in charge of the Fire Department, to aid in extinguishing a fire or to assist in the removal and protection of property.

(B) Any official of the Fire Department may command the assistance and services of any person present at a fire to help in extinguishing the fire, or in the removal and protection of property. In the event that a spectator refuses, neglects, or fails to assist the Fire Department after a lawful order to do so, he or she shall be deemed guilty of a misdemeanor. Penalty, see § 10.99

### **§ 91.31 DRIVING OVER HOSE UNLAWFUL.**

It shall be unlawful for any person, without the consent of the Fire Chief or principal appointed City public safety officer or any officer in charge of the Fire Department, to drive any vehicle over unprotected hose of the Fire Department. (Neb. Rev. Stat. 60-6,184) Penalty, see § 10.99

### **§ 91.32 TRAFFIC IN VICINITY.**

No vehicle, except by the specific direction of the Fire Chief or principal appointed City public safety officer or any officer in charge of the Fire Department shall follow, approach, or park closer than 500 feet to any fire vehicle or to any fire hydrant to which a hose is connected. Nothing herein shall be construed to apply to vehicles carrying doctors or members of the Fire Department or to emergency vehicles. (Neb. Rev. Stat. 60-6,184) (Am. Ord. 2941, 6-20-06) Penalty, see § 10.99

**§ 91.33** (This Section is reserved)

### **§ 91.34 FALSE ALARM.**

It shall be unlawful for any person to intentionally and without good and reasonable cause raise any false alarm of fire. Penalty, see § 10.99

### **§ 91.35 RESIDENTIAL FIRE ALARM; PERMIT.**

(A) Any person desiring to connect automatic fire detector equipment, in a residence, capable of sending an alarm of fire directly or indirectly, shall file with the Fire Chief or principal appointed City public safety officer an application for a residential fire alarm permit. The application shall be in writing on a form to be furnished by the Fire Chief or principal appointed City public safety officer for that purpose. Every such application shall set forth the legal description of the land upon which the building is located, the names of the owner, an agreement by the applicant to reimburse the municipality for all expenses incurred in responding to a false alarm and indemnifying and holding harmless the municipality for all damages to the property of applicant incurred by reason of response to an alarm, and such other information as may be requested thereon. The application shall be checked and examined by the Fire Chief or principal appointed City public safety officer and if it is found to be in conformity with the requirements of this chapter and all other ordinances applicable thereto, the Fire Chief or principal appointed City public safety officer shall issue the applicant a permit upon the payment of the permit fee set by resolution of the City Council.

(B) It shall be unlawful for any person to violate any provision of this section. (Ord. 2292, 1-3-84) Penalty, see § 10.99

## ***POISONOUS AND FLAMMABLE GASES; EXPLOSIVES***

### **§ 91.50 PETROLEUM GASES.**

(A) *Storage location.* Any person desiring to store or keep in their possession liquefied petroleum gas shall place the containers outside of buildings on nonflammable docks or platforms, and no such container shall at any time be stored within a building of any kind. (Neb. RS 17-549)

(B) *State regulations.* All regulations and requirements pertaining to the commercial storage of petroleum gas which have been adopted by the state, shall have full force and effect and control over the storage of all these gases within the corporate limits of the municipality.

(C) *Permit and regulations.* Anyone desiring to store or handle liquefied petroleum gas shall first file an application with the City Council of the municipality and obtain the permission of the City Council to store that gas. This storage and handling shall comply with the rules and regulations promulgated by the Office of the State Fire Marshal, hereby adopted by reference in addi-

tion to all supplements and amended editions as though printed in full herein.

(D) *Compressed gases.* These restrictions and regulations shall not apply to any non-flammable compressed gas.

Penalty, see § 10.99

#### **§ 91.51 POISONOUS AND FLAMMABLE GASES; STORAGE.**

Any person, firm, or corporation desiring to store or keep in the municipality for any period of time any form of poisonous or flammable gas or liquefied petroleum gas or add to, enlarge, or replace any facility used for the storage of those gases, must first get permission from the Fire Chief or principal appointed City public safety officer, who shall require the name of the gas, the place of storage, and the amount of gas stored. If permission is granted, the governing body shall prescribe those rules, regulations, and precautionary actions as it may deem necessary. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence on the effective date of the ordinance enacting this section, provided that any such present use that is discontinued for a period of 60 days shall not be revived without a permit. The provisions of this section shall be controlling throughout the municipality and throughout its zoning jurisdiction. (Am. Ord. 2944, 8-15-06) Penalty, see § 10.99

#### **§ 91.52 DYNAMITE AND OTHER EXPLOSIVES; STORAGE.**

No person, firm, or corporation shall store or keep for any period of time dynamite, nitroglycerine, or other high explosives within the municipality. (Neb. RS 17-549) (Am. Ord. 2944, 8-15-06) Penalty, see § 10.99

#### **§ 91.53 BULLETS.**

Cartridges, shells, and percussions caps shall be kept away from flame, flammable materials, and high explosives. (Am. Ord. 2944, 8-15-06) Penalty, see § 10.99

#### **§ 91.54 BLASTING PERMIT.**

In addition to notifying the Municipal Fire Department pursuant to Neb. RS 28-1233(3), any person desiring to discharge explosive materials within the municipality shall secure a permit from the City Council and shall discharge those explosive materials in conformance with the conditions specified in the permit. In no case shall any person perform blasting operations unless operating under the direct supervision of a person in possession of a valid user's permit issued by the State Patrol. (Am. Ord. 2467, 12-5-89; 2604, 6-21-94) Penalty, see § 10.99

#### **§ 91.55 TRANSPORTATION.**

Any person wishing to transport high explosives in the municipality shall first acquire a permit from the City Council and shall take those precautions and use that route as they may prescribe. Nothing herein shall be construed to apply to the county police, or any of the Armed Services of the United States. No vehicle transporting explosives shall make an unscheduled stop for longer than 5 minutes within the municipality and in the event of mechanical failure, immediate notice of the breakdown shall be given the Chief of Police, who shall then prescribe those precautions as may be necessary to protect the residents of the municipality and a reasonable time for removal of the vehicle from the municipality. Penalty, see § 10.99

### ***FIREWORKS***

## § 91.70 DEFINITIONS.

For the purpose of this subchapter, unless the context otherwise requires:

**PERSON** means any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;

**FIREWORKS** means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of consumer or special fireworks set by the United States Department Transportation in Title 49 of the Code of Federal Regulations;

**CONSUMER FIREWORKS** means:

A. Any of the following devices that (i) meet the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2010, and (ii) are tested and approved by a nationally recognized testing facility or by the State Fire Marshal:

- (1) Any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., as such regulations existed on January 1, 2010;
- (2) Any small device designed to produce audible effects such as a whistling device;
- (3) Any ground device or firecracker containing 50 milligrams or less of explosive composition; or
- (4) Any aerial device containing 130 milligrams or less of explosive composition;

B. Class C explosives as classified by the United States Department of Transportation;

C. **CONSUMER FIREWORKS** does not include:

- (1) Rockets that are mounted on a stick or wire and project into the air when ignited, with or without report;
- (2) Wire sparklers, except that silver and gold sparklers are deemed to be consumer fireworks until January 1, 2014;
- (3) Nighttime parachutes;
- (4) Fireworks that are shot into the air and after coming to the ground cause automatic ignition due to sufficient temperature;
- (5) Firecrackers that contain more than 50 milligrams of explosive composition; and
- (6) Fireworks that have been tested by the State Fire Marshal as a response to complaints and have been deemed to be unsafe; and
- (7) Sky lanterns or similar devices, defined as any unmanned balloon-like or similar structure; a device having as part of its structure a portion designed to capture heated gases from an open flame to produce lift or propulsion.

(Am. Ord. 3025, 11-6-12)

**DISPLAY FIREWORKS** means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks includes, but is not limited to, firecrackers containing more than 130 milligrams of explosive composition, aerial shells containing more than 40 grams of explosive composition, and other display pieces which exceed the limits for classification as consumer fireworks. Class B explosives, also known as 1.3G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regu-

lation existed on January 1, 2010, shall be considered display fireworks.  
(Neb. RS 28-1241) (Ord. 2436, 10-4-88) (Am. Ord. 2998, 10-19-10)

#### **§ 91.71 PERMITTED FIREWORKS.**

(A) It shall be unlawful for any person to ignite or cause to be exploded any fireworks other than consumer fireworks.

(B) The provisions of this section shall not apply to display fireworks to be used for the purpose of public exhibitions or display under authorization of the City Council or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal. (Ord. 2439, 10-4-88) (Am. Ord. 2998, 10-19-10) Penalty, see § 10.99

#### **§ 91.72 THROWING FIREWORKS.**

It shall be unlawful for any person to throw any firecracker or any object which explodes upon contact with another object: from or into a motor vehicle; onto any street, highway, or sidewalk; at or near any person; into any building; or into or at any group of persons. Penalty, see § 10.99

#### **§ 91.73 SALES; LICENSE REQUIRED.**

It shall be unlawful for any person to sell any fireworks, except consumer fireworks. Consumer fireworks may be sold at retail only from 8:00 a.m. through 10:00 p.m. on July 1 through July 4 and from 8:00 a.m. through 10:00 p.m. on December 30 through December 31 of each year; provided; the person selling consumer fireworks shall secure a license from the City prior to such sales. Application shall be filed with the City Clerk upon forms supplied by the City and requesting such information and documents as the City may deem necessary as to whether or not to grant the license. Upon the determination to grant the license, the City Fire Chief or principal appointed City public safety officer shall direct the City Clerk to collect the appropriate fee and issue the license. If the granting of a license is denied, the applicant may appeal the Fire Chief's or principal appointed City public safety officer's decision to the City Council if requested within seven days of said denial of license. Any license issued may be revoked at any time by the City Fire Chief or principal appointed City public safety officer, with a right of appeal retained by the licensee to the City Council if requested within 7 days of said revocation of license.

(Neb. RS 17-137; 28-1003.03 through 28-1003.08) (Am. Ords. 2785, 9-21-99; 2876, 1-6-04; 2998, 10-19-10; 2999, 11-2-10) Penalty, see § 10.99

#### **§ 91.74 IGNITION OF FIREWORKS IN HISTORIC DISTRICT.**

No person shall ignite or cause to be exploded any fireworks as defined by § 91.70 of this code within the historic district of the municipality. (Ord. 2876, 1-6-04) Penalty, see § 10.99

#### **§ 91.75 TIME LIMITATIONS ON IGNITION OR EXPLOSION OF FIREWORKS.**

(A) Only consumer fireworks may be ignited or exploded within the City; provided, consumer fireworks may be ignited or discharged only during the following times:



<i>Between the Hours of:</i>	<i>Dates</i>
8:00 a.m. and 11:00 p.m.	July 1 through July 3
8:00 a.m. and 11:59 p.m.	July 4
8:00 a.m. and 11:00 p.m.	December 29 through December 30
8:00 a.m. and 11:59 p.m.	December 31

(B) The provisions of this section shall not apply to display fireworks, which may be used for purposes of public exhibitions or displays as authorized by and according to regulation by the City Council. Unless otherwise provided by the City Council, the usual time for the City-sponsored exhibition of display fireworks shall be July 4 between the hours of 8:00 a.m. and 11:59 p.m. If weather conditions prevent such exhibition at that time, the City-sponsored exhibition of display fireworks shall occur at the same time on July 5, unless otherwise provided by the City Council.

(C) It shall be unlawful for any person to ignite or cause to be exploded any fireworks except during the dates and times prescribed by this section.  
(Ords. 2876, 1-6-04; 2998, 10-19-10; 3025, 11-6-12) Penalty, see § 10.99

## **CHAPTER 92: HEALTH AND SAFETY**

### Section

#### *General Provisions*

- 92.01 Health regulations
- 92.02 Enforcement official
- 92.03 County Board of Health

#### *Nuisances*

- 92.20 Definition
- 92.21 Abatement procedure
- 92.22 Jurisdiction
- 92.23 Adjoining land owners; intervention before trial
- 92.24 Dead or diseased trees

#### *Pollution*

- 92.40 Air pollution prohibited
- 92.41 Water pollution prohibited

#### *Rodents and Insects*

- 92.55 Extermination required
- 92.56 Occupant responsibility
- 92.57 Owner responsibility

## **GENERAL PROVISIONS**

### **§ 92.01 HEALTH REGULATIONS.**

For the purpose of promoting the health and safety of the residents of the municipality, the Board of Health shall, from time to time, adopt those rules and regulations relative thereto and shall make those inspections, prescribe those penalties, and make those reports as may be necessary toward that purpose.

