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## CHAPTER 90: ANIMALS

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***GENERAL PROVISIONS*****§ 90.001 PUBLIC NUISANCES.**

- (A) It shall be considered a public nuisance to permit any animal or animals to:
- (1) Molest passersby or passing vehicles;
  - (2) Attack other animals;
  - (3) Trespass on school grounds;
  - (4) Be repeatedly running at large;
  - (5) Damage private or public property;
  - (6) Bark, whine or howl in an excessive, continuous or untimely fashion; or

(7) Annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of persons or property.

(B) The keeping of sheep, horses, cattle, mules, donkeys, goats, pigs or other hooved or cloven-footed animals, domestic or wild, and poultry or rabbits within the village, except as hereinafter provided, is hereby declared to be a public nuisance.

(1976 Code, § 6-201) (Ord. 411, passed 11-5-2012) Penalty, see § 90.999

**§ 90.002 (RESERVED).**

**§ 90.003 (RESERVED).**

**§ 90.004 BANNED FROM MUNICIPALITY.**

Cattle, hog or sheep feed yards are prohibited within the limits of the village.

(1976 Code, § 6-204) Penalty, see § 90.999

**§ 90.005 CRUELTY.**

No person shall cruelly or unnecessarily beat, overwork or insufficiently shelter or feed any animal within the village.

(1976 Code, § 6-205) Penalty, see § 90.999

**§ 90.006 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.

(1976 Code, § 6-206) Penalty, see § 90.999

**§ 90.007 ABANDONMENT, NEGLIGENCE AND MISTREATMENT.**

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

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**ABANDON.** To leave any animal in one's care, whether as owner or as custodian, for any length of time without making effective provision's for its food, water, or other care as is reasonably necessary for the animal's health.

**ANIMAL.** Any vertebrate member of the animal kingdom. **ANIMAL** does not include an un-captured wild creature, or a livestock animal as defined in this section.

**BOVINE.** A cow, an ox, or a bison.

**CRUELLY MISTREAT.** To knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm 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 Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any municipality, or any other public official authorized by a municipality to enforce state or local animal control laws, rules, regulation, or ordinances.

**LIVESTOCK ANIMAL.** Any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, or poultry.

**POLICE ANIMAL.** A horse or dog owned or controlled by the state or county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties.  
(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 in Neb. RS 29-422 to 29-429.

(3) Any law enforcement office acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

(C) *Violation.*

(1) A person who intentionally, knowingly, or recklessly abandons, cruelly neglects, or cruelly mistreats an animal is guilty of an offense.

(2) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties.

(Neb. RS 28-1009)

(Ord. 412, passed 1-7-2013)

**§ 90.008 KEEPING AND RAISING OF HEN CHICKENS.**

The raising of hen chickens within the village limits may be permitted, subject to the compliance with the following conditions.

(A) Any person desiring to keep hen chickens who keeps hens in within the village limits shall obtain a permit from the village prior to acquiring the hens. Application shall be made to the Village Clerk and the fee for the permit shall be \$25. The application shall be in writing on a form furnished by the Village Clerk.

(B) The application shall be made pursuant to the procedures and requirement that are applicable at the time the person applies for a new permit, which shall include:

(1) Name and mailing address of the applicant;

(2) Location of premises where the hen chickens are to be kept;

(3) Species of hen chickens to be kept; and

(4) A plot plan showing the size and location of the enclosure in which said hen chickens are to be kept.

(C) Prior to the issuance of any permit for the keeping of hen chickens the village shall make a proper investigation of the facts set forth in the application for the permit and a determination as to the location of the enclosure in which said hen chickens will be housed and whether said property conforms to the requirements of this chapter and other ordinances of the village with respect to the zoning and building regulations, as well as sanitation regulations. No permit shall be issued until it is established that there are facilities appropriate for the care and the protection of the hen chickens and the location of the enclosure is deemed to be proper and suitable for the keeping of such hen chickens.

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(D) All applications to keep hen chickens within the village limits must be approved by the Village Board of Trustees.

(E) The permit to keep hen chickens will expire and become invalid one year after issuance. A person who wishes to continue to keep hens shall have to renew said permit on or before the expiration date of the previous permit. The procedures for renewing said permit shall be the same as those for applying for a new permit.

(F) Permits to keep hen chickens shall not be transferable.

(G) A person who keeps or houses hens on his or her property shall comply with all of the following requirements:

(1) No more than six hen chickens may be kept on any one zoning lot.

(2) The principal use of the property shall be a single-family dwelling.

(3) No person shall keep any rooster.

(4) No person shall slaughter any chicken hens within the village limits.

(5) No person shall keep hen chickens on a vacant or uninhabited tract of land.

(6) The hen chickens shall be provided with a covered enclosure as well as an adjoining fenced-in enclosure and must be kept in the covered enclosure or said adjoining fenced-in enclosure at all times. Hen chickens shall be secured within a covered enclosure during non-daylight hours. Such covered enclosure or coop shall contain at least four square feet of floor area per hen chicken and the fenced enclosure shall provide at least ten square feet of open area per hen chicken; no coop shall exceed 120 square feet of floor area or exceed eight feet in height.

(7) A person shall not keep hen chickens in any location on the property other than in the rear yard. For purposes of this section **REAR YARD** means that portion of a lot enclosed by the property's rear lot line and the side lot lines to the points where the side lot lines intersect with an imaginary line established by the rear of the dwelling and extending to the side lot lines.

(8) No covered enclosure or fenced-in enclosure shall be located closer than ten feet to any property line of an adjacent property.

(9) All enclosures for the keeping of hen chickens shall be so constructed or repaired as to prevent rats, mice or other rodents from being harbored underneath the enclosure or within its walls. A covered enclosure or fenced-in enclosure shall not be located closer than 40 feet to any residential structure on another person's property.



(a) The covered enclosure shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator and bird proof wire of less than one-inch openings.

(b) The material used in making a covered enclosure shall be uniform for each element of the structure such that the wall are made out of the same material, the roof has the same shingles or other covering, and any windows or openings are constructed using the same materials. The use any scrap materials, waste board, sheet metal or other similar materials is prohibited. Covered enclosures shall be regularly maintained as to not become a public nuisance.

(c) The fenced-in area adjoining the covered enclosure shall consist of sturdy wire fencing, and the fenced-in area shall be covered with sturdy wire, aviary netting or other suitable materials.

(d) All covered enclosures shall be covered with solid roofing materials.

(10) All feed and other items associated with the keeping of hen chickens that are likely to attract or to become infested with or infected by rats, mice or other rodents shall be protected so as to prevent rats, mice or other rodents from gaining access to them.

(11) Odors from hen chickens, hen chicken manure, or other hen chicken related substances shall not be perceptible beyond the boundaries of the property with the permit for hen chickens. All manure and waste materials accumulating from hen chickens must be removed at least once every seven days.

(12) Any noise from hen chickens shall not be loud enough beyond the boundaries of the property with the permit for the hen chickens to disturb persons of reasonable sensitivity.

(13) Hen chickens shall not be permitted to run at large within the village limits. No dog, cat or other domesticated animal which kills a hen chicken permitted to run at large will, for that reason alone, not be considered a dangerous or aggressive animal and it will not be the village's responsibility to enforce its animal control provisions.

(H) If the above requirements are not complied with the village may revoke any hen chicken permit granted under this section and initiate prosecution for a civil infraction violation. If a permit is revoked, all hen chickens must be removed from the property with the revoked permit and the village limits within seven days.

(I) A person who has been issued a permit shall submit it for examination upon demand by any law enforcement office, animal control officer or code enforcement officer.  
(Ord. 455, passed 7-13-2015)

***DOGS GENERALLY*****§ 90.020 LICENSE REQUIRED.**

(A) It shall be unlawful for any person in the village, to own, keep or harbor a dog over the age of six months without having licensed the dog. All dogs over six months must be licensed within 30 days of acquisition. Applications for the license shall be made to the Village Clerk and shall include the name, address and phone number of the owner of the dog; a description of the dog may be required for the purpose of identification; and the number of the registration issued.

(B) Upon the payment of a fee as set out the master fee schedule for each dog whether neutered male, spayed female, intact male or intact female, the Village Clerk shall furnish to the registrant a receipt showing the proof of the payment and a metallic tag bearing the registration number. The license renewal shall be due biannually on May 1, and the renewal fee shall be delinquent biannually on June 1. The license shall not be transferable, and no refund will be allowed in the case of the death, sale or other disposition of the licensed dog.

(C) No license shall be issued without presentation of a valid certificate for the rabies. If the license tag is lost and upon satisfactory evidence that the original tag was issued in accordance with provisions of this section, the Village Clerk shall issue a duplicate or new tag for the balance of the biannual period for which the tax has been paid and may charge and collect a fee in the amount as set out in the master fee schedule 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 Village Clerk to issue tags of a suitable design that are different in appearance each year.

(1976 Code, § 6-101) (Ord. 446, passed 10-13-2014) Penalty, see § 90.999

***Statutory reference:***

*Related provisions, see Neb. RS 17-526, 54-603, 71-4412*

**§ 90.021 (RESERVED).****§ 90.022 WRONGFUL LICENSING.**

It shall be unlawful for the owner, keeper or harbinger of any dog to permit or allow a dog to wear any license, metallic tag or other municipal identification than that issued by the Municipal Clerk for dogs, nor shall the owner, keeper or harbinger wrongfully and knowingly license an unspayed female dog with a license prescribed for a male or spayed female dog.

(1976 Code, § 6-103) Penalty, see § 90.999

**§ 90.023 OWNER DEFINED.**

Any person who shall harbor or permit any dog to be for ten 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 the dog and shall be deemed to be liable for all penalties herein prescribed.

(1976 Code, § 6-104) Penalty, see § 90.999

***Statutory reference:***

*Related provisions, see Neb. RS 54-606, 71-4401*

**§ 90.024 PROCLAMATION.**

It shall be the duty of the governing body 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 premise 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.

(1976 Code, § 6-105)

**§ 90.025 UNLICENSED DOGS.**

All dogs found running at large upon the streets and public grounds of the village without a license tag affixed as required in this subchapter are hereby declared a public nuisance. Unlicensed dogs found running at large shall be impounded in the municipal dog shelter by the Village Animal Control Officer.

(1976 Code, § 6-106) Penalty, see § 90.999

***Statutory reference:***

*Related provisions, see Neb. RS 17-526, 71-4408*



**§ 90.026 UNCOLLARED DOGS.**

All dogs found running at large upon the streets and public grounds of the village without a collar or harness or any other means of identification are hereby declared a public nuisance. Uncollared dogs found running at large shall be killed or impounded in the municipal dog shelter by the municipal police.

(1976 Code, § 6-107) Penalty, see § 90.999

**Statutory reference:**

*Related provisions, see Neb. RS 54-605*

**§ 90.027 RUNNING AT LARGE.**

It shall be unlawful for the owner of any dog to allow a dog to run at large at any time within the corporate limits of the village. It shall be the duty of the Village Animal Control Officer to cause any dog found to be running at large within the village to be taken up and impounded. **RUNNING AT LARGE** shall mean any dog found off the premise 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.

(1976 Code, § 6-108) Penalty, see § 90.999

**Statutory reference:**

*Related provisions, see Neb. RS 17-526, 54-607*

**§ 90.028 RESTRAINT.**

(A) An owner of a dog or cat owners shall at all times keep such animals under restraint.

(B) An owner shall at all times exercise proper care and control of his/her animals to prevent them from becoming a public nuisance.

(C) An owner of a female dog or cat in heat shall at all times confine such animal in a building or secure enclosure in a manner ensuring that such animal cannot come in contact with another animal except for planned breeding.

(D) An animal that poses an immediate threat of significant bodily harm to any person may be killed by any state or local law enforcement or Animal Control Officer if such animal is located upon any lot or ground that such animal's owner does not own, occupy, lease, have possession, charge or control of, even if such animal is licensed and vaccinated for rabies.

(E) Any person may use whatever means necessary and not otherwise prohibited to protect himself or others from any vicious animal when there is an immediate danger from said animal and no person



can be held accountable for any inhumane treatment of an animal when his/her actions are to protect himself/herself or others from significant bodily harm.

(Ord. 411, passed 11-5-2012)

#### **§ 90.029 LIMIT ON NUMBER OF DOGS OWNED.**

It shall be unlawful for any owner, as defined in § 90.023, to own, keep, house, harbor or permit to be kept on any property or under the person's charge within the village limits other than at a facility licensed under the Commercial Dog and Cat Operator Inspection Act, more than three dogs over six months of age.

(Ord. 494, passed 9-10-2018) Penalty, see § 90.999

#### **§ 90.030 INTERFERENCE WITH ANIMAL CONTROL OFFICER.**

It shall be unlawful for any person to hinder, delay or interfere with the Village Animal Control Officer who is performing any duty enjoined upon him or her by the provisions of this subchapter, or to break open, or in any manner directly or indirectly aid, counsel or advise the breaking open of the animal shelter, any ambulance wagon, or other vehicle used for the collecting or conveying of dogs to the shelter.

(1976 Code, § 6-111) Penalty, see § 90.999

***Statutory reference:***

*Related provisions, see Neb. RS 28-906*

#### **§ 90.031 KILLING AND POISONING.**

It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to a dog, or in any manner to injure, maim or destroy, or in any manner attempt to injure, maim or destroy any dog that is the property of another person, or to place any poison, or poisoned food where the same is accessible to a dog; provided, that this section shall not apply to Village Animal Control Officer acting within his or her power and duty.

(1976 Code, § 6-112) Penalty, see § 90.999

#### **§ 90.032 BARKING AND OFFENSIVE.**

(A) It shall be unlawful for any person to own, keep or harbor any dog which by loud, continued or frequent barking, howling or yelping shall annoy or disturb any neighborhood, or person, or which habitually barks at or chases pedestrians, drivers or owners of horses or vehicles while they are on any public sidewalks, streets or alleys in the village.

