

## **CHAPTER 3 – MISDEMEANORS**

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## **CHAPTER 3 – MISDEMEANORS**

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

#### **SECTION 3-101: IMPERSONATING OFFICER**

No person shall falsely pretend to be a peace officer or perform any act in that pretended capacity. (Neb. Rev. Stat. §28-610)

#### **SECTION 3-102: REFUSING TO ASSIST OFFICER**

It shall be unlawful for any person to refuse to assist a peace officer when lawfully requested to do so. (Neb. Rev. Stat. §28-903)

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

It shall be unlawful for any person to resist any city police officer who is in the lawful performance of duties. (Neb. Rev. Stat. §28-729)

#### **SECTION 3-104: TRESPASSING**

It shall be unlawful for any person to trespass upon any private grounds within the City; to break, cut, or injure any tree, shrub, plant, flower, or grass growing thereon; or without the consent of the owner or occupant to enter upon an improved lot or grounds occupied for residence purposes and to loiter about the same. (Neb. Rev. Stat. §28-588, 28-588.01)

#### **SECTION 3-105: EXCESSIVE NOISE**

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

#### **SECTION 3-106: WINDOW PEEPING**

It shall be unlawful for any person to maliciously or stealthily go upon the premises of another in said city and look or peep into any window, door or other opening in any building located thereon which is occupied as a place of abode or to go upon the premises of another for the purpose of looking or peeping into any window, door or other opening in any building thereon which is occupied as a place of abode.

#### **SECTION 3-107: RIOTING**

It shall be unlawful for any person or persons to congregate together for the purpose

of breaching the peace by rioting or to induce others to riot through words, actions, or conduct; and whosoever shall congregate with others for the purpose of rioting or inducing others to riot shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §17-556, 28-804)

### **SECTION 3-108: PUBLIC URINATION OR DEFECATION; LEWD ACTS**

It shall be unlawful for any person within this city to urinate or defecate in public view or to commit any indecent or lewd act.

### **SECTION 3-109: SHOPLIFTING**

A. A person commits the crime of theft by shoplifting when, with the intent of appropriating merchandise for his/her own use without paying for the same or to deprive the owner of possession of such property or its retail value, in whole or in part, he/she does any of the following:

1. Conceals or takes possession of the goods or merchandise of any store or retail establishment;
2. Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
3. Transfers the goods or merchandise of any store or retail establishment from one container to another;
4. Interchanges the label or price tag from one item of merchandise with a label or price tag from another item of merchandise; or
5. Causes the cash register or other sales recording device to reflect less than the retail price of the merchandise.

B. In any prosecution for theft by shoplifting, in order to allow the owner or owners of shoplifted property the use of such property pending criminal prosecutions, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photograph shall be accompanied by a written statement containing the following:

1. A description of the property;
2. The name of the owner or owners of the property;
3. The time, date, and location where the shoplifting occurred;
4. The time and date the photograph was taken;
5. The name of the photographer; and
6. Verification by the arresting officer.

C. Prior to allowing the use of shoplifted property as provided in this section, legal counsel for the alleged shoplifter shall have a reasonable opportunity to inspect and appraise the property and may file a motion for its retention, which motion shall be granted if there is any reasonable basis for believing that the photographs and accompanying affidavit may be misleading.

(Neb. Rev. Stat. §28-511.01) (Ord. No. 674, 10/14/82)

### **SECTION 3-110: PROVOKING ASSAULT; FINE ASSESSED**

It shall be unlawful for any person or persons within the City to intentionally provoke or attempt to provoke an assault upon him/her or another by the uttering of insulting words, cursing and swearing or to use slander against any other person. Upon conviction, a fine not to exceed \$10.00 shall be assessed. (Neb. Rev. Stat. §28-412)

### **SECTION 3-111: ASSAULT**

It is hereby declared unlawful for any person within the corporate limits of the City to assault or threaten another in a menacing manner or strike or injure another. It shall be unlawful for any person to strike or injure any other person or persons. Any person who assaults or batters another person or persons shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §28-310) (Ord. No. 1225, 10/14/87)

### **SECTION 3-112: DISTURBING THE PEACE**

It shall be unlawful for any person or persons to assemble or gather within the City with the intent to do an unlawful or disorderly act or acts by force or violence against the City or residents therein or who shall disturb the public peace, quiet, security, repose, or sense of morality. Any person or persons so assembled or gathered shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §28-818)

### **SECTION 3-113: STALKING**

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

A. "Harass" shall mean to engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose;

B. "Course of conduct" shall mean a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning, contacting, or otherwise communicating with the person;

C. "Family or household member" means a spouse or former spouse of the victim, children of the victim, a person presently residing with the victim or who has resided with the victim in the past, a person who had a child in common with the victim, other persons related to the victim by consanguinity or affinity, or any person presently involved in a dating relationship with the victim or who has been involved in a dating relationship with the victim. For purposes of this subdivision, "dating relation-

ship” means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement but does not include a casual relationship or an ordinary association between persons in a business or social context.

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

### **SECTION 3-114: DISORDERLY CONDUCT**

Persons who shall knowingly start a fight, fight, commit assault or battery, make unnecessary noise, or otherwise conduct themselves in such a way as to breach the peace shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §17-129, 17-556)

### **SECTION 3-115: MALICIOUS DESTRUCTION OF PROPERTY**

It shall be unlawful for any person within the corporate limits to purposely, willfully, or maliciously injure in any manner or destroy any real or personal property of any description belonging to another. (Neb. Rev. Stat. §28-572, 28-573)

### **SECTION 3-116: MALICIOUS MISCHIEF; FINE ASSESSED**

It shall be deemed a misdemeanor for any person to willfully destroy, mutilate, deface, injure, or remove any tomb, monument, gravestone, structure, or thing of value which is located upon any government property, cemetery, or property of historic value. Conviction of such misdemeanor shall be punishable by a fine not less than \$5.00, nor more than \$100.00. Any such offender shall also be liable, in an action for trespass in the name of the beneficial holder of said property, for all damages which arise from the commission of such unlawful act. (Neb. Rev. Stat. §12-519)