### **§ 92.02 ENFORCEMENT OFFICIAL.**

The Police Chief, as the quarantine officer, shall be the chief health officer of the municipality. It shall be his or her duty to notify the City Council and the Board of Health of health nuisances within the municipality and its zoning jurisdiction.

### **§ 92.03 COUNTY BOARD OF HEALTH.**

It shall be the duty of the Board of Health to work closely with the County Health Board in protecting the health and welfare of the residents of the municipality.

## **NUISANCES**

### **§ 92.20 DEFINITION.**

(A) *General definition.* A **NUISANCE** consists 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 either:

- (1) Injures or endangers the comfort, repose, health, or safety of others.
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the municipality;
- (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 tends to depreciate the value of the property of others.

(B) *Specific definition.* The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things are hereby declared to be **NUISANCES**:

- (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) Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats, or which are foul or malodorous;

(3) Filthy, littered, or trash-covered cellars, houseyards, barnyards, stable yards, factory yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises;

(4) 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 municipality;

(5) Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity, provided that nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the municipality, nor the dumping of non-putrefying waste in a place and manner approved by the health officer;

(6) 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;

(7) 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 may breed or multiply, or which may be a fire danger or which are so unsightly as to depreciate property values in the vicinity thereof;

(8) Any 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 either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof;

(9) 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;

(10) Stagnant water permitted or maintained on any lot or piece of ground;

(11) 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 municipality or are maintained and kept in such a manner as to be injurious to the public health; or

(12) All other things specifically designated as nuisances elsewhere in this code.  
Penalty, see § 10.99

## **§ 92.21 ABATEMENT PROCEDURE.**

(A) It shall be the duty of every owner, occupant, lessee, or mortgagee of real estate within the corporate limits or zoning jurisdiction of the City to keep that real estate free of public nuisances. Upon determination by the Board of Health or official designated by the City Council that the owner, occupant, lessee, or mortgagee has failed to keep the real estate free of public nuisances, the City Clerk shall thereupon cause notice to abate and remove such nuisance to be served upon the owner or owner's duly authorized agent and to the occupant, if any, by personal service, certified mail, or first-class mail. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance;. The notice shall describe the condition as found by the Board of Health or designated official, state that the condition has been declared a public nuisance and that the condition must be remedied at once, and inform the recipient of the right to an appeal hearing before the City Council and the manner in which it may be requested.

(B) Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the City or fails to comply with the order to abate and remove the nuisance, the City may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the City may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment in the same manner as other special assessments for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(C) If within five days after receipt of such notice, the owner or occupant requests in writing a hearing before the City Council in appeal of the determination of the Board of Health or designated official, the Council shall, upon receipt of that notice, cause a hearing date to be fixed and notice thereof to be served upon the owner, owner's duly authorized agent, or occupant. This notice of hearing shall be by personal service or certified mail and require the party or parties to appear before the City Council to show cause why the condition should not be found to be a public nuisance and remedied. A return of service shall be required by the City Council. The notice shall be given not less than five days prior to the time of hearing, provided that whenever the owner, owner's duly authorized agent, or occupant is a nonresident or cannot be found in the state, then the City Clerk shall publish, in a newspaper of general circulation in the City, the notice of hearing for two consecutive weeks, the last publication to be at least one week prior to the date set for the hearing. Upon the date fixed for the hearing and pursuant to notice, the City Council shall hear all objections made by interested parties and shall hear evidence submitted by the Board of Health or designated official. If, after consideration of all of the evidence, the Council shall find that the condition is a public nuisance, it shall, by resolution, order and direct the owner, owner's authorized agent, or occupant to remedy that public nuisance at once; provided, the party or parties may appeal the decision to the appropriate court for adjudication, during which proceedings the decision of the Council shall be stayed.

(D) Should the owner or occupant refuse or neglect to comply with the order of the City Council within 10 days of adoption of the resolution, the City Council may proceed to cause the abatement of the described public nuisance. The costs and expenses of abatement shall be paid by the owner. If unpaid for two months after the work is done, the City Council may either:

(1) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment in the same manner as other special assessments for improvements are levied and assessed; or

(2) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(Am. Ords. 2833, 7-17-01; 2980, 2-17-09) (Neb. Rev. Stat. 17-563) Penalty, see § 10.99

## **§ 92.22 JURISDICTION.**

The Mayor and Police Department are directed to enforce this municipal code against all nuisances. The jurisdiction of the Mayor, Police Department, and court shall extend to and the territorial application of this chapter shall include all territory adjacent to the limits of the municipality within one mile thereof and all territory within the corporate limits.

## **§ 92.23 ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL.**

In cases of appeal from an action of the City Council condemning real property as a nuisance or as dangerous under the police powers of the municipality, the owners of the adjoining property may intervene in the action at any time before trial. (Neb. RS 19-710) (Ord. 2339, 9-3-85)

## **§ 92.24 DEAD OR DISEASED TREES.**

(A) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the municipality.

(B) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees on private property within the corporate limits of the municipality. For the purpose of carrying out the provisions of this section, the Police Department shall have the authority to enter upon private property to inspect the trees thereon.

(C) Notice to abate and remove this nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given as provided in Section 92.21 of this Code. (Ord. 2633, 2-21-95) Penalty, see § 10.99

## ***POLLUTION***

## **§ 92.40 AIR POLLUTION PROHIBITED.**

It shall be unlawful for any person, firm, or corporation to permit the emission of smoke from any source that is injurious or offensive to the residents of the municipality in the judgment of the Board of Health. Air shall be considered to be polluted when the discharge into the open air of dust, fumes, gases, mist, odors, smoke, or any combination thereof is of a character and in a quantity which to any group of persons interferes with their health, repose, or safety, or causes severe annoyance or discomfort or is offensive and objectionable to normal persons, and causes injury to real and personal property of any kind. The standards for air pollution established or adopted by the state shall be presumptive evidence as to when the air is deemed to be polluted under this section. It is hereby unlawful for any person, firm, or corporation to permit or cause

the escape of the nuisances named above, and the escape of the dust, fumes, gases, mists, odors, and smoke is hereby declared to be a nuisance and shall be summarily abated upon written notice by the Board of Health to the violator. The abatement may be in addition to the penalty for air pollution in the municipality. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

#### **§ 92.41 WATER POLLUTION PROHIBITED.**

It shall be unlawful for any person, firm, or corporation to obstruct or impede without legal authority any river or collection of water, or to corrupt and render unwholesome or impure any watercourse, stream, or other water. The standards for water quality established or adopted by the state shall be presumptive evidence as to when the water is deemed to be polluted under this section. Such a corruption of the water in or about the municipality shall constitute a nuisance and shall be summarily abated upon written notice to the violator by the Board of Health. The abatement may be in addition to the penalty for water pollution. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

### ***RODENTS AND INSECTS***

#### **§ 92.55 EXTERMINATION REQUIRED.**

It shall be the duty of the owner, lessee, or occupant of any dwelling or building to be responsible for the active and continued extermination of any insects, rodents, or other pests therein, or on the premises. In the event that the owner, lessee, or occupant of any dwelling or building neglects, fails, or otherwise refuses to control and actively exterminate the insects, rodents, and other pests in and about his or her premises, the Board of Health shall issue notice for him or her to do so. If that owner, lessee, or occupant has not made a good faith effort to exterminate the pests within 5 days, the premises shall be deemed to be a nuisance and a health hazard. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

#### **§ 92.56 OCCUPANT RESPONSIBILITY.**

It shall be the responsibility of the occupant in a single dwelling unit whether or not the dwelling unit is located in a multiple unit structure to exterminate the rodents and insects infesting the premises when it is found by the Board of Health that only the occupant's dwelling is so infested. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

#### **§ 92.57 OWNER RESPONSIBILITY.**

The owner of a multiple dwelling unit shall have the duty to exterminate therein for rodents and insects when infestation exists in two or more units, when infestation exists in shared or public areas of a multiple unit structure when the infestation is due to failure by the owner to maintain the dwelling in an insect and rodent proof condition. The owner of a single dwelling unit shall have the duty to exterminate therein notwithstanding the occupancy of a renter or lessee when the infestation of insects or rodents is due to the owner's failure to construct or maintain the premises in a manner so as to make it reasonably resistant to the entrance and habitability of pests. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

## CHAPTER 93: PUBLIC WAYS AND PROPERTY

### Section

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## ***MUNICIPAL PROPERTY***

### **§ 93.001 DEFINITIONS.**

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

***SIDEWALK SPACE.*** The portion of a street between curb lines and adjacent property line.

### **§ 93.002 MAINTENANCE AND CONTROL.**

The City Council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the municipality and shall cause the same to be kept open and in repair and free from nuisances. (Neb. RS 17-567(1))

### **§ 93.003 OBSTRUCTIONS.**

(A) (1) Trees and shrubs growing upon or near the lot line or upon public ground and interfering with the use or construction of any public improvements shall be deemed an obstruction under this chapter. The trees and shrubs and their roots may be removed by the City at the expense of the owner of the property upon which the tree is located should the owner fail, or neglect, after notice, to do so. It shall be unlawful for any person, persons, firm, or corporation to obstruct or encumber by fences, gates, buildings, structures, or otherwise any of the streets, alleys, or side-walks. The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property shall permit or suffer to remain on any premises owned or controlled by him or her any hedge, shrubbery, bush, or similar growth within two feet adjacent to the lot line whether there is a sidewalk abutting or adjoining the premises or not. It shall be the duty of owners and occupants to keep trimmed and pruned all such similar growth at all times. Whenever any such growth is allowed to grow within two feet of the lot line contrary to the provisions of this chapter, the City Council may pass a resolution ordering the owner or occupant to remove those obstructions within five days after having been served with a copy of the resolution by the City stating that the City will do so and will charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, or shall



collect the same by civil suit brought in the name of the municipality against the owner or occupant.

(2) Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property or wholly upon the abutting property but so close to the lot line as to interfere with the making of any public improvement or so that the roots thereof interfere with any utility wires or pipe shall be deemed an obstruction and these trees, shrubs, and roots may be removed by the City pursuant to the procedure prescribed above.

(3) It shall be unlawful for any person to plant, or allow to grow, any tree or shrub within any sidewalk space, street right of way, or other public property of the City without first receiving a written permit for the same from the City pursuant to its regulations. Any tree or shrub otherwise planted and growing hereafter or any other obstruction within such sidewalk space, street right of way, or other public property of the City may be declared a nuisance by the City and ordered to be removed. Pursuant to the nuisance provisions of this Code and state law, upon failure of the owner to remove such a nuisance, the City may cause such removal at the owner's expense.

(B) It shall be unlawful for any person to place any structure, facility, utility, or other obstruction, whether above ground or below, including but not limited to underground sprinklers, ornamental mailboxes, signage, lighting, or other structures within any sidewalk space, street right of way, or other public property of the City without first receiving a written permit for the same from the City pursuant to its regulations. The City shall not repair, pay for, or otherwise compensate or be responsible for any damage done to any structures located in any sidewalk space, street right of way, or other public property of the City by the City while engaged in municipal operations, which limitation of responsibility shall be noted on any permits received by applicants for construction of the same. Failure to obtain a permit prior to placement of any such structure in any sidewalk space, street right of way, or other public property of the City does not alter the limitation of the City's responsibility under this section.

(C) It shall be the duty of an owner or occupant engaged in construction of any building or improvement upon or near the public ways and property to have all excavations or exposures of any kind protected and guarded by suitable guards or barricades by day and by warning lights at night. In the event of failure, neglect, or refusal to comply with the provisions of this subchapter, it shall be the duty of the City to stop all work upon the buildings and improvements until suitable guards are erected and kept in the manner aforementioned.

(D) Persons engaged in the erection, construction, reconstruction, wrecking, or repairing of any building, or the construction or repair of a sidewalk along any street, may occupy the public street space with such building material and equipment as long as is necessary if those persons shall make application to and receive a permit in writing from the municipal official in charge of municipal streets to do so, provided that no permit for the occupancy of the sidewalk space and more than one-third of the roadway of the public space adjacent to the real estate on which the building is to be constructed, erected, reconstructed, wrecked, or repaired shall be granted, and provided further that a suitable passageway for pedestrians shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the official issuing the permit.

(E) In the event the property owner is a nonresident of the county in which the property lies, the municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published.

