

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: LEISURE AND RECREATION

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PARKS

§ 90.01 OPERATION AND FUNDING.

The Municipality owns and operates the Municipal Parks and other Recreational Areas. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Park may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Park Fund and shall remain in the custody of the Municipal Treasurer. The Park Committee shall have the authority to adopt rules and regulations for the management, use and operation of all parks and recreational facilities belonging to the Municipality. The Governing Body retains the authority to adopt all rules and regulations for the management, use and operation of all parks and recreational facilities belonging to the Municipality. (*Ref. 17-948 through 17-952 RS Neb.*) (*Amended by Ord. No. 92-4, 5/4/92*)

§ 90.02 INJURY TO PROPERTY.

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

§ 90.03 HOURS.

Municipal Parks, except Sharp Park, shall be closed to all vehicular traffic, except law enforcement vehicles, from the hours of ten o'clock (10:00) p.m. to six o'clock (6:00) a.m. between Labor Day and Memorial Day, and from eleven o'clock (11:00) p.m. to six o'clock (6:00) a.m. between Memorial Day to Labor Day. Sharp Park shall be closed at sunset. (*Amended by Ord. No. 08-17, 10/6/08; 12-23, 10/16/12*)

§ 90.04 ALCOHOLIC BEVERAGES PROHIBITED.

It shall be unlawful to possess or consume alcoholic beverages, including beer, in the Municipal Parks or on other municipally owned property.

§ 90.05 VEHICLES REGULATED.

It shall be unlawful to operate a motorized vehicle of any kind or description or a bicycle in the Municipal parks, except upon established, improved roadways or other areas of the parks designated for such use.

§ 90.06 SPEED LIMITS.

Speed limits for motor vehicles within park boundaries are hereby established at fifteen (15) miles per hour.

SWIMMING POOLS

§ 90.20 OPERATION AND FUNDING.

The Municipality owns and manages the Municipal Swimming Pool. The Governing Body, for the purpose of defraying the cost of the management, maintenance, and improvements of the Swimming Pool may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from the said tax shall be known as the Swimming Pool Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Swimming Pool. The Swimming Pool Fund shall at all times be in the custody of the Municipal Treasurer. *(Ref. 17-948, 17-951, 17-952 RS Neb.) (Amended by Ord. No. 92-5, 5/4/92)*

§ 90.21 ADMISSION CHARGE.

The Park Committee shall annually review and recommend to the Governing Body a reasonable admission charge at the Municipal Swimming Pool for the use by any person of the Municipal Swimming Pool. The Governing Body retains the authority to adopt a reasonable admission charge at the Municipal Swimming Pool for the use by any person of the Pool. The said charges shall be on file at the office of the Municipal Clerk and shall also be posted in a conspicuous place at the Municipal Swimming Pool for public inspection. Such charges may be structured for classes of persons in a reasonable manner; Provided, that nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color, or national origin in the classification of persons for admission charges. *(Ref. 17-949 RS Neb