### **SECTION 3-117: LARCENY**

It shall be unlawful for any person within the corporate limits to steal any money, goods, or chattels of any kind whatever. Any person who shall steal property of any kind, whether the same is entirely in money or entirely property of the value of less than \$300.00 shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §28-512, 28-514) (Ord. No. 1225, 10/14/87)

### **SECTION 3-118: CONCEALING STOLEN PROPERTY**

Any person who receives or conceals stolen property, goods, or chattels of any kind with the intent to defraud the owner or whoever receives or conceals any money or other accountable receipts and evidences of ownership shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §28-513) (Ord. No. 1225, 10/14/87)

### **SECTION 3-119: ARSON**

Any person who willfully or maliciously sets on fire any property when the injury or damage therefrom shall be of a value less than \$35.00 shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §28-503) (Ord. No. 1225, 10/14/87)



## **SECTION 3-120: POSSESSION OF TOBACCO BY MINORS**

A. It shall be unlawful for any person under the age of 18 years to possess any cigarettes or tobacco products; provided, the possession by a person under the age of 18 years under the direct supervision of a parent or guardian of such person in the privacy of the parent's or guardian's home shall not be prohibited.

B. The term "cigarette" includes any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other material excepting tobacco. The term "tobacco products" shall mean:

1. Cigars,
2. Cheroots,
3. Stogies,
4. Periques,
5. Granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco,
6. Snuff or snuff flour,
7. Cavendish,
8. Plug and twist tobacco,
9. Fine cut and other chewing tobacco,
10. Shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and
11. Other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise or both for chewing and smoking, except that "tobacco products" shall not mean cigarettes as previously defined herein.

C. Whoever, being a minor under the age of 18 years, shall smoke cigarettes or cigars or use tobacco in any form whatever in this state shall be guilty of a Class V misdemeanor. Any minor so charged with the violation of this section may be free from prosecution when he/she shall have furnished evidence for the conviction of the person or persons selling or giving him/her the cigarettes, cigars or tobacco.

(Ord. No. 1403, 10/8/97)

## **SECTION 3-121: CURFEW**

It shall be unlawful for any minor under the age of 18 years to loiter, wander, or play in or upon any street, alley, park, or public place; on any railroad right of way; any place of public entertainment or recreation in the City; or in any motor vehicle located in any of the above places after the hour of 12:00 midnight to the hour of 5:00 A.M. of the following day unless accompanied by a parent or legal guardian. It shall be an affirmative defense to the above provisions that the said minor child at the time of the offense was participating in or going to or from a legitimate school- or church-

sponsored activity or legitimate business employment activity. (Ord. No. 1490, 3/14/07)

### **SECTION 3-122: UNLAWFUL ASSEMBLY; OBSTRUCTION OF PUBLIC WAY**

It shall be unlawful for three or more people to assemble together upon any sidewalk or street thereof in front of or adjacent to any store, shop, or other place of business so as to obstruct the public right-of-way along said street or sidewalk or entrance to said place of business or so as to obstruct or injure the carrying on of any lawful business in any of the places aforesaid within the limits of the City. (Neb. Rev. Stat. §28-804)

### **SECTION 3-123: DISTURBING AN ASSEMBLY**

It shall be unlawful for any person or persons to disturb, interrupt, or interfere with any lawful assembly of people, whether religious or otherwise, by loud and unnecessary noise, threatening behavior, or indecent and shocking behavior. (Ord. No. 1225, 10/14/87)

### **SECTION 3-124: DISCHARGE OF FIREARMS**

It shall be unlawful for any person, except an officer of the law in the discharge of official duties, to fire or discharge any gun, pistol, or other fowling piece within the City; provided, nothing herein shall be construed to apply to officially sanctioned public celebrations if the person so discharging the firearm has written permission from the City Council. (Neb. Rev. Stat. §17-556) (Ord. No. 1247, 2/1/89)

### **SECTION 3-125: DISCHARGE OF SLINGSHOTS, PAINTBALL GUNS, BLOW GUNS, AIR RIFLES OR SIMILAR INSTRUMENTS**

It shall be unlawful for any person to discharge a slingshot, paintball gun, blow gun, air rifle, an arrow from a bow, or other like instruments capable of launching a dangerous projectile therefrom at any time or under any circumstances within the City, or within a one-half mile radius of the City where the projectile from the piece could reach the city limits of the City; provided, nothing herein shall be construed to apply to officially sanctioned public celebrations if the person so discharging the weapon has written permission from the City Council.

### **SECTION 3-126: APPLIANCES IN YARD**

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

### **SECTION 3-127: REMOVING DIRT**

It is hereby declared unlawful for any person to remove, disturb, or take away from any street, alley, or public grounds any dirt, earth, stones, or other materials forming a part of such street, alley, or public grounds without first having obtained written permission to do so from the City Council.

### **SECTION 3-128: TRASH**

It shall be unlawful for any person to willfully, maliciously, or negligently place or throw upon the premises of another any filth, garbage, leaves, papers, or other matter to the annoyance of the owner or occupant thereon. (Neb. Rev. Stat. §28-523)

### **SECTION 3-129: LITTERING**

It shall be unlawful for any person to throw, cast, lay, or drop on any public way or property any paper, scrap material or other waste whatsoever.

### **SECTION 3-130: OBSTRUCTING WATER FLOW**

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

### **SECTION 3-131: OBSTRUCTING PUBLIC WAYS**

It shall be unlawful for any person to erect, maintain, or suffer to remain on any street or public sidewalk a stand, wagon, display, or other obstruction inconvenient to or inconsistent with the public use of the same.