(Am. Ord. 2990, 3-16-10) Penalty, see § 10.99

#### **§ 93.004 WEEDS.**

It is hereby the duty of the Police Chief or his or her duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season, and if rank and noxious weeds are found growing thereon, he or she shall notify the owner or occupant thereof to cut down those weeds as close to the ground as can be practicably done and keep the weeds cut thereon in like manner during the growing season for weeds, provided that any weeds growing in excess of 12 inches on any sidewalk space shall be considered a violation of this section. In the event that the owner of the lot or parcel of land abutting that sidewalk space within the municipality is a nonresident of the municipality or cannot be found therein, the notice may be given to any person having the care, custody, or control of that lot or parcel of land. In the event that there can be found no one within the municipality to whom notice can be given, it shall be the duty of the Police Chief or his or her agent to post a copy of the notice on the premises and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the City Council. The cost shall then be audited and paid by the municipality, and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the municipality or may be recovered by civil suit brought by the municipality against the owner of the parcel of land. In the event the property owner is a nonresident of the county in which the property lies, the municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published. (Am. Ord. 2941, 6-20-06) Penalty, see § 10.99

#### **§ 93.005 SIGNS AND CANOPIES.**

No person, firm, or corporation shall erect or maintain any sign, signboard, poster, or rigid canopy over any street, sidewalk, alley, or on other public property without having first obtained a permit therefor. Permits for signs, canopies, posters, and signboards shall be issued by the Municipal Clerk, subject to the approval of the Utilities Superintendent. All signs and canopies extending over any public sidewalk, street, alley, or other public place must be securely fastened and constructed so that there will be no danger of the same being dislodged by ordinary winds, or falling from other causes. No sign or canopy shall be erected or maintained which extends over any public sidewalk, street, alley, or other public place in such a location as to obstruct the view of any traffic light, sign, or signal. Upon the written order of the City Council, any person owning or occupying the premises where such a sign, canopy, poster, or signboard is located shall cause the same to be removed within the time limit specified on the notice, upon payment of a fee set by the City Council by resolution. Penalty, see § 10.99

#### **§ 93.006 OVERHANGING BRANCHES.**

(A) The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which there extend the branches of trees shall at all times keep the branches or limbs thereof trimmed to the height of at least 8 feet above the surface of the walk

and at least 14 feet above the surface of the street. Whenever the limbs or branches of any tree or trees extend over streets or sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights or with the convenience of the public using the street or sidewalk, the City Council at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove the obstructions within 5 days after having received a copy thereof from the Utilities Superintendent stating that the municipality will remove the branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, if the resolution is not complied with.

(B) In the event the property owner is a nonresident of the county in which the property lies, the municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published. Penalty, see § 10.99

### **§ 93.007 SALE AND CONVEYANCE OF REAL PROPERTY.**

(A) Except as provided in division (G) of this section, the power of the city to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of the property and the manner and terms thereof, except that the property shall not be sold at public auction or by sealed bid when:

- (1) The property is being sold in compliance with the requirements of federal or state grants or programs;
- (2) The property is being conveyed to another public agency; or
- (3) The property consists of streets and alleys.

(B) The City Council may establish a minimum price for real property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(C) After the passage of the resolution directing the sale, notice of all proposed sales of property described in division (A) of this section and the terms thereof shall be published once each week for 3 consecutive weeks in a legal newspaper published in or of general circulation in the city.

(D) (1) If within 30 days after the third publication of the notice a remonstrance against the sale is signed by registered voters of the city equal in number to 30% of the registered voters of the city voting at the last regular municipal election held therein and is filed with the City Council, the property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(2) Upon the receipt of the remonstrance, the City Council, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The City Council shall deliver the remonstrance to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the City Council a written receipt that the remonstrance is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the City Council. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and city or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and city or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the City Council. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the City Council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process.

(4) Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the Election Commissioner or County Clerk shall set forth the reason for the invalidity of the signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature.

(5) The Election Commissioner or County Clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the remonstrance and the certifications to the City Council within 40 days after the receipt of the remonstrance from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than 20 signatures on one signature page shall be counted.

(6) The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The City Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(E) Real estate now owned or hereafter owned by the city may be conveyed without consideration to the state for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of Neb. RS 18-1001 through 18-1006.

(F) Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the 30-day right-of-remonstrance period, the property shall then be sold. The sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. (Neb. RS 17-503)

(G) Divisions (A) through (F) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property, the total fair market value of which is less

than \$5,000. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in 3 prominent places within the city for a period of not less than 7 days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required.

(Neb. RS 17-503.01) (Am. Ords. 2605, 6-21-94; 2688, 6-17-97; 2749, 10-20-98; 2879, 2-3-04)

### **§ 93.008 SALE AND CONVEYANCE OF PERSONAL PROPERTY.**

In order to sell personal property owned by the City, the City Council shall adopt a resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. If the fair market value of the property is greater than \$5,000.00, notice of the sale shall also be published once in a legal newspaper in or of general circulation in such city at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. When such personal property is being (a) sold in compliance with the requirements of federal or state grants or programs or (b) conveyed to another public agency, the notice procedure set forth above may be dispensed with.

(Neb. RS 17-503.02) (Ord. 2879, 2-3-04) (Am. Ord. 2966, 10-16-07)

### **§ 93.009 ACQUISITION OF PROPERTY; CONSTRUCTION; ELECTIONS, WHEN REQUIRED.**

(A) The municipality is authorized and empowered to purchase, accept by gift or devise, purchase real estate upon which to erect, and erect a building or buildings for an auditorium, fire station, municipal building, or community house for housing municipal enterprises and social and recreation purposes, and other public buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the municipality.

(B) Except as provided in division (C) of this section, before any such purchase can be made or building erected, the question shall be submitted to the electors of the municipality at a general municipal election or at an election duly called for that purpose, or as set forth in Neb. RS 17-954 and be adopted by a majority of the electors voting on the question.

(Neb. RS 17-953)

(C) If the funds to be used to finance the purchase or construction of a building pursuant to this section are available other than through a bond issue, then either:

(1) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the municipality, and no election shall be required to approve the purchase or construction unless within 30 days after the publication of the notice, a remonstrance against the purchase or construction is signed by registered voters of the municipality equal in number to 15% of the registered voters of the municipality voting at the last regular municipal election held therein and is filed with the City Council. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the municipality at a general municipal election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or

(2) The City Council may proceed without providing the notice and right of remon-

strance required in division (C)(1) of this section if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than \$25,000. The purchase shall be approved by the City Council after notice and public hearing as provided in Neb. RS 18-1755.

(Neb. RS 17-953.01) (Am. Ord. 2689, 6-17-97)

### **§ 93.010 ACQUISITION OF REAL PROPERTY; APPRAISAL.**

The municipality shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000 or more unless an appraisal of the property has been performed by a certified real estate appraiser. (Neb. RS 13-403)

### **§ 93.011 ACQUISITION OF REAL PROPERTY; PUBLIC MEETING.**

When acquiring an interest in real property by purchase or eminent domain, the municipality shall do so only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing. The City shall provide to the public a right of access for recreational use to the real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational use shall meet or exceed such right held by a private landowner adjacent to the real property.

(Neb. RS 18-1755)

### **§ 93.012 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS.**

(A) Except as provided in division (B) of this section, the municipality shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer.

(B) Division (A) of this section shall not apply to the following activities:

(1) Any public works project with contemplated expenditures for the completed project that do not exceed \$100,000; (Neb. RS 81-3445, 81-3449(4), and 81-3453(3))

(2) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building; (Neb. RS 81-3449(5) and 81-3453(4))

(3) Performance of professional services for itself if the municipality appoints a municipal engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work; (Neb. RS 81-3423, 81-3449(9), and 81-3453(6))

(4) The practice of any other certified trade or legally recognized profession; (Neb. RS 81-3449(11) and 81-3453(7))

(5) Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the municipality that is not subject to a permit from the Department of Natural Resources; (Neb. RS 81-3449(13) and 81-3453(12))

(6) The work of employees and agents of the municipality performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land use regulations and their customary duties in utility and public works construction, operation, and maintenance; (Neb. RS 81-3449(14) and 81-3453(13))

(7) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant; (Neb. RS 81-3453(10))

(8) The construction of municipal water wells as defined in Neb. RS 46-1212, the installation of pumps and pumping equipment into municipal water wells, and the decommissioning of municipal water wells, unless that construction, installation, or decommissioning is required by the municipality to be designed or supervised by an engineer or unless legal requirements are imposed upon the municipality as a part of a public water supply; and (Neb. RS 81-3453(15))

(9) Any other activities described in Neb. RS 81-3449 through 81-3453.  
(Ord. 2773, 2-16-99) (Am. Ord. 2818, 1-16-01)

### **§ 93.013 SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE.**

(A) The City Council may, by ordinance, create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement.

(B) Except as provided in Neb. RS 19-2428 through 19-2431, the City Council shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not those properties were previously assessed for the same general purpose. In creating such special improvement district, the City Council shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.  
(Neb. RS 18-1751) (Ord. 2415, 4-1-87)

### **§ 93.014 IMPROVEMENT DISTRICT; LAND ADJACENT.**

Supplemental to any existing law on the subject, a municipality may include land adjacent to the municipality when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The City Council may levy a special assessment for the costs of such improvements upon the properties found specially benefited thereby, except as provided in Neb. Rev. Stat. 19-2428 to 19-2431. (Neb. RS 19-2427) (Ord. 2416, 4-1-87)

### ***SIDEWALKS***

### **§ 93.025 KEPT CLEAN.**

It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon the sidewalk. All sidewalks within the business district shall be cleaned within 5 hours after the cessation

of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before 9:00 a.m. the following day, provided that sidewalks within the residential areas of the municipality shall be cleaned within 24 hours after the cessation of the storm. (Neb. Rev. Stat. 17-555, 557, 557.01) Penalty, see § 10.99

### **§ 93.026 MAINTENANCE.**

Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to the lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of the owner's property, within the time and in the manner as directed and required herein by the Mayor and City Council after having received due notice to do so, the Mayor and City Council may cause the sidewalk to be constructed or repaired and may assess the cost thereof against the property.. Penalty, see § 10.99

### **§ 93.028 USE OF SPACE BENEATH.**

No person shall be allowed to keep or use the space beneath the sidewalk lying between lot line and curb line unless a permit therefor shall have been obtained from the City Council. Before any permit shall be granted, the applicant for the permit shall submit plans and specifications of any present or proposed construction to the Municipal Engineer. Should the plans or specifications be disapproved by the Engineer, no permit shall be granted therefor. All permits hereafter granted shall continue only upon the condition that the party receiving the same shall build, maintain, and keep in repair a sidewalk over the space used or constructed to be used and pay all damages that may be sustained by any person by reason of that use or by reason of the sidewalk being defective or in a dangerous condition. As a condition precedent to the issuance or continuance of any permit for the use of any space underneath the municipal sidewalks as herein contemplated, the City Council may require the applicant to furnish a bond to the municipality as obligee for the benefit of any person or persons who may suffer any damage or damages by reason of the use. The bond shall be in the sum as the City Council, in its discretion, may designate. (Neb. Rev. Stat. 17-555(3)) Penalty, see § 10.99

### **§ 93.029 UNDERGROUND STRUCTURES UNDER SIDEWALKS; PERMIT.**

(A) Definitions. For the purpose of this chapter, the following definitions shall prevail:

**OWNER** shall mean and include the record owner of the fee simple of property or the lessee for a term of twenty-five years or more of such property, or purchaser in possession under land contract.

**STRUCTURE** shall mean and include, but not be limited to, vaults, underpasses, area-ways, basements, liquid storage tanks, boilers, and cantilevered areas of buildings.

(B) Permit Required. It shall be unlawful for any person to use any space underneath or above the surface of any street, alley, sidewalk, or other public ground within this city, or to construct any structure thereunder or thereover unless approved by the city by a permit issued as a privilege. No permit shall be issued except to the owner of the lot or land adjacent to the space sought to be used, and no permit shall be issued unless authorized by action of the City Council. A building permit shall also be required from the Building Inspector if a permit would be required under the ordinances of the city to construct a similar structure upon private property. All



buildings that have any such structures around the Courthouse Square, defined as those buildings located on the 400 blocks of 4th, 5th, D and E Streets, must petition for a permit prior to August 1, 2006 or any such structure will be filled in by the city.