(B) The provisions of this section shall not be construed to apply to the municipal dog shelter.  
(1976 Code, § 6-113) Penalty, see § 90.999

**Statutory reference:**

*Related provisions, see Neb. RS 17-526*

**§ 90.033 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.

(1976 Code, § 6-114) Penalty, see § 90.999

**Statutory reference:**

*Related provisions, see Neb. RS 17-526*

**§ 90.034 LIABILITY OF OWNER.**

(A) It shall be unlawful for any person to allow a dog owned, kept or harbored by him or her, or under his or her charge or control, to injure or destroy any real or personal property of any description belonging to another person.

(B) The owner or possessor of any 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.

(1976 Code, § 6-115) Penalty, see § 90.999

**Statutory reference:**

*Related provisions, see Neb. RS 54-601, 54-602*

**§ 90.035 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.

(1976 Code, § 6-116) Penalty, see § 90.999

**Statutory reference:**

*Related provisions, see Neb. RS 17-526*

**§ 90.036 IMPOUNDING.**

(A) It shall be the duty of the municipal police to capture, secure and remove in a humane manner to the municipal animal shelter any dog violating any of the provisions of this subchapter.



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(B) The dogs so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day. Each impounded dog shall be kept and maintained at the pound for a period of not less than five days after public notice has been given unless reclaimed earlier by the owner.

(C) Notice of impoundment of all animals, including any significant marks or identifications, shall be posted at the office of the Municipal Clerk within 24 hours after impoundment as public notification of the impoundment.

(D) 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 governing body and on file in the office of the Municipal Clerk.

(E) The owner shall then be required to comply with the licensing and rabies vaccination requirements within 72 hours after release.

(F) If the dog is not claimed at the end of required waiting period after public notice has been given the Village Marshal may dispose of the dog in accordance with the applicable rules and regulations pertaining to the same; provided, that if, in the judgment of the Village Marshal, a suitable home can be found for any dog within the village, the 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 subchapter.

(G) The village 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.

(H) All dogs shall be destroyed and buried in the summary and humane manner as prescribed by the Board of Health unless a suitable home can be found for the dog.

(1976 Code, § 6-117) (Ord. 100, passed 2-6-1978; Ord. 140, passed 3-1-1982) Penalty, see § 90.999  
**Statutory reference:**

*Related provisions, see Neb. RS 17-548, 71-4408*

**§ 90.037 RABIES SUSPECTED.**

(A) Any dog suspected of being afflicted with rabies, or any dog not vaccinated in accordance with the provisions of this subchapter which has bitten any person and caused an abrasion of the skin, shall be seized and impounded under the supervision of the Board of Health for a period of not less than ten days. If upon examination by a veterinarian, the dog has no clinical signs of rabies at the end of the impoundment, it may be released to the owner, or, in the case of an unlicensed dog.

(B) It shall be disposed of in accordance with the provisions herein. If the owner of the dog has proof of vaccination, it shall be confined by the owner or some other responsible person for a period of at least ten days, at which time the dog shall be examined by a licensed veterinarian. If no signs of rabies are observed, the dog may be released from confinement.

(1976 Code, § 6-118)

***Statutory reference:***

*Related provisions, see Neb. RS 71-4406*

**§ 90.038 LEGAL DESTRUCTION.**

Any person who owns, harbors or in any way sustains a dog that he or she wishes to be destroyed may place the same in the animal shelter to be destroyed and disposed of according to the provisions herein.

(1976 Code, § 6-119)

***Statutory reference:***

*Related provisions, see Neb. RS 17-526*

***DANGEROUS DOGS***

**§ 90.050 DANGEROUS DOGS.**

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

***ANIMAL CONTROL AUTHORITY.*** An entity authorized to enforce the animal control laws of a municipality.

***ANIMAL CONTROL OFFICER.*** Any individual employed, appointed or authorized by an animal control authority for the purpose of aiding in the enforcement of this act or any other law or ordinance relating to the licensing of animals, control of animals or seizure and impoundment of animals and shall include any state or local law enforcement or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

***ANIMAL SHELTER.*** Any facility operated by a humane society, or municipal agency, or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

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***DANGEROUS DOG.*** Any dog that, according to the records of the Animal Control Authority:

- (a) Has killed a human being;
- (b) Has inflicted injury on a human being that requires medical treatment, either on private or public property;
- (c) Has killed or inflicted serious injury on a domestic animal without provocation, either on private or public property;
- (d) Ferociously and without provocation has attacked, snapped at or bitten one or more human beings, or one or more other domestic animals, one or more times, or has a history of any such behaviors;
- (e) Has been previously determined to be a potentially dangerous dog by the Animal Control Authority of the village, the owner has received notice from the Animal Control Authority of the village of such determination, and that 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;
- (f) Is owned or harbored primarily or in part for the purpose of fighting;
- (g) By training, disposition, or behavior poses a potential risk of attacking and inflicting injury without provocation upon human beings or other domestic animals.

***DOG.*** Any canine animal, male or female, sexed or neutered.

***DOMESTIC ANIMAL.*** Any dog or cat, and cat means a cat which is a household pet.

***OWNER.*** Any person, firm, corporation, organization, political subdivision or department possessing, harboring, keeping or having control or custody of a domestic animal.

***POTENTIALLY DANGEROUS DOG.***

- (a) Any dog that, when unprovoked, inflicts an injury on a human being that does not require medical attention, either on public or private property;
- (b) Any dog that, when unprovoked, injures a domestic animal, either on public or private property;
- (c) Any dog that, when unprovoked, chases or approaches a person who is upon a street, sidewalk, or any public ground or public area, in a menacing or threatening fashion or apparent attitude of attack; or

(d) Any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, or to cause injury, or to threaten the safety of human beings or other domestic animals.

**RESTRAINT.** Any animal secured by a leash or lead or within the real property limits of its owners.

**SERIOUS INJURY ON A DOMESTIC ANIMAL.** Any injury to a domestic animal that requires treatment administered by a veterinarian, veterinary clinic, veterinary hospital, or veterinary office, that results in one or more sutures, surgery or treatment for one or more broken bones.

(B) The Board of Trustees shall serve as the Animal Control Authority for the Village of Potter.

(C) It shall be unlawful for any person to keep, harbor or own any dog that has been determined to be a dangerous dog within the village.

(D) It shall be unlawful for any person to keep or harbor a potentially dangerous dog, except as otherwise provided in this subchapter.

(E) No animal may be declared to be a dangerous dog or a potentially dangerous dog if it inflicts injury or damage upon a human being committing a willful trespass or other tort upon premises occupied by the owner of the animal or upon a human being committing or attempting to commit a crime.

(F) No animal may be declared a dangerous dog or a potentially dangerous dog for taking action to defend or protect a human being within the immediate vicinity of the animal from an unjustified attack or assault.

(G) No animal used in lawful activities of law enforcement officials shall be declared to be a dangerous dog or a potentially dangerous dog.

(H) No animal may be declared a dangerous dog if the injury or threat of safety was sustained by an individual, who, at the time, was tormenting, abusing, or assaulting the animal, or has, in the past, been observed or reported to have tormented, abused or assaulted the animal.

(I) *Potentially dangerous dog; determination.* The preliminary determination as to whether a particular animal is a potentially dangerous dog shall be made by the Animal Control Officer on the basis of reasonable evidence, which may include but shall not be limited to reports and statements of witnesses, observation and the opinion of experts. If the Animal Control Officer has reasonable cause to believe that the animal threatens the safety of the public or of domestic animals, the Animal Control Officer may enter upon any premises upon which the animal is kept and remove the animal from the premise to a place of impoundment.

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(1) If the Animal Control Authority has preliminarily determined an animal to be a potentially dangerous dog, as defined above, the Animal Control Authority shall initiate administrative proceedings to make such determination final by serving a preliminary determination notice on such animal's owner either by personal service or by certified mail, return receipt requested, addressed to the owner at the owner's usual place of residence. The preliminary determination shall contain:

(a) The name and address of the owner whose animal is the subject of the proceeding;

(b) The name, description and any known license number of the animal that is the subject of the proceeding;

(c) A statement that the Animal Control Authority has preliminarily determined the animal to be a potentially dangerous dog and a summary of the description of the facts that form the basis of such preliminary determination;

(d) A summary of the effects of a final determination that the animal is a potentially dangerous dog and a statement that noncompliance by the owner with such requirements will result in the owner being declared a reckless owner by the Animal Control Authority;

(e) A statement of the effective date on which the preliminary determination notice will become a final determination order in the owner does not file a timely written request for a hearing with the Animal Control Authority, which effective date shall not be less than ten days after the date of personal service or certified mailing of the preliminary determination notice; and

(f) A statement that the owner may file with the Animal Control Authority a written request for a hearing within ten days after the date of the personal service or the certified mailing of the preliminary determination.

(2) If the owner whose dog is preliminarily determined to be a potentially dangerous dog does not file a written request for a hearing with the Animal Control Authority within ten days after the date of the personal service or the certified mailing of the preliminary determination notice, the preliminary determination notice shall become a final determination order on the effective date stated in the preliminary determination notice, and the Animal Control Authority shall so indicate in the records of the Animal Control Authority. In such case, the owner shall comply with division (L) below immediately and with division (K) below within 30 days after such effective date. If the owner fails to comply with any of such sections within the time limits specified, the Animal Control Authority shall initiate administrative proceedings under division (J) below to declare the owner a reckless owner.

(3) If the owner whose animal is preliminarily determined to be a potentially dangerous dog files a written request for a hearing with the Animal Control Authority within ten days after the date of the personal service or the certified mailing of the preliminary determination notice, a hearing on such preliminary determination notice shall be held by the Animal Control Authority. The hearing shall be

held if practicable within ten days of receipt by the Animal Control Authority of the written request for a hearing. The Animal Control Authority shall provide notice of the time and place of the hearing to the owner of the animal by mail not less than 48 hours prior to the scheduled hearing. At the hearing, the owner shall be provided an opportunity to appear and offer evidence to dispute the preliminary determination notice. A written determination to affirm or reverse the preliminary determination notice shall be entered by the Animal Control Authority within ten days after the date of the hearing, if practicable, if the preliminary determination notice is affirmed, the Animal Control Authority shall enter a final determination order and, such order shall require the owner to comply with division (L) below immediately and with division (K) below within 30 days after such effective date. If the owner fails to comply with any such sections within the time limits specified, the Animal Control Authority shall initiate administrative proceedings under division (J) below to declare the owner a reckless owner.

(4) The Animal Control Authority will notify the owner of any potentially dangerous dog that has been involved in no incidents of the type described above within the three years following the date of the determination order that such dog is no longer determined to be a potentially dangerous dog.

(J) *Reckless owner.* If an owner has been convicted of one or more violations of this chapter on three separate occasions in any period of 24 consecutive months, the Animal Control Authority shall initiate administrative proceedings to declare such owner a reckless owner and to revoke all pet license(s) issued to such owner that are associated with the owner's animal(s) that were the subject or subjects of any such convictions. If an owner's animal has been determined to be a potentially dangerous dog and such owner has not complied in a timely manner with the requirements of this subchapter pertaining to such animals, the Animal Control Authority shall initiate administrative proceedings to declare such owner a reckless owner and to revoke all pet license(s) issued to such owner that are associated with such animal. In either case, such proceedings shall be instituted by service of a written declaration and revocation notice upon such owner either by personal service or by certified mail, return receipt requested, addressed to the owner at the owner's usual place of residence. The declaration and revocation notice shall contain:

(1) The name and address of the owner who is subject to such declaration and revocation notice;

(2) The name(s), description(s) and license numbers) of any animal(s) associated with such violations licensed to the owner;

(3) A description to the violations or requirements which form the basis of such declaration and revocation notice;

(4) A summary of the effects of such declaration, including the revocation of such pet license(s) and surrender to the Animal Control Authority of such animal(s);

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(5) The date the Animal Control Authority proposes to enter a final declaration and revocation order, which shall not be less than ten days after the date of the personal service or mailing of the notice;  
and

(6) A statement that the owner may file with the village's Animal Control Authority a written request for a hearing within ten days after the date of the mailing or personal service of the declaration and revocation notice.

(a) If the owner does not file a written request for a hearing within ten days after the date of the mailing or personal service of the declaration and revocation notice, then such declaration and revocation notice shall automatically become a final declaration and revocation order, and within 24 hours after the expiration of such ten-day period the owner shall surrender such animal(s) to the Animal Control Authority. Failure to surrender such animal(s) shall result in immediate impoundment by the Animal Control Authority. Such surrendered or impounded animal(s) shall immediately become property of the Animal Control Authority and maybe disposed of or destroyed humanely by the Animal Control Authority, or placed with a new owner, as the authority deems appropriate.

(b) If the owner files a written request for a hearing within ten days after the date of the mailing or personal service of the declaration and revocation notice, a hearing on such declaration and revocation shall be held by the Animal Control Authority. The hearing shall be held if practicable within ten days of receipt by the Animal Control Authority of the written request for a hearing. The Animal Control Authority shall provide notice of the time and place of the hearing to the owner of the animal by mail not less than 48 hours prior to the scheduled hearing. At the hearing, the owner shall be provided an opportunity to appear and offer evidence to dispute the declaration and revocation notice. A written determination to affirm or reverse such declaration and revocation notice shall be entered by the Animal Control Authority within ten days after the date of the hearing if practicable. If the decision is to affirm the declaration and revocation order requiring the owner to surrender such animai(s) to the Animal Control Authority within ten days afterthe date if the Animal Control Authority's decision.

(c) An owner who is declared a reckless owner shall be prohibited from licensing, residing with or owning any additional animal(s) in the village for a period of 48 consecutive months from the date of the entry of the declaration and revocation order.

(K) *Potentially dangerous dogs; proof of insurance.* No animal administratively determined to be a potentially dangerous dog shall be licensed unless the person having custody, ownership or control of such animal first presents to the Animal Control Authority written proof of liability insurance, written by an insurer authorized to issue such insurance in Nebraska, having limits of liability not less than \$500,000 for injury to any one person caused by such animal. Such insurance shall be maintained for the entire period such animal is deemed a potentially dangerous dog. The Animal Control Authority may require proof that such insurance coverage remains in effect at any time, but not more frequently than every 60 days, or may require such policy of insurance to provide that it may not be cancelled or allowed to expire without 30 days prior written notice to the Animal Control Authority.