## **Article 2 – Dogs and Cats**

### **SECTION 3-201: OWNER DEFINED**

Any person who shall harbor or permit any dog or cat to remain for ten days or more in or about his/her house, store, or enclosure or to remain to be fed shall be deemed the owner and possessor of such dog or cat and shall be deemed to be liable for all penalties herein prescribed. (Neb. Rev. Stat. §54-606, 71-4401) (Am. by Ord. No. 1129, 3/2/83)

### **SECTION 3-202: RABIES; VACCINATION**

Every dog and cat three months of age and older shall be vaccinated against rabies and distemper pursuant to Nebraska law. Puppies and kittens shall be vaccinated within 30 days after having reached three months of age. Unvaccinated dogs and cats acquired or brought into the City must be vaccinated within 30 days after purchase or arrival unless under three months of age as specified above. The provisions of this ordinance with respect to vaccination shall not apply to any dogs or cats owned by a person temporarily residing within this city for less than 30 days, any dog or cat brought into this city for show purposes, or any dog brought into this city for hunting purposes for a period of less than 30 days; such dogs and cats shall be kept under the strict supervision of the owner.

### **SECTION 3-203: LICENSES**

A. Any person who shall own, keep, or harbor a dog or cat over the age of three months within the City shall acquire a license for each such dog or cat annually by or before January 31 each year. If any person acquires a dog or cat after January 31, such person shall acquire the license within one calendar month after acquisition. A license for each dog or cat shall be issued by the city clerk upon the payment of the license fee which has been set by the City Council. All such fees shall be filed in the office of the city clerk, where they shall be available for public inspection during office hours.

B. Said license shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog or cat. The owner shall state at the time the application is made and upon printed forms provided for such purpose his/her name and address and the name, breed, color, sex and whether such animal is neutered or spayed for each dog or cat owned and kept by such person. A certificate that the dog or cat has had a rabies shot, effective for the ensuing year of the license, shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown.

(Neb. Rev. Stat. §17-526, 54-603, 71-4412) (Am. by Ord. Nos. 1129, 3/2/83; 1234, 6/1/88; 1368, 12/6/95)

### **SECTION 3-204: LICENSE TAGS; LOST TAGS**

Upon the payment of the license fee, the city clerk shall issue to the owner of a

dog or cat a license certificate and a metallic tag for each dog or cat so licensed. The metallic tag shall be properly attached to the collar or harness of every dog and cat so licensed and shall entitle the owner to keep or harbor the said dog or cat until December 31 following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag was issued in accordance with the provisions herein, the city clerk shall issue a duplicate or new tag for the balance of the year for which the license tax has been paid and shall charge and collect a fee for each duplicate or new tag so issued. Such fee shall be set by the City Council and filed in the office of the city clerk for public inspection during office hours. All license fees and collections shall be immediately credited to the General Fund. It shall be the duty of the city clerk to issue tags of a suitable design that are different in appearance each year. (Neb. Rev. Stat. §17-526, 54-603) (Am. by Ord. Nos. 1129, 3/2/83; 1368, 12/6/95)

### **SECTION 3-205: REMOVAL OF LICENSE 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 or cat without the consent of the owner, keeper, or possessor thereof. (Am. by Ord. No., 1129, 3/2/83)

### **SECTION 3-206: WRONGFUL LICENSING**

It shall be unlawful for the owner, keeper, or harbinger of any dog or cat to permit or allow such dog or cat to wear any license, metallic tag or other city identification than that issued by the city clerk for dogs and cats. (Neb. Rev. Stat. §17-526, 54-603) (Am. by Ord. No. 1129, 3/2/83)

### **SECTION 3-207: LIABILITY OF OWNER**

It shall be unlawful for any person to allow a dog or cat owned, kept, harbored by, or under his/her charge or control to injure or destroy any real or personal property of any description belonging to another person. The owner or possessor of any such dog or cat, 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. (Neb. Rev. Stat. §54-601, 54-602) (Am. by Ord. No. 1129, 3/2/83)

### **SECTION 3-208: 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 or cat that is the property of another person or to place any poison or poisoned food where the same is accessible to a dog or cat; provided, this section shall not apply to the city police chief or agent acting within his/her power and duty. (Neb. Rev. Stat. §28-1002, 28-553) (Am. by Ord. No. 1129, 3/2/83)

### **SECTION 3-209: RUNNING AT LARGE**

It shall be unlawful for the owner of any dog or cat to allow such dog or cat to run at

large at any time within the corporate limits of the City. It shall be the duty of the city police chief or agent to cause any dog or cat found to be running at large within the City to be taken up and impounded. If the city police chief or agent is unable to capture such dog or cat found running at large but able to ascertain who is the owner of the dog or cat, a citation shall be issued to such owner. Any dog or cat found "running at large" shall mean it was found off the premises of the owner and not under control of the owner or a responsible person, either by leash, cord, chain, wire, rope, cage or other suitable means of physical restraint. Any person who is convicted of violating this section shall be fined in an amount set by the City Council and filed in the office of the city clerk for public inspection during office hours.

(Neb. Rev. Stat. §17-526) (Am. by Ord. Nos. 1129, 3/2/83; 1429, 4/14/99)

### **SECTION 3-210: DOGS; BARKING, CHASING**

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 City. The provisions of this section shall not be construed to apply to the city animal shelter.

### **SECTION 3-211: POTENTIALLY DANGEROUS DOG; DETERMINATION OF; NOTICE; CERTIFICATE OF REGISTRATION**

If it is determined by the city police chief or designated animal control officer that a dog is a potentially dangerous dog, the owner of the dog shall be notified in writing that it has been declared a potentially dangerous dog. The owner of a dog which has been declared a potentially dangerous dog shall, within ten days of the date of the notice, apply for a certificate of registration from the city police chief or designated animal control officer. Such certificate shall be issued if the owner presents sufficient evidence of a proper enclosure to confine such potentially dangerous dog and posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog.

### **SECTION 3-212: POTENTIALLY DANGEROUS DOG; RESTRAINT**

It is unlawful for an owner of a potentially dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

### **SECTION 3-213: DANGEROUS DOG; DEFINITIONS**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

“Potentially dangerous dog” means any dog that, when unprovoked, inflicts bites on a human or a domestic animal on either public or private property or chases or approaches a person upon the streets, sidewalks or any public grounds in a menacing fashion or apparent attitude of attack; or any dog with a known propensity, tendency or disposition to attack without provocation, to cause injury, or to otherwise threaten the safety of humans or domestic animals.

