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# **CHAPTER 3 – MISDEMEANORS**

## **Article 1 – General Misdemeanors**

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

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

### **SECTION 3-102: IMPERSONATING OFFICER**

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

### **SECTION 3-103: HINDERING OR RESISTING ARREST**

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

### **SECTION 3-104: RESISTING ARREST WITHOUT THE USE OF A DEADLY OR DANGEROUS WEAPON**

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

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

### **SECTION 3-105: CONCEALED WEAPONS**

Except as otherwise provided in this section, any person who carries a weapon or weapons concealed on or about his or her person such as a revolver, pistol, Bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other deadly weapon commits the offense of carrying a concealed weapon. This section shall not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon which the offender is carrying is a handgun as defined in Neb. Rev. Stat. §69-2429. This section shall not apply to shooting galleries or other private shooting ranges within buildings or other structures approved by the mayor and council. (Neb. Rev. Stat. §§17-556, 28-1202)

### **SECTION 3-106: DISCHARGE OF FIREARMS**

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

### **SECTION 3-107: DISCHARGE OF SLINGSHOTS, PAINTBALL GUNS, BLOW GUNS, AIR RIFLES OR SIMILAR INSTRUMENT**

It shall be unlawful for any person to discharge a slingshot, paint ball gun, blow gun, air rifle, or other like instrument capable of launching a dangerous projectile therefrom at any time or under any circumstances 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. §§17-110, 17-505)

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

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

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

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

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

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

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

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

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

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

(Neb. Rev. Stat. §§28-520, 28-521)

### **SECTION 3-110: FALSE REPORTING**

It shall be unlawful for any person to:

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

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

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

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

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

### **SECTION 3-111: PUBLIC INDECENCY**

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

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

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

C. A lewd fondling or caressing of the body of any other person of the same or opposite sex.  
(Neb. Rev. Stat. §28-806)

### **SECTION 3-112: INDECENT ACTS**

It shall be unlawful for any person to sell or convey any indecent and obscene books, pictures, or films or to take part in any indecent, lascivious, or obscene show, play, theatrical exhibition, or other form of entertainment that is shocking to the public morals. Any person who commits a rude, indecent, or immoral act shall be deemed to be guilty of a misdemeanor.

### **SECTION 3-113: PUBLIC NUILITY; AIDING AND ABETTING**

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

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

### **SECTION 3-114: SEXUAL PREDATORS**

A. *Definitions.* For purposes of this ordinance:

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

B. *Residency Restrictions.* It is unlawful for any sexual predator to reside within 500 feet from a school or childcare 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 childcare facility.

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

D. *Enforcement; Information.* The Nebraska State Patrol and all other law enforcement officials shall be charged with the enforcement within the jurisdiction of this city of the Nebraska Sexual Predator Residency Restriction Act. Any person subject to said Act shall be provided with a copy of this section and any current amendments upon making such request to the city.

(Neb. Rev. Stat. §§29-4016, 29-4017) (Am. Ord. Nos. 560, 6/19/06; 660, 12/20/10)

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

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

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

It shall be unlawful for any person to damage property of another intentionally or recklessly, tamper with property of another intentionally or recklessly so as to endanger any person or property or cause another to suffer pecuniary loss by deception or threat

intentionally or maliciously, provided that the value of the property involved is under \$5,000.00. (Neb. Rev. Stat. §28-519)

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

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

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

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

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

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

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

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

G. A person commits theft if he or she obtains services, which he or she knows are available only for compensation, by deception or threat or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone

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

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

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

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

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

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

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

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

It shall be unlawful for any person or persons to disturb, interrupt, or interfere with any lawful assembly of people, whether religious or otherwise, by loud and unnecessary noise, threatening behavior, or indecent and shocking behavior, refusal to leave when ordered, or other conduct or action which interferes with the lawful discharge of business. (Neb. Rev. Stat. §17-556)

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

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

### **SECTION 3-122: 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 6:00 a.m. in such a manner as to disturb the comfort, repose, peace, and quiet of city residents unless such activity has been approved in advance by the City Council.

### **SECTION 3-123: LOUD MUSIC, RECORDINGS, RADIOS AND SIMILAR DEVICES; EXCEPTIONS**

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

operating such devices while participating in licensed or permitted activities, such as parades, shall not be deemed in violation of this section.

### **SECTION 3-124: ALCOHOL; MINOR IN POSSESSION**

It shall be unlawful for any minor, as defined by Neb. Rev. Stat. §53-168.06, to sell, dispense, consume or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways of the city or inside any vehicle while in or on any other place, including but not limited to the public streets, alleys, roads, or highways of the city or upon property owned by the city, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a *bona fide* religious rite, ritual, or ceremony or in his or her permanent place of residence. It shall be unlawful for any person under 21 years of age to transport, consume, or knowingly possess or have under his or her control beer or other alcoholic liquor in or transported by any motor vehicle. (Neb. Rev. Stat. §53-180.02)

### **SECTION 3-125: ALCOHOL; MISREPRESENTATION BY MINOR**

It shall be unlawful for any minor, as defined by Neb. Rev. Stat. §53-168.06, to obtain or attempt to obtain alcoholic liquor by misrepresentation of age or by any other method in any tavern or other place where alcoholic liquor is sold. (Neb. Rev. Stat. §§53-180.01, 53-180.05)

### **SECTION 3-126: TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS; MINORS; VENDORS**

A. Any minor under the age of 19 years who shall smoke cigarettes or cigars, use vapor products or alternative nicotine products, or use tobacco in any form whatever shall be guilty of an offense. Any minor charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, vapor products, alternative nicotine products, or tobacco.

B. Any person who shall sell, give, or furnish in any way any tobacco in any form whatever or any cigarettes or cigarette paper, vapor products, or alternative nicotine products to any minor under 19 years of age is guilty of an offense.  
(Neb. Rev. Stat. §§28-1418, 28-1419)

### **SECTION 3-127: TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS; MISREPRESENTATION BY MINOR**

Any person under the age of 19 years who shall obtain cigars, tobacco, cigarettes, or cigarette material, vapor products, or alternative nicotine products from a licensee by representing that he or she is of the age of 19 years or over is guilty of an offense. (Neb. Rev. Stat. §28-1427)

### **SECTION 3-128: CURFEW**

A. It shall be unlawful for any person under the age of 16 years to loiter, idle, wander, stroll, play or be in or upon the public streets, places and buildings; places of amusement or entertainment; vacant buildings or lots; or to otherwise operate any bicycle or other vehicle in, upon, over or through the streets or other public places of the city between the hours of 11:00 p.m. of any day until the hour of 6:00 a.m. of the following day unless such minor person is accompanied by a parent, guardian or other adult person having the legal care and custody of said minor, or unless the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian or legal custodian, except as hereinafter provided.

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

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

D. Every officer of the Sheriff's Office while on duty shall be authorized to detain any minor under the age of 16 years willfully violating the provisions of this ordinance and, upon apprehension of said minor, shall forthwith notify by telephone or other appropriate means the parent or legal guardian or person in custody of said minor child.

E. Any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by a warning for the first offense and a fine for the second offense as set by resolution by the City Council and kept on file in the city clerk's office. Any third or subsequent violation shall constitute a violation of subsection (C) herein and a complaint shall be filed against the parent, guardian or other adult person having the care and custody of said child for violation of such subsection.