(L) *Potentially dangerous dogs; leash, muzzle, muzzle and harness required.* It shall be unlawful for any person owning, harboring, or having the care of a potentially dangerous dog to permit or enable such animal to go beyond the property of such person unless the animal is under the control of a person 19 years of age or older, the animal is restrained securely by a harness or leash no more than six feet in length, and the animal is properly muzzled to reasonably prevent the animal from biting.

(1) *Definitions.* For purposes of this section:

**HARNESS.** A close fitting device with straps that encircle the animal's body across the chest, over the shoulders, and under the belly behind the front legs, to which a leash can be securely attached, and which is constructed of materials sufficient to securely restrain the animal wearing it given the size and strength of the animal.

**LEASH.** A strap, rope or similar tethering device that can be securely attached to a harness and which is sufficient strength and weight to securely restrain the animal wearing the harness.

**MUZZLE.** A basket or cage-like device approved by the Animal Control Authority to cover the animal's mouth and snout and prevent the animal from biting, but which allows the animal to open its mouth to pant and drink.

(M) *Potentially dangerous dogs; impoundment.* Any animal that has been determined to be a potentially dangerous dog that bites a human being without provocation may be immediately impounded by the Animal Control Officer and held until the disposition of the animal is finally determined. The owner shall be responsible for the all of the costs incurred for the care of such impounded animal.

(N) *Impoundment of certain animals during enforcement proceedings.* If there is reasonable cause shown that a domestic animal would constitute a hazard to the safety of the public at large during the pendency of any action or proceeding commenced under this subchapter, or that the owner of such animal has subjected the animal to neglect or cruelty, the Animal Control Authority may order such animal impounded pending the outcome of such proceedings. Any person who owns, kept, harbored, maintained, or controlled the animal involved in such impoundment shall pay all of the expenses of the impoundment to the Animal Control Authority, including the costs for shelter, food, veterinary expenses, boarding, and any other expenses necessitated by the impoundment of the animal or as may be required for the protection of the public. The Animal Control Authority may require such person, prior to the expiration of ten days after the date of impoundment, to pay an amount sufficient to pay all reasonable expenses incurred in caring and providing for the animal, including estimated medical care, for 30 days, inclusive of the date on which the animal was impounded. If such payment is not made prior to the expiration of such ten-day period, the animal shall become the property of the Animal Control Authority and may be humanely disposed of, destroyed, or placed with a new owner, as the Animal Control Authority deems appropriate. Such payment shall be required for each succeeding 30-day period. If any such payment is not made prior to the end of each succeeding 30-day period the animal shall become the property of the Animal Control Authority and may be humanely disposed of, destroyed, or placed with a new owner, as the Animal Control Authority deems appropriate.



(1) The amount of the payment shall be determined by the Animal Control Authority based on the current rate for board at the animal shelter and the condition of the animal after its examination by a veterinarian acting for the Animal Control Authority. Any such payment received by the Animal Control Authority in excess of the amount determined by the Animal Control Authority to be due for board and care of the animal shall be refunded by the Animal Control Authority upon expiration of the order of impoundment. Notwithstanding the foregoing, if the owner of the animal is found not guilty of animal neglect or cruelty, the owner shall only be required to pay to veterinary expenses and one-half of the board and care fees determined by the Animal Control Authority to be due.

(2) Notwithstanding the foregoing, if it is determined by a veterinarian acting for the Animal Control Authority that such animal is diseased or disabled, that it would be inhumane to allow such animal to continue to suffer the effects of such disease or disability, and that the owner of such animal declines to advance the costs of reasonable veterinary efforts to cure or ameliorate the effects of such disease or disability and that the costs of such veterinary efforts and not otherwise economically practicable, then the animal shall immediately become property of the Animal Control Authority and may be humanely disposed of, destroyed, or placed with a new owner, as the Animal Control Authority deems appropriate.

(1976 Code, §§ 6-120, 6-121, 6-122, 6-123) (Ord. 218, passed 2-4-1991; Ord. 411, passed 11-5-2012)

***Statutory reference:***

*Related provisions, see Neb. RS 54-617*

**§ 90.051 ADDITIONAL REGULATIONS.**

Nothing in this subchapter shall be construed to restrict or prohibit any governing body of the municipality from establishing and enforcing laws or ordinances at least as stringent as the provisions of this subchapter.

(1976 Code, § 6-124) (Ord. 218, passed 2-4-1991)

***Statutory reference:***

*Related provisions, see Neb. RS 54-624*

***CATS GENERALLY***

**§ 90.065 OWNER AND POSSESSOR.**

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

***OWNER AND POSSESSOR.*** Any person who harbors or permits any cat to be for ten days or more in or about his or her house, store or enclosure, or to remain to be fed, is deemed the ***OWNER AND POSSESSOR*** of the cat and is liable for all penalties.  
(Ord. 366, passed 5-11-2009)

#### **§ 90.066 RUNNING AT LARGE.**

(A) It is unlawful for the owner of any cat to allow the cat to run at large at any time within the corporate limits of the village. It is the duty of the designated Animal Control Officer to cause any cat found running at large within the village, to be taken up and impounded.

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

***RUNNING AT LARGE.*** Any cat found off the premises of the owner and not under control of the owner or a responsible person, either by leash, cord, chain, rope, cage or other suitable means of physical restraint.  
(Ord. 366, passed 5-11-2009) Penalty, see § 90.999

#### **§ 90.067 RABIES.**

(A) It shall be the duty of the Board of Trustees, whenever in its opinion the danger to the public safety from rabid cats is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any cat 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 cats 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 cat to confine the same as herein provided.

(B) Any cat suspected of being afflicted with rabies, or any cat not vaccinated in accordance with the provisions of this subchapter, which has bitten any person and caused an abrasion of the skin, shall be seized and impounded under the supervision of the Board of Health for a period of not less than ten days. If upon examination by a veterinarian, the cat has no clinical signs of rabies at the end of the impoundment, it may be released to the owner. If the owner of the cat has proof of vaccination, it shall be confined by the owner or some other responsible person for a period of at least ten days, at which time the cat shall be examined by a licensed veterinarian at the owner's expense. If no signs of rabies are observed, the cat may be released from confinement.  
(Ord. 366, passed 5-11-2009)

**§ 90.068 LICENSE REQUIRED.**

(A) It shall be unlawful for any person in the village, to own, keep or harbor a cat over the age of six months without having licensed the cat. All cats over six months must be licensed within 30 days of acquisition. Applications for the license shall be made to the Village Clerk and shall include the name, address and phone number of the owner of the cat; a description of the cat may be required for the purpose of identification; and the number of the registration issued.

(B) Upon the payment of a fee as set out the master fee schedule for each cat whether neutered male, spayed female, intact male or intact female, the Village Clerk shall furnish to the registrant a receipt showing the proof of the payment and a metallic tag bearing the registration number. The license renewal shall be due biannually on May 1, and the renewal fee shall be delinquent biannually on June 1. The license shall not be transferable, and no refund will be allowed in the case of the death, sale or other disposition of the licensed cat.

(C) No license shall be issued without presentation of a valid certificate for the rabies. If the license tag is lost and upon satisfactory evidence that the original tag was issued in accordance with provisions of this section, the Village Clerk shall issue a duplicate or new tag for the balance of the biannual period for which the tax has been paid and may charge and collect a fee in the amount as set out in the master fee schedule 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 Village Clerk to issue tags of a suitable design that are different in appearance each year.

(Ord. 366, passed 5-11-2009; Ord. 446, passed 10-13-2014) Penalty, see § 90.999

**§ 90.069 WRONGFUL LICENSING.**

It shall be unlawful for the owner, keeper or harbinger of any cat to permit or allow the cat to wear any license, metallic tag, or other village identification other than that issued by the Village Clerk for cats, nor shall the owner, keeper or harbinger wrongfully and knowingly license an unneutered cat/unspayed female cat with a license prescribed for a neutered cat/spayed female cat. A cat shall be presumed unspayed or unneutered unless the Village Clerk is shown a certificate by a licensed veterinarian that the animal is permanently sterilized.

(Ord. 366, passed 5-11-2009) Penalty, see § 90.999

**§ 90.070 WEARING OF COLLARS; REMOVAL OF LICENSE TAG.**

It shall be unlawful for any reason to remove, or cause to be removed, the collar, harness or metallic license tag or rabies vaccination tag from any licensed cat.

(Ord. 366, passed 5-11-2009) Penalty, see § 90.999

**§ 90.071 LIMIT ON NUMBER OF CATS OWNED.**

It shall be unlawful for any owner and possessor to own, keep, harbor or permit to be kept upon any premises occupied or under the person's charge, more than five cats over six months of age. (Ord. 366, passed 5-11-2009) Penalty, see § 90.999

**§ 90.072 CATS RUNNING AT LARGE.**

It shall be unlawful for any owner and possessor of any cat to let the cat run at large, unless a valid license tag is attached and the cat is spayed and neutered. (Ord. 366, passed 5-11-2009) Penalty, see § 90.999

**§ 90.073 PUBLIC NUISANCE.**

(A) Any cat running at large in violation of the provisions of § 90.072 above is declared to be a public nuisance, and shall be impounded by the designated Animal Control Officer, or if the residence of the owner of the cat is determined by the capturing Animal Control Officer before the cat is delivered to the animal shelter, the cat may be delivered to the owner upon the owner's written acceptance of delivery upon a form to be provided by the designated Animal Control Officer.

(B) If the cat is so delivered to the owner, an impoundment fee as required by § 90.074 below shall be paid by the owner to the designated Animal Control Officer within five days of delivery, and failure to pay the fee shall constitute a separate violation of this section. The designated Animal Control Officer shall not release any cat from being impounded until the owner of the cat shall have obtained a license as provided in this chapter. (Ord. 366, passed 5-11-2009)

**§ 90.074 IMPOUNDING.**

(A) It shall be the duty of the designated Animal Control Officer to capture, secure and remove in a humane manner to the village animal shelter any cat violating any of the provisions of this subchapter.

(B) The cats so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day.

(C) Each impounded cat shall be kept and maintained at the pound for a period of not less than five days after public notice has been given unless reclaimed earlier by the owner.

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(D) Notice of impoundment of all animals, including any significant marks or identifications, shall be posted at the office of the Village Clerk within 24 hours after impoundment as public notification of the impoundment.

(E) Any cat 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 governing body and on file in the office of the Village Clerk.

(F) The owner shall then be required to comply with the licensing and rabies vaccination; requirements within 72 hours after release.

(G) If the cat is not claimed at the end of the required waiting period after public notice has been given the designated Animal Control Officer may dispose of the cat in accordance with the applicable rules and regulations pertaining to the same; provided, that if, in the judgment of the designated Animal Control Officer, a suitable home can be found for any cat within the village, the cat 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 subchapter.

(H) The village shall acquire legal title to any unlicensed cat impounded in the animal shelter for a period longer than the required waiting period after giving notice. All cats shall be destroyed and buried in the summary and humane manner as prescribed by the Board of Health unless a suitable home can be found for the cat.

(Ord. 366, passed 5-11-2009)

**§ 90.075 SANITARY REGULATIONS.**

The owner of any cat shall keep any yard, enclosure, shelter structure, or dwelling wherein the cat is kept in a clean and sanitary condition so as not to give off offensive odors which are a source of discomfort to persons residing in the vicinity thereof. The owner of any cat shall not allow offal, manure and waste material of the cat to accumulate or remain in the yard, pen, enclosure, shelter structure and/or dwelling, upon which the cat resides or is confined in any manner which is conducive to the breeding or attraction of flies, mosquitoes, or other noxious insects or in any manner which endangers the public health or safety or which creates an unhealthy environment. The maintenance or permitting of any of the foregoing conditions on any premises is hereby declared to be a public nuisance. The owner of any cat shall in a sanitary manner remove or dispose of all offal, manure and waste material accumulating from the cat at least once every seven days.

(Ord. 366, passed 5-11-2009)

**§ 90.076 ENFORCEMENT.**

The enforcement of the provisions of this chapter shall be under the direction of the designated Animal Control Officer. For the purpose of enforcing this chapter or abating any nuisance existing hereunder, the designated Animal Control Officer or any police officer may enter private premises. (Ord. 366, passed 5-11-2009)

**§ 90.999 PENALTY.**

Any person or any person's agent or servant who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500, recoverable with costs, except that each person so convicted shall be fined not less than \$100 for the first offense, not less than \$200 for the second offense and not less than \$350 for the third offense and each offense thereafter. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this chapter.

(Ord. 366, passed 5-11-2009; Ord. 411, passed 11-5-2012)



## CHAPTER 91: FIRE PREVENTION AND PROTECTION

### Section

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***GENERAL REGULATIONS*****§ 91.01 PRESERVATION OF PROPERTY.**

(A) The Fire Chief, 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.

(B) The Fire Chief may direct the village firefighters to remove any building, structure or fence for the purpose of checking the progress of any fire.

(C) The Fire Chief 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.

(1976 Code, § 7-101)

**§ 91.02 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 to act in a noisy or disorderly manner. The Fire Chief and Assistant Fire Chief shall have the power and authority during that time to arrest or command any such person to assist them in the performance of their official duties.

(1976 Code, § 7-102) Penalty, see § 91.99

**§ 91.03 EQUIPMENT.**

It shall be unlawful for any person except the Fire Chief and the members of the 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 village.

(1976 Code, § 7-103) Penalty, see § 91.99

**§ 91.04 INTERFERENCE.**

It shall be unlawful for any person or persons to hinder or obstruct the Fire Chief or the members of the Fire Department in the performance of their duty.

(1976 Code, § 7-104) Penalty, see § 91.99

**§ 91.05 OBSTRUCTION.**

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 any member of the Fire Department, at the risk, cost and expense of the owner or claimant.

(1976 Code, § 7-105) Penalty, see § 91.99

**Statutory reference:**

*Related provisions, see Neb. RS 60-6,166*

**§ 91.06 ASSISTANCE.**

It shall be unlawful for any person to refuse, after the command of the Fire Chief or Assistant Fire Chief, to aid in extinguishing a fire or to assist in the removal and protection of property.