“Dangerous dog or other dangerous animal” means any dog or animal that has:

- A. Inflicted injury on a human being without provocation on public or private property;
- B. Killed a domestic animal without provocation while off the owner's property; or
- C. Previously been found to be potentially dangerous, the owner having received notice of such finding and the dog or other animal again aggressively bites, attacks or endangers the safety of humans or domestic animals.

“Injury” means any injury that results in bruised, broken or punctured skin, broken bones, or lacerations requiring sutures.

“Proper enclosure” of a potentially dangerous dog means that while on the owner's property it shall be securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall be completely enclosed with secure sides and top, shall be securely embedded into the ground, and shall also provide protection from the elements for the dog.

### **SECTION 3-214: DANGEROUS DOG; PROHIBITED**

The owning, allowing, keeping or harboring of a dangerous dog or other dangerous animal within the corporate limits of the City is hereby prohibited.

### **SECTION 3-215: DANGEROUS DOG; EXCEPTIONS**

A dog shall not be declared dangerous if the threat, injury or damage was sustained by a person who (A) at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the dog; (B) was tormenting, abusing or assaulting the dog; (C) has in the past been observed or reported to have tormented, abused or assaulted the dog; or (D) was committing or attempting to commit a crime.

### **SECTION 3-216: DANGEROUS DOG OR POTENTIALLY DANGEROUS DOG; IMPOUNDMENT**

Any potentially dangerous dog which is:



- A. Not validly registered under this section,
- B. Not maintained in the proper enclosure,
- C. Outside the dwelling of the owner or outside of the proper enclosure and not under physical restraint of the responsible person, or
- D. Any dangerous dog or any dangerous animal

shall be immediately confiscated by the police chief, or agent, and placed in quarantine at the owner's cost. The police chief or designated animal control officer shall notify the dog's owner by personal service or certified mail that such dog has been placed in quarantine. The dog shall be returned to the owner upon compliance with Section 3-221 herein. If the owner fails to comply within 15 days of being notified of the quarantine, the dog may be destroyed and the owner shall be responsible for the cost of impoundment and the cost of destroying it.

#### **SECTION 3-217: DANGEROUS DOG OR POTENTIALLY DANGEROUS DOG; VIOLATIONS; PENALTY; DESTRUCTION**

It shall be unlawful to violate any provision of Sections 3-211 through 3-216 and such violation shall be punished as provided hereafter. If the court finds that a dog is a potentially dangerous dog as defined in this article, the court may, in addition to the usual judgment of conviction, order that the dog be humanely killed. (Neb. Rev. Stat. §54-617 through 54-624)

#### **SECTION 3-218: RABIES SUSPECTED; IMPOUNDMENT**

Any dog or other animal suspected of having rabies or any dog or cat not vaccinated in accordance with the provisions herein, which has bitten any person or has caused an abrasion of the skin of any person, shall be seized by a police officer, city police chief or agent and shall be impounded under the supervision of a licensed veterinarian or public health authority for not less than ten days. If, upon examination by a veterinarian, the dog or other animal has no clinical signs of rabies at the end of such impoundment, it shall be released to the owner upon payment of the costs of said impoundment by the owner or, in the case of a stray, shall be disposed of in whatever manner deemed best by the city police chief, agent or officer. (Neb. Rev. Stat. §71-4406)

#### **SECTION 3-219: RABIES; PROCLAMATION**

It shall be the duty of the City Council whenever in its opinion the danger to the public safety from rabid dogs or cats is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any dog or cat to muzzle the same or to confine it for a period of not less than 30 days or more than 90 days from the date of such proclamation or until such danger is past. The dogs or cats may be harbored by any good and sufficient means in a house, garage, or yard on the premises wherein the said owner may reside. Upon issuance of the proclamation it shall be the duty of

all persons owning, keeping, or harboring any dog or cat to confine the same as herein provided. (Neb. Rev. Stat. §17-526) (Am. by Ord. No. 1129, 3/2/83)

### **SECTION 3-220: ANIMAL SHELTER**

The City may engage the services of a licensed veterinarian to maintain an animal shelter, which shall be safe, suitable and conveniently located for the impounding, keeping and destruction of animals. The said shelter shall be sanitary, ventilated and lighted.

### **SECTION 3-221: IMPOUNDING**

A. It shall be the duty of the police chief or agent to capture, secure, and remove in a humane manner to the city animal shelter any dog or cat violating any of the provisions of this article. The dogs or 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. Each impounded dog or 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. Notice of impoundment of all animals, including any significant marks or identifications, shall be posted at the office of the city clerk within 24 hours after impoundment as public notification of such impoundment.

B. If the dog or cat is not claimed at the end of required waiting period after public notice has been given, the police chief may dispose of the dog or cat in accordance with the applicable rules and regulations pertaining to the same. If, in the judgment of the police chief a suitable home can be found for any such dog or cat within the City, it shall be turned over to such person, who shall then be required to pay all fees and meet all licensing and vaccinating requirements. In addition to these requirements, any adopted dog or cat prior to being turned over shall be neutered at the expense of the person adopting it. All dogs and cats not claimed by the owner or adopted shall be humanely destroyed and buried as prescribed by the Board of Health unless a suitable home can be found for such dog or cat.

(Neb. Rev. Stat. §17-548, 71-4408) (Am. by Ord. Nos. 1027, 11/9/78; 1129, 3/2/83; 1234, 6/1/88)

### **SECTION 3-222: IMPOUNDING; FEES FOR RECLAIMED ANIMALS**

A. Any dog or cat may be reclaimed by its owner during the period of impoundment by payment of certain fees and expenses as set by the City Council. Such fees and expenses shall be on file at the office of the city clerk for public inspection during office hours.

B. A new owner providing a suitable home for any animal as provided in Section 3-221(B) of this code shall be required to pay all such fees, except that the license fee for an unlicensed animal shall be for a newly acquired animal.