### **SECTION 3-129: STREET GAMES**

It shall be unlawful for any person to play catch, bat a ball, kick or throw a football, or to engage in any exercise or sport upon the city streets and sidewalks. Nothing herein shall be construed to prohibit or prevent the City Council from ordering certain streets and public places blocked off from time to time for the purpose of providing a safe area to engage in such exercise and sport. (Neb. Rev. Stat. §§17-555, 17-557, 17-142)

### **SECTION 3-130: LITTERING**

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

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

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

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

D. 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.

E. It shall be unlawful for any person that is not a resident of the city to dispose of any trees, yard waste, or brush at the city tree disposal site.  
(Neb. Rev. Stat. §§17-123.01, 28-523) (Am. Ord. No. 755, 8/19/19)

### **SECTION 3-131: POSTING NOTICES**

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

### **SECTION 3-132: POSTED ADVERTISEMENTS**

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

### **SECTION 3-133: APPLIANCE OUTDOORS**

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

### **SECTION 3-134: 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 3-135: INJURY TO PLANTS AND TREES**

It shall be unlawful for any person to purposely or carelessly and without lawful authority to cut down, carry away, injure, break down, or destroy any trees or their fruit or any shrub, plant, flower, or grass on any public or private property. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by it, shall make an application to the City Council and the written permit of the council in accordance with its decision to allow such an action shall constitute the only lawful authority on the part of the company to do so.

### **SECTION 3-136: PARKS; INJURY TO PROPERTY; LITTERING**

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

### **SECTION 3-137: PARKS; ANIMALS AND VEHICLES PROHIBITED**

It shall be unlawful for any person to ride, drive, have or bring any horse, mule or donkey in, over or through any park or to operate any vehicle propelled by any power other than muscular power in, over or through any park. This section shall not apply to officers or employees of the city while engaged in the performance of their regular duties.

### **SECTION 3-138: INJURY OR REMOVAL OF PUBLIC AND PRIVATE PROPERTY**

No person in the city shall willfully, maliciously, wantonly, negligently, or otherwise injure, deface, destroy, or remove real property or improvements thereto or moveable or personal property belonging to the city or to any person in the city.

### **SECTION 3-139: PROHIBITED FENCES**

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

### **SECTION 3-140: HEDGES, VEGETATION OBSTRUCTING VIEW**

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

## **Article 2 – Dogs**

(Am. Ord. No. 669, 10/17/11)

### **SECTION 3-201: DEFINITIONS**

“Animal control authority” shall mean an entity authorized by the City Council of Fort Calhoun to enforce the animal control laws of the city or, in the absence of such authorization, the council, in whole or in part, may act as the animal control authority.

“Code enforcement officer” shall mean the person appointed in Chapter 1, Section 1-512 to investigate ordinance violations.

“Owner” shall mean any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog; and specifically in reference to a collarless dog, every person who shall harbor such a dog about his or her premises for the space of ten days shall be held to be the owner.

“Rabies control authority” shall mean any law enforcement officer, the code enforcement officer or other officer designated by the mayor.

“Vaccination against rabies” shall mean the inoculation of a dog with a rabies vaccine licensed by the U. S. Department of Agriculture on the effective date of this code. Such vaccination must be performed by a veterinarian duly licensed to practice veterinary medicine in the state.

(Neb. Rev. Stat. §§54-606, 71-4401 to 71-4412)

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

A. Every dog shall be vaccinated against rabies pursuant to Nebraska law. Unvaccinated dogs acquired or moved into the city must be vaccinated within 30 days after purchase unless under the age for initial vaccination. The provisions of this ordinance with respect to vaccination shall not apply to any dogs owned by a person temporarily residing within this city for fewer than 30 days, any dog brought into this city for show purposes, or any dog brought into this city for hunting purposes for a period of fewer than 30 days; such dogs shall be kept under the strict supervision of the owner.

B. Every dog shall be revaccinated against rabies at intervals specified by rules and regulations adopted and promulgated by the Nebraska Department of Health and Human Services. Such revaccination shall be performed by a veterinarian duly licensed to practice veterinary medicine in the State of Nebraska.

(Neb. Rev. Stat. §§71-4401 to 71-4412)

### **SECTION 3-203: LICENSING TAX; RABIES CERTIFICATE**

A. Any person who shall own, keep, or harbor a dog over the age of six months within the city shall within ten days after acquisition of the said animal acquire a license for each animal annually by or before January 30 each year. Application shall be made upon a printed form provided by the city, upon which the owner shall state his or her name and address and the name, breed, color, and sex of each dog owned and kept by him or her. A certificate stating that the animal 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. If the dog has been spayed or neutered, a statement signed by a veterinarian verifying the spaying or neutering must be presented.

B. Upon payment of the license tax, as set by resolution of the City Council and kept on file at the office of the city clerk, the clerk shall issue to the owner a numbered receipt and a metallic tag for each animal so licensed. The city shall, in addition to the license tax imposed, collect an additional fee of \$1.25. The clerk shall retain 3¢ from the said fee and remit the balance to the state treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund. The 3¢ collected shall be credited to the general fund along with the license fees.

C. The possessor of any dog brought into or harbored within the corporate limits subsequent to January 30 shall be liable for the payment of the animal tax levied herein and such tax shall be delinquent if not paid within ten days thereafter. Tags shall be issued annually or at another interval determined by the City Council. It shall be the duty of the city clerk to issue tags of a suitable design that are different in appearance each year.

D. The metallic tag shall be properly attached to the collar or harness of every dog so licensed and shall entitle the owner to keep or harbor the said animal until January 29 of the following year. Said licenses shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog.

E. Every dog guide for a blind or visually impaired person, hearing aid dog for a deaf or hearing-impaired person, and service dog for a physically limited person shall be licensed as required but no license fee shall be charged upon a showing by the owner that the dog is a graduate of a recognized training school for dog guides, hearing aid dogs, or service dogs. Upon the retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of a license tax as prescribed herein.

(Neb. Rev. Stat. §§17-526, 54-603)

### **SECTION 3-204: LOST TAG**

In the event that a licensing tag is lost and upon satisfactory evidence that the original 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 tag so issued. Such fee shall be as set by resolution of the City Council and placed on file in the office of the city clerk. (Neb. Rev. Stat. §§17-526, 54-603)

### **SECTION 3-205: WRONGFUL LICENSING**

It shall be unlawful for the owner, keeper, or harbinger of any dog to permit or allow such dog to wear any license, metallic tag, or other city identification other than that issued by the city clerk. (Neb. Rev. Stat. §17-526)

### **SECTION 3-206: NUMBER RESTRICTED**

It shall be unlawful to own, keep or harbor at any time more than three dogs over the age of four months per residential or dwelling unit in the city; provided, this section shall not

apply to kennels.

### **SECTION 3-207: RESTRAINT; TETHERS**

It shall be unlawful for the owner of any dog within the city to fail to keep his or her dog securely restrained or otherwise confined in or upon his or her premises in an enclosure sufficient to contain the dog. Each dog shall be separately tethered. No dog shall be tethered outdoors in excess of 15 minutes at any one time unless an owner, custodian or person responsible for the dog, 19 years of age or older, is present in the same yard in which the dog is tethered. The tether shall be at least five times the length of the dog's body as measured from the tip of the nose to the base of the tail, being within 15 feet from the edge of any public street or sidewalk; provided, if the tethering method is a trolley system at least 15 feet in length and less than 7 feet above ground and meeting the foregoing tether requirements, the dog may be tethered outdoors for up to one hour with an owner, custodian or person responsible for the dog, 19 years of age or older, in the same yard in which the dog is tethered.