(1976 Code, § 7-106) Penalty, see § 91.99

**§ 91.07 DRIVING OVER HOSE.**

It shall be unlawful for any person, without the consent of the Fire Chief or Assistant Fire Chief, to drive any vehicle over unprotected hose of the Fire Department.

(1976 Code, § 7-107) Penalty, see § 91.99

**Statutory reference:**

*Related provisions, see Neb. RS 60-6,184*

**§ 91.08 TRAFFIC.**

No vehicle, except by the specific direction of the Fire Chief or Assistant Fire Chief, 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, members of the Fire Department, or emergency vehicles.

(1976 Code, § 7-108) Penalty, see § 91.99

**Statutory reference:**

*Related provisions, see Neb. RS 60-6,183*

**§ 91.09 FALSE ALARM.**

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

(1976 Code, § 7-109) Penalty, see § 91.99

***FIRE PREVENTION*****§ 91.20 FIRE LIMITS DEFINED.**

The following described territory in the village shall be and constitute the fire limits: all of Blocks 2, 3, 4 and the south one-half of Block 5; all in the original Town of Potter, Nebraska.  
(1976 Code, § 7-201)

***Statutory reference:***

*Related provisions, see Neb. RS 17-550*

**§ 91.21 FIRE LIMITS MATERIALS.**

Within the aforesaid fire limits, no structure shall be built, altered, moved or enlarged unless the structure will be enclosed with walls constructed wholly of stone, well-burned brick, terra cotta, concrete or other non-combustible materials as will satisfy the Fire Chief that the structure will be reasonably fireproof.

(1976 Code, § 7-202) Penalty, see § 91.99

***Statutory reference:***

*Related provisions, see Neb. RS 17-550*

**§ 91.22 IRONCLADS PROHIBITED.**

All buildings, sheds and structures known as ironclads which are constructed of wood and covered with sheet iron or tin attached to the frame shall be considered and deemed to be constructed of combustible materials. Any future construction of an ironclad building shall hereafter be prohibited.

(1976 Code, § 7-203) Penalty, see § 91.99

***Statutory reference:***

*Related provisions, see Neb. RS 17-550*

**§ 91.23 REMOVAL REQUIRED.**

In the event that any wooden or combustible building or structure, or any non-combustible 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.

(1976 Code, § 7-204)

***Statutory reference:***

*Related provisions, see Neb. RS 17-550*

**§ 91.24 FIRE PROHIBITED.**

It shall be unlawful for any person to set out a fire on the pavement, or near any curb, now built or hereafter to be built, within the village.

(1976 Code, § 7-205) Penalty, see § 91.99

**§ 91.25 FIRES REGULATED.**

(A) It shall be lawful to build or set out certain fires; provided, that the person building the fires shall have the substance to be burned in a fireproof trash burner or incinerator with a metal fireproof screen of not more than one inch mesh, and located at least 20 feet from any building.

(B) The incinerator shall be built in such a way as to not permit the escape of burning paper or other substance. If any person shall require a fire in the course of his or her trade as a blacksmith or mechanic, the fire shall be built and maintained in the manner prescribed by the Fire Chief.

(C) All fires shall be built after 7:00 a.m. and completely extinguished by 8:00 p.m., except the aforesaid fires used in the course of a trade which shall be allowed during the hours as the Fire Chief shall prescribe.

(D) It shall be unlawful for any person to set fire to, burn or cause to be burned any garbage, animal matter or vegetable matter.

(E) The burning of straw, hay, leaves or brush in the open air is hereby permitted and allowed; provided, that the person setting out the same request permission and receive an open burning permit in writing, signed by the local Fire Chief, on a form provided by the State Fire Marshal; and provided further, that any burning shall be done while the fire is attended by the person setting out the same at all times, and further provided that the fire shall be located at least 20 feet from any building.

(1976 Code, § 7-206) (Ord. 154, passed 6-6-1983) Penalty, see § 91.99

***Statutory reference:***

*Related provisions, see Neb. RS 17-549, 17-556, 81-520.01*

**§ 91.26 MERGER.**

(A) The Municipal Fire Department may be merged with the Rural Fire Protection District. The proceedings for the merger may be initiated by the presentation to the County Clerk of a petition, signed by 60% or more of the electors who are owners of any interest in real or personal property assessed for taxation in the territory to be merged and who are residing within the boundaries of the territory, stating the desires and purposes of the petitioners. The petition shall contain a description of the boundaries of the territory proposed to be merged and it shall be accompanied by a map or plat and a deposit for publication costs.

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(B) The County Clerk shall examine the tax schedules in the office of the County Assessor and determine and certify whether or not the petition complies with the requirements of this section and that the persons signing the petition appear to reside within the boundaries described by the petition. Thereafter, the County Clerk shall forward the petition, map or plat, and certificate to the Board of Directors of the District and the governing body affected by the merger.

(C) Within 30 days after receiving the petition, map or plat, and certificate of the County Clerk, in accordance with this section, the Board of Directors and governing body shall transmit the petition, map or plat, and certificate to the proper County Board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving the proposal in part and disapproving it in part.

(D) The County Clerk shall designate a time and place for a hearing before a joint meeting of the county boards of all counties in which the proposed district is to be situated and shall give notice of the hearing by publication two weeks in a newspaper of general circulation within the county, the last publication appearing at least seven days prior to the hearing. At the time and place so fixed, the county board or boards shall meet and the hearing shall be held respecting the merger or location of the boundaries of the district. Thereupon the county board shall determine the boundaries of the proposed district, whether as suggested in the petition or otherwise, and make a written order of the determination which shall describe the boundaries of the district and be filed in the office of the County Clerk.

(E) If the report of the Board of Directors and the governing body require under this section disapproves the proposal, the petition shall be rejected. If the report is favorable to the proposal, either in whole or in part, the County Board shall promptly designate a time and place for a hearing upon the petition and shall give notice of the hearing by publication two weeks in a newspaper of general circulation within the county, the last publication appearing at least seven days prior to the hearing.

(F) The County Board shall, at or shortly after the hearing, determine whether the territory shall be merged and shall fix the boundaries of the territory to be merged. The determination of the County Board shall be set forth in a written order which shall describe the boundaries determined upon and shall be filed in the office of the County Clerk. The County Clerk shall then fix a time and place for a public meeting of all electors who are owners of any interest in real or personal property assessed for taxation in the district who are residing within the boundaries. A Board of Directors shall be elected consisting of five residents of the district.

(G) The merged district shall operate under the same mill levy limit as the Rural Fire Protection District.

(1976 Code, § 7-207) (Ord. 103, passed 12-4-1978)

***Statutory reference:***

*Related provisions, see Neb. RS 35-506, 35-508, 35-509, 35-511, 35-530 through 35-536*

**§ 91.27 OPEN BURNING BAN; WAIVER.**

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

(B) The Fire Chief may waive an open burning ban under division (A) of this section for an area under the municipal Fire Department's jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the Fire Chief to a person desiring to conduct open burning shall be in writing, signed by the Fire Chief, and on a form provided by the State Fire Marshal.

(C) The Fire Chief may waive the open burning ban in the municipal Fire Department's jurisdiction when conditions are acceptable to the Chief. Anyone intending to burn in that jurisdiction when the open burning ban has been waived shall notify the Fire Chief of his or her intention to burn prior to starting the burn.

(D) The Fire Chief may adopt standards listing the conditions acceptable for issuing a permit to conduct open burning under division (B) of this section.

(E) The Fire Department may charge a fee not to exceed \$10 for each such permit issued. This fee shall be remitted to the governing body 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.

(Neb. RS 81-520.01)

(1976 Code, § 7-208) (Ord. 125, passed 1-5-1981; Ord. 153, passed 6-6-1983; Ord. 260, passed 4-8-1996; Ord. 392, passed 12-12-2011)

***Statutory reference:***

*Related provisions, see Neb. RS 81-520.01*

***FLAMMABLE GASES AND EXPLOSIVES*****§ 91.40 POISONOUS AND FLAMMABLE GASES.**

Any person, firm or corporation desiring to store or keep in the village for any period of time any form of poisonous or flammable gas or liquefied petroleum gas in excess of 50 gallons shall keep the

same underground in the residential district of the village. Storage, in the business district, of poisonous or flammable gas or liquefied petroleum gas in excess of 50 gallons shall require registration of that fact with the Municipal Clerk.

(1976 Code, § 7-301)

**Statutory reference:**

*Related provisions, see Neb. RS 17-549*

**§ 91.41 STORAGE REGISTRATION.**

(A) Any person, firm or corporation storing or keeping for any period of time dynamite, gunpowder, nitroglycerine or other high explosives within the village shall register the information with the Municipal Clerk within ten days after the explosives are brought into the village. The Clerk shall provide that information to the Municipal Fire Chief and to the governing body. Transfer of explosives to another individual within the village shall require the individual receiving the explosives to register the transfer and the new location of the explosives with the Municipal Clerk. Also, moving explosives to a new location by the owner shall require registration of that fact to the Municipal Clerk.

(B) All high explosives, including dynamite, gunpowder and nitroglycerine shall be stored in a proper receptacle which shall be closed at all times, except when actually in use. The cement, metal or stone receptacle shall not be located in any room where there is a flame or flammable materials. The area surrounding storage facilities shall be kept clear of rubbish, brush, dry grass or trees for not less than 25 feet in all directions. Any other combustible materials shall be kept a distance of not less than 50 feet from outdoor storage facilities.

(1976 Code, § 7-302)

**§ 91.42 BLASTING PERMITS.**

Any person wishing to discharge high explosives within the village must secure a permit from the governing body and shall discharge the explosives in conformance with its direction and under its supervision, and 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 Fire Marshal.

(1976 Code, § 7-303)

**§ 91.43 TRANSPORTATION.**

Any person wishing to transport high explosives in the village shall first acquire a permit from the municipal police and shall take precautions and use a route as he or she may prescribe. Nothing herein shall be construed to apply to the municipal police, or any of the armed services of the United States. No vehicle transporting explosives shall make an unscheduled stop for longer than five minutes within

the village and in the event of mechanical failure, immediate notice of the breakdown shall be given the Village Marshal who shall then prescribe the precautions as may be necessary to protect the residents of the village and a reasonable time for removal of the vehicle from the village.  
(1976 Code, § 7-304)

**§ 91.99 PENALTY.**

(A) Any person, or any person's agent or servant, who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this chapter.

(B) (1) Whenever a nuisance exists as defined in this chapter, the village may proceed by a suit in equity to enjoin, abate and remove the same in the manner provided by law.

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case.  
(1976 Code, § 7-401) (Ord. 339, passed 10-9-2000)

***Statutory reference:***

*Related provisions, see Neb. RS 17-207, 17-505, 18-1720, 18-1722*





## CHAPTER 92: STREETS, SIDEWALKS, PUBLIC WAYS AND PROPERTY

### Section

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**VILLAGE PROPERTY****§ 92.01 DEFINITIONS.**

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

**OVERSEER OF STREETS.** The village official with general charge, direction, and control of streets and sidewalks. If one official is responsible for streets and another official is responsible for sidewalks, **OVERSEER OF STREETS** shall mean whichever one is appropriate in the context the term is used.

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

**§ 92.02 STREETS, ALLEYS, WALKS, MALLS, AND OTHER IMPROVEMENTS.**

The Board of Trustees 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 re-lay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the village corporate area and the area adjoining the village; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and

construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefitted in proportion to such benefits, except as provided in Neb. RS 19-2428 through 19-2431. The Board of Trustees 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 types of the improvements authorized under this section in a single district in one proceeding. All of the improvements which are to be funded by a levy of special assessment on the property especially benefitted shall be ordered as provided in Neb. RS 17-510 to 17-512, except as otherwise provided in Neb. RS 17-509.

(Neb. RS 17-509) (Ord. 491, passed 5-14-2018)

**Statutory reference:**

*Other provisions on improvements, assessments, and bonds, see Neb. RS 17-513 to 17-524, 18-1751, 19-2401, and 19-2408 to 19-2415*

**§ 92.03 MAINTENANCE AND CONTROL.**

The Board of Trustees shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the village and shall cause the same to be kept open and in repair and free from nuisances.

(Neb. RS 17-567)

**§ 92.04 REGULATION OF OBSTRUCTIONS.**

(A) The village shall have the power to remove all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or of the village and to require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(B) The village shall have the power to regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the village.

(Neb. RS 17-555)

**§ 92.05 REGULATION OF SNOW, ICE, AND OTHER ENCROACHMENTS.**

(A) The village shall have power to prevent and remove all encroachments, including snow, ice, mud or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other village property.

(Neb. RS 17-557)

(B) In case such abutting property owner refuses or neglects, after five-days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in division (A), the village through the proper officers may cause such encroachments to be removed, and the cost of removal paid out of the street fund. The Board of Trustees shall assess the cost of the notice and removal of the encroachment against the abutting property. The special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as special taxes in addition to the general revenue taxes, and shall be subject to the same penalties and shall draw interest from the date of the assessment. Upon payment of the assessment, the same shall be credited to the street fund.

(Neb. RS 17-557.01)

### **§ 92.06 PERMITTED USE OF PUBLIC STREET SPACE.**

Any person 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 the building material and equipment as long as is necessary if such person makes application to and receives a permit to do so in writing from the Overseer of Streets. No permit shall authorize the occupancy of more than one-third of the roadway of the public space adjacent to the real estate on which the building or sidewalk is to be erected, constructed, reconstructed, wrecked, or repaired. A suitable passageway for pedestrians shall be maintained within the public space included in the permit, which passageway shall be protected and lighted in the manner required by the Overseer of Streets.

Penalty, see § 10.99

### **§ 92.07 POLES, WIRES, AND PIPE LINES.**

(A) Poles, wires, conduits, 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 village. Application for location of such appurtenances shall be made to the Board of Trustees in writing. Approval by the Board shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, wires, conduits, gas mains, pipe lines, or other appurtenances shall at all times erect and locate their appurtenances at such places and in such manner as shall be designated by the Board.

(B) All poles, wires, conduits, 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 Board. Any such removal or relocation shall be ordered by resolution of the Board, and the Village 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, conduits, gas mains, pipe lines, or other appurtenances to be removed or relocated. The Board shall designate another location as closely as possible where the appurtenances may be reset or placed.