(Ord. No. 1129, 3/2/83) (Am. by Ord. No. 1234, 6/1/88; 1429, 4/14/99)

### **SECTION 3-223: IMPOUNDING; FEES FOR DESTROYED ANIMALS**

If the animal is disposed of and the owner of the animal is known to the City, then the owner shall be required to pay the fees specified in Section 3-222. In addition, he/she shall be required to pay the disposal fees charged to the City by the veterinarian. All such fees shall be due ten days after a billing therefor is mailed to the owner by the city clerk. (Ord. No. 1234, 6/1/88)



## **Article 3 – Animals Generally**

### **SECTION 3-301: POULTRY; BANNED FROM CITY**

It shall be unlawful for any person to keep within the City any poultry, chickens, turkeys, geese or other fowls.

### **SECTION 3-302: ANIMALS; PERMIT REQUIRED**

It shall be unlawful for any person to keep or maintain within the corporate limits any horse, mule, sheep, cow, goat, swine or other livestock, except as provided in this article. (Neb. Rev. Stat. §17-547) (Am. by Ord. No. 1227, 12/8/87)

### **SECTION 3-303: PERMITS; PROCEDURE FOR ISSUANCE**

A. The owner of any horse, sheep, or goat may keep such animal within the corporate limits upon issuance or renewal of a permit by the City Council as provided in this article. The application for issuance or renewal of such permit shall be submitted by the owner on a form provided by the city clerk containing all information necessary to show that all requirements of this article have been satisfied. The permit application shall contain at least the following information:

1. The owner's name, address and telephone number;
2. The type and numbers of animals proposed to be kept by the owner;
3. The legal description and name(s) of the owner of the property on which the animal(s) will be kept;
4. A plat map showing the specific area to which such animal(s) will be confined if less than the entire property, showing the location on the property of any enclosures and restraints required by this article and showing distances relative thereto;
5. The written consent of all owners and occupants of adjoining real estate and all owners and occupants of real estate of which any portion is within 250 feet of any boundary of the property on which such animal(s) are to be located; provided, for purposes of this section, real estate shall be considered as "adjoining" only when any part thereof touches, or corners with, such other lot or tract or as separated therefrom only by a street or alley which would touch such other lot, tract or corner therewith if such street or alley did not intervene; and,
6. The length of time for which such permit is requested, not exceeding four years and ending on December 31 of such fourth year.

B. The application shall be accompanied by a fee as set by the City Council and filed in the office of the city clerk for public inspection during office hours. Such fee shall not be refundable under any circumstances, whether or not such permit is issued.

C. Upon receipt of the application, the city clerk shall refer the application to the Planning Commission, which shall determine whether the proposed location is consistent with the applicable zoning regulations and the type and character of the neighborhood.

D. The Planning Commission shall forward its recommendation with regard to such application, together with any special conditions or special characteristics of the proposed location, to the City Council for consideration at its next regular meeting.

E. The City Council may adopt or reject the recommendation of the Planning Commission in whole or in part and may impose any other conditions for issuance of the permit it deems necessary for the protection of the public health and safety. The term of the permit shall be set by the City Council at the time of authorization of issuance and may be less than the length requested in the application but shall not extend beyond December 31 of the fourth year of such permit.

F. If the City Council authorizes issuance thereof, the city clerk shall proceed to issue such permit for the term and upon such conditions as determined by the Council and no additional fee shall be required for such issuance.

G. Any permit will be subject to renewal at the expiration of its term and such renewal shall have the same requirements as a new permit. The renewal shall be applied for and obtained within six months prior to the expiration date, which shall not be extended if such renewal has not been obtained prior thereto.

H. Permits are nontransferable from one location to another or from one owner of animals to another, whether through change of ownership of real estate or otherwise.

(Ord. No. 1177, 5/1/85) (Am. by Ord. No. 1227, 12/8/87)

### **SECTION 3-304: PERMITS; ENCLOSURES; DISTANCE REQUIREMENTS**

All enclosures and restraints used to confine animals for which a permit is issued pursuant to this article shall be no less than 150 feet from any residence other than the residence of the owner of said enclosure. (Ord. No. 1227, 12/8/87)

### **SECTION 3-305: PERMITS; LIMITS ON NUMBER AND TYPES OF ANIMALS**

No permit shall be issued for more than the number of animals specified below over four months of age where said animals are of the following species: horses, three; sheep, six; and goats, six. No permit shall be issued for more than one type of animal for which such permits may be issued. No more than one permit shall be issued for

any particular location. (Ord. No. 1227, 12/8/87)

**SECTION 3-306: PERMITS; AREA REQUIREMENTS**

A. No permit shall be issued unless the owner shall provide an enclosure that has, as a minimum, the following area:

Horses	One acre for each animal
Sheep	One-half acre for each animal
Goats	One-half acre for each animal

B. The area to be utilized may consist of one or more platted lots, unplatted tracts or subdivisions of either or any combination thereof; provided, the entire area of real estate proposed for such use shall be in common ownership and no part thereof separated from any other part by any street, alley in actual use or by any tract of real estate not in such common ownership; and provided further, the total amount of land under such common ownership equals or exceeds the aggregate amount required by this section considering the number of animals so authorized by such permit.

(Ord. No. 1227, 12/8/87)

**SECTION 3-307: PERMITS; SANITATION REQUIREMENTS**

No owner of any animal for which a permit is required by this article shall fail to keep the shelters and enclosures on his/her property in a sanitary condition. At a minimum, owners shall not fail to:

A. Remove or dispose of in a sanitary manner the bedding, offal manure, and waste materials accumulating in a shelter from such animals at least once every 30 days; and

B. Clean and disinfect said shelters and enclosures so as to prevent the breeding of flies and insects and the emission of deleterious and offensive odors.