(C) Application for Permit. Applications for such permit shall be made to the City Clerk, and such application shall be in writing stating specifically the space size of the structure being used or being built including, its length, breadth and depth, and the use intended to be made thereof, or the structure to be built therein; and the City Clerk shall then refer said application to the City Council.

(D) (1) Bond and Public Liability Insurance. Every applicant for such permit shall file with the application required, a continuing bond in the sum of not less than \$5,000.00, but in the event that the City Council in the resolution authorizing the permit shall fix a different sum, then a bond for such sum so fixed shall be substituted and filed with the application. All bonds and sureties shall be approved by the City Attorney before such permit becomes effective. All bonds shall be conditioned that the person to whom such permit shall be issued and such person's heirs, successors, or assigns shall strictly comply with all applicable laws and regulations and all conditions of the permit and which shall save and keep the city free and harmless from any and all loss or damages or claims for damages arising from or out of the use of the space or structure therein mentioned, and for the maintenance of the street, alley, sidewalk, or other public way in such condition that said street, alley, sidewalk, or other public way shall at all times after such structure is completed or such space is covered, be safe for the public use; for the full and complete protection of the city against any and all litigation growing out of the granting of such permit or anything done under such permit and for the removal of any structure permitted in the public space by such permit at the sole expense of the permittee and the permittee's heirs, successors, or assigns; for the faithful performance and observance of all the terms and conditions of this chapter; and where the permit is given to use space which under this chapter is taxed, such bond shall also be conditioned for the prompt and full payment of the compensation required by this chapter, or any other ordinance required to be paid during the period said permit shall be outstanding. Following the issuance of such permit and as long as the use continues or as long as the structure exists in such public space, the owners of such property from time to time shall also be responsible to the city for the performance of all of the conditions of said bond above described.

(2) Whenever the City Council shall be of the opinion that the surety on such bond given for such permit issued hereunder has become insufficient and shall so declare by resolution, a new bond for such permit shall thereupon be filed with a new surety to be approved by the City Attorney.

(3) In addition to the bond, the applicant shall be required to:

(a) At all times maintain public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by the City Attorney, with a minimum combined single limit of \$500,000.00 aggregate for any one occurrence. The coverages required herein shall be subject to review and approval by the City Attorney for conformance with the provisions of this section;

(b) At all times keep on file with the City Clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for conformance with the provisions of this section evidencing the existence of valid and effective policies of insurance naming the city as an additional insured for the coverage required by subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each pol-

icy, the deductibles or self-insurance retainers of each policy and a copy of an endorsement placed on each policy requiring thirty day's notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declarations page of such policies. Any termination or lapse of such insurance shall automatically revoke any permit issued pursuant to this chapter.

(E) Interference with Sewer, Gas, or Water Pipes. No person shall ever use the space under any such street, alley, or public way in such manner as to interfere with any wastewater collector, gas, water, or any other public works or utilities lawfully in such street, alley, or other public way unless by consent of the City Council especially granted by resolution; and no such permit shall be granted until the applicant therefor has deposited with the City Clerk and a sum of money equal to the estimated cost prepared by the City Clerk to defray the cost and expense of removing, replacing, and relaying such wastewater collector, gas, water pipes, or other public works or utilities, and making the necessary connections therewith. Each and every applicant disturbing any such wastewater collector, gas, water pipes, or other public works or utilities, shall, within ten days after so disturbing it, restore the same to such condition as will meet with the approval of the Department of Public Works and Utilities. When such wastewater collector, gas, water pipes, or other public works or utilities are so restored by said applicant, the sum so deposited with the City Clerk shall be refunded to such applicant less any sums which may be necessary to defray any damages which might arise from such disruption. If such applicant shall fail to restore such wastewater collector, gas, or water pipes, or other public works or utilities within ten days after the same is disturbed, then the City Clerk shall cause the same to be restored in a manner meeting with his/her approval, and the cost thereof shall be paid out of the sum thus deposited.

(F) (1) Revocation of Permit; Removal of Structure. A permit issued under this chapter may be revoked by resolution of the City Council upon a finding by them of such fact and the giving of five days' written notice to such person by the City Clerk, for the following reasons:

(a) Failure of the permit holder to pay the compensation required within ten days after the date for payment is due;

(b) Failure or neglect of the permit holder to comply with the provisions of this chapter or any of the provisions of the Municipal Code or provisions of the permit;

(c) Failure to use the space for which the permit was granted for a continuous period of at least six months; or

(d) Upon a determination by the city that the space for which the permit was granted is needed for public use.

(2) Upon revocation of a permit, the permit holder shall forthwith remove or abandon the space for which the permit was granted. together with the removal of any structures at his/her own cost and expense and return that space to the City of Fairbury, free and clear of all structures or encroachments of any type, at no expense to the city. If said space is below ground, such space shall be filled to the satisfaction of the Director of Public Works and Utilities at the expense of the permit holder. If a removal, abandonment, or fill has been requested and the said removal, abandonment, or fill is not completed within six months after revocation of such permit, the City Council may cause such removal, abandonment, or fill to be so done, and the costs of such work shall become a lien against the property of the permit holder.

(G) Exceptions. The provisions of this chapter shall apply to all uses of any space under or over the public space where said use involves the existence, construction of or excavation of structures to be placed in that space. The provisions of this chapter shall not apply to public utilities located above or under the public space, the use of street or sidewalk areas during construction work occurring on adjacent property and for parking of vehicles within the sidewalk space, balconies, appendages, marquees, footings, and awnings provided for in this Code. (Ord. 2936, 6-6-06)

### **§ 93.030 DANGEROUS STAIRWAY.**

It shall be unlawful for any person to construct or maintain any stairway, open cellarway, open basement way, or open entrance thereto in or adjacent to any sidewalk, pavement, or street, and any such entrance is hereby declared to be a public nuisance, provided that all existing stairways, open cellarways, open basement ways, or open entrances thereto in sidewalks, pavements, or streets may be permitted to remain from and after the passage, approval, and publication of this code if the person owning or using the opening in the sidewalk, or street, shall satisfy the Utilities Superintendent that the same is properly protected by a balustrade or coping of durable material and shall furnish the municipality with a bond in such amount as the City Council may set, for the benefit of any person who might suffer an injury or damage by reason of the use of the stairway, cellarway, or open basement way. Penalty, see § 10.99

### **§ 93.031 CONSTRUCTION AT OWNER'S INITIATIVE.**

(A) (1) Any person desiring to construct, or cause to be constructed, any sidewalk shall do so only as herein provided and according to standards and specifications required by the City. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

(2) The owner shall make application in writing for a permit and file the application in the office of the Municipal Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The official in charge of sidewalks shall issue the desired permit unless good cause shall appear why the permit should be denied, provided that if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the municipal official in charge of sidewalks shall submit the application to the City Council who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed, the sidewalk at any other location, grade, or elevation than so designated by the municipality. All sidewalks shall be built and constructed on the established grade or elevation, and if there is no established grade, then on the grade or elevation indicated by the municipal official in charge of sidewalks. Penalty, see § 10.99

### **§ 93.032 CONSTRUCTION AT MUNICIPAL DIRECTION.**

(A) The City Council may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the municipality. Notice of the City Council's intention to construct the sidewalk shall be given by the Municipal Clerk by publication of notice one time in a legal news- paper of general circulation in the municipality.

(B) A copy of the notice shall be personally served upon the occupant in possession of the property, or, when personal service is not possible, the notice shall be posted upon the premises 10 days prior to the commencement of construction. The notice required in this section shall be prepared by the Municipal Attorney in accordance with the provisions of this section. This service shall include a form of return evidencing personal service or posting as herein required.

(C) The notice shall notify the owner of the premises of the passage of the resolution ordering the owner to construct or cause to be constructed a sidewalk within 30 days after the date of publication, and further that if the owner fails to construct the sidewalk or cause the same to be done within the time allowed, the municipality will cause the sidewalk to be constructed, and the cost thereof shall be levied and assessed as a special tax against the premises, provided that the notice shall contain the official estimate of the cost of construction, and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a nonresident of the county in which the property lies, the municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published.

### **§ 93.033 CONSTRUCTION BIDS.**

Whenever the municipality shall construct, widen, replace, or reconstruct any sidewalk, notice prepared by the Municipal Attorney, specifying the work to be done and calling for bids for doing that work and supplying the necessary materials and labor shall be published in at least 1 issue of a legal newspaper of general circulation in the municipality; provided, bids so invited shall be filed in the office of the Municipal Clerk within 10 days after the date of publication. Bids shall be opened at the next regular or special meeting of the City Council, and the City Council shall then award the work to the lowest responsible bidder. Upon approval of the work, the City Council may require the contractor to accept payment in certificates issued to him or her by the Municipal Clerk entitling him or her to all assessments or special taxes against such real estate whenever the assessments or special taxes shall be collected, together with the interest or penalty collected thereon. Each certificate shall give the legal description of the lot, lots, or parcel of ground against which the assessments or special taxes are assessed. The certificate or certificates may be assigned and transferred, entitling the holder to the same rights as if held by the original contractor. The County Treasurer shall pay over to the contractor or other holder of the certificate or certificates all assessments or special taxes against the real estate, together with the interest and penalty thereon, at any time upon presentation of the certificate or certificates after the assessments or special taxes against the real estate together with interest or penalty thereon shall have been collected.

### **§ 93.034 CONSTRUCTION BY PETITION.**

If the owners of the record title representing more than 60% of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the City Council to make the same, the Council shall proceed in all things as though the construction had been ordered by it. Upon the petition of any freeholder who is an abutting owner in fee simple of property subject to assessment for sidewalk improvements, the Council may order permanent sidewalks built in accordance with this subchapter upon the freeholder making, executing, and delivering to the City an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires the sidewalk to be constructed and that the petitioner gives and grants to the municipality the right to assess and levy the costs of this construction against the freeholder's real estate abutting the sidewalk improvement and promises to pay the costs with interest. The total cost of the improvement shall be levied, allocated, financed, and specially assessed as provided by law. In the event the property owner is a nonresident of the county in which the property lies, the municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident

property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published.

### **§ 93.035 CONSTRUCTION SPECIFICATIONS.**

All sidewalks shall be constructed in conformity with those specifications as are adopted by the Street Superintendent and approved by the City Council. The Street Superintendent may reject the use of any materials that do not comply with those requirements and specifications or any material that is lacking in quality, and it shall be unlawful to construct any sidewalks from any material so rejected. In case any lot owner of a piece of land within the municipality, under notice given or otherwise, shall construct a sidewalk in violation of this chapter, the Street Superintendent may stop the work of the construction and order the same to be constructed in accordance with this chapter and order the work already done to be changed, and on the failure of the owner to change any such work, the Street Superintendent shall forthwith change the work, and the expense of the same shall be assessed and taxed to that lot. Penalty, see § 10.99

### **§ 93.036 CERTIFICATION.**

The Street Superintendent shall certify to the City Council a detailed schedule of all sidewalks laid, widened, or rebuilt and the cost of same, from which the City Council may be aided in determining the amount to be assessed as a special assessment against each lot or piece of ground. The Street Superintendent shall certify such other facts as may be necessary to enable the City Council to make the proper special assessment. He or she shall also certify to the City Council the acceptance of any sidewalk improvements to the adjoining lots or parcels of land and prepare all necessary data for assessment sheets. The cost of improvements provided for in this chapter shall be assessed by the Mayor and Council meeting as a Board of Equalization, following notice of such sitting at least 10 days prior thereto by publication in a newspaper having general circulation in the municipality, and the assessments shall be equalized and levy made in the manner provided by law.

## ***STREETS***

### **§ 93.050 OPENING, WIDENING, IMPROVING, OR VACATING.**

(A) (1) The city shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the city and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the city, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance.