(C) All poles, wires, conduits, 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; the sewerage system; any poles, wires, conduits, mains, lines, or other appurtenances of any public utility; any adjacent buildings; or travel on the public ways and property. Whenever possible, all poles, wires, conduits, gas mains, pipe lines, and appurtenances shall be confined to the alleys of the village.

**§ 92.08 DANGEROUS STAIRWAYS AND ENTRANCES.**

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, except that all existing stairways, open cellarways, open basement ways, or open entrances thereto in or adjacent to sidewalks, pavements, or streets may be permitted to remain from and after the adoption of this prohibition if the person owning or using the opening in the sidewalk, pavement, or street satisfies the Overseer of Streets that the opening is properly protected by a balustrade, or coping of durable material, and furnishes the village with a bond in the amount set by the Board of Trustees for the benefit of any person who might suffer an injury or damage by reason of the use of the stairway, cellarway, basement way, or entrance.

**§ 92.09 EXCAVATIONS AND EXPOSURES; BARRICADES AND LIGHTS.**

Any owner or occupant engaged in construction or demolition of any building or improvement upon or near the public ways and property shall protect all excavations or exposures of any kind by suitable barricades or guards by day and by warning lights at night. The failure, neglect, or refusal of the owner or occupant to erect and maintain such protections shall constitute a violation of this section, and the village may stop all work upon the buildings and improvements until suitable protections are erected and maintained in the required manner.

**§ 92.10 GUTTERING AND EAVE SPOUTS.**

It shall be unlawful for any person to erect or maintain any dwelling house or business building within the limits of the village where the dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters 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.

**§ 92.11 PROHIBITED OBSTRUCTIONS.**

(A) It shall be unlawful for any person to obstruct, or encumber, by fences, gates, buildings, structures, or otherwise, any of the streets, alleys, or sidewalks.

(B) The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property permits or suffers 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 at all times keep trimmed and pruned all such similar growth.

(C) Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property, or wholly upon the abutting property, and interfering with the use, making, or construction of any public improvement or so that the roots thereof interfere with any utility wire or pipe shall be deemed an obstruction. Such trees and shrubs and their roots may be removed by the village at the expense of the owner of the property upon which the trees or shrubs are partially or wholly located if the owner fails or neglects, after notice, to do so.

(D) When any obstruction described in this section is determined to exist, the village may proceed against the owner or occupant of the property adjacent to the sidewalk space as provided in § 93.16. Penalty, see § 10.99

**§ 92.12 TREES IN SIDEWALK SPACE.**

(A) No person shall plant any tree or allow any tree to grow within the sidewalk space without first making a written or verbal application to and receiving a written permit from the Overseer of Streets upon payment of the fee, if any, established by the Board of Trustees.

(B) Any tree planted within the sidewalk space after the adoption of this prohibition shall be deemed to be unlawfully planted and growing and may be determined to be a nuisance. Nothing in this section shall be construed to apply to any trees growing within the sidewalk space prior to the adoption of this prohibition.

(C) When any such tree is determined to be a nuisance, the village may proceed against the owner or occupant of the property adjacent to the sidewalk space as provided in § 91.21. Penalty, see § 10.99

**§ 92.13 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 eight feet above the surface of the walk and at least 14 feet above the surface of the street or to the heights otherwise specified by the Board of Trustees.

(B) Whenever the branches or limbs of any tree extend over streets or sidewalks contrary to such provisions 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 village may proceed against the owner or occupant of the property abutting or adjacent to the street or sidewalk as provided in § 91.21.

Penalty, see § 10.99

**§ 92.14 SIGNS AND CANOPIES.**

(A) No person shall erect or maintain any sign, signboard, poster, or rigid canopy over any street, sidewalk, or alley or on other public property without having first obtained a permit therefor. Permits for signs, signboards, posters, and canopies shall be issued by the Village Clerk, subject to the approval of the Overseer of Streets, upon the payment of the fee, if any, established by the Board of Trustees.

(B) All signs, signboards, posters, 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 them being dislodged by ordinary winds or falling from other causes.

(C) No sign, signboard, poster, 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.

(D) Upon a determination that a sign, signboard, poster, or canopy is in violation of this section, the village may proceed against the owner or occupant of the premises where such the sign, signboard, poster, or canopy is located as provided in § 91.21.

Penalty, see § 10.99

**§ 92.15 CUTTING INTO PAVING, CURB, OR SIDEWALK.**

(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 Board of Trustees. Before any person obtains a permit, he or she shall inform the Village Clerk of the place where such cutting is to be done and it shall be the duty of the Overseer of Streets to inspect the proposed place of entry into the paving, sidewalk, or curb.



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(B) When cutting into any paving, curb, or sidewalk, it shall be the duty of the party to comply with such rules and regulations as may be prescribed by the Board or the Village Engineer. When the applicant is ready to close the opening made, he or she shall inform the Overseer of Streets, who shall supervise and inspect the materials used and the work done in closing the opening.

(C) It shall be discretionary with the Board to order the Overseer of Streets, under the supervision and inspection of the Village Engineer or the committee of the Board on the streets and alleys, to do the cutting and closing of the paving, curb, or sidewalk and charge the costs thereof to the party who obtained the permit. The Board may consent to the cutting and closing of the paving, curb, or sidewalk by the party holding the permit.

(D) Before any permit is issued by the Board, the applicant for the permit shall deposit with the Village Treasurer a sum set by resolution of the Board for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the village for the purpose of replacing the paving, curb, or sidewalk in the event the work is done by the village. If the Board elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the village until the work is completed to the satisfaction of the Overseer of Streets or of the committee of the Board on streets and alleys.

(E) In addition to making the deposit, the applicant shall, before any permit is issued, execute a bond to the village with a good and sufficient surety to be approved by the Board in a sum set by resolution.

**§ 92.16 HEAVY EQUIPMENT.**

(A) It shall be unlawful for any person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing.

(B) 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, except that where heavy vehicles, structures, and machines move along paved or unpaved streets the village police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed.

***SALE AND ACQUISITION OF PROPERTY; PUBLIC WORKS***

**§ 92.30 SALE AND CONVEYANCE; REAL PROPERTY.**

(A) Except as provided in division (G) of this section, the power of the village 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 that property and the manner and terms of such sales, 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 Board of Trustees 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 of such sales shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in the village.

(D) (1) If within 30 days after the third publication of the notice a remonstrance petition against the sale is signed by registered voters of the village equal in number to 30% of the registered voters of the village voting at the last regular village election held therein and is filed with the Board of Trustees, that property shall not then, nor within one year thereafter, be sold. If the date for filing the petition 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 petition, the Board of Trustees, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the petition. The Board of Trustees shall deliver the petition 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 petition, the Election Commissioner or County Clerk shall issue to the Board of Trustees a written receipt that the petition 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 petition with the voter registration records to determine if each signer was a registered voter

on or before the date on which the petition was filed with the Board of Trustees. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and village 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 village or post office address match the registration records and that the registration was received on or before the date on which the petition was filed with the Board of Trustees. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the Board of Trustees 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 petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance petition 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 petition 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 Board of Trustees 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 Board of Trustees within 40 days after the receipt of the remonstrance from the Board of Trustees. 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 Board of Trustees 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 Board of Trustees 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 village 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 three prominent places within the village for a period of not less than 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. Confirmation of the sale by passage of an ordinance may be required. (Neb. RS 17-503.01) (Ord. 492, passed 5-14-2018)

**§ 92.31 SALE AND CONVEYANCE; PERSONAL PROPERTY.**

(A) The power of the village to convey any personal property owned by it shall be exercised by 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 village 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, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in the village 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.

(B) Personal property may be conveyed notwithstanding the procedure in division (A) of this section when:

(1) Such property is being sold in compliance with the requirements of federal or state grants or programs; or

(2) Such property is being conveyed to another public agency.  
(Neb. RS 17-503.02)

**§ 92.32 ACQUISITION OR CONSTRUCTION OF PUBLIC BUILDINGS; ELECTION REQUIREMENTS.**

(A) The village 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, village building, or community house for housing village enterprises and social and recreation purposes, and

other public buildings, including the construction of buildings authorized to be constructed by Neb. RS Chapter 72, article 14, and including construction of buildings to be leased in whole or in part by the village to any other political or governmental subdivision of the state authorized by law to lease such buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the village.

(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 village at a general village election or at an election duly called for that purpose, or as set forth in division (D) of this section, and be adopted by a majority of the electors voting on such 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 village 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 village equal in number to 15% of the registered voters of the village voting at the last regular village election held therein and is filed with the Board of Trustees. 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. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the village at a general village 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 Board of Trustees may proceed without providing the notice and right of remonstrance 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 Board of Trustees after notice and public hearing as provided in § 92.34.  
(Neb. RS 17-953.01)

(D) (1) The Board of Trustees adopting the proposition to make such purchase or erect such building or buildings for the purposes set forth in division (A) of this section shall have the power to borrow money and pledge the property and credit of the village upon its negotiable bonds. No such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance, at a general village election or at a special election called for the submission of such proposition. The question of such purchase or erection of such a building or buildings, as set forth in division (A) of this section, and the question of the issuance of the negotiable bonds referred to in this division may be submitted as one question at a general village or special election if so ordered by resolution or ordinance.

(2) Notice of the time and place of the election shall be given by publication in some legal newspaper printed in or of general circulation in the village three successive weeks immediately prior thereto.

(3) No such election for the issuance of such bonds shall be called until a petition therefor signed by at least 10% of the legal voters of the village has been presented to the Board of Trustees. The number of voters voting at the last regular village election prior to the presenting of the petition shall be deemed the number of votes in the village for the purpose of determining the sufficiency of the petition.

(4) The question of bond issues for such purpose in the village when defeated shall not be resubmitted for six months from and after the date of such election.

(5) When the building to be constructed is to be used by the state or its agency or agencies under a lease authorized by Neb. RS Chapter 72, Article 14, or the building is to be leased by any other political or governmental subdivision of the state, when the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the state is more than 50% of the area of the building, and when such sum does not exceed \$2,000,000, then no such vote of the electors will be required.  
(Neb. RS 17-954)

**§ 92.33 ACQUISITION OF REAL PROPERTY; APPRAISAL.**

Notwithstanding any other provision of law, the village shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000 or more unless an appraisal of such property has been performed by a certified real property appraiser.  
(Neb. RS 13-403)

**§ 92.34 ACQUISITION OF REAL PROPERTY; PUBLIC MEETING; ACCESS FOR RECREATIONAL USE.**

(A) The village shall acquire an interest in real property by purchase or eminent domain only after the Board of Trustees has authorized the acquisition by action taken in a public meeting after notice and public hearing.

(B) The village shall provide to the public a right of access for recreational use to 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)

**§ 92.35 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING;  
REQUIREMENTS.**

(A) (1) Except as otherwise provided in this section and Neb. RS 81-3449 and 81-3453, 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.

(2) This division (A) shall not apply to any public work in which the contemplated expenditure for the complete project does not exceed \$100,000 or the adjusted dollar amount set by the Board of Engineers and Architects.  
(Neb. RS 81-3445)

(B) The provisions of division (A) of this section regulating the practice of architecture do not apply to the following activities or the other activities specified in Neb. RS 81-3449:

(2) A public service provider who employs a design professional performing professional services for itself;

(3) The practice of any other certified trade or legally recognized profession;

(4) Earthmoving and related work associated with soil and water conservation practices performed any land owned by the municipality that is not subject to a permit from the Department of Natural Resources; and

(5) 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)

(C) The provisions of division (A) of this section regulating the practice of engineering do not apply to the following activities, the activities specified in division (B) of this section, or the other activities specified in Neb. RS 81-3453:

(1) 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; and

(2) The construction of water wells as defined in Neb. RS 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such 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.  
(Neb. RS 81-3453)

(D) For the purpose of this section, the municipality is considered a public service provider if it 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)  
(Ord. 393, passed 12-12-2011)

**§ 92.36 SPECIAL ASSESSMENTS FOR PUBLIC WORKS OR IMPROVEMENTS; NOTICE TO NONRESIDENT PROPERTY OWNERS.**

(A) Before any political subdivision or special taxing district for public works or public improvements shall be formed, and before the village or any political subdivision or special taxing district may impose any special assessment for public works or public improvements, a copy of any notice required to be published by law shall be mailed to the last-known address of all nonresident property owners as shown on the current tax rolls at the time such notice is first published.  
(Neb. RS 13-310)

(B) The Village Clerk or any other person upon whom the duty is imposed by law to publish notice required by law in regard to the formation of a special taxing district for public works or public improvements shall mail by certified mail with return receipt requested a copy of the published notice in regard to the formation of any special taxing district within the village to the last-known address as shown on the current tax rolls of each nonresident property owner.  
(Neb. RS 13-311)

(C) The Village Clerk or any other person upon whom the duty is imposed by law to publish notice required by law in regard to any special assessment by a special taxing district shall mail by certified mail with return receipt requested a copy of such notice to be published to the last-known address as shown on the current tax rolls of each nonresident property owner.  
(Neb. RS 13-312)

(D) The failure of the Village Clerk any other person upon whom the duty is imposed by law to mail a copy of a published notice as provided in this section shall invalidate the assessment against the property involved while permitting all other assessments and procedures to be lawful.  
(Neb. RS 13-313)



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

***NONRESIDENT PROPERTY OWNER.*** Any person or corporation whose residence and mailing address as shown on the current tax rolls is outside the boundaries of the county and who is a record owner of property within the boundaries of the village, special assessment district, or taxing district involved.

(Neb. RS 13-314)

### ***SIDEWALKS***

#### **§ 92.50 REQUIREMENT TO KEEP 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. Unless the Board of Trustees has provided otherwise, all sidewalks within the business district shall be cleaned within five 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, and sidewalks within the residential areas of the village shall be cleaned within 24 hours after the cessation of the storm.