(Ord. No. 1227, 12/8/87)

**SECTION 3-308: PERMITS; FOOD, WATER, HEALTH CARE; OWNER'S DUTY**

No owner of any animal for which a permit is required by this article shall fail to provide food and water for his/her animal(s) or fail to seek veterinary care for any such animal(s) that are sick or injured. (Ord. No. 1227, 12/8/87)

**SECTION 3-309: PERMITS; REVOCATION**

The permit of any owner regulated by this article who fails to comply with any term or condition of the permit issued or of the provisions of this article may be revoked by the City Council after a hearing held upon at least ten days' written notice mailed to the address of the owner set forth in the permit application by certified U. S. Mail,

which notice shall be deemed as given when mailed. Upon revocation, all animals regulated under this article shall be removed from the corporate limits of the City within three days and if the owner shall fail or refuse to remove such animals within such time, such owner shall be deemed to be maintaining a nuisance, the abatement of which shall be the forfeiture of the animal or animals in violation. The procedure for abatement of nuisances set forth in Article 4 of this chapter shall be followed. (Ord. No. 1227, 12/8/87)

### **SECTION 3-310: WILD ANIMALS**

A. No wild animals may be kept within the corporate limits except such animals kept for exhibition purposes by circuses and educational institutions.

B. As used in this section, the term "wild" relates to any animals that, whether or not raised in captivity, normally are found in a wild state including but not limited to:

1. Any game animals; fur-bearing animals including muskrats, raccoons, opossums, and otters; game birds, upland game birds, and raptors as defined in Neb. Rev. Stat. §37-101;
2. Any non-game wildlife in need of conservation as determined by the Game & Parks Commission under Neb. Rev. Stat. §37-430 *et seq.*;
3. Any animal for which a game fancier or pet permit or a commercial game or fur farmer permit is required pursuant to Neb. Rev. Stat. §37-714 and §37-715;
4. Any poisonous reptile or arthropod; and
5. Any such other species of wild animal which may be injurious to human beings.

(Ord. No. 1326, 8/11/93)

### **SECTION 3-311: CAPTURE IMPOSSIBLE**

The city police chief or agent shall have the authority to kill any animals showing vicious tendencies or characteristics of rabies which make capture impossible because of the danger involved. (Neb. Rev. Stat. §17-526, 54-605) (Am. by Ord. No. 1129, 3/2/83)

### **SECTION 3-312: ABANDONMENT, NEGLIGENCE, AND CRUELTY; DEFINITIONS**

“Abandon” shall mean to leave any animal for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health.

“Animal” shall mean any vertebrate member of the animal kingdom except man. The term shall not include an uncaptured wild creature.



“Cruelly mistreat” shall mean to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise set upon any animal.

“Cruelly neglect” shall mean to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health.

“Humane killing” shall mean the destruction of an animal by a method which causes the animal a minimum of pain and suffering.

“Law enforcement officer” shall mean any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances.

(Neb. Rev. Stat. §28-1008) (Ord. No. 1292, 8/14/91)

### **SECTION 3-313: CRUELTY TO ANIMALS**

A person commits cruelty to animals if he/she abandons, cruelly mistreats, or cruelly neglects an animal. (Neb. Rev. Stat. §28-1009) (Ord. No. 1292, 8/14/91)

### **SECTION 3-314: ABANDONMENT PROHIBITED**

No owner of an animal for which a permit is required by this article shall abandon such animal. (Ord. No. 1227, 12/8/87)

### **SECTION 3-315: CRUELTY TO ANIMALS; LAW ENFORCEMENT OFFICER; POWERS; IMMUNITY**

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

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

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

(Neb. Rev. Stat. §28-1012) (Ord. No. 1292, 8/14/91)

### **SECTION 3-316: PITTING; DEFINITIONS**

"Pitting" shall mean bringing animals together in combat.

"Bearbaiting" shall mean the pitting of any animal against a bear.

"Cockfighting" shall mean the pitting of a fowl against another fowl.

"Dogfighting" shall mean the pitting of a dog against another dog.  
(Neb. Rev. Stat. §28-1004)

### **SECTION 3-317: PITTING; PROHIBITED**

No person shall knowingly:

A. Promote, engage in or be employed at dogfighting, cockfighting, bearbaiting or pitting an animal against another;

B. Receive money for the admission of another person to a place kept for such purpose;

C. Own, use, train, sell or possess an animal for the purpose of animal pitting; nor

D. Permit any act as described in this section to occur on any premises owned or controlled by him/her.  
(Neb. Rev. Stat. §28-1005)

### **SECTION 3-318: PITTING; SPECTATORS PROHIBITED**

No person shall knowingly and willingly be present at and witness as a spectator dogfighting, cockfighting, bearbaiting or the pitting of an animal against another as prohibited in Section 3-317.

## **Article 4 – Nuisances**

(Am. by Ord. No. 1525, 12/11/13)

### **SECTION 3-401: PURPOSE**

The City of Ainsworth by this article defines its authority to define, regulate, suppress and prevent nuisances, and to declare what shall be a nuisance for its jurisdiction and to provide services to abate same for the health and sanitation of the City. (Neb. Rev. Stat. §18-1720)

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

A. 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 City;
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:

1. Any odorous, putrid, unsound, or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl.
2. The emission of smoke, dust, fumes, gases, mists, odors, or polluted air from any source that is injurious or dangerous to human health and safety.
3. Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats or other insects and rodents, or which are foul or malodorous.
4. Filthy, littered, or trash-covered cellars, house yards, barnyards, stable-yards, factory-yards, mill yards, vacant areas 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 City.
7. Hauling any garbage, waste, or refuse matter through the streets, alleys, and public ways except when the same is loaded and conveyed in such a way when none of the contents shall be spilled.
8. Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity. Nothing herein contained shall prevent the temporary retention of waste in receptacles nor the dumping of non-putrefying waste in a place and manner approved by the City.
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, milk, 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 inhabit-

ants of the City or are maintained and kept in such a manner as to be injurious to the public health.

14. Dead or diseased trees within the right-of-way of streets within the corporate limits of the City or on private property within the one-mile zoning jurisdiction beyond the corporate limits. (Neb. Rev. Stat. §17-555)
15. Undrained lots which hold or may hold stagnant water or any other nuisance.
16. Any condition which allows the perpetuating of insects and rodents.
17. Storage, accumulation, keeping, placing, or allowing to remain any trash, garbage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any junk or abandoned motor vehicles, tractors, trailers, machinery, and equipment.
18. Any vehicle which is not properly registered or is inoperable, wrecked, junked or partially dismantled and remaining longer than thirty (30) days on private property. This does not apply to a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the lawful operation of such business enterprise (such as a licensed salvage dealer, motor vehicle dealer or farm implement dealer), or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner, and so long as the premises which said vehicle is located are not a nuisance and are maintained in a healthful and safe condition.
19. Lots, pieces of ground, and the adjoining streets and alleys with growth of weeds or noxious growth.
20. The owner or occupant of any lot or piece of ground within the City shall keep the lot or piece of ground and the adjoining streets and alleys free of any growth of 8 inches or more in height of weeds, grasses, or worthless vegetation.
21. All other things specifically designated as nuisances elsewhere in the city code.