### **SECTION 3-208: REMOVAL OF COLLAR OR HARNESS, LICENSE TAGS**

It shall be unlawful for any person to remove or cause to be removed the collar, harness, or license tag from any licensed dog without the consent of the owner, keeper, or possessor thereof. (Neb. Rev. Stat. §17-526)

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

It shall be unlawful for the owner of any dog to allow it to run at large at any time within the city. It shall be the duty of the animal control authority to cause any dog found to be running at large within the city to be taken up and impounded as provided in Section 3-231. "Running at large" shall mean a dog was found off the premises of the owner and not under control of the owner or a responsible person by leash, cord, chain, wire, rope, cage, or other suitable means of physical restraint. (Neb. Rev. Stat. §17-526)

### **SECTION 3-210: DAMAGE TO PROPERTY; OWNER'S LIABILITY**

It shall be unlawful for the owner of a dog to allow or permit it to damage the property of others or to cause bodily injury. If the owner is adjudged guilty of a violation of this section, the court may, in addition to the penalty provided for the violation of this code, order such disposition or destruction of the offending dog as may seem reasonable and proper. (Ref. Neb. Rev. Stat. §§17-526, 54-601)

### **SECTION 3-211: BARKING AND OFFENSIVE BEHAVIOR; COMPLAINT**

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. Upon the written complaint of two or more affected persons from different households, filed within any 30-day period with the city clerk, that any dog owned by the person named in the complaint is an annoyance or disturbance or otherwise violates the provisions of this section, the code enforcement officer shall investigate the complaint and, if in his or her opinion the situation warrants, shall notify the owner to silence and restrain such dog. The provisions of this section shall not be construed to apply to the city animal shelter. (Neb. Rev. Stat. §17-526)

### **SECTION 3-212: FEMALE IN SEASON**

It is hereby declared unlawful for the owner, keeper, or harbinger of a female dog to permit

her to run at large within the city while in season. Any such female dog found running at large in violation of this section shall be declared to be a public nuisance and as such may be impounded or killed according to the provisions herein. (Neb. Rev. Stat. §17-526)

### **SECTION 3-213: FIGHTING**

It shall be unlawful for any person, by agreement or otherwise, to set dogs to fighting or by any gesture or word to encourage the same to fight. (Neb. Rev. Stat. §17-526)

### **SECTION 3-214: UNLAWFUL USE; CRIMINAL ACTS**

It shall be unlawful for any person to make use of a dog in the commission or furtherance of any criminal act in the city.

### **SECTION 3-215: RABIES CONTROL; PERSON BITTEN BY DOG; PROCEDURE**

A. Any dog suspected of being afflicted with rabies or any dog not vaccinated in accordance with the regulations herein which has bitten any person and caused an abrasion of the skin of such person shall be seized by the city and impounded under the supervision of a licensed veterinarian or a public health authority for a period of no fewer than ten days. If, upon examination by a veterinarian, the dog has no clinical signs of rabies at the end of such impoundment, it may be released to the owner or, in the case of a stray, it shall be disposed of in accordance with applicable law.

B. Any dog vaccinated in accordance with the provisions herein which has bitten any person(s) shall be confined by the owner or other responsible person as required by the rabies control authority 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 by the veterinarian, the dog may be released from confinement.

C. All costs of impoundment and examination fees shall be the responsibility of the owner.

### **SECTION 3-216: 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 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 dog may be harbored by any good and sufficient means in a house, garage, or yard on the premises wherein the owner may reside. Upon issuance of the proclamation, it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided. (Neb. Rev. Stat. §17-526)

### **SECTION 3-217: RABIES SUSPECTED; IMPOUNDMENT**

Any dog suspected of being afflicted with rabies or any dog not vaccinated in accordance with the provisions of this article which has bitten any person and caused an abrasion of the skin shall be seized and impounded under the supervision of a licensed veterinarian or a public health authority for a period of no fewer than ten days. If, upon examination by a veterinarian, the dog has no clinical signs of rabies at the end of such impoundment, it may be released to the owner or, in the case of an unlicensed dog, it shall be disposed of in accordance with the provisions herein. If the owner of the said dog has proof of vaccination, it shall be confined by the owner or some other responsible person for a period of at least ten days, at which time the dog shall be examined by a licensed veterinarian. If no signs of rabies are observed, the dog may be released from confinement. All costs of impoundment and examination fees shall be the responsibility of the owner. (Neb. Rev. Stat.

**SECTION 3-218: POTENTIALLY DANGEROUS DOGS; DETERMINATION**

A. The animal control authority shall initiate administrative proceedings to determine a dog to be a potentially dangerous dog, if it meets the definition of a potentially dangerous dog under Section 3-220, by service of a notice, in writing, upon such dog's owner either by certified or regular mail to the owner's last known address or personal delivery. The notice shall contain:

1. The name and address of the owner whose dog is subject to such determination;
2. The name, description and license number of the dog that is subject to such determination;
3. A description of the facts which form the basis of such determination;
4. A summary of the effects of such determination, including the requirements for Sections 3-223 (Spaying or Neutering; Microchip; License); 3-224 (Classes Required); 3-225 (Leash, Muzzle, Harness); 3-227 (Confined); and 3-228 (Warning Signs), and a statement that non-compliance will result in an owner being declared a reckless owner by the animal control authority;
5. The date of proposed entry of the determination, which shall be not less than ten days after the date of mailing or personal service of the notice; and
6. Notification of the availability of an appeal, if the owner objects to such determination, within ten days of the date of mailing or personal service of the notice.

B. An owner whose dog is determined to be a potentially dangerous dog shall be required to comply with Section 3-223 (Spaying or Neutering; Microchip; License) immediately; Sections 3-224 (Classes) and 3-228 (Warning Signs) within 30 days of the date of entry of the determination order; and Section 3-227 (Confined) within 90 days of the date of entry of the determination order, unless a notice of appeal of the order is filed with the animal control authority; provided, non-compliance with any of the sections set forth in this paragraph shall result in the owner being declared a reckless owner by the authority under Section 3-234.

C. An appeal of such determination order shall be heard by a hearing officer designated by the City Council within ten days of the date of the filing of the notice of appeal to provide an opportunity for the owner to appear and offer evidence to dispute the determination order. The filing fee for each notice of appeal shall be as set by resolution of the City Council and kept on file at the office of the city clerk. A decision to affirm or reverse such order shall be entered by the hearing officer within ten days of the date of the hearing.

D. An owner may request termination of the determination order if there are no incidents of the type specified in Section 3-220 (Generally) for at least two years following the date of the determination order. Such request for termination shall be heard by a hearing officer designated by the animal control authority within ten days of the date of the filing of the request for termination to provide an opportunity for the owner to appear and offer evidence to support termination of the determination order. The owner must provide documented evidence that the dog's behavior has changed due to environment, health, age, training, neutering or other relevant factor. The filing fee for each request for termination shall be as set by resolution of the City Council and kept on file at the office of the city clerk. A decision to continue or terminate such determination order shall be entered

by the hearing officer within ten days of the date of the hearing.

### **SECTION 3-219: AGGRESSIVE OR POTENTIALLY DANGEROUS DOGS**

It shall be unlawful for any person owning, harboring or having the care of an aggressive or potentially dangerous dog to permit such dog to be outdoors unless confined in a securely fenced yard or unless the dog is under the control of a person 19 years of age or older, restrained securely by a harness and leash no longer than 6 feet, and properly muzzled to reasonably prevent the dog from biting. An aggressive or potentially dangerous dog which is a participant in an organized dog event approved by the authority shall not be required to be leashed and muzzled while outdoors and being shown or otherwise actively competing in such event.