Penalty, see § 10.99

#### **§ 92.51 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 has been obtained from the Board of Trustees. Before any permit is granted, the applicant shall submit plans and specifications of any present or proposed construction to the Village Engineer. If the plans or specifications are disapproved by the Engineer, no permit shall be granted. All permits hereafter granted shall continue only upon the condition that the party receiving them builds, maintains, and keeps in repair a sidewalk over the space used or constructed to be used and pays all damages that may be sustained by any person by reason of such 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 village sidewalks as contemplated in this section, the Board of Trustees may require the applicant to furnish a bond to the village as obligee for the benefit of any person who may suffer an injury or damage by reason of such use. The bond shall be in such sum as the Board of Trustees, in its discretion, may designate.

Penalty, see § 10.99

**§ 92.52 CONSTRUCTION AT OWNER'S INITIATIVE.**

(A) Any person desiring to construct, or cause to be constructed, any sidewalk shall do so only as provided in this section. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

(B) The owner shall make application in writing for a permit and file such application in the office of the Village Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The Overseer of Streets shall issue the desired permit unless good cause appears why the permit should be denied, except that if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the Overseer of Streets shall submit the application to the Board of Trustees for determination as to whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed, such sidewalk at any other location, grade, or elevation than so designated by the village. 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 Overseer of Streets.

**§ 92.53 CONSTRUCTION AND REPAIR AT VILLAGE DIRECTION.**

(A) (1) The Board of Trustees may construct and repair sidewalks or cause the construction and repair of sidewalks in such manner as the Board of Trustees deems necessary and assess the expense thereof on the property in front of which such construction or repairs are made, after having given notice:

(a) By publication in one issue of a legal newspaper of general circulation in the village;  
and

(b) By either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such construction or repair.

(2) The powers conferred under this section are in addition to those provided in Neb. RS 17-509 to 17-521 and may be exercised without creating an improvement district.

(3) If the owner of any property abutting any street or avenue or part thereof fails to construct or repair any sidewalk in front of the owner's property within the time and in the manner as directed and requested by the Board of Trustees, after having received due notice to do so, the Board of Trustees may cause the sidewalk to be constructed or repaired and may assess the cost thereof against the property.  
(Neb. RS 17-522)

(B) All sidewalks shall be constructed and repaired in conformity with such plans and specifications as may be approved by the Board of Trustees.

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(C) Assessments made under the provisions of this section shall be made and assessed in the following manner:

(1) Such assessment shall be made by the Board of Trustees at a special meeting, by a resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements, and the amount charged against the same, which, with the vote thereon by yeas and nays, shall be spread at length upon the minutes; and notice of the time of holding such meeting and the purpose for which it is to be held, shall be published in some newspaper published or of general circulation in the village at least four weeks before the same shall be held or, in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed; and

(2) All such assessments shall be known as special assessments for improvements and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, and shall be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other village taxes.

(Neb. RS 17-524)

***Statutory reference:***

*Authority to improve through sidewalk district, see Neb. RS 19-2417 through 19-2419*

***STREETS AND ALLEYS*****§ 92.65 DEDICATION TO PUBLIC USE.**

No street or alley which shall hereafter be dedicated to public use, by the proprietor of ground in the village, shall be deemed a public street or alley, or be under the use or control of the Board of Trustees, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

(Neb. RS 17-567)

**§ 92.66 GRADING, PAVING, AND OTHER IMPROVEMENTS.**

The village 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 Board of Trustees.

(Neb. RS 17-508)

***Cross-reference:***

*Other provisions on grading and paving, see § 92.02*

***Statutory reference:***

*Acquisition of additional land or easement, see Neb. RS 18-1705*

*Boundary street with county or another municipality, see Neb. RS 18-2005*

*Limited street improvement districts, see Neb. RS 19-2416*

**§ 92.67 IMPROVEMENTS WITHOUT PETITION OR CREATION OF DISTRICT.**

(A) The village 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 one continuous paved street, but the portion to be so improved shall not exceed two 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 of 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) Those improvements may be performed upon any portion of a street or alley or any unpaved street or alley not previously improved to meet or exceed the minimum standards for pavement set by the village for its paved streets.

(C) In order to defray the costs and expenses of these improvements, the Board of Trustees 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)

**§ 92.68 OPENING, WIDENING, IMPROVING, OR VACATING.**

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

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

(3) When a portion of a street, avenue, alley, or lane is vacated only on one 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 village reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the village.

(4) When the village vacates all or any portion of a street, avenue, alley, or lane, the village 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 village 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 village, 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, above, 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 village 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)

**§ 92.69 VACATING PUBLIC WAYS; PROCEDURE.**

(A) For the purpose of this section, 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 Board of Trustees 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 village 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 village or public at large.

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

(1) *Notice.* 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 village. The content of the notice shall advise the abutting property owners that the Board of Trustees will consider vacating that 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) *Consent; waiver.* The Board of Trustees may have all the abutting property owners sign a form stating that they consent to the action being taken by the Board of Trustees 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 Board of Trustees' action was proper. If the abutting property owners do not sign the consent/waiver form, the Board of Trustees 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) *Ordinance.* The Board of Trustees 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 village;
- (b) A statement that the village will have an easement for maintaining all utilities; and
- (c) A method or procedure for ascertaining special damages to abutting property owners.

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(C) The Chairperson shall appoint three or five or seven disinterested residents of the village 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 Board of Trustees vacating the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the Board of Trustees. 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 the street, avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation.

**§ 92.70 CROSSINGS.**

The Board of Trustees may order and cause to be constructed, under the supervision of the Overseer of Streets, those street, avenue, and alley crossings as the Board of Trustees deems necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the Village Clerk, the Village Clerk shall refer the application to the Overseer of Streets, who shall investigate and make a recommendation to the Board of Trustees. Action by the Board of Trustees on the application, whether the application is approved or rejected, shall be considered final.

**§ 92.71 NAMES AND NUMBERS.**

The Board of Trustees 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 those streets shall retain those numbers as the Board of Trustees may require. It shall be the duty of the Overseer of Streets, upon the erection of any new building, to assign the proper numbers to the building and give notice to the owner and occupant of the same.

Penalty, see § 10.99

**§ 92.72 DRIVEWAY APPROACHES.**

(A) The Overseer of Streets 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 Village 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 the notice the property owner fails or neglects to cause the repairs or replacements to be made, the Overseer of Streets may cause the work to be done and assess the cost upon the property served by the approach.  
(Neb. RS 18-1748) Penalty, see § 10.99

**§ 92.73 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 Overseer of Streets authorizing those excavations.  
Penalty, see § 10.99

**§ 92.74 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 Overseer of Streets.  
Penalty, see § 10.99

**§ 92.75 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

**§ 92.76 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

**§ 92.77 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 village.  
Penalty, see § 10.99

***Statutory reference:***

*Authority to regulate, see Neb. RS 17-557*





## CHAPTER 93: NUISANCES

### Section

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***HEALTH AND SANITATION*****§ 93.01 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 rules and regulations relative thereto, and shall make the inspections, prescribe penalties, and make reports as may be necessary toward that purpose.

(1976 Code, § 4-101)

***Statutory reference:***

*Related provisions, see Neb. RS 17-208*

**§ 93.02 ENFORCEMENT OFFICIAL.**

The Village Marshal, as the Quarantine Officer, shall be the chief health officer of the municipality. It shall be his or her duty to notify the governing body and the Board of Health of health nuisances within the municipality and its zoning jurisdiction.

(1976 Code, § 4-102)

***Statutory reference:***

*Related provisions, see Neb. RS 17-208*

**§ 93.03 COUNTY HEALTH BOARD.**

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 village.

(1976 Code, § 4-104)

***NUISANCES GENERALLY*****§ 93.14 PURPOSE.**

The village by this subchapter defines its authority to define, regulate, suppress and prevent nuisances and to declare what will be a nuisance for its jurisdiction and to provide services to abate same for the health and sanitation of the village.

(Neb. RS 18-1720) (Ord. 407, passed 12-10-2012)

**§ 93.15 DEFINITIONS.**

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

(A) ***NUISANCE***. 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:

(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

(7) Tends to depreciate the value of the property of others.

(B) ***NUISANCE*** includes, but is not limited to, the maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things of:

(1) Any odorous, putrid, unsound, or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl;

(2) The emission of smoke, dust, fumes, gases, mists, odors, or polluted air from any source that is injurious or dangerous to human health and safety;

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(3) Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats or other insects and rodents, or which are foul or malodorous;

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

(5) Dead animals or dead animals buried within the corporate limits;

(6) Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the municipality;

(7) Hauling any garbage, waste, or refuse matter through the streets, alleys, and public ways except when the same is loaded and conveyed in such a way when none of the contents shall be spilled;

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

(9) Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;

(10) Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition in which flies or rats or other insects or rodents may breed or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity;

(11) Any unsafe building, unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards, or other structures are a fire hazard, or a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity;

(12) All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;

(13) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the municipality or are maintained and kept in such a manner as to be injurious to the public health;

(14) Undrained lots which hold or may hold stagnant water or any other nuisance;

(15) Any condition which allows the perpetuating of insects and rodents;

(16) Storage, accumulation, keeping, placing, or allowing to remain trash, garbage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any junk or abandoned motor vehicles, tractors, trailers, machinery, and equipment;

(17) All other things specifically designated as nuisances elsewhere in the this code. (Neb. RS 18-1720) (1976 Code, § 4-302) (Ord. 407, passed 12-10-2012)

***Statutory reference:***

*Related provisions, see Neb. RS 17-207, 18-1720*

**§ 93.16 ABATEMENT SERVICES AND NOTICE PROCEDURE FOR NUISANCES.**

(A) *Nuisance officer.* The Village Clerk.

(B) *Identifying nuisances,*

(1) The village may identify suspected nuisances, in which case the Village Board or Board of Health shall notify the Nuisance Officer of the suspected location, person or persons in violation of any provision of this chapter and provide the address of such alleged nuisance.

(2) The village may request that the Nuisance Officer audit the village for nuisances as defined by this code. The Nuisance Officer shall then view the property or area for any violations of the nuisances of the village.

(C) *Confirming, documenting and presenting nuisances.* Nuisance Officer shall identify and confirm that in his or her opinion a nuisance exists as defined by federal, state or village law.

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(1) Upon confirming that a nuisance appears to exist the Nuisance Officer shall document said nuisance with photographs and other evidence pertinent to the situation. Nuisance Officer will also obtain the legal description of the property and identify the current owners and, if possible, the occupants of the property upon which the nuisance exists.

(2) Nuisance Officer shall then present this information to the Village Board at a regular or special meeting for its confirmation that a nuisance exists.

(1976 Code, § 4-303) (Ord. 359, passed 7-11-2005; Ord. 371, passed 1-11-2010; Ord. 377, passed 5-10-2010; Ord. 407, passed 12-10-2012; Ord. 448, passed 10-13-2014)

**Statutory reference:**

*Related provisions, see Neb. RS 17-207, 18-1720*

### § 93.17 JURISDICTION.

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

(1976 Code, § 4-304)

**Statutory reference:**

*Related provisions, see Neb. RS 18-1720*

### § 93.18 ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL.

In cases of appeal from an action of the governing body condemning real property as a nuisance or as dangerous under the police powers of the village, the owners of the adjoining property may intervene in the action at any time before trial.

(1976 Code, § 4-305) (Ord. 195, passed 8-3-1987)

**Statutory reference:**

*Related provisions, see Neb. RS 19-710*

### § 93.19 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 village or within the one-mile zoning jurisdiction.

(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 village or within the one-mile zoning jurisdiction. For the purpose of carrying out the provisions of this section, the Utilities Superintendent shall have the authority to enter private property to inspect the trees thereon.

(C) Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the village to appeal the decision to abate or remove the nuisance by filing a written appeal with the Village Clerk. A hearing on the appeal shall be held within 14 days after the filing date of the appeal and shall be conducted by the Board of Trustees. The Board of Trustees shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the village may have the work done to abate and remove the dead and diseased trees. If the owner or occupant of the lot or ground does not request a hearing with the village within five days of receipt of such notice or fails to comply with the order to abate and remove the nuisance, the village may have such work done. The village may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of so benefited as a special assessment.

(Neb. RS. 17-555)

(1976 Code, § 4-306) (Ord. 258, passed 4-8-1996; 465, passed 4-11-2016; Ord. 471, passed 6-9-2017)

Penalty, see § 93.99

***Statutory reference:***

*Related provisions, see Neb. RS 17-555, 18-1720, 28-1321*

**§ 93.20 WEEDS, LITTER, STAGNANT WATER.**

(A) Lots or pieces of ground within the village or within its one-mile zoning jurisdiction shall be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon.

(B) The owner or occupant of any lot or piece of ground within the village or within its one-mile zoning jurisdiction shall keep the lot or piece of ground and the adjoining streets and alleys free of any growth of 12 inches or more in height of weeds, grasses, or worthless vegetation.

(C) The throwing, depositing, or accumulation of litter on any lot or piece of ground within the village or within its one-mile zoning jurisdiction is prohibited; provided, grass, leaves, and worthless vegetation may be used as a ground mulch or in a compost pile.

(D) It is hereby declared to be a nuisance to permit or maintain any growth of 12 inches or more in height of weeds, grasses, or worthless vegetation on any lot or piece of ground within the village or within its one-mile zoning jurisdiction or on the adjoining streets or alleys or to litter or cause litter to be deposited or remain thereon except in proper receptacles.



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(E) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating this section, be guilty of an offense.

(F) (1) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by first-class mail and shall be conspicuously marked as to its importance, or by conspicuously posting the notice on the lot of ground upon which the nuisance is to be abated or removed. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the village to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the Village Clerk. A hearing on the appeal shall be held within 14 days after the filing of the appeal and shall be conducted by the Board of Trustees. The Board of Trustees shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the village may have such work done to abate and remove such nuisance. Within five days after receipt of such notice or the posting of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the village or fails to comply with the order to abate and remove the nuisance, the village may have such work done to abate and remove such nuisance.

(2) The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is completed, the village may either:

(a) Levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes 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.