(2) Whenever any street or alley is vacated, the same shall revert to the owners of the abutting real estate, 1/2 on each side thereof, and become a part of that property, unless the city reserves title in the ordinance vacating such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(3) When a portion of a street, avenue, alley, or lane is vacated only on 1 side of the center thereof, the title to the land shall vest in the owner of the abutting property and become a part of that property, unless the city reserves title in the ordinance vacating such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(4) When the city vacates all or any portion of a street, avenue, alley, or lane, the city shall, within 30 days after the effective date of the vacation, file a certified copy of the vacating ordinance with the Register of Deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city, any public utilities and any cable television systems the right to maintain, repair, renew and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times. (Neb. RS 17-558)

(B) The city shall have power to create, open, widen, or extend any street, avenue, alley, off-street parking area, or other public way, or annul, vacate, or discontinue the same. (Neb. RS 17-559)

#### **§ 93.051 GRADING, PAVING, AND OTHER IMPROVEMENTS.**

(A) The municipality has the power to provide for the grading and repair of any street, avenue, or alley and the construction of bridges, culverts and sewers. No street, avenue, or alley shall be graded unless the grading is ordered to be done by the affirmative vote of two-thirds of the City Council. (Neb. RS 17-508)

(B) The City Council may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravell, macadamize, remacadamize, widen, or narrow streets or roadways, resurface or relay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the city corporate area and the area adjoining the city. These projects may be funded at public cost or by the levy of special assessments on the property especially benefited in proportion to the benefits, except as provided in Neb. RS 19-2428 through 19-2431. The City Council may by ordinance create improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more of the improvements in one proceeding. (Neb. RS 17-509)

(C) Whenever the City Council deems it necessary to make the improvements in division (B) which are to be funded by a levy of special assessment on the property especially benefited, the City Council shall by ordinance create an improvement district. (Neb. RS 17-511)  
Penalty, see § 10.99

#### **§ 93.052 IMPROVEMENTS WITHOUT PETITION OR CREATION OF DISTRICT.**

(A) The municipality may, without petition or creating a street improvement district, grade, curb, gutter, and pave:

(1) Any portion of a street otherwise paved so as to make 1 continuous paved street, but the portion to be so improved shall not exceed 2 blocks, including intersections, or 1,325 feet, whichever is the lesser;

(2) Any unpaved street or alley which intersects a paved street for a distance not to exceed one block on either side of that paved street; and

(3) Any side street or alley within its corporate limits connecting with a major traffic street for a distance not to exceed one block from that major traffic street.

(B) These improvements may be performed upon any portion of a street or any unpaved street or alley not previously improved to meet or exceed the minimum standards for pavement set by the municipality for its paved streets.

(C) In order to defray the costs and expenses of these improvements, the municipality may levy and collect special taxes and assessments or issue paving bonds as provided in Neb. RS 18-2003.

(Neb. RS 18-2001 through 18-2004)

### **§ 93.053 VACATING PUBLIC WAYS.**

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

***SPECIAL DAMAGES.*** Only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his or her property and which result from the City Council vacating a street, avenue, alley, lane, or similar public way. ***SPECIAL DAMAGES*** shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the city or public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the city or public at large. (Ord. 2380, 9-2-86)

(B) Whenever the City Council decides that it would be in the best interests of the city to vacate a street, avenue, alley, lane, or similar public way, the City Council shall comply with the following procedure.

(1) Notice shall be given to all abutting property owners either by first class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the city. The content of the notice shall advise the abutting property owners that the City Council will consider vacating the street, avenue, alley, lane, or similar public way at its next regular meeting or, if a special meeting is scheduled for the discussion, then the date, time, and place of that meeting.

(2) The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the City Council and waive their right of access. The signing of this form shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the City Council's action was proper. If the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating the street, avenue, alley, lane, or similar public way under the authority granted by Neb. RS 17-558 and 17-559.

(3) The City Council shall pass an ordinance that includes essentially the following provisions:

(a) A declaration that the action is expedient for the public good or in the best interests of the city;

(b) A statement that the city will have an easement for maintaining all utilities; and

(c) A method or procedure for ascertaining special damages to abutting property owners.

(Ord. 2381, 9-2-86)

(C) The Mayor shall appoint three or five or seven disinterested residents of the city to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the City Council. Only special damages shall be awarded to the abutting property owners.

(D) In determining the amount of compensation to award the abutting property owners as special damages, the commission shall use the following rule:

*An abutting property owner is entitled to recover as compensation the difference between the value of the property immediately before and immediately after the vacating of such street, avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation.*

(Ord. 2380, 9-2-86)

#### **§ 93.054 CROSSINGS.**

The City Council may order and cause to be constructed, under the supervision of the municipal official in charge of streets, those street, avenue, and alley crossings as the City Council shall deem necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the Municipal Clerk, the Municipal Clerk shall refer the application to the Utilities Superintendent who shall investigate and make a recommendation to the City Council. Action by the City Council on the application, whether the application is approved or rejected, shall be considered final.

#### **§ 93.055 NAMES AND NUMBERS.**

The City Council may at any time, by ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along the streets shall retain those numbers as the City Council may require. It shall be the duty of the municipal official in charge of streets, upon the erection of any new building or buildings, to assign the proper numbers to the building or buildings and give notice to the owner or owners and occupant or occupants of the same. Penalty, see § 10.99

#### **§ 93.056 DRIVEWAY APPROACHES.**

(A) The Utilities Superintendent may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure, including pavement or sidewalks.



(B) The Municipal Clerk shall give the property owner notice by registered letter or certified mail, directed to the last known address of the owner or the agent of the owner, directing the repair or replacement of the driveway approach. If within 30 days of mailing this notice the property owner fails or neglects to cause the repairs or replacements to be made, the Utilities Superintendent may cause the work to be done and assess the cost upon the property served by the approach.

(Neb. RS 18-1748) (Ord. 2314, 8-21-84) Penalty, see § 10.99

#### **§ 93.057 EXCAVATION.**

It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the Utilities Superintendent authorizing the excavations. Penalty, see § 10.99

#### **§ 93.058 DRIVING STAKES.**

It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the Utilities Superintendent. Penalty, see § 10.99

#### **§ 93.059 MIXING CONCRETE.**

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever. Penalty, see § 10.99

#### **§ 93.060 HARMFUL LIQUIDS.**

It shall be unlawful for any person to place or permit to leak in the gutter of any street any waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon the streets. Penalty, see § 10.99

#### **93.061 GASOLINE PUMPS.**

No gasoline pump shall be located in the sidewalk space or street. All gasoline pumps shall be located within the building -line or lot line, and the servicing of any vehicle while in the street or within the sidewalk space is hereby prohibited. Penalty, see § 10.99

#### **§ 93.062 MANHOLES.**

It shall be unlawful for any person to use a manhole in the streets or alleys of the municipality for anchorage or for any purpose other than that for which it was built. Penalty, see § 10.99

#### **§ 93.063 EAVE AND GUTTER SPOUTS.**

It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the municipality where the dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the wastewaters that collect on the sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alleys or shall be buried beneath the sidewalks and drain into the streets where it is found to be impossible to drain the eave spouts into the alley. Penalty, see § 10.99

### **§ 93.064 HEAVY EQUIPMENT; SPECIAL TIRES.**

It shall hereafter be unlawful for any person or persons to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected the curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of the curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon the pavement, with wheels having cutting edges, with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter, or curb; provided that, where heavy vehicles, structures, and machines move along paved or unpaved streets, the Police Department is hereby authorized and empowered to choose the route over which the moving of those vehicles, structures, or machines will be permitted and allowed. Nothing in this section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding 5/16 inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than 7/64 inch between November 1 and April 1, provided that mail carriers, school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets. It shall be permissible to use a rubber tired crane with a fixed load when that vehicle will be transported on a state highway or on any road within the corporate limits of the municipality, the municipality in which the crane is intended to be transported has authorized a one-day permit for the transportation of the -crane and specified the route to be used and the hours during which the crane can be transported, the vehicle is escorted by another vehicle or vehicles assigned by the municipality, and the vehicle's gross weight does not exceed the limits set out in Neb. RS 60-6,294(10), and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid. Penalty, see § 10.99

### **§ 93.065 PIPELINES AND WIRES.**

Poles, wires, gas mains, pipe lines, and other appurtenances of public service companies shall be located, or erected over, upon, or under the streets, alleys, and common grounds of the municipality. Application for location of the above shall be made to the City Council in writing. Approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, conduits, gas mains, pipe lines, and wires shall at all times erect and locate their poles, wires, gas mains, pipe lines, and other appurtenances at those places and in the manner as shall be designated by the City Council. These poles, wires, gas mains, pipe lines, and other appurtenances shall be removed or relocated by the companies at their own expense when requested to do so by the City Council. Any such relocation shall be ordered by resolution of the City Council, and the Municipal Clerk shall notify any and all companies affected. The companies shall, within 24 hours after receiving notice, at their own expense, cause the poles, wires, gas mains, pipe lines, or other appurtenances to be removed. The City Council shall designate another location as closely as possible where the poles, wires, gas mains, pipe lines, or other appurtenances, may be reset or placed. All poles, wires, gas mains, pipe lines, or other appurtenances shall be reset, placed, or erected in such a manner that they will not interfere with the water system, sewerage system, poles, wires, and mains of any public utility, adjacent buildings, or with travel on the public ways and property. Whenever possible, all pole lines, wires, gas mains, pipe lines, or appurtenances shall be confined to the alleys of the municipality. Penalty, see § 10.99

### **§ 93.066 SNOW, DEBRIS, AND THE LIKE ON STREET PROHIBITED.**

It shall be unlawful to place, push, or deposit snow, sleet, ice, or mud, or any debris, including leaves, grass, and branches, from private property onto the streets of the municipality. Penalty, see § 10.99

### **§ 93.067 CONSTRUCTION NOTICE.**

The Street Superintendent shall notify the owners in fee simple of real estate abutting a street, alley, or a part thereof which is to be put under contract for paving or repaving. Notice shall also be given to all gas, electric service, and telephone companies. Notice shall also be given to all consumers of gas, water, and sewer services which will be discontinued during the construction. This notice shall be published 1 time in a legal newspaper at least 20 days prior to the beginning of the construction by the party undertaking the construction, and this notice shall state at what date connections must be made and excavation completed. All gas, water, sewer, and underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued, nor will excavation be allowed, until after the completion of the pavement in that street or alley, and the formal final acceptance thereof by the proper officials of the municipality. Penalty, see § 10.99

### **§ 93.068 IMPROVEMENT AUTHORITY.**

The Council shall have the power to open, control, name, rename, extend, widen, narrow, vacate, grade, curb, gutter, park, and pave, or otherwise to improve and control and keep in good repair and condition, in any manner it may deem proper, any street, avenue or alley, public parks or square, or part of either, within or without the limits of the municipality. It may grade, park, or otherwise improve any width or part of any such street, avenue, or alley. (Neb. RS 17-508, 17-509, and 17-558)

### **§ 93.069 IMPROVEMENT DISTRICTS; OBJECTIONS.**

Whenever the City Council deems it necessary to make any improvements allowed by statute which are to be funded by a levy of special assessment on the property especially benefited, the City Council shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication or posting of the ordinance, shall publish notice of the creation of any such district for 6 days in a legal newspaper of the municipality, if a daily newspaper, or for 2 consecutive weeks if it is a weekly newspaper. If no legal newspaper is published in the municipality, the publication shall be in a legal newspaper of general circulation in the municipality. If the owners of the record title representing more than 50% of the front footage of the property directly abutting on the street or alley to be improved file with the Municipal Clerk within 20 days after the first publication of the notice written objections to the creation of that district, the improvement shall not be made as provided in the ordinance, but the ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the City Council shall immediately cause the work to be done or the improvement to be made, shall contract for the work or improvement, and shall levy assessments on the lots and parcels of land abutting on or adjacent to the street or alley especially benefited in that district in proportion to the benefits to pay the cost of the improvement. (Neb. RS 17-511) (Am. Ord. 2690, 6-17-97)

### **§ 93.070 PETITION FOR IMPROVEMENTS.**

Whenever a petition signed by the owners of record title representing more than 60% of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the Municipal Clerk, petitioning therefor, the City Council shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause the work to be done or the improvement to be made, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to the street, streets, alley, or alleys especially benefited thereby in that district in proportion to the benefits, to pay the cost of the improvement. The City Council shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the City Council should deny a requested improvement district formation, it shall state the grounds for this denial in a written letter to interested parties. (Neb. RS 17-510) (Am. Ord. 2275, 10-4-83)

### **§ 93.071 CONSTRUCTION ASSESSMENT.**

To defray the costs and expenses of street improvements, as may be authorized by law, the City Council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The City Council sitting as the Board of Equalization shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the City Council at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of the improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of holding this meeting and the purpose for which it is to be held shall be published in some newspaper published, or of general circulation, in the municipality at least 4 weeks before the same shall be held. In lieu of the aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. The assessments shall be known as "special assessments for improvements" and with the cost of notice shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other municipal taxes, and shall be certified to the County Clerk by the Municipal Clerk forthwith after the date of levy, for collection by the County Treasurer unless otherwise specified. After it shall become delinquent, the assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a nonresident of the county in which the property lies, the municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published. (Neb. RS 17-511 and 17-524)