### **SECTION 3-220: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; GENERALLY**

A. No person shall own, keep or harbor, or allow to be in or upon any premises occupied by him or her or under his or her charge or control any dangerous or potentially dangerous dog, without complying with the requirements of this article regarding dangerous or potentially dangerous dogs.

B. A "dangerous dog" is defined as one who meets one or more of the following conditions:

1. Any dog which attacks, snaps at, bites, or has a history of attacking a human being or other domestic animal, one or more times, without provocation;
2. Any dog engaging in or found to have been trained to engage in exhibitions of fighting; or
3. Any dog previously declared a potentially dangerous dog that bites a human being without provocation.

C. A "potentially dangerous dog" is defined as one who meets one or more of the following conditions:

1. Any dog that, when unprovoked: (a) inflicts an injury on a human being that does not require medical treatment, (b) injures a domestic animal, or (c) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack; or
2. Any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

D. No dog may be declared dangerous or potentially dangerous that inflicts injury or damage on a person committing a willful trespass or other tort upon premises occupied by the owner or lessee of the owner or a person committing or attempting to commit a crime. No dog may be declared dangerous or potentially dangerous for taking any action to defend or protect a human being within the immediate vicinity of the dog from an unjustified attack or assault. No dog used in connection with lawful activities of law enforcement officials shall be declared a dangerous or potentially dangerous dog.

E. The court may, in addition to any other fine or judgment, order the animal control authority to forthwith put the dog to death by removing the same to the animal shelter for such purpose. Any person found guilty of violating this section shall pay all expenses, including shelter, food, veterinary expenses for identification or certification of the dog,

boarding and veterinary expenses necessitated by the seizure of any dog for the protection of the public, and such other expenses as may be required for the destruction of any such dog.

(Neb. Rev. Stat. §§54-617 through 54-624)

### **SECTION 3-221: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; JUDICIAL EXCLUSION**

It shall be unlawful for any person to bring any dog into the city which has been judicially determined in another jurisdiction to be a dangerous or potentially dangerous dog, a nuisance, or a threat to the health or safety of human beings.

### **SECTION 3-222: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; PROOF OF INSURANCE**

Any dog that has been determined to be a dangerous dog by a court determination, any dog administratively determined to be a potentially dangerous dog, and any aggressive and/or potentially dangerous dog that is required to be licensed under this article cannot be licensed unless the person having custody, ownership or control of such dog first presents written proof of public liability insurance of not less than \$100,000.00 to the city clerk. Such insurance shall be maintained in effect for the period that such dangerous or potentially dangerous dog is so designated; provided, insurance for an aggressive and/or potentially dangerous dog shall be maintained in effect for the life of the dog. (Neb. Rev. Stat. §54-624)

### **SECTION 3-223: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; SPAYING OR NEUTERING; MICROCHIP; LICENSE**

Any dog judicially determined to be dangerous or administratively determined to be potentially dangerous shall be spayed or neutered and implanted with microchip identification by a licensed veterinarian at the owner's expense no less than 30 days after such determination is entered, with written proof of spaying or neutering and the microchip identification number being provided to the animal control authority within 72 hours of the procedure being completed. In addition, such dangerous or potentially dangerous dog shall be required to be licensed as a dangerous or potentially dangerous dog within 30 days of the determination.

### **SECTION 3-224: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; CLASSES REQUIRED**

The owner of any dog judicially determined to be dangerous or administratively determined to be potentially dangerous shall be required to attend, at the owner's expense, within 90 days after such determination is entered, a responsible pet ownership class approved by the animal control authority and, at the discretion and direction of the authority, a dog behavior class provided or approved by the authority.

### **SECTION 3-225: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; LEASH, MUZZLE AND HARNESS REQUIRED**

It shall be unlawful for any person owning, harboring or having the care of a dangerous or potentially dangerous dog to permit such dog to go beyond the property of such person unless the dog is under the control of a person 19 years of age or older, restrained securely by a harness and leash no longer than 6 feet, and properly muzzled to reasonably prevent the dog from biting. (Neb. Rev. Stat. §54-624)

### **SECTION 3-226: DANGEROUS DOGS; REGISTRY**

A. The owner of any dog that has been determined to be dangerous as defined in Section 3-220 (Generally), or previously determined to be dangerous under this article, shall register such dog with the city within 30 days of such determination or within 30 days of enactment of this section if previously determined to be dangerous. Such registration shall include the following information:

1. The name of the current owner of the dog;
2. The address where the dog is harbored;
3. A description of the dog, including name, breed, sex, and coloring;
4. The current license number for the dog;
5. The carrier and policy number for public liability insurance as required in Section 3-222 (Insurance); and
6. Microchip manufacturer and microchip identification number.

B. At least once per calendar year, the animal control authority shall publish a list of dogs on the above registry, providing the name of the owner, the address where the dog is harbored, and a description of the dog, including name and breed.

C. Any person who has registered a dog pursuant to this section shall have a continuing obligation to provide updated registration information to the authority and shall, within 30 days of the sale or transfer of such dog, provide to the authority the date of such sale or transfer, the name of the new owner, and the address where the dog will be harbored.

(Neb. Rev. Stat. §54-624)

### **SECTION 3-227: DANGEROUS DOGS; CONFINED**

A. No person owning, harboring or having the care of a dangerous dog shall permit the dog to go unconfined on such person's premises. A dangerous dog is unconfined, as the term is used in this section, if such dog is not confined (1) indoors or (2) outdoors in an enclosed and locked pen or structure upon the premises of the person described herein, provided the existence of such a pen or structure is permitted by zoning regulations. Maintenance of a dangerous dog is not permitted in areas where such structures or pens are not authorized by zoning regulations. If permitted, such pen or structure shall be sized according to the following:

<b>Size of Dog</b>	<b>Sq. Ft. of Pen</b>
Extra large (over 26 inches at withers or over 75 pounds)	48
Large (over 20 inches and up to 26 inches at withers or not over 75 pounds)	40
Medium (over 12 inches and up to 20 inches at withers or not over 50 pounds)	32
Small (12 inches or less at withers or not over 20 pounds)	24

B. The pen shall be constructed with chain link fencing for all four sides and the top. If the pen or structure has no bottom secured to the sides, the sides shall be imbedded in the ground no less than one foot or shall have a concrete pad for the bottom. The pen or structure shall be set back at least 10 feet from the nearest property line.

(Neb. Rev. Stat. §54-619)

### **SECTION 3-228: DANGEROUS DOGS; WARNING SIGNS REQUIRED**

Any property wherein a dangerous dog is kept, harbored or confined shall be posted with warning signs visible from all areas of public access. The warning signs shall be no less than 10 inches by 12 inches in size and contain the English words, "Warning; Dangerous

### **SECTION 3-229: DANGEROUS DOGS; FOUND AT LARGE; DESTRUCTION**

In the event that a dog that has been determined to be dangerous as defined in Section 3-220 is found at large and unattended upon public property, park property, or a public right of way, or upon the property of someone other than its owner, thereby creating a hazard to person or property, such dog may, in the discretion of the county sheriff or authorized designee, be destroyed if it cannot be confined or captured. The city shall be under no duty to attempt the confinement or capture of a dangerous dog found at large nor shall it have a duty to notify the owner of such dog prior to its destruction. (Neb. Rev. Stat. §54-624)

### **SECTION 3-230: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; IMMEDIATE IMPOUNDMENT**

Any dog that has been determined to be a dangerous dog or a potentially dangerous dog that, without provocation, bites a human being may be immediately impounded by the code enforcement officer if in violation of this article. The owner shall be responsible for the reasonable costs incurred for the care of such impounded dangerous dog.