(G) For purposes of this section:

(1) **LITTER** shall include, but not be limited to:

(a) Trash, rubbish, refuse, garbage, paper, rags, and ashes;

(b) Wood, plaster, cement, brick, or stone building rubble;

(c) Grass, leaves, and worthless vegetation;

(d) Offal and dead animals; and

(e) Any machine or machines, vehicle or vehicles or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(2) **WEEDS** shall mean and include any plant commonly known as a weed, and shall include, but not be limited to, those plants defined as weeds, including restricted and prohibited noxious weeds as defined and determined by the Director of Agriculture of the State of Nebraska and the Cheyenne County Board of Commissioners, and any other rank growth of vegetation including specifically bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus sp.*) (Tourn.), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).  
(Ord. 384, passed 7-11-2011; Ord. 409, passed 10-8-2012; Ord. 429, passed 9-9-2013; Ord. 464, passed 4-11-2016) Penalty, see § 93.99

### § 93.21 DIRECT ACTION IN COURT.

(A) In addition to any other remedies the law may provide and in addition to the abatement set forth in § 93.16 above, and in addition to any penal provisions of this municipal code, the village may, at the



discretion of the Board of Trustees, bring an action in any court of competent jurisdiction to enjoin and/or abate any nuisance, in the manner provided by law.

(B) The action in any court of competent jurisdiction may be brought prior to notification to the owner, occupant, lessee, mortgagee or agent thereof and may be brought in the absence of any abatement procedure set forth in § 93.16 above.

(1976 Code, § 4-307) (Ord. 356, passed 7-12-2004; Ord. 384, passed 7-11-2011)

### **§ 93.22 ABATEMENT OF NUISANCE.**

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

(1976 Code, § 4-602) (Ord. 365, passed 4-8-2008; Ord. 384, passed 7-11-2011)

## ***ABANDONED OR WRECKED VEHICLES***

### **§ 93.35 SHORT TITLE.**

This subchapter shall be known and may be cited as the “Abandoned, Wrecked, Dismantled or Inoperative Motor Vehicle Subchapter”.

(Ord. 367, passed 5-11-2009)

### **§ 93.36 DEFINITIONS.**

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

***BUILDING OFFICIAL.*** The Building Official of the Village of Potter.

***JUNKED MOTOR VEHICLE.*** Any motor vehicle, as defined above, which does not have lawfully affixed thereto an unexpired license plate or plates, and the condition of which is wrecked, dismantled, partially dismantled, inoperative, abandoned or discarded.

**MOTOR VEHICLE.** Any vehicle which is self-propelled and designed to travel along the ground and shall include, but not be limited to, automobiles, buses, motor bikes, motorcycles, motor scooters, trucks, tractors, go-carts, campers and trailers.

**PERSON.** Any person, firm, partnership, association, corporation, company or organization of any kind.

**PRIVATE PROPERTY.** Any real property within the village and the zoning jurisdiction which is privately owned which is not public property as defined in this section.

**PUBLIC PROPERTY.** Any street or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and shall also mean any other publicly owned property or facility.

**VILLAGE.** The Village of Potter.  
(Ord. 367, passed 5-11-2009)

### **§ 93.37 STORING DISMANTLED VEHICLES PROHIBITED; EXCEPTIONS.**

(A) No person shall park, store, leave or permit the parking, storing or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, inoperative, rusted, junked or partially dismantled condition, whether attended or not upon any public or private property within the village or its zoning jurisdiction for a period of time in excess of 30 days unless the vehicle is enclosed within a building on private property.

(B) The presence of an abandoned, wrecked, dismantled, inoperative, rusted, junked or partially dismantled vehicle or parts hereof, on private or public property, is hereby declared a public nuisance which may be abated as such in accordance with the provisions of this subchapter.  
(Ord. 367, passed 5-11-2009; Ord. 430, passed 1-13-2014) Penalty, see § 93.99

### **§ 93.38 NOTICE TO REMOVE.**

Whenever it comes to the attention of the Building Official that any nuisance as defined in § 93.37 above exists in the village, a notice in writing shall be served upon the occupant of the land where the nuisance exists, or in case there is no occupant, thereupon the owner of the property or his or her agent, notifying them of the existence of the nuisance and requesting its removal in the time specified in § 93.39 below.  
(Ord. 367, passed 5-11-2009)

**§ 93.39 RESPONSIBILITY FOR REMOVAL.**

Upon proper notice and opportunity to be heard, the owner of the abandoned, wrecked, dismantled or inoperative vehicle and the owner or occupant of the private property on which the same is located, either or all of them shall be responsible for its removal. In the event of removal and disposition by the village, the owner, or occupant of the private property where same is located, shall be liable for the expenses incurred.

(Ord. 367, passed 5-11-2009)

**§ 93.40 NOTICE PROCEDURE.**

The Building Official of the village shall give notice of removal to the owner or occupant of the private property where it is located, at least 30 days before the time of compliance. The Building Official shall send copies of the notice by registered mail to the owner or occupant of the private property at his or her last known address. The Building Official may also post the notice in a conspicuous place upon the private property on which the vehicle is located.

(Ord. 367, passed 5-11-2009; Ord. 372, passed 1-11-2010; Ord. 376, passed 5-10-2010)

**§ 93.41 CONTENT OF NOTICE.**

The notice shall contain the request for removal within the time specified in § 93.40 above, and the notice shall advise that upon failure to comply with the notice to remove, the village or its designee, shall undertake the removal with the cost of removal to be levied against the owner or occupant of the property.

(Ord. 367, passed 5-11-2009)

**§ 93.42 REQUEST FOR HEARING.**

The persons to whom the notices are directed, or their duly authorized agents, may file a written request for hearing before the Board of Trustees with the Village Clerk within the 30-day period of compliance prescribed in § 93.40 above for the purpose of defending the charges by the village.

(Ord. 367, passed 5-11-2009; Ord. 374, passed 2-8-2010)

**§ 93.43 PROCEDURE FOR HEARING.**

The hearing shall be held as soon as practicable after the filing of the request and the persons to whom the notices are directed shall be advised of the time and place of the hearing at least ten days in

advance thereof. At any hearing the village and the persons to whom the notices have been directed may introduce the witnesses and evidence as either party deems necessary.

(Ord. 367, passed 5-11-2009)

#### **§ 93.44 REMOVAL OF MOTOR VEHICLE FROM PROPERTY.**

(A) If the violation described in the notice has not been remedied within the ten-day period of compliance, or in the event that a notice requesting a hearing is timely filed, a hearing is had, and the existence of the violation is affirmed by the Board of Trustees or the Village Clerk as its designee, the Building Official or his or her designee shall have the right to take possession of the junked motor vehicle and remove it from the premises.

(B) It shall be unlawful for any person to interfere with, hinder or refuse to allow the person or persons to enter upon private property for the purpose of removing a vehicle under the provisions of this subchapter.

(Ord. 367, passed 5-11-2009) Penalty, see § 93.99

#### **§ 93.45 NOTICE OF REMOVAL.**

Within 48 hours of the removal of the vehicle, the Building Official shall give notice to the registered owner of the vehicle, if known, and also to the owner or occupant of the private property from which the vehicle was removed, that the vehicle, or vehicles, has been impounded and stored for violation of this subchapter. The notice shall give the location of where the vehicle, or vehicles, is stored and the costs incurred by the village for removal.

(Ord. 367, passed 5-11-2009)

#### **§ 93.46 DISPOSITION OF VEHICLES.**

Upon removing a vehicle under the provisions of § 93.44 above, the village shall after ten days cause it to be appraised. If the vehicle is appraised at \$250 or less, the Building Official shall execute an affidavit so attesting and describing the vehicle, including the license plates, if any, and stating the location and appraised value of the vehicle. The Building Official, after complying with the above, may summarily dispose of the vehicle and execute a certificate of sale. If the vehicle is appraised at over \$250, the Building official shall give notice of public sale not less than ten days before the date of the proposed sale.

(Ord. 367, passed 5-11-2009)

**§ 93.47 CONTENTS OF PUBLIC SALE NOTICE.**

The notice of sale shall state:

(A) The sale is of abandoned property in the possession of the village;

(B) A description of the vehicle, including make, model, license number and any other information which will accurately identify the vehicle;

(C) The terms of the sale; and

(D) The date, time and place of the sale.

(Ord. 367, passed 5-11-2009)

**§ 93.48 PUBLIC SALE.**

The vehicle shall be sold to the highest and best bidder. At the time of payment of the purchase price, the Building Official shall execute a certificate of sale in duplicate, the original of which to be given to the purchaser, and the copy thereof to be filed with the Village Clerk. Should the sale for any reason be invalid, the village's liability shall be limited to the return of the purchase price.

(Ord. 367, passed 5-11-2009)

**§ 93.49 REDEMPTION OF IMPOUNDED VEHICLES.**

The owner of any vehicle seized under the provisions of this subchapter may redeem the vehicle at any time after its removal but prior to the sale or destruction thereof upon proof of ownership and payment to the Building Official of the sum as he or she may determine and fix for the actual and reasonable expense of removal, and any preliminary sale advertising expenses, not to exceed \$150 plus \$25 per day for storage for each vehicle redeemed.

(Ord. 367, passed 5-11-2009)

**§ 93.50 LIABILITY OF OWNER OR OCCUPANT.**

Upon the failure of the owner or occupant of property on which abandoned vehicles have been removed by the village to pay the unrecovered expenses incurred by the village in the removal, a lien shall be placed upon the property for the amount of the expenses.

(Ord. 367, passed 5-11-2009)



***ENFORCEMENT AND EXPENSES*****§ 93.60 ENFORCEMENT.***(A) Enforcement procedures.*

(1) The nuisance, health and/or sanitation violation is brought to the governing body by the village Nuisance Officer or the Board of Health or upon the governing body's own action. The governing body then may declare by resolution a nuisance, health and/or sanitation violation. The nuisance, health, and/or sanitation ordinances may be enforced by:

- (a) Village administrative procedures;
- (b) Penal prosecutions through the courts; and/or
- (c) By civil procedures in the courts.

(2) Any of these procedures or any combination of these procedures may be used to enforce the nuisance, health and/or sanitation ordinances of the village.

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

(1) After a nuisance is declared the Village Clerk notifies the Nuisance Officer to serve notice upon the violator(s).

(2) The Nuisance Officer shall prepare and serve notice which shall describe the found nuisance and state the required date of abatement and removal of the nuisance shall be accomplished. The notice shall also provide information as to how the interested parties may request a hearing before the governing body described in division (B)(4) below.

(3) The notice shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, said notice shall be given by a single publication in a newspaper of general circulation in the village or county of the village, and by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The date of service is determined by the later of certified mail receipt, personal service or publication date.

(4) The accused violator (owner/agent/occupant) may request in writing a hearing before the governing body of the village within five days after notice of violation is served or published.

(5) If no request for a hearing is received in the required time period, the governing body may cause a hearing to be held. This option is at the sole discretion of the governing body to be used in exceptional cases.

(6) If a hearing is requested, the Village Clerk shall fix date of said hearing to be no later than 15 days from receipt of the request for the hearing. Notice of said hearing and with the date and time shall be served upon the agent, owner, and of the nuisance property by certified and regular mail.

(7) The hearing shall be a "show cause" hearing in which the agent, owner, occupant of the nuisance property (objecting property) shall provide evidence why the alleged condition should not be found to be a public nuisance and remedied. This hearing shall be heard before a quorum of the governing body. The presiding official of the governing body may conduct the hearing or said presiding official may appoint another person as the hearing officer to conduct the hearing (said hearing officer may be the Village Attorney or the Enforcement Officer). At the hearing the hearing officer shall mark and receive evidence which was presented when the finding of a nuisance was made, relevant evidence of the nuisance since that time, and evidence that the notices were properly given. The objecting party shall then provide its evidence. The rules of evidence are not required at said hearing, but all evidence must be relevant to the particular nuisance being heard. Testimony shall be under oath as administered by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.

(8) No later than 14 days after the hearing and consideration of the evidence, the governing board may by majority vote rescind the resolution of violation. If the resolution of violation is not rescinded, it shall stand. Furthermore, if the objector or its designated agent fails to appear at the hearing or does not provide evidence, the nuisance shall stand. If the resolution is not rescinded, the governing board may, by resolution, extend the date that owner, occupant, lessee, or mortgagee shall abate and remedy the said public nuisance, but in no case shall this time exceed 60 days. The findings of the governing board shall be made no later than 14 days after the hearing and notice of its finding shall be served upon the objecting party by regular U.S. Mail within five days of the finding. The finding of this hearing is final, provided that an interested party or parties may appeal such decision to the appropriate court for adjudication.

(9) If the Nuisance Officer determines the nuisance is not remedied and abated within the time period designated, the village shall cause the abatement of the nuisance.

(10) If an interested party properly appeals to an appropriate court the findings and orders of the village, the village actions shall be stayed during until such time that the legal proceedings are completed or dismissed. In cases of appeal from an action of the village condemning real property as a nuisance or as dangerous under 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)

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(C) *Penal court enforcement procedure.* If the declared nuisance, health, and/or sanitation is not abated within 15 days that the notice is served upon the owner and/or occupant, and the Village Clerk has not received a request for hearing, the Nuisance Officer may cause issue of a citation for the code violation.

(1) The citation shall be prosecuted to the appropriate court by the Village Attorney or other designated prosecutor for the village.

(2) A person or persons found guilty of these violations shall be guilty of a misdemeanor and fined up to \$500 per each offense.

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

(D) *Civil court procedure.* The governing board may instruct by resolution the Village Attorney to file a civil action for the abatement of a nuisance. Said civil suit may commence after 15 days notice has been served as stated in § 93.16, and may be filed and prosecuted at the same time any other enforcement procedure has commenced, terminated or in progress.  
(Ord. 407, passed 12-10-2012)

**§ 93.61 EXPENSES.**

(A) When the village has effected the abatement of the nuisance, health and/or sanitation violation through either village employees or through contract with a third party and has incurred expenses and costs thereof, the actual cost thereof shall be charged to the owner, agent, occupant or person in possession, charge or control of such property. The billing shall be calculated at the actual cost of abating the nuisance plus a \$25 administrative fee.

(B) This billing shall be submitted to the last known address of the owner of the nuisance property as found in the County Treasurer's office by regular U.S. Mail.