### **§ 93.072 IMPROVEMENT OF STREETS ON CORPORATE LIMITS.**

The Mayor and Council shall have the power to improve any street or part thereof which divides the municipal corporate area and the area adjoining the municipality. When creating an improvement district including land adjacent to the municipality, the Council shall have power to assess, to the extent of special benefits, the costs of the improvements upon the properties found especially benefited thereby. (Neb. RS 17-509)

### **§ 93.073 IMPROVEMENT OF THOROUGHFARES.**

The Mayor and City Council shall have the power, by a three-fourths vote of the City Council, to create by ordinance a paving, graveling, or other improvement district and to order this work done upon any federal or state highway in the municipality or upon a street or route, designated by the Mayor and City Council as a main thoroughfare, that connects, on both ends, to either a federal or state highway or a county road. The City Council shall contract therefor and shall have the power to assess, to the extent of special benefits, the costs of the improvements upon the properties found especially benefited thereby. (Neb. RS 17-512)

### **§ 93.074 DAMAGING NEWLY LAID STREETS.**

No person shall remove, destroy, or tear down any barricade, fence, railing, or other device erected or constructed for the purpose of protecting paving or any other work on any street, alley, or public grounds of the municipality. No person shall drive over or upon or go upon any paving or other public grounds while the same is protected by any barrier, fence, or railing until that barrier, fence, or railing has been removed by the contractors doing the work or by the duly authorized officials of the municipality. No person shall mar, deface, destroy, remove, or carry away any street sign or highway marker within the municipality. Penalty, see § 10.99

### **§ 93.075 DEFERRAL FROM SPECIAL ASSESSMENTS.**

(A) Whenever the City Council of a municipality creates an improvement district as specified in § 93.014 which includes land adjacent to the municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of that adjacent land may apply for a deferral from special assessments. For purposes of this section, the terms "agricultural use" and "agricultural use zone" shall have the meaning specified in Neb. RS (1943) 77-1343.

(B) Any owner of record title eligible for the deferral granted by this section shall, to secure the assessment, make application to the City Council of the municipality within 90 days after creation of an improvement district as specified in § 93.014. Any owner of record title who makes application for the deferral provided by this section shall notify the County Register of Deeds of that application in writing prior to approval by the City Council. The City Council shall approve the application of any owner of record title upon determination that:

(1) The property is within an agricultural use zone and is used exclusively for agricultural use; and

(2) The owner has met the requirements of this section.

(C) The deferral provided for in this section shall be terminated upon any of the following events:

- (1) Notification by the owner of record title to the City Council to remove the deferral;
- (2) Sale or transfer to a new owner who does not make a new application within 60 days of the sale or transfer, except as provided in division (C)(3) of this section;
- (3) Transfer by reason of death of a former owner to a new owner who does not make application within 125 days of the transfer;
- (4) The land is no longer being used as agricultural land; or
- (5) Change of zoning to other than an agricultural zone.

(D) Whenever property which has received a deferral pursuant to this section becomes disqualified for that deferral, the owner of record title of the property shall pay to the municipality an amount equal to:

- (1) The total amount of special assessments which would have been assessed against the property, to the extent of special benefits, had the deferral not been granted; and
- (2) Interest upon the special assessments not paid each year at the rate of 6% from the dates at which the assessments would have been payable if no deferral had been granted.

(E) In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in division (C)(2) or (C)(3) of this section, the lien for assessments and interest shall attach as of the day preceding the sale or transfer.  
(Neb. RS 19-2428 through 19-2431) (Ord. 2276, 10-4-83; Am. Ord. 2417, 10-6-87) Penalty, see § 10.99

## ***STREET TREES***

### **§ 93.090 CONTROL OVER TREES.**

(A) (1) It shall be the duty and responsibility of the Public Works Director to study, investigate, develop, formulate, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, and disposition of all park trees and street trees within the municipality and to present this plan annually to the City Council, which plan shall, upon its acceptance and approval by the City Council, constitute the official Comprehensive Municipal Tree Plan of the municipality.

(2) For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

***PARK TREES.*** Include all trees, shrubs, bushes, and all other, or different, woody vegetation situated in all public parks having individual names and all other, or different, areas or tracts of land owned by the municipality or open to the general public as a park or public recreational area.

***STREET TREES.*** Include all trees, shrubs, bushes, and all other, or different, woody vegetation situated on any land between the property lines on either side of all streets, avenues, alleys, and all other, or different, public thoroughfares within the City. The following species of

trees, listed by common name, in addition to those species specifically approved by the City, constitute the officially recognized street tree species for the City.

<i>SMALL TREES</i>		<i>LARGE TREES</i>	
<i>Type</i>	<i>Species</i>	<i>Type</i>	<i>Species</i>
Other	Amur cork tree	Evergreen	Fir - medium
Other	Amur maple	Evergreen	Spruce - medium
Other	Bradford pear	Pine	Eastern white pine - large
Other	Eastern redbud	Pine	Ponderosa - medium
Other	Flowering crab (scab resistant varieties)	Other	Bald cypress
Other	Golden rain tree	Other	Burr oak
Other	Hawthorne	Other	Ginkgo
Other	Lilac, Japanese tree	Other	Honey locust, thornless
Other	Ohio buckeye	Other	Horse chestnut
Other	Purple leaf plum	Other	Kentucky coffeetree
Other	Saucer magnolia	Other	Little leaf linden
		Other	Norway maple
		Other	Pagoda tree, Japanese
		Other	Red maple
		Other	Red oak
		Other	Redmond linden
		Other	River birch
		Other	Scarlet oak
		Other	Sugar maple
		Other	Swamp white oak
		Other	Sweet gum

(B) All trees planted as street trees in the City shall be planted at least 40 feet apart; provided, trees of one or more species, hereinabove classified by common name as small trees, may be planted less than 40 feet apart but not less than 30 feet apart. All trees planted as street trees in the municipality shall be planted at least 4 feet from all curbs, curb lines, and sidewalks; provided, trees of one or more species, hereinabove classified by common name as small trees, may be planted less than 4 feet but not less than 3 feet, from all curbs, curb lines, and sidewalks.

(C) No street trees, other than those species hereinabove classified by common name as small trees, shall be planted under or within 10 lateral feet of any overhead electrical, telephone, or other utility wire or line or over or within 5 lateral feet of any underground water, sewer, electrical, telephone, or other utility wire, line, or main. No street tree shall be planted within ten feet of any fireplug or within a 20-foot radius of an intersection of any two or more curbs or curb lines. Any and all trees, bushes, and shrubs planted or allowed to become or remain in conflict with the provisions of this section or any parts or portions hereof are hereby declared to be a public nuisance and the City shall be, and hereby is, authorized and empowered to institute and prosecute legal proceedings for the abatement of the same in the manner provided by law.

(D) It shall be unlawful for any person, firm, or corporation to plant any tree or trees in the space between the sidewalk and curb line on any street without first obtaining a permit from the Public Works Director permitting the planting of trees and also signing an agreement to pay all cost of removal of those trees if it becomes necessary for the health and welfare of the residents of the City to remove the trees.

(E) It shall be unlawful for any person, firm, or corporation to trim, prune, treat, care for, or sever any street tree or park tree from any land or any part of portion thereof in return for any sum of money or any other thing of value without first applying for and obtaining the written consent of the Public Works Director; provided, before any such consent shall be given, the Public Works Director shall require each and every such applicant to furnish a certificate of insurance issued by an insurance company or companies licensed in this state, showing that each applicant has:

(1) Workers' compensation coverage effective in this state; and

(2) Liability insurance in the minimum amount of \$100,000 for bodily insurance to any one person, \$300,000 for bodily injury for any one occurrence, and \$50,000 property damage, which will indemnify and hold harmless the City of and from any and all claims, demands, liabilities, and causes of action of every kind, sort, or nature covering, concerning, relating to, arising from or out of or connected with any and all acts of the applicant.

(F) The City shall have the right to care for, preserve, prune, plant, re-plant, maintain, remove, cause to be removed, order to be removed, and dispose of all street trees and all park trees at those times, for those reasons, and in those manners as the City may, in its sole and absolute discretion, decide from time to time. It shall be unlawful for any person to obstruct, delay, impede, or interfere with the Public Works Director or any other agents, servants, or employees of the City while they are engaging in or performing any duties or activities authorized, empowered, ordered, or directed by, under or pursuant to this section or any part or portion thereof.

(G) The City of Fairbury Tree Board shall be, in addition to any of its other duties, a consulting organization for the City for the purposes of administering and making recommendations regarding this ordinance.

(Ord. 2359, 2-4-86) (Am. Ord. 3016, 1-3-12) Penalty, see § 10.99

## ***CURB AND GUTTER***

### **§ 93.105 CUTTING CURB.**

(A) It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the Street Superintendent therefor. Before any person shall obtain a permit, that person shall inform the Superintendent of the place where the cutting is to be done and it shall be his duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut. When cutting into any paving, it shall be the duty of the party to cut the paving under those rules and regulations as may be prescribed by the Street Superintendent or City Council; provided, all such cuts shall be saw cuts unless the applicant secured written permission to use another method from the Superintendent. When the applicant is ready to close the opening made, he or she shall inform the Superintendent, who shall supervise and inspect the materials used and the work done in the closing. It shall be discretionary with the Street Superintendent to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained the



permit. He may consent to the work of cutting and closing the paving to be done by the party holding the permit. Before any permit is issued by the Superintendent, the applicant for that permit shall deposit with the Municipal Treasurer a sum set by resolution of the City Council for all paving, curb, or sidewalk to be cut. The sum shall be set on a per-square-foot cost of construction basis. The deposit shall be retained by the City for the purpose of replacing the paving, curb, or sidewalk in the event the work is done by the City. In the event the City elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the City until the work is completed to the satisfaction of the Street Superintendent.

(B) No permit shall be granted unless the applicant shall, in addition to all other requirements, agree in writing to the following conditions:

(1) The applicant will, if requested by the City, promptly replace and repair each and every place cut into any pavement, curb, or sidewalk under such rules as may be prescribed by the Street Superintendent or the City Council and leave the same in as good a condition as before the same was cut;

(2) The applicant will promptly compensate the City for all work done by the City in replacing or repairing any places cut in the pavement, curb, or sidewalk by the applicant;

(3) The applicant will obey all applicable laws in doing the work and will save the City harmless from any damages which may occur as the result of either cutting or repairing the pavement, curb, or sidewalk; and

(4) The applicant will maintain and keep in repair the place where the pavement, curb, or sidewalk is cut to the satisfaction of the City and its officers for a period of one year after the completion of the work.

(C) In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the City with a good and sufficient surety or sureties to be approved by the Street Superintendent or City Council, in a sum set by resolution of the Council.

(Am. Ord. 3002, 1-18-11)

### **§ 93.106 DRIVEWAYS.**

On all streets to be hereafter curbed, guttered, and paved, it shall be the duty of the Street Superintendent to notify all parties desiring driveways into their premises to furnish him or her with the width and location of those driveways. The cost of all such driveways in excess of the cost of the continuous gutter and curb shall be charged against the lots or real estate so benefited by their use when the levy for this work shall be made.

## CHAPTER 94: ANIMALS

### Section

#### *General Provisions*

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- 94.04 Wild animals
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### **GENERAL PROVISIONS**

#### **§ 94.01 RUNNING AT LARGE.**

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 a manner so as to allow the animal to reach or pass into any public way. (Ord. 2388, 4-7-87) Penalty, see § 10.99

## § 94.02 PROHIBITED ANIMALS AND FOWL.

(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. (Ord. 2389, passed 4-7-1987)

(B) For the purpose of this section, the following definition shall apply:

**LIVESTOCK.** Any animal which is kept for the use or profit of its owner.

(C) It shall be unlawful for any person to keep or maintain within the corporate limits any poultry, chickens, turkeys, geese, or any other fowl.  
(Ord. 2391, 4-7-87) (Am. Ord. 2941, 6-20-06) Penalty, see § 10.99

§ 94.03 (This Section is reserved)

## § 94.04 WILD ANIMALS.

No wild animals may be kept within the corporate limits except those animals kept for exhibition purposes by circuses and educational institutions. Penalty, see § 10.99

## § 94.05 UNUSUAL ANIMAL, DEFINITION.

**UNUSUAL ANIMAL** shall mean any exotic, wild, poisonous, or potentially dangerous animal not normally considered domesticated and shall include animals prohibited by the City of Fairbury, State of Nebraska, or federal requirements, and also:

(A) Class *Mammalia*; order *Carnivora*, family *Felidae* (such as lions, tigers, jaguars, leopards, and cougars) and hybrids of the same except domesticated cats; family *Canidae* (such as wolves, coyotes, and foxes) and hybrids of the same except domesticated dogs; family *Mustelidae* (such as weasels, martins, fishers, skunks, wolverines, minks, and badgers) except ferrets; family *Procyonidae* (such as raccoons); family *Ursidae* (such as bears); order *Primata* (such as monkeys and chimpanzees); and order *Chiroptera* (such as bats).