### **SECTION 3-231: IMPOUNDMENT**

A. *Impoundment of Certain Dogs during Enforcement Proceedings.* If there is reasonable cause shown that an offending dog under Section 3-210 (Damage to Property of Others) or 3-220 (Dangerous Generally) may constitute a hazard to the safety of the public at large during the pendency of any action commenced thereunder, the court may order such dog(s) impounded pending the outcome of such proceedings. Any person who owns, keeps, harbors, maintains, or controls any dog involved in such impoundment shall pay all expenses, including shelter, food, veterinary expenses, boarding, or other expenses necessitated by the impoundment of the dog for the protection of the public.

B. The authority may require such person to pay, prior to expiration of ten days after the date of impoundment, an amount sufficient to pay all reasonable expenses incurred in caring and providing for the dog, including estimated medical care, for 30 days, inclusive of the date on which the dog was impounded. If such payment is not made prior to expiration of such ten-day period, the dog shall become the property of the animal control authority to be disposed of as the 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 dog shall become the property of the authority to be disposed of as the authority deems appropriate. The amount of the payment shall be determined by the authority based on the current rate for board at the animal shelter and the condition of the dog after examination by a veterinarian acting for the authority.

C. Any such payment received by the authority in excess of the amount determined by the authority to be due for the board and care of the dog shall be refunded by the authority upon expiration of the order of impoundment. Notwithstanding the foregoing, if the owner or custodian is found not guilty of animal neglect or cruelty, the owner or custodian shall only be required to pay the veterinary expenses and one-half of the board and care fees determined by the authority to be due. Notwithstanding the foregoing, if it is determined by a veterinarian acting for the authority that such dog is diseased or disabled beyond any useful purpose, the dog shall immediately become the property of the authority to be humanely disposed of, as the authority deems appropriate.

D. *General Impoundment; Time Period.* It shall be the duty of the code enforcement

officer to capture, secure and remove in a humane manner to the designated city animal shelter any dog violating any of the provisions of this article. Each impounded dog shall be kept and maintained at the pound for a period of not less than five days, unless reclaimed earlier by the owner. No later than 24 hours after the impoundment of any dog, notice of impoundment, including any significant marks or identification, shall be posted at the office of the city clerk as public notification of such impoundment. Any dog may be reclaimed by its owner during the period of impoundment by payment of a general impoundment fee and daily board fee as set by resolution of the City Council and kept on file at the office of the city clerk. The owner shall then be required to comply with the rabies vaccination requirements within 72 hours after release.

E. If the dog is not claimed at the end of the required waiting period after public notice has been given, the code enforcement officer may dispose of the dog in accordance with the applicable rules and regulations pertaining to the same; provided, if the code enforcement officer can find a suitable home for the impounded dog, he or she may turn such dog over to any person willing to provide the dog with such home. In this event the new owner shall be required to pay all fees and meet all licensing and vaccinating requirements provided in this article. The city shall acquire legal title to any unlicensed dog impounded in the animal shelter for a period longer than the required waiting period, after giving notice. All dogs not placed for adoption shall be destroyed and buried in a humane manner as prescribed by the Board of Health.

(Neb. Rev. Stat. §§17-548, 71-4401 to 71-4410)

C. *Animal Shelter; Conditions.* All impounded dogs shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day. The animal shelter shall be safe, suitable and conveniently located for the impounding, keeping and destruction of dogs. The said shelter shall be sanitary, ventilated and lighted.

(Neb. Rev. Stat. §17-548)

### **SECTION 3-232: INTERFERENCE WITH ANIMAL CONTROL**

It shall be unlawful for any person to hinder, delay, or interfere with any officer who is performing any duty enjoined upon him or her by the provisions of this article or to break open or in any manner directly or indirectly aid, counsel, or advise breaking into the animal shelter or any vehicle used for the collecting or conveying of dogs or cats to the shelter.

(Neb. Rev. Stat. §28-906)

### **SECTION 3-233: EXCEPTIONS**

Notwithstanding any other provision herein, the provisions of this article shall not be deemed to apply to, or in any way interfere with, the ordinary conduct and operation of veterinary clinics, biological laboratories or pet shows when conducted within the city.

### **SECTION 3-234: RECKLESS OWNER**

A. The city may initiate administrative proceedings to declare an owner who has been convicted of one or more violations of this article on two separate occasions in a 24-month period, or whose dog(s) have been determined to be dangerous or potentially dangerous and he or she has not complied with the requirements of this chapter pertaining to dangerous or potentially dangerous dogs, a reckless owner. In such proceedings the city may revoke all pet licenses associated with said dog(s) issued to such reckless owner. Such proceedings shall be instituted by service of a notice in writing upon such owner either by certified mail or regular mail to the owner's last known address, or by personal delivery. The notice shall contain:

1. The name and address of the owner who is subject to such declaration and revocation decision;

2. The name, description and license number of each dog associated with such violations licensed to the owner;
3. A description of the violations or requirements which form the basis of such declaration and revocation decision, including the case numbers, if any;
4. A summary of the effects of such declaration, including the revocation of said pet license(s) and surrender of said dog(s);
5. The date of proposed entry of the declaration and revocation decision, which shall be not less than ten days after the date of mailing or personal service of the notice; and
6. Notification of the availability of an appeal, if the owner objects to such declaration and revocation decision, within ten days of the date of mailing or personal service of the notice.

B. Upon entry of such declaration and revocation decision, unless an appeal of such is filed with the city in accordance with this section, such reckless owner shall be required to surrender said dog(s) to any city law enforcement officer or the code enforcement officer within 24 hours. Failure to surrender such dog(s) shall result in immediate impoundment by the city. Such surrendered or impounded dog(s) shall immediately become the property of the city and may be disposed of by the city as it deems appropriate.

C. An owner who is declared a reckless owner shall be prohibited from licensing, residing with, or owning any additional dog(s) in the city for a period of 48 months from the date of entry of the declaration and revocation decision.

D. An appeal of such declaration and revocation decision shall be heard by the City Council, which shall provide an opportunity for the owner to appear and offer evidence to dispute the declaration and revocation decision. The filing fee for each appeal shall be as set by resolution of the council and kept on file at the office of the city clerk. Such fee, payable to the city, shall be made at the time of the filing of said appeal. A determination to affirm or reverse such decision shall be determined by the council.

### **SECTION 3-235: VIOLATION; PENALTY**

It shall be unlawful for any person to fail to comply with the provisions set forth herein. Every person failing to comply with or violating any of the provisions of this article shall, unless specifically provided otherwise, be deemed to be guilty of a Class III misdemeanor as defined by Neb. Rev. Stat. §28-106 and upon conviction thereof shall be fined accordingly.

## **Article 3 – Kennels**

### **SECTION 3-301: DEFINED**

"Kennel" is defined for this article as any lot or parcel of land or place where more than three dogs or more than three cats over the age of 12 weeks are confined, treated, boarded, housed, or cared for and shall include any lot or parcel of land or place where a person, corporation, or other entity engages in, conducts, manages, or maintains a veterinary business, regardless of the number of animals treated, kept, confined, or boarded; provided, this article shall not apply to animal shelters operated by licensed veterinarians.