(C) If said costs are not paid within two months after the work is done and one month after the expenses and costs are submitted to the owner and/or occupant, the village may levy and assess the expenses and costs upon the real estate benefitted by the actions in the same manner as other special assessments are levied and assessed, and the village may collect said assessments in the same procedure as other special assessments are collected. The village may also recover said expenses and costs of abating the nuisance, health and/or sanitation violation(s) in a civil action in the courts of the appropriate county in Nebraska.  
(Ord. 407, passed 12-10-2012)

**§ 93.99 PENALTY.**

Any person or any person's agent or servant who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this chapter.  
(Ord. 367, passed 5-11-2009; Ord. 384, passed 7-11-2011)



## CHAPTER 94: TREES

### Section

- 94.01 Definitions
- 94.02 Village Tree Board
- 94.03 Street trees
- 94.04 Public tree care
- 94.05 Tree topping
- 94.06 Pruning; corner clearance
- 94.07 Review by Board of Trustees
  
- 94.99 Penalty

### § 94.01 DEFINITIONS.

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

***PARK TREES.*** Trees, shrubs and all other woody vegetation in public parks having individual names, and all areas owned by the village, or to which the public has free access as a park.

***STREET TREES.*** Trees, shrubs and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the village.  
(1976 Code, § 8-501) (Ord. 208, passed 12-7-1987)

### § 94.02 VILLAGE TREE BOARD.

(A) There is hereby created and established a Village Tree Board for the village, which shall consist of five members, citizens and residents of this village, who shall be appointed by the Chairperson with the approval of the Village Board.

(B) The term of the five persons to be appointed by the Chairperson shall be three years except that the term of two of the members appointed to the first Board shall be for only one year and the term of two members of the first Board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

(C) Members of the Board shall serve without compensation.

(D) It shall be the responsibility of the Board to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. The plan will be presented annually to the Village Board and upon their acceptance and approval shall constitute the official Comprehensive Village Tree Plan for the village. The Board, when requested by the Village Board, shall consider, investigate, make finding, report and recommend upon any special matter of question coming within the scope of its work.

(E) The Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall lie a quorum for the transaction of business. (1976 Code, § 8-502) (Ord. 208, passed 12-7-1987)

### § 94.03 STREET TREES.

(A) *Species to be planted.* The following list constitutes the official street tree species for the village. No species other than those included in this list may be planted as street trees without permission of the Village Tree Board.

- (1) Small trees:
  - (a) Apricot;
  - (b) Crabapple;
  - (c) Golden Rain;
  - (d) Hawthorne;
  - (e) Pear, Bradford;
  - (f) Redbud;
  - (g) Soapberry;
  - (h) Lilac, Jap. Tree;
  - (i) Peach;
  - (j) Plum;
  - (k) Serviceberry; and

(l) Amur Maple.

(2) Medium trees:

(a) European Mt. Ash;

(b) Yellow Wood;

(c) Pin Oak;

(d) Scarlet Oak;

(e) Ash, Green;

(f) Hackberry;

(g) Honeylocust;

(h) Linden;

(i) Oak, English;

(j) Oak, Red;

(k) Pagoda tree;

(l) Norway Maple; and

(m) Amur.

(3) Large trees:

(a) Coffee tree;

(b) Maple Sugar;

(c) Oak, Bur;

(d) Sycamore;

(e) Sycamore, London plantree;



(f) Cottonwood (cot-less); and

(g) Ginkgo.

(1976 Code, § 8-503)

(B) *Spacing*. The spacing of street trees will be in accordance with the three species size classes listed in division (A) above, and no trees may be planted closer together than the following: small trees: 30 feet; medium trees: 40 feet; and large trees: 50 feet; except in special plantings designed or approved by a landscape architect.

(1) *Distance from curb and sidewalk*. The distance trees may be planted from curb lines and sidewalks will be in accordance with the three species size classes listed in division (A) above, and no trees may be planted closer to any curb or sidewalk than the following: small trees: two feet; medium trees: three feet; large trees: four feet.

(2) *Distance from street corners and fire plugs*. No street tree shall be planted closer than 15 feet of any street corner, measured from the point of nearest intersecting curbs and curb lines. No street tree shall be planted closer than ten feet of any fireplug.

(3) *Utilities*. No street trees other than those species listed as small trees in division (A) above may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.

(1976 Code, § 8-504)

(Ord. 208, passed 12-7-1987)

#### **§ 94.04 PUBLIC TREE CARE.**

(A) The village shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of public grounds.

(B) The Village Tree Board may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location if the trees is in accordance with § 94.03 above.

(1976 Code, § 8-505) (Ord. 208, passed 12-7-1987)

**§ 94.05 TREE TOPPING.**

It shall be unlawful as a normal practice for any person, firm or village department to top any street tree, park tree or other tree on public property. **TOPPING** is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this subchapter at the determination of the Village Tree Board.  
(1976 Code, § 8-506) (Ord. 208, passed 12-7-1987) Penalty, see § 94.99

**§ 94.06 PRUNING; CORNER CLEARANCE.**

Every owner of any tree overhanging any street or right-of-way within the village shall prune the branches so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection; so that the tree shall be trimmed to a height of at least eight feet above the surface of the walk and at least 14 feet above the surface of the street or the heights otherwise specified by the Board of Trustees. The owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The village shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.  
(1976 Code, § 8-507) (Ord. 208, passed 12-7-1987)

**§ 94.07 REVIEW BY BOARD OF TRUSTEES.**

The Village Board of Trustees shall have the right to review the conduct, acts and decisions of the Village Tree Board. Any person may appeal from any ruling or order of the Village Tree Board to the Village Board of Trustees who may hear the matter and make final decision.  
(1976 Code, § 8-508) (Ord. 208, passed 12-7-1987)

**§ 94.99 PENALTY.**

(A) Any person, or any person's agent or servant, who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500. A new violation shall be deemed to have been committed every 24-hours' of failure to comply with the provisions of this chapter.

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(B) (1) Whenever a nuisance exists as defined in this chapter, the village may proceed by a suit in equity to enjoin, abate and remove the same in the manner provided by law.

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (1976 Code, § 8-601) (Ord. 339, passed 10-9-2000)

## CHAPTER 95: AIRPORT

### Section

#### 95.01 Ownership and operation

#### **§ 95.01 OWNERSHIP AND OPERATION.**

(A) The village owns the aviation field and has erected thereon improvements for the purpose of serving aerial traffic in compliance with the statutes of the state and in conformity with the requirements of the State Aeronautics Commission and the Federal Civil Aeronautics Administration.

(B) For the purpose of the construction, leasing, improvement, maintenance and management of the aviation field and for the payment of persons employed in the performance of labor in connection therewith, the governing body may, without a vote of the legal electors, levy an annual tax of not to exceed one mill on the dollar upon the assessed value of all the taxable property in the village, except intangible property. No part of the funds so levied and collected shall be used for any other purpose.

(C) The governing body shall have power to make and enforce the ordinances, rules and regulations as shall lawfully be made, for the control and supervision of the airport, and for the control of aircraft and airmen, but the ordinances, rules and regulations shall not conflict with the rules and regulations for the navigation of aircraft promulgated by the United States government. This power shall extend to the space above the land and waters included within the limits of the village, and to the space above the airport, outside its limits.

(1976 Code, § 3-901)

***Statutory reference:***

*Related provisions, see Neb. RS 18-1501 through 18-1509*



## CHAPTER 96: CEMETERY

### Section

96.01	Operation and funding
96.02	Sexton
96.03	Conveyance of lots
96.04	Forfeiture of lots
96.05	Lot transfers
96.06	Burial permit
96.07	Burial of indigents
96.08	Destruction of property
96.09	Reclamation

### § 96.01 OPERATION AND FUNDING.

(A) The village owns and manages the cemetery through the Cemetery Board. The governing body, for the purpose of defraying the cost of the care, management, maintenance and beautification of the cemetery may each year levy tax not exceeding the maximum limit prescribed state law, on the actual valuation of all real estate and personal property within the village that is subject to taxation.

(B) The revenue from the tax shall be known as the Cemetery Fund and shall include all gifts, grants, deeds of conveyance, bequests, money, stocks, bonds or other valuable income-producing personal property and real estate from any source for the purpose of endowing the cemetery.

(C) The Cemetery Fund shall at all times be in the custody of the Municipal Treasurer. The Board shall have the power and authority to hire and supervise the employees as it may deem necessary and to pass rules and regulation for the operation of the cemetery as may be proper for its efficient operation. All actions by the Board shall be under the supervision and control of the governing body.

(1976 Code, § 3-701)

#### ***Statutory reference:***

*Related provisions, see Neb. RS 12-301 through 12-403*

**§ 96.02 SEXTON.**

(A) The Cemetery Board, subject to the approval of the governing body, shall have the authority to appoint a Sexton who shall perform duties and make reports as the Cemetery Board shall direct.

(B) It shall be the duty of the Sexton, upon receiving a burial permit to locate and direct the party named in the permit to the lot mentioned therein and to dig and excavate, or cause the same to be dug or excavated, in compliance with the rules and regulations of the Cemetery Board.

(1976 Code, § 3-702)

**Statutory reference:**

*Related provisions, see Neb. RS 12-403*

**§ 96.03 CONVEYANCE OF LOTS.**

The governing body may convey cemetery lots by certificate signed by the Mayor, and countersigned by the Municipal Clerk under the municipal seal specifying that the person to whom the same is issued is the owner of the lot described therein by number for the purpose of interment. The certificate shall give a right in fee simple to the proprietor, his or her heirs, and assigns. The certificate shall then be recorded in the office of the County Clerk.

(1976 Code, § 3-703)

**Statutory reference:**

*Related provisions, see Neb. RS 17-941*

**§ 96.04 FORFEITURE OF LOTS.**

If, for three consecutive years, all charges and liens are not paid by the holders of the lot certificates, the certificates shall be declared forfeited and subject to resale. All certificates sold shall contain a forfeiture clause to the effect that if no interment is made on the lot and all liens paid, the certificate and the rights under the same may, at the option of the Cemetery Board, with the sanction of the governing body, be declared null and void and the lot shall be subject to resale.

(1976 Code, § 3-704)

**Statutory reference:**

*Related provisions, see Neb. RS 17-938*

**§ 96.05 LOT TRANSFERS.**

Any person who wishes to transfer a certificate may do so by surrendering the original certificate to the Municipal Clerk, who shall issue a new certificate upon the receipt of the recording fee set by resolution of the governing body.

(1976 Code, § 3-705)

**§ 96.06 BURIAL PERMIT.**

All persons desiring to bury a deceased person shall first be required to file a completed death certificate with the Registrar of the county before any body may be buried in the municipal cemetery. If it is impossible to complete the certificate of death within the legal period of time prescribed by state law, the funeral director shall notify the Registrar and obtain his or her written approval before the deceased person may be buried in the cemetery. The burial permit so issued by the Registrar shall then be filed with the Secretary of the Cemetery Board. It shall be unlawful for the Sexton, or other person, to allow the interment of a body without first receiving the permit. The burial permit shall then be countersigned and dated by the Sexton. The interment of any body shall be performed under the direct supervision of a licensed funeral director. The applicant shall also file with the burial permit an application containing the name, age, sex, race and cause of death of the deceased person for the records of the Cemetery Board. Upon completion the requirements herein, the Secretary of the Cemetery Board shall then issue a municipal burial permit which shall entitle the applicant to bury a deceased person in the municipal cemetery. In the event that the removal of the body of any deceased person is requested the Secretary shall issue a permit until the applicant shall have first compliance with the laws of the state with respect to the disinterment.

(1976 Code, § 3-706) Penalty, see § 10.99

***Statutory reference:***

*Related provisions, see Neb. RS 71-605*

**§ 96.07 BURIAL OF INDIGENTS.**

Within the municipal cemetery, there shall be included a plot of ground which shall be available for the free burial of indigents and unknown travelers who may die while they are within the village.

(1976 Code, § 3-707)

**§ 96.08 DESTRUCTION OF PROPERTY.**

Any person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone placed in the cemetery, or any fence, railing or other work for the protection or ornamentation of the cemetery, or who shall willfully destroy, cut, break or injure any tree, shrub or plant shall be deemed to be guilty of a misdemeanor.

(1976 Code, § 3-708)

***Statutory reference:***

*Related provisions, see Neb. RS 28-512*



**§ 96.09 RECLAMATION.**

When any lot has been transferred by warranty deed or by a deed conveying a fee simple title, but there has been no burial in any lot or subdivision thereof and no payment of annual assessments for a period of three years, the Cemetery Board with the sanction of the governing body, may reclaim the unused portion of the lot or subdivision after notifying the record owner or his or her heirs or assigns, if known, by certified mail and publishing notice of its intention to do so. The notice shall be published once each week for four weeks in a newspaper of general circulation throughout the county in which the cemetery is located, shall describe the lot or subdivision proposed to be reclaimed, and shall be addressed to the person in whose name the portion stands of record or, if there is no owner of record, to all persons claiming any interest in the lot or subdivision. If no person appears to claim the lot or subdivision and pay all delinquent assessments with interest within 15 days after the last date of the publication, the Cemetery Board may by resolution reclaim the lot or subdivision. The reclamation shall be complete upon a filing of a verified copy of the resolution, together with proof of publication, in the office of the Register of Deeds.

(1976 Code, § 3-709) (Ord. 201, passed 8-3-1987)

## CHAPTER 97: PARKS AND RECREATION

### Section

- 97.01 Operation and funding
- 97.02 Injury to property

### § 97.01 OPERATION AND FUNDING.

The village owns and operates the municipal parks and other recreational areas through the governing body. The governing body, 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 actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the tax shall be known as the Park Fund and shall remain in the custody of the Municipal Treasurer. The Board shall have the authority to adopt rules and regulations for the efficient management of the municipal parks and other recreational areas of the village.

(1976 Code, § 3-501)

***Statutory reference:***

*Related provisions, see Neb. RS 17-948 through 17-952*

### § 97.02 INJURY TO PROPERTY.

It shall be unlawful for any person to maliciously or willfully 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.

(1976 Code, § 3-502) Penalty, see § 10.99

***Statutory reference:***

*Related provisions, see Neb. RS 17-949*