(B) Class *Reptilia*; (1) all poisonous or venomous snakes, lizards, amphibians and other reptiles, including but not limited to cobras and their allies (*Elapidae*, *Hydrophidae*); vipers and their allies (*Crotalidae*, *Viperidae*); boomslang and Kirtland's tree snakes (*Clonophis*); and gila monsters (*Helodermatidae*); (2) order *Loricata* (such as alligators, caymans, and crocodiles); (3) green anacondas (*Eunectes murinus*), Indian pythons (*Molurus molurus*), reticulated pythons (*Python reticulatus*), and African rock pythons (*Python sebae*).

(C) Class *aves*, all birds over a foot in height, including but not limited to emus (*Dromaius novaehollandiae*) and ostriches (*Struthio camelus*).  
(Ord. 2941, 6-20-06)

## § 94.06 UNUSUAL ANIMALS PROHIBITED.

(A) It shall be unlawful for any person or persons to own, keep, or harbor any unusual animal within the corporate limits of the City of Fairbury. This section shall not apply to: (1) a circus, or carnival that maintains all legally required permits under applicable state or federal law, including applicable rules and regulations of the Nebraska Game and Parks Commission and federal wildlife agencies; (2) a humane society kenneling or boarding impounded unusual animals for Animal Control; (3) any wildlife rescue organizations with appropriate permits from the Nebraska Game and Parks Commission that rehabilitate or shelter unusual animals; or (4) autho-

rized individuals sheltering animals belonging to a public zoo which require extensive care or rehabilitation.

(B) It shall be unlawful for any person to sell, give away, transfer, or import into the City any unusual animals as defined in this chapter.

(C) In the event that the Health Board determines an unusual animal is being owned, kept, or harbored by any person in violation of this chapter, the said Board may have such person prosecuted for such violation and shall order such person to remove said unusual animal from the city or destroy it. Such order shall be contained in a written notice to remove or destroy said unusual animal within ten days and shall be delivered in person or by certified mail, return receipt requested. If the owner fails to remove or destroy such unusual animal after the expiration of eleven days from receipt of notice, the Health Inspector is hereby authorized and empowered to seek a warrant from the appropriate court to enable him or her to enter private property in order to impound the unusual animal in violation of this chapter.

(D) If the Health Inspector reasonably believes that a violation of this section exists, he or she is hereby authorized and empowered to seek a warrant from the appropriate court to enable him or her to enter private property in order to inspect, care for, or impound unusual animals in violation of this chapter.

(E) Any person or persons violating this section shall bear full cost and expenses incurred by the City in the recovery, care, medical treatment, impoundment cost, and disposal of said animals, including removal from a motor vehicle or trailer.

(F) Whenever an unusual animal has been seized pursuant to a warrant issued by the court, the release or disposition of the unusual animal shall be within the sound discretion of the court. The court may, upon conviction of the owner for a violation of this title, order that the unusual animal may be destroyed in a humane fashion, and any such impoundment or disposal costs incurred by the City shall be payable by the person so convicted.

(Ord. 2941, 6-20-06)

#### **§ 94.07 KILLING AND INJURING.**

No person shall kill or injure any animal by the use of firearms, stones, clubs, poisons, or any other manner unless the animal is vicious or dangerous and cannot be captured without danger to the persons attempting to effect a capture of the animal. Penalty, see § 10.99

#### **§ 94.08 ENCLOSURES.**

All pens, cages, sheds, yards, or any other area or enclosure for the confinement of animals and fowls not specifically barred within the corporate limits shall be kept in a clean and orderly manner so as not to become a menace or nuisance to the neighborhood in which the enclosure is located. Penalty, see § 10.99

#### **§ 94.09 ABANDONMENT, NEGLIGENCE, AND CRUELTY.**

(A) *Definitions:* For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABANDON.** 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.

**ANIMAL.** Any vertebrate member of the animal kingdom except humans. The term shall not include an uncaptured wild creature.

**CRUELLY MISTREAT.** To knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise set upon any animal.

**CRUELLY NEGLECT.** 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.

**HUMANE KILLING.** The destruction of an animal by a method which causes the animal a minimum of pain and suffering.

**LAW ENFORCEMENT OFFICER.** Any member of the State Patrol, any county or deputy sheriff, any member of the police force of the municipality, or any other public official authorized by the municipality to enforce state or local animal control laws, rules, regulations, or ordinances. (Neb. RS 28-1008)

**(B) Enforcement powers; immunity.**

(1) 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.

(2) 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.

(3) Any law enforcement officer acting under this section shall not be liable for damage to property if that damage is not the result of the officer's negligence. (Neb. RS 28-1012)

**(C) Violation.** A person commits cruelty to animals if he or she abandons, cruelly mistreats, or cruelly neglects an animal. (Neb. RS 28-1009) Penalty, see § 10.99

**§ 94.10 PITTING PROHIBITED.**

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

**BEARBAITING.** The pitting of any animal against a bear.

**COCKFIGHTING.** The pitting of a fowl against another fowl.

**DOGFIGHTING.** The pitting of a dog against another dog.

**PITTING.** Bringing animals together in combat. (Neb. RS 28-1004)

(B) No person shall knowingly promote, engage in, or be employed at dogfighting, cock-fighting, bearbaiting, or pitting an animal against another. Nor shall any person knowingly receive money for the admission of another person to a place kept for that purpose. Nor shall any person knowingly own, use, train, sell, or possess an animal for the purpose of animal pitting. Nor shall any person knowingly permit any act as described in this section to

occur on any pre- mises owned or controlled by him or her.

(C) No person shall knowingly and willingly be present at and witness as a spectator dog- fighting, cockfighting, bearbaiting, or the pitting of an animal against another as prohibited in this section. (Neb. RS 28-1005)

Penalty, see § 10.99

## ***DOGS; GENERAL PROVISIONS***

### **§ 94.20 OWNER DEFINED.**

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

***OWNER.*** Any person who shall harbor or permit any dog to be for 10 days or more in or about his or her house, store, or enclosure, or to remain to be fed shall be deemed the ***OWNER*** and possessor of that dog and shall be deemed to be liable for all penalties herein prescribed. (Neb. RS 54-606) (Am. Ord. 2893, 9-78-2004) Penalty, see § 10.99

### **§ 94.21 RUNNING AT LARGE.**

(A) It shall be unlawful for the owner of any dog to allow that dog to run at large at any time within the corporate limits of the municipality. It shall be the duty of the municipal police to cause any dog found to be running at large within the municipality to be taken up and impounded.

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

***RUNNING AT LARGE.*** Any dog found off the premises of the owner and not under control of the owner or a responsible person, either by leash, cord, chain, wire, rope, cage, or other suitable means of physical restraint.

(Am. Ord. 2893, 9-7-04) Penalty, see § 10.99

### **§ 94.22 RABIES THREAT; PROCLAMATION.**

It shall be the duty of the City Council 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 the proclamation, or until the danger is passed. The dogs may be harbored by any good and sufficient means in a house, garage, or yard on the premises wherein the 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. (Am. Ord. 2893, 9-7-04) Penalty, see § 10.99

### **§ 94.23 CAPTURE IMPOSSIBLE.**

The municipal police shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies, which make capture impossible because of the danger involved. (Am. Ord. 2893, 9-7-04)

#### **§ 94.24 LIABILITY OF OWNER.**

It shall be unlawful for any person to allow a dog owned, kept, or harbored by him, 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. (Am. Ord. 2893, 9-7-04) Penalty, see § 10.99

#### **§ 94.25 IMPOUNDING.**

It shall be the duty of any animal control official designated by resolution of the City Council to capture, secure, and remove in a humane manner to the municipal animal shelter any dog violating any of the provisions of this chapter. 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 shelter for a period of not less than 5 days after notice has been given unless reclaimed earlier by the owner. Notice of the impoundment of any licensed dog shall be mailed to the owner listed on the license application of that dog, by regular U.S. mail, at the address of the applicant. Any dog may be reclaimed by its owner during the period of impoundment by payment of a general impoundment fee and daily board fee as set by resolution of the City Council and on file at the office of the Police Department. The owner shall be required to comply with the licensing and rabies vaccination before release; If the dog is not claimed at the end of the required waiting period after public notice has been given, any animal control official designated by resolution of the City Council may dispose of the dog in accordance with the applicable rules and regulations pertaining to the same, provided that if, in the judgment of any designated animal control official, a suitable home can be found for any such dog, that dog shall be turned over to that person, and the new owner shall then be required to pay all fees and meet all licensing and vaccinating requirements provided in this chapter. The municipality shall acquire legal title to any unlicensed dog impounded in the animal shelter for a period longer than the required waiting period after giving notice. All dogs shall be destroyed in the summary and humane manner as prescribed by the Board of Health unless a suitable home can be found for the dog. (Am. Ords. 2893, 9-7-04; 2941, 6-20-06)

#### **§ 94.26 BARKING AND OFFENSIVE DOGS.**

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 municipality. The provisions of this section shall not be construed to apply to the municipal dog shelter. (Neb. RS 17-526) (Am. Ords. 2893, 9-7-04; 2941, 6-20-06) Penalty, see § 10.99

#### **§ 94.27 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. (Neb. RS 17-526) (Am. Ord. 2893, 9-7-04) Penalty, see § 10.99

#### **§ 94.28 DANGEROUS DOGS; DEFINITIONS.**

For purposes of Fairbury Municipal Code §§ 94.28 to 94.30, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) **ANIMAL CONTROL AUTHORITY** shall mean the Fairbury Police Department or other law enforcement agency designated by the Mayor to enforce the animal control laws of the City;

(2) **ANIMAL CONTROL OFFICER** shall mean shall mean any city police officer or other law enforcement officer designated by the Mayor to enforce the animal control laws of the City or any individual employed, appointed, or authorized by the Animal Control Authority for purposes of aiding in the enforcement of the animal control laws of the City, and shall include any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal;

(3)(a) **DANGEROUS DOG** shall mean a dog that, according to the records of an animal control authority: (i) Has killed a human being; (ii) has inflicted injury on a human being that requires medical treatment; (iii) has killed a domestic animal without provocation; or (iv) has been previously determined to be a potentially dangerous dog by an animal control authority, the owner has received notice from an animal control authority or an animal control officer of such determination, and the dog inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals.

(b)(i) A dog shall not be defined as a dangerous dog under subdivision (3)(a)(ii) of this section, and the owner shall not be guilty under Neb. Rev. Stat. 54-622.01, if the individual was tormenting, abusing, or assaulting the dog at the time of the injury or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog.

(ii) A dog shall not be defined as a dangerous dog under subdivision (3)(a)(iv) of this section, and the owner shall not be guilty under Neb. Rev. Stat. 54-622.01, if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined in Neb. Rev. Stat. 20-203, 28-520, or 28-521, was committing any other tort upon the property of the owner of the dog, was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

(iii) A dog shall not be defined as a dangerous dog under subdivision (3)(a) of this section if the dog is a police animal as defined in section 28-1008;

(4) **DOMESTIC ANIMAL** shall mean a cat, a dog, or livestock. Livestock includes, but is not limited to, buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit;

(5) **MEDICAL TREATMENT** shall mean treatment administered by a physician or other licensed health care professional that results in sutures or surgery or treatment for one or more broken bones or for a puncture wound;

(6) **OWNER** shall mean any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog;

(7) **POTENTIALLY DANGEROUS DOG** shall mean (A) any dog that, when unprovoked, (1) inflicts an injury on a human being that does not require medical treatment, (2) injures a domestic animal, or (3) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack or (B) any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

(Neb. RS 54-617) (Ord. 9823, 9-7-04) (Am. Ord. 3001, 1-18-11)



## **§ 94.29 DANGEROUS DOGS; OWNERSHIP.**

(A) Once the Animal Control Authority has declared a dog a dangerous dog or a potentially dangerous dog, such declaration may not be rescinded and shall not expire.