### **SECTION 3-302: UNLICENSED KENNELS; NUISANCE**

It is unlawful for any person, corporation, partnership, or other entity to maintain, keep,

conduct, or operate any kennel within the zoning limits of the city without first obtaining a license therefor and any unlicensed kennel shall be declared a nuisance.

### **SECTION 3-303: APPLICATION; LICENSE**

Any person or legal entity seeking a kennel license shall make written application to the City Council. Such application shall state in detail the type, number, and gender of animals to be held in such kennel, describe the kennel facility in detail, and provide such other information as may be required by the City Council. Such application shall also have attached thereto the consent of all property owners or occupants of lands or lots adjoining the land upon which the proposed kennel is to be located. In the event that the City Council determines that such kennel would not constitute a nuisance, it shall issue such license on such terms and conditions as it deems appropriate. Such license shall be on an annual basis and may be revoked after notice and hearing for violation of any term or condition of the issuance of the license. The annual license fee shall be as set by resolution of the City Council and kept on file in the office of the city clerk for public inspection. The license shall not be issued until such fee is paid.

### **SECTION 3-304: REGULATIONS**

Every place used as a kennel shall be kept in a clean and sanitary condition and no refuse or waste material shall be allowed to remain thereon for more than 24 hours. All animals shall be humanely treated and any animal having any disease shall be properly isolated and treated.

## **Article 4 – Animals Generally**

### **SECTION 3-401: CATS; NUMBER RESTRICTED**

It shall be unlawful to own, keep or harbor at any time more than three cats over the age of four months per residential or dwelling unit in the city; provided, this section shall not apply to catteries.

### **SECTION 3-402: PROHIBITIONS**

It is hereby determined unlawful for any person to keep, maintain or confine any snakes, exotic animals or domestic farm animals within the corporate limits of the city or within one mile thereof except as hereinafter provided.

"Domestic farm animal" shall mean any horse, sheep, mule, cow, goat, swine or offspring thereof or any other livestock generally raised for commercial sale.

"Exotic animal" shall mean any llama, zebra, buffalo or other animal other than a domestic farm animal or dog, weighing more than 50 pounds.  
(Neb. Rev. Stat. §17-547)

### **SECTION 3-403: RUNNING AT LARGE**

It shall be unlawful for the owner, keeper, or harbinger of any animal or any person having the charge, custody, or control thereof to permit a horse, mule, cow, sheep, goat, swine, or other animal to run at large on any of the public ways and property or upon the property of another or to be tethered or staked out in such a manner so as to allow such animal to reach or pass into any public way. (Neb. Rev. Stat. §17-547)

### **SECTION 3-404: FOWLS; WRITTEN PERMISSION**

It shall be unlawful for any person to keep on his or her private property poultry, chickens,

turkeys, geese, or other fowls unless and until they have received the written consents of the owners or lessees of the properties immediately adjoining the private property where such fowls are to be kept, as well as all other property owners within 150 feet of the place where such animals are to be kept, which consents shall be filed at the office of the city clerk and shall be subject to revocation by any of the said owners or lessees at any time. In the event any of the consents are revoked, the person keeping poultry, chickens, turkeys, geese, or other fowls or animals shall have 30 days to remove the same after being notified by the city clerk that such consents have been revoked.

### **SECTION 3-405: FOWLS; RUNNING AT LARGE**

It shall be unlawful for any person to allow poultry, chickens, turkeys, geese, or any other fowls to run at large within the corporate limits, except in enclosed places on private property. (Neb. Rev. Stat. §17-547)

### **SECTION 3-406: IMPOUNDMENT**

Animals or fowls maintained unlawfully or found running at large within the city shall be captured by the official in charge of animals and killed or confined in the manner prescribed for dogs.

### **SECTION 3-407: ENCLOSURES**

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

### **SECTION 3-408: ANIMALS PROHIBITED; NUISANCE**

Any animal exhibiting the following characteristics is hereby determined to be a public nuisance and it is unlawful to keep, shelter or harbor such animals for any purpose within the city limits: wolves and/or any cross between a wolf and dog; any cat which is not a domesticated house cat; venomous snakes or large carnivorous reptiles; and any and all other wild animals.

### **SECTION 3-409: DANGEROUS ANIMALS; DEFINITION; PROHIBITION; EXCEPTIONS**

A. "Dangerous animal" shall mean and include any animal which is not naturally tamed or gentle; is of a naturally wild disposition; is capable of inflicting serious injury upon or killing human beings and having known tendencies, individually or as a species, to do so; or because of its size or other characteristics would constitute a danger to human life or property if not kept or maintained in a safe manner or in secure quarters. "Dangerous animal" shall include, but not be limited to, the following animals which shall be deemed to be dangerous: bears, wolves, lions, tigers, panthers, bobcats, elephants, bison, poisonous snakes and spiders, alligators, crocodiles, anacondas, pythons, boa constrictors and piranhas.

B. No person shall keep, shelter or harbor for any purpose within the city a dangerous animal as defined in subsection (A) herein.

C. The prohibition contained in subsection (B) herein shall not apply to the keeping of a dangerous animal in the following circumstances:

1. In a public zoo, bona fide educational or medical institution, museum or other place where such animals are kept as live specimens for the public to view or

for the purpose of instruction or study;

2. For exhibition to the public by a circus, carnival, exhibit, show or pet shop; or
3. In a bona fide, licensed veterinary hospital for treatment.

### **SECTION 3-410: DANGEROUS ANIMALS; REGULATIONS**

A. Every person, firm or corporation owning, keeping, sheltering or harboring a dangerous animal shall report such fact to the code enforcement officer, together with the following information:

1. The species name of each such animal;
2. The number of such animal to each such species kept on the premises;
3. A physical description of each such animal, including any pet name to which it might respond;
4. The location of such animal(s) within the city, including the location of the cage or place of confinement upon or in said premises wherein the animal is kept; and
5. In the case of poisonous dangerous animals, the location of the nearest source of anti-venom for that species.

B. Every person, firm or corporation keeping, sheltering or harboring a dangerous animal shall at all times keep such animal securely confined within a cage or other enclosure.

C. No person, firm or corporation owning, keeping, harboring or sheltering a dangerous animal shall permit or allow such animal to enter upon or traverse any public property, park property, public right of way, or the property of another except when such animal is being transported while caged or confined.

D. In the event that a dangerous animal is found at large and unattended upon public property, park property, public right of way, or the property of someone other than its owner, such animal may, in the discretion of the code enforcement officer, be destroyed if it cannot be confined or captured, thereby creating a hazard to life or property. The city, its officers, employees and designees shall be under no duty to attempt the confinement or capture of a dangerous animal found at large nor shall they have a duty to notify the owner of such animal prior to its destruction.

### **SECTION 3-411: DANGEROUS ANIMALS; DUTY OF OWNER**

A. All persons owning or having custody of or control over an animal(s), whether licensed or unlicensed, which attacks, bites or attempts to bite a person or persons or domestic animals or fowl; is vicious or dangerous; or chases, maims or kills domestic animals or fowl, are required to keep such animal from running at large and from going into the streets and other public places within the city unless such animal is muzzled and kept on a leash, and shall keep such animal from attacking or injuring persons lawfully on the premises of the owner.