(Neb. Rev. Stat. §18-1720)

### **SECTION 3-403: ABATEMENT SERVICES & NOTICE PROCEDURE FOR NUISANCES**

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

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

1. The City may identify suspected nuisances, in which case the city clerk shall, upon direction of the City Council, notify the nuisance officer of the suspected location, person or persons in violation of any provision of this article and provide the address of such alleged nuisance.

2. The City may request that the nuisance officer audit the City for nuisances in the City as defined by the city code. The nuisance officer shall then view the property or area for any violations of the nuisances of the City. The nuisance officer shall not go upon private property for said audit unless granted permission by the resident/owner of suspected property.

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

1. Upon confirming that a nuisance appears to exist, the nuisance officer shall document said nuisance with photographs and other evidence pertinent to the situation. The 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. The nuisance officer shall then present this information to the City Council at a regular or special meeting for its confirmation that a nuisance exists as stated in Section 3-404 below.

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

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

A. Administrative Procedure. The City 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 city 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 City Council described in subparagraph (4) herein.

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 City or county of the City, 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 City Council within five days after notice of violation is served or published. For tree nuisance violations, the period for requesting a hearing is extended to 30 days after service.
5. If no request for a hearing is received in the required time period, the City Council may cause a hearing to be held. This option is at the sole discretion of the City Council to be used in exceptional cases.
6. If a hearing is requested, the city 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 City Council. The presiding official of the Council 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 city attorney or the enforcement officer). At the hearing, the hearing officer shall mark and receive evidence which was presented when the finding of a nuisance was made, relevant evidence of the nuisance since that time, and evidence that the notices were properly given. The objecting party shall then provide his/her evidence. The rules of evidence are not required at said hearing, but all evidence must be relevant to the particular nuisance being heard. Testimony shall be under oath as administered by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.
8. No later than 14 days after the hearing and consideration of the evidence, the City Council 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 his/her designated agent fails to appear at the hearing or does not provide evidence, the nuisance shall stand. If

the resolution is not rescinded, the City Council 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 Council 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 City shall cause the abatement of the nuisance.
10. If an interested party properly appeals to an appropriate court the findings and orders of the City, the City's actions shall be stayed during and until such time that the legal proceedings are completed or dismissed. In cases of appeal from an action of the City 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. Rev. Stat. §19-710)

#### B. Penal Court Enforcement Procedure.

1. 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 city clerk has not received a request for hearing, the nuisance officer may cause issuance of a citation for the code violation.
2. The citation shall be prosecuted to the appropriate court by the city attorney or other designated prosecutor for the City.
3. A person or persons found guilty of these violations shall be guilty of a misdemeanor and fined up to \$500.00 per each offense. Each day that the nuisance, as identified in the nuisance resolution and notice, is not abated shall be a separate offense and subject to a separate fine.

C. Civil Court Procedure. The City Council may instruct the city attorney by resolution to file a civil action for the abatement of a nuisance. Said civil suit may commence after 15 days' notice has been served, and may be filed and prosecuted at the same time any other enforcement procedure has commenced, terminated or in progress.

### **SECTION 3-405: EXPENSES**

A. When the City has effected the abatement of the nuisance, health and/or sanitation violation through either City employees or through contract with a third par-



ty 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 \$25.00 administrative fee.

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

C. If said costs are not paid within two months after the work is done and one month after the expenses and costs are submitted to the owner and/or occupant, the City 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 City may collect said assessments in the same procedure as other special assessments are collected. The City 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.



## **Article 5 – Sexual Predators**

### **SECTION 3-501: GENERAL FINDINGS AND INTENT**

A. The Nebraska Legislature has found that certain sex offenders present a high risk to commit repeat offenses and has enabled municipalities to restrict such persons' place of residency as provided in the Sexual Predator Residency Restriction Act.

B. Sex offenders who prey on children and who are high risks to repeat such acts present an extreme threat to public safety. The cost of sex offender victimization to these children and to society at large, while incalculable, is exorbitant.

C. It is the intent of this ordinance to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating certain areas around locations where children regularly congregate in concentrated numbers where certain sexual predators cannot reside.

### **SECTION 3-502: DEFINITIONS**

For purposes of this ordinance:

“Childcare facility” means a place with a license issued under the Nebraska Child Care Licensing Act, Neb. Rev. Stat. §71-1908 to §71-1923, as currently existing or hereafter amended.

“Loiter” for purposes of this article means:

- A. Standing or sitting idly, whether or not the person is in a vehicle or remaining in or around any of the premises described in this article; or
- B. Standing or sitting idly, whether or not the person is in a vehicle or remaining in or around any of the premises described in this article, for the purpose of committing or attempting to commit a sex offense; or
- C. Entering or remaining in a building in or around any of the premises described in this article, other than the offender's residence.

“Reside” means to sleep, live, or dwell at a place, which may include more than one location, and may be mobile or transitory;

“Residence” means a place where an individual sleeps, lives, or dwells, which may include more than one location, and may be mobile or transitory;

“School” means a public, private, denominational, or parochial school which meets the requirements for state accreditation or approval;

“Sex offender” shall be anyone defined in the Sex Offender Registration Act (Neb. Rev. Stat. §29-4001 to §29-4013 inclusive) or any amendments thereto, or any person convicted under the law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have required registration under the Nebraska Sex Offender Registration Act if the conviction had occurred in Nebraska.