(B) A dangerous dog that has been declared as such shall be spayed or neutered and implanted with a microchip identification number by a licensed veterinarian within thirty (30) days after such declaration. The cost of both procedures is the responsibility of the owner of the dangerous dog. Written proof of both procedures and the microchip identification number shall be provided to the Animal Control Authority after the procedures are completed.

(C) No owner of a dangerous dog shall permit the dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash.

(D) Except as provided in subsection (E) of this section or for a reasonable veterinary purpose, no owner of a dangerous dog shall transport such dog or permit such dog to be transported to another county, city, or village in this state.

(E) An owner of a dangerous dog may transport such dog or permit such dog to be transported to another county, city, or village in this state for the purpose of permanent relocation of the owner if the owner has obtained written permission prior to such relocation from the animal control authority of City and from the county, city, or village in which the owner will reside. Each animal control authority may grant such permission based upon a reasonable evaluation of both the owner and the dog, including if the owner has complied with the laws of this state and of the City with regard to dangerous dogs after the dog was declared dangerous. An animal control authority shall not grant permission under this subsection if the county, city, or village has an ordinance or resolution prohibiting the relocation of dangerous dogs. After the permanent relocation, the animal control authority of the county, city, or village in which the owner resides shall monitor the owner and such dog for a period of at least thirty days but not to exceed ninety days to ensure the owner's compliance with the laws of this state and of such county, city, or village with regard to dangerous dogs. Nothing in this subsection shall permit the rescindment of the declaration of dangerous dog.

(F) No person, firm, partnership, limited liability company, or corporation shall own, keep, or harbor or allow to be in or on any premises occupied by him, her, or it or under his, her, or its charge or control any dangerous dog without such dog being confined so as to protect the public from injury including, but not limited to, complying with subsection (F) of this section.

(G) While unattended on the owner's property, a dangerous dog shall be securely confined in a humane manner indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the dog from escaping. The pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground at a depth of at least one (1) foot. The pen or structure shall also protect the dog from the elements. The pen or structure shall be at least ten (10) feet from any property line of the owner. The owner of a dangerous dog shall post warning signs on the property where the dog is kept that are clearly visible from all areas of public access and that inform persons that a dangerous dog is on the property. Each warning sign shall be no less than ten (10) inches by twelve (12) inches and shall contain the words "Warning" and "Dangerous Animal" in high-contrast lettering at least three (3) inches high on a black background.  
(Ord. 9823, 9-7-04) (Am. Ord. 3001, 1-18-11)

### **§ 94.30 DANGEROUS DOGS; FAILURE TO COMPLY.**

(A) Any dangerous dog may be immediately confiscated by an animal control officer if the owner is in violation of this subchapter. The owner shall be responsible for the reasonable costs incurred by the animal control authority for the care of a dangerous dog confiscated by an animal control officer or for the destruction of any dangerous dog if the action by the animal control authority is pursuant to law and if the owner violated this subchapter. Prior to or within three (3) days following such confiscation, the Animal Control Authority shall give notice to the owner of the Animal Control Authority's decision to destroy the dangerous dog. Within seven (7) days of receipt of such notice, the owner of the dangerous dog may file with the City Clerk a written request for a hearing before the City Council to review the Animal Control Authority's decision. Within thirty (30) days after the filing of the appeal, the City Council shall convene a hearing, for which the owner shall receive written notice by personal service or certified mail at least five (5) days prior to the hearing, and at which the owner may be heard and present evidence why the dangerous dog should not be destroyed and at which the Animal Control Authority may be heard and present evidence why the dangerous dog should be destroyed. If, after consideration of all of the evidence, the City Council shall find that the dangerous dog presents a clear danger to the public of attacking or biting a human being or domestic animal and should be destroyed, it shall, by resolution, order and direct the Animal Control Authority to destroy the dangerous dog. The owner may appeal the City Council's decision to the appropriate court for adjudication, during which proceedings the decision of the City Council shall be stayed.

(B) In addition to any other penalty, a court may order the animal control authority to dispose of a dangerous dog in an expeditious and humane manner.

(C) If a dangerous dog attacks or bites a human being or domestic animal, the dangerous dog shall be immediately confiscated by the Animal Control Authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner. (Neb. RS 54-620) (Ord. 2893, 9-7-04) (Am. Ord. 3001, 1-18-11)

### ***DOGS; LICENSING***

### **§ 94.45 LICENSE REQUIRED.**

Any person who shall own, keep, or harbor a dog over the age of 6 months within the municipality shall, within 30 days after acquisition of the dog, acquire a license for each such dog annually by or before January 1 each year. The tax shall be delinquent from and after January 10; provided, 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 the tax shall be delinquent if not paid within 10 days thereafter. Licenses shall be issued by the Police Department upon the payment of a license fee as set by resolution of the City Council for each neutered dog and for each unneutered dog; provided, the tax shall be as set by resolution of the Council for each neutered dog for every license issued after the fee has become delinquent and for each unneutered dog for every license issued after the fee has become delinquent. The license shall not be transferable, and no refund will be allowed in case of death, sale, or other disposition of the licensed dog. The owner shall state at the time the application is made and upon printed forms provided for that 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 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. (Am. Ord. 2941, 6-20-06) Penalty, see § 10.99

#### **§ 94.46 MULTI-DOG HOUSEHOLD PERMITS.**

(A) It shall be unlawful for any person to have or maintain a multi-dog household of more than three dogs within the City without first having obtained such a permit from the Chief of Police.

(B) Any person having a multi-dog household of more than three dogs shall make application to the Chief of Police for said permit. The following shall be submitted with the application:

(1) Proof of current licenses and rabies vaccination for each dog to be owned, kept or harbored on the premises.

(2) A drawing or plan showing the location and dimensions of the premises, dog runs or pens, and distances to neighboring properties. Drawings or plans must be drawn to scale.

(3) The permit fee shall be the sum of \$50.00 in addition to the licensing fee for each dog as required by the municipal code.

(C) Upon a finding by the Chief of Police that the premises are in compliance with the terms of the permit and the law, said permit will be issued. Only one multi-dog household permit per premises shall be issued. A permit shall not be granted if permit holder possesses a current commercial breeding kennel permit on the same premises.

(Ord. No. 2960, 8-7-07)

#### **§ 94.47 COMMERCIAL BREEDING KENNEL; PERMIT REQUIRED.**

(A) It shall be unlawful for any person to have or maintain a commercial breeding kennel within the City of Fairbury without first having obtained such a permit from the Chief of Police.

(B) Any person wanting to operate a commercial breeding kennel shall make application to the Chief of Police for a commercial breeding kennel permit. The following shall be submitted with the application:

(1) Proof of current licenses, rabies vaccination, and registration with a nationally recognized registration organization for each dog to be kept or harbored on the premises.

(2) A drawing or plan showing the location and dimensions of the premises, dog runs or pens, and distances to neighboring properties.

(3) The permit fee shall be \$100 in addition to required licensing fees for each dog as required in the municipal code.

(C) Upon a finding by the Chief of Police that the premises are in compliance with the terms of the permit and the law, said permit will be issued. Only one permit per premises shall be issued. A permit shall not be granted if permit holder possesses a current multi-dog household permit on the same premises.

(Ord. No. 2960, 8-7-07)

**§ 94.48 MULTI-DOG HOUSEHOLD AND COMMERCIAL BREEDING KENNEL;  
TERMS AND REQUIREMENTS.**

For the purposes of this article, the following terms and requirements shall apply:

(A) A permit is not transferable to another person or premises.

(B) The permits shall expire December 31 of each calendar year for which issued. All permits shall be renewed by January 1 of the following year.

(C) A permit holder shall notify the Chief of Police of any changes in ownership or death of dogs, property, or any other changes which may affect the status of said permit and shall keep the Chief of Police apprised of any change in name or location of the permit holder's kennel.

(D) For a multi-dog household permit, all dogs owned, kept or harbored on the premises shall be spayed and neutered. There shall be no breeding of dogs permitted under this permit. The commercial breeding kennel permit holders shall limit dog reproduction to no more than one litter of offspring per license year per adult female dog.

(E) It shall be unlawful for any multi-dog household permit holder to own, keep or harbor more than three dogs over the age of six months on the premises. It shall be unlawful for any commercial breeding kennel permit holder to keep or harbor more than ten dogs over six months of age on the premises.

(F) All dogs shall be kept confined on the permit holder's premises.

(G) A permit holder may either have a multi-dog household permit or a commercial breeding kennel permit, but not both.

(H) The minimum lot size shall be one acre for any premises in which a multi-dog household or a commercial breeding kennel is to be located. The permit holder shall be allowed to maintain a multi-dog household or commercial breeding kennel permit until such premises is completely or partially sold or a change of ownership occurs, or termination of the permit.

(I) It shall be unlawful to have indoor or outdoor housing facilities, pens, enclosures, or shelter closer than 75 feet to a neighboring residence and closer than ten feet to a neighboring property line. The Chief of Police may require additional setbacks, fencing, screening or soundproofing requirements as deemed necessary to ensure the compatibility of the multi-dog household or commercial breeding kennel with the surrounding neighborhood. Factors to be considered in determining such capability are as follows:

(1) Statements regarding approval/disapproval of surrounding neighbors relative to maintenance of a multi-dog household or commercial breeding kennel at the address applied for;

(2) Past history of animal control complaints relating to the dogs of the applicant at the address for which the multi-dog household or commercial breeding kennel is applied for;

(3) Facility specifications/dimensions in which the dogs are to be maintained;

(4) Animal size, type and characteristics of breed.

(J) Noise or barking from the dogs shall not interfere with an adjoining property owner's use and peaceful enjoyment of his/her property.

(K) Any odor or unsanitary conditions caused by the dogs shall not interfere with an adjoining property owner's use and peaceful enjoyment of his/her property.

(L) It shall be unlawful for the owner, proprietor, employee, or volunteer of any commercial breeding kennel to knowingly sell or offer for sale an ill dog or misrepresent the breed or sex of a dog to any buyer or consumer.

(M) It shall be unlawful to operate a multi-dog household or commercial breeding kennel thereof in an area within the City that kennels are not allowed by law.

(N) Failure to maintain the premises in compliance with the law, or failure to make payment of the permit fee, or failure to maintain proof showing that each dog has been properly licensed or vaccinated against rabies may result in the immediate termination of the commercial breeding kennel permit by the Chief of Police.

(O) Permit holders shall allow a police officer to inspect or investigate premises. Failure to permit a police officer to investigate or inspect may result in the termination of the multi-dog or commercial breeding kennel permit.

(P) A person residing within the jurisdictional limits of Fairbury does not commit a violation of this section if he/she owns more than three dogs and said dogs' residence within the jurisdictional limits of the City predate the passage of this ordinance. However, said exception shall cease whenever a dog predating the ordinance is moved outside the jurisdictional limits or expires, whichever occurs first.

(Ord. No. 2960, 8-7-07)

#### **§ 94.49 DOG GUIDES, HEARING AID DOGS, AND SERVICE DOGS; EXEMPT FROM LICENSE TAX.**

Every dog guide for a blind or visually impaired person, hearing aid dog for a deaf or hearing-impaired person, and service dog for a physically limited person shall be licensed as required by this code, but no license tax shall be charged upon a showing by the owner that the dog is a graduate of a recognized training school for dog guides, hearing aid dogs, or service dogs. Upon the retirement or discontinuance of the dog as a dog guide, hearing aid dog, or service dog, the owner of the dog shall be liable for the payment of the required license tax. (Neb. RS 54-603) (Ord. 2772, 2-16-99) (Am. Ord. 2893, 9-7-04) Penalty, see § 10.99

#### **§ 94.50 LICENSE TAGS.**

(A) Upon the payment of the license fee, the Police Department shall issue to the owner of a metallic tag for each dog so licensed. It shall be the duty of every owner of a dog to securely place upon the neck of such animal a good and sufficient collar with the current metallic license tag and current rabies vaccination tag attached thereto. The license so issued shall entitle the owner to keep or harbor the dog until December 31 following such licensing.

(B) 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 Police Department 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 City Council 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 Police Department to issue tags of a suitable design that are different in appearance each year.

(Am. Ords. 2742, 6-2-98; 2941, 6-20-06)

#### **§ 94.51 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.

(Am. Ord. 2893, 9-7-04) Penalty, see § 10.99