B. The code enforcement officer, upon being satisfied that there is a vicious or dangerous animal at large, shall, if practicable, notify in writing the owner or person in control or in charge of such animal to restrain the same from going at large and to control it on the premises of the owner. The code enforcement officer may, at his or her discretion,

recommend to the city attorney prosecution for the violation of subsection (A) herein which occurred prior to such notice being given.

C. If satisfied that an animal is vicious and has, without provocation, actually bitten or attacked a person or a domestic animal or fowl, the code enforcement officer may, if the animal is found at large within the city, cause the animal to be destroyed without previous notice to the owner or he or she may, without killing the animal if he or she sees fit, notify the owner as provided in subsection (B) herein and recommend to the city attorney prosecution of the owner for the violation of subsection (A) herein.

### **SECTION 3-412: RABIES SUSPECTED; CAPTURE IMPOSSIBLE**

The animal control authority as defined in Article 2 herein shall have the authority to kill any animal showing vicious tendencies or characteristics of rabies which make capture impossible because of the danger involved. (Neb. Rev. Stat. §71-4406)

## **Article 5 – Nuisances**

### **SECTION 3-501: PUBLIC NUISANCES PROHIBITED**

It shall be the duty of every owner, occupant, lessee, or mortgagee of real estate in the city to keep such real estate free of public nuisances. (Neb. Rev. Stat. §§17-207, 18-1720)

### **SECTION 3-502: GENERALLY DEFINED**

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

- A. Injures or endangers the comfort, repose, health or safety of others,
  - B. Offends decency,
  - C. Is offensive to the senses,
  - D. Unlawfully interferes with, obstructs, tends to obstruct or renders dangerous for passage any stream, public park, parkway, square, street or highway in the city,
  - E. In any way renders other persons insecure in life or the use of property, or
  - F. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.
- (Neb. Rev. Stat. §18-1720)

### **SECTION 3-503: SPECIFICALLY DEFINED**

The maintaining, using, placing, depositing, leaving or permitting of any of the following specific acts, omissions, places, conditions and things are hereby declared to be nuisances:

- A. 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. Any dead animal shall be immediately removed and buried by the owner; provided, if the owner of such animal cannot be found within two hours after discovery of the same, then such animal shall be removed by and at the expense of the city. Dead animals shall not be buried within the city corporate limits or within one mile thereof nor in or above the course

of groundwater that is used for drinking purposes by the city or its inhabitants.

B. Privies, vaults, cesspools, dumps, pits or like places which are not securely protected from flies or rats or which are foul or malodorous.

C. 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.

D. 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.

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

F. 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 is kept in covered bins or galvanized iron receptacles.

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

H. Any buildings or structures which have any or all of the defects defined at Section 3-601 hereafter.

I. All places used or maintained (1) as junkyards or dumping grounds; (2) for the wrecking and dissembling of automobiles, trucks, tractors, or machinery of any kind; (3) 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 (4) for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons.

J. Stagnant water permitted or maintained on any lot or piece of ground.

K. Any machine, vehicle, 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.

L. Any motor vehicle as follows: It shall be unlawful for any person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee, or otherwise, to allow any non-operating, wrecked, junked, or partially dismantled vehicle to remain on such property longer than 30 days. It shall be unlawful for any person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee, or otherwise, to allow any vehicle which has been unregistered for more than 30 days to remain on such property. This section shall 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, or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner.

M. Any wood or tree limbs not cut and stacked in neat rows on an area not exceeding 10 feet by 16 feet.

N. Debris from burned or damaged buildings, whether created by consensual burning or demolition or whether occurring due to fire or age.

O. Stockyards, granaries, mills, pig pens, cattle pens, chicken pens, or any other place, building, or enclosure in which animals or fowl 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 said places in which said animals are confined or said premises on which said 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 city or are maintained and kept in such a manner as to be injurious to the public health.

P. Maintenance of weeds, grasses or worthless vegetation of 8 inches or more in height.

1. Exception: Ornamental native grasses may be grown on unoccupied, vacant lots, parcels, or land exceeding three acres or 130,680 square feet in size, unless any such lot, parcel, property or land, regardless of size, is under cultivation, used for other agricultural or horticulture purposes and approved for such use in accordance with city zoning and development rules or regulations.

2. Weeds shall include, but not be limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

Q. All other things specifically designated as nuisances elsewhere in this code.  
(Neb. Rev. Stat. §18-1720) (Ord. No. 629, 10/19/09)

### **SECTION 3-504: NOTICE PROCEDURE; ABATEMENT**

A. Whenever the code enforcement officer determines that any weeds or grasses in excess of 8 inches are growing on property within the city, or other nuisance, as defined herein, is found on any property, the following abatement procedure shall be followed:

1. The code enforcement officer shall document the weeds or nuisance by photographing the same. Once the weeds or nuisance has been documented, the city clerk shall give notice to mow, abate, and remove such weeds or nuisance to each owner or owner's duly authorized agent and to the occupant of the premises, if any, by personal service, which shall be made by the code enforcement officer and evidenced by his or her certificate of delivery. If notice by personal service is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the village or by conspicuously posting the notice on the lot or property upon which the nuisance is to be abated or removed. Such notice shall contain a copy of the photograph of the weeds or nuisance, a copy of this ordinance, instructions on abatement of the weeds or nuisance, time in which such abatement shall take place, and possible penalties for failure to abate.

2. Within five business days after receipt of such notice, the owner, agent or occupant of the lot or piece of ground may request a hearing with the city to appeal the order to mow, abate, or remove the weeds or nuisance by filing a written appeal with the office of the city clerk. A hearing on the appeal shall be held within 14 days after the filing of the appeal and shall be conducted by the mayor as hearing officer. The mayor shall render a decision on the appeal within five business days after the conclusion of the hearing. The hearing shall be conducted informally and the formal rules of evidence shall not apply but either party may appear with an attorney and may request that the hearing be recorded for appeal purposes. Any decision rendered by the mayor may be appealed to the District Court. If no appeal is taken within ten days of the mayor's decision, the owner, agent, or occupant shall promptly comply with the notice to abate. If abatement is not completed within 20 days of the mayor's decision and no appeal is taken, the code enforcement officer shall proceed pursuant to subsections (3) and (4) below or to subsections (B)(1) and (2) as set forth below.
3. Within ten days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to appeal the decision of the mayor and fails to comply with the order to mow or abate and remove the weeds or nuisance, the city shall again photograph the weeds or nuisance to document that abatement has not occurred.
4. If abatement has not occurred within the time prescribed, the code enforcement officer may deliver the original photographs, a copy of the delivered notice to abate, the certificate of delivery or certificate of publication, and the photographs taken subsequent to the time to abate has elapsed to the prosecuting attorney for the city and request that charges be filed against the owner or occupant of the premises for maintenance of a nuisance.

B. In the alternative, the city may cause the weeds to be mowed or the nuisance to be corrected or removed. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either:

1. 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
2. Recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

### **SECTION 3-505: SECOND OFFENSE**

In the event that an owner or agent of any property with the city shall have received a notice to correct or abate a nuisance within the past 12 months and is again charged with maintaining a nuisance, as defined herein, the code enforcement officer shall document such offense as set forth above and request that a complaint against such owner, agent or occupant be filed for maintenance of a nuisance with the county court.