“Sexual predator” means an individual who is required to register under the Sex Offender Registration Act who has been classified as Level 3 because of a high risk of recidivism as determined by the Nebraska State Patrol under Neb. Rev. Stat. §29-4013, and who has victimized a person 18 years of age or younger.

### **SECTION 3-503: RESTRICTIONS; EXCEPTIONS**

It is unlawful for any sexual predator to reside within 500 feet of a school or child care facility. For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the residence to the nearest outer boundary line of the school or child care facility. This ordinance shall not apply to a sexual predator who:

A. Resides within a prison or correctional or treatment facility operated by the state or a political subdivision;

B. Established a residence before July 1, 2006, and has not moved from that residence; or

C. Established a residence after July 1, 2006, and the school or child care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location.

### **SECTION 3-504: PRESENCE WITHIN SCHOOL ZONE BY CHILD SEX OFFENDER PROHIBITED; EXCEPTION**

A. *Prohibited on School Grounds and Conveyances.* It is unlawful for a child sex offender to knowingly be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity when persons under the age of 18 are present in the building, on the grounds or in the conveyance.

B. *Loitering Prohibited near School Grounds.* It is unlawful for a child sex offender to knowingly loiter within 500 feet of a school building or real property comprising any school while persons under the age of 18 are present in the building or on the grounds unless the said child sex offender is an invitee of a person who resides within 500 feet of a school building or real property comprising a school and is accompanied by such resident, provided such resident is not also a child sex offender.

C. *Exception for Parents.* A child sex offender does not commit a violation of subsection (A) of this section if that child sex offender is the parent or legal guardian of a child enrolled in the school building and the following circumstances apply and requirements are complied with:

1. The parent or guardian is attending a conference at the school with school personnel to discuss the progress of his/her child academically or socially, review for placement, retention or promotion or other student issues concerning said student.
2. The parent or guardian is attending a function at the school, of which his/her child is an active part. Such functions include, by way of illustration and not limitation, athletic contests, music concerts, theatrical performances and academic competitions.
3. Prior to entering upon the school property during regular school hours, a parent or guardian shall contact the school principal (or designee) and communicate to the principal the parent's intended presence. Such communication shall include the purpose of the parent's presence, the anticipated time of arrival and the anticipated time of departure. The principal shall communicate to the parent any conditions to be imposed during presence at the school, which conditions may include that the parent be accompanied at all time by an appropriate individual approved by the principal. Upon arrival at the school, the parent shall immediately check in at the school's office and shall inform the office of his/her departure.
4. Prior to entering upon the school property at times other than regular school hours, a parent or guardian shall contact the school principal (or designee) and communicate to the principal the parent's intended presence. Such communication shall include the purpose of the parent's presence, the anticipated time of arrival and the anticipated time of departure. The principal shall communicate to the parent any conditions to be imposed during presence at the school, which conditions shall include that the parent be accompanied at all times by an appropriate individual approved by the principal. In the event the parent does not receive communication from the principal (or designee); such lack of communication shall be deemed a refusal to authorize the presence of the child sex offender.

D. *Exception for Non-Parents.* A child sex offender does not commit a violation of subsection (A) of this section if he/she:

1. Is in the school or upon the school grounds for a legitimate business purpose as a representative of a commercial company supplying goods or services to the school building, provided that prior to entering upon

the school grounds when children under the age of 18 years are present, such individual shall contact the principal (or designee) and communicate to the principal the individual's intended presence. Such communication shall include the purpose of the individual's presence, the company or business he/she is representing, the anticipated time of arrival and the anticipated time of departure. The principal shall communicate to the individual any conditions to be imposed upon the individual during presence at the school, which conditions shall include that the individual be accompanied at all times by an appropriate individual, approved by the principal.

2. Is a grandparent, aunt, uncle, first cousin, brother or sister of a child enrolled in the school and is attending a function at the school of which the child to whom is related is an active part, provided that the related person shall at all times be accompanied by and in the presence of the parent or guardian of the enrolled child taking part in the function. Such functions include, by way of illustration and not limitation, athletic contests, music concerts, theatrical performances and academic competitions.

E. *Exception for Residence.* A child sex offender does not commit a violation of subsection (B) of this section if a bona fide resident of residential property located within 500 feet of the school property and is present on the property.

F. *Constitutional Exception.* Nothing in this section shall be construed to infringe upon the constitutional right of a child sex offender to be present in a school building that is used as a polling place for the purpose of voting or for the purpose of exercising constitutional First Amendment rights.

### **SECTION 3-505: APPROACHING, CONTACTING OR COMMUNICATING WITH A CHILD WITHIN CERTAIN PLACES BY CHILD SEX OFFENDERS; PROHIBITED**

A. It is unlawful for a child sex offender to knowingly be present in any public park building on real property comprising any public park or on the premises of the city pool when persons under the age of 18 are present in the building, on the grounds or at the pool and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds or unless the offender is accompanied by a responsible adult who is not a sex offender.

B. It is unlawful for a child sex offender to knowingly loiter on a public way within 500 feet of a public park building or real property comprising any public park or while persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age within said 500-foot zone unless the offender is a parent or guardian of a person under 18 years

of age present in the building or on the grounds or unless the offender is accompanied by a responsible adult who is not a sex offender.

C. It is unlawful for a child sex offender to knowingly loiter on a public way within 500 feet of a child care facility while persons under the age of 18 are present in the building or on the grounds and to approach, contact or communicate with a child under 18 years of age within said 500-foot zone unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds or unless the offender is accompanied by a responsible adult who is not a sex offender.

D. It is unlawful for a child sex offender to knowingly loiter on a public way within 500 feet of the premises of the city swimming pool while persons under the age of 18 are present in the pool or on the premises of the pool and to approach, contact, or communicate with a child under 18 years of age within said 500-foot zone unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds or unless the offender is accompanied by a responsible adult who is not a sex offender.

### **SECTION 3-506: DISSEMINATION OF INFORMATION**

Any person subject to the Nebraska Sex Offender Registration Act shall be provided a copy of this ordinance and any current amendments upon making request to the Ainsworth Police Department.





## **Article 6 – Penal Provision**

### **SECTION 3-601: VIOLATION; PENALTY**

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