### **SECTION 3-506: JURISDICTION**

The mayor and code enforcement officer are directed to enforce this city code against all nuisances. The jurisdiction of the mayor, code enforcement officer, and court shall extend to, and the territorial application of this chapter shall include, all territory adjacent to the limits of the city within one mile thereof and all territory within the corporate limits. (Neb. Rev. Stat. §18-1720)

## **SECTION 3-507: ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL**

In cases of appeal from an action of the City Council condemning real property as a nuisance or as dangerous under the police powers of the city, the owners of the adjoining property may intervene in the action at any time before trial. (Neb. Rev. Stat. §19-710)

## **Article 6 – Dangerous Buildings**

### **SECTION 3-601: DETERMINATION; DEFINITIONS**

Any buildings or structures which have any or all of the following defects are hereby declared to be unsafe or dangerous buildings or structures and a public nuisance:

A. Those having walls or other vertical structural members that list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside the middle third of its base;

B. Those showing 33% or more of damage or deterioration of the supporting member or members, exclusive of the foundation;

C. Those with improperly distributed loads upon floors or roofs or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used;

D. Those damaged by fire, wind or other causes so as to have become dangerous to life, safety or the general health and welfare of the occupants of the people of the city;

E. Those which have become dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein;

F. Those having light, air and sanitation facilities which are inadequate to protect the health, safety or general welfare of human beings who live or may live therein;

G. Those having inadequate facilities for egress in the case of fire or panic, or those having insufficient stairways, elevators, fire escapes or other means of communication;

H. Those having parts thereof which are so attached that they may fall and injure persons or property;

I. Those that are unsafe, unsanitary or dangerous to the health, safety or general welfare of the people of the city because of their condition;

J. Those having been inspected by the County Health Department or a professional engineer appointed by the city which are, after inspection, deemed to be in violation of any provision of the health department rules and regulations or which are structurally unsafe or unsound as found by the inspection of the professional engineer;

K. Those existing in violation of any provision of this article, any provision of the Fire Code, any provision of the county health rules and regulations or other applicable provisions of city ordinances, including but not limited to the building code adopted by the city.

(Neb. Rev. Stat. §18-1720)

### **SECTION 3-602: BUILDING INSPECTOR**

A specially designated building inspector, as provided in Chapter 9, Section 9-101, shall, at the direction of the City Council:

A. Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in a dangerous or unsafe manner;

B. Inspect any building or structure within the jurisdictional area of the city for the purpose of determining whether any conditions exist which render such place a dangerous or unsafe building or structure within the terms of this article;

C. Report to the City Council the results of the inspection;

D. Appear at all hearings and testify as to the condition of the unsafe or dangerous building or structure.

### **SECTION 3-603: STANDARDS**

In the event that it is determined that any building or structure is unsafe or dangerous the following standards shall be followed in substance in determining whether the structure or building should be repaired, vacated or demolished:

A. If the unsafe or dangerous building or structure can reasonably be repaired so that it will no longer exist in violation of any of the terms or provisions of this article, it shall be ordered to be repaired;

B. If the unsafe or dangerous building is in such condition as to make it dangerous to the health, morals, safety or general welfare of its occupants, it shall be ordered to be vacated;

C. In any case where an unsafe or dangerous building or structure cannot be repaired so that it will no longer exist in violation of the terms or provisions of this article, it shall be demolished. In all cases where the unsafe or dangerous building is a fire hazard existing or erected in violation of the applicable fire codes and regulations, or any other provision of an ordinance of this city, or statute of the state, it shall be demolished. (Neb. Rev. Stat. §§17-136, 15-905, 18-2107)

### **SECTION 3-604: UNLAWFUL MAINTENANCE**

It is hereby determined unlawful to maintain a dangerous building within the corporate limits of the city or within its zoning jurisdiction. (Neb. Rev. Stat. §28-1321)

### **SECTION 3-605: NUISANCE; PROCEDURE**

If the specially designated building inspector or his representatives or professional engineer finds that a building or structure is unsafe or dangerous and a nuisance, the City Council shall:

A. Notify the owner, occupant, lessee, mortgagee, agent or other persons having an interest in the building or structure that it has been found to be an unsafe or dangerous building; the notice will indicate whether the owner must vacate, repair or demolish the building or structure;

B. Set forth in the notice a description of the building or structure deemed unsafe or dangerous, accompanied by a statement of the particulars which make the building or

structure unsafe or dangerous and an order requiring the same to be put in such condition as to comply with the terms of this article within such length of time, not exceeding 30 days, as is reasonable;

C. Direct a city employee to place a sign on the building or structure found to be unsafe or dangerous on its exterior near the main entrance which shall set forth that the building or structure is unsafe or dangerous for occupancy and use; and

D. File a copy of such determination or resolution in the office of the register of deeds of the county to be recorded. No fee shall be charged for such recording or for the release of such recording.

(Neb. Rev. Stat. §18-1722.01)

### **SECTION 3-606: FAILURE TO COMPLY**

In case any owner, occupant, lessee, mortgagee, agent or other person having an interest in the building or structure shall fail, neglect or refuse to comply with the notice by or on behalf of the city to repair, rehabilitate or demolish and remove a building or structure which is unsafe or dangerous and a public nuisance, and fails to request a hearing on such determination, the city may proceed with the work specified in the notice to the property owner. A statement of the cost of such work shall be transmitted to the City Council, which is authorized to levy the cost as a special assessment against the property. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments under Nebraska statutes. (Neb. Rev. Stat. §18-1722)

### **SECTION 3-607: DISPUTES**

A. In the event that the owner, occupant, lessee, mortgagee, agent or other person having an interest in the building or structure disagrees with or disputes the information contained in the notice, such person shall notify the city clerk with a written statement that sets forth the reasons for the disagreement or dispute and the relief requested. This written request shall be made within 14 days of mailing of the notice as provided herein. If written notice is received by the city clerk within 14 days of mailing or delivery of notice, a hearing shall be held before the City Council, either at a special meeting or at a regularly scheduled monthly meeting. The clerk shall notify the person requesting the hearing, in writing, of the time, place and date of such hearing.

B. The hearing before the City Council shall be informal and not governed by the Nebraska Rules of Evidence. Such hearing shall be quasi-judicial in nature and its decision shall be based on the evidence presented at the hearing. The person requesting the hearing may be represented by legal counsel or other representative, may present witnesses and offer evidence and may examine and copy, at his or her own expense, and not less than three business days before the hearing, the records of the city regarding the inspection and notice. The City Council need not make a written finding of fact and may make its pronouncement orally at the hearing. The decision of the council shall be final unless appealed. Failure of the person to attend the hearing shall relieve the council of any further procedures before action is taken as set forth in a notice.

### **SECTION 3-608: APPEAL**

Any person aggrieved by the decision of the City Council may appeal the decision to the District Court. This appeal shall and must be taken within 30 days of the pronouncement of the council's decision.

### **SECTION 3-609: IMMEDIATE HAZARD**

In the event the building constitutes an immediate hazard to the life or safety of any

persons and must be demolished to protect their health or safety, the specially appointed building inspector or professional engineer designated by the City Council shall report such facts to the council. Upon receipt of such report the city, by and through the council, may immediately contract for the immediate demolition of the unsafe or dangerous building without requiring bids. The cost of such emergency vacation and demolition of unsafe or dangerous buildings or structures shall be levied, equalized, and assessed, as are other special assessments.

## **Article 7 – Penal Provisions**

### **SECTION 3-701: 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, except that Section 3-503(G) trash, litter, etc., (J) stagnant water, and (P) weeds, grasses, etc. shall be Class V misdemeanors and shall be fined not more than \$100.00. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.

### **SECTION 3-702: ABATEMENT OF NUISANCE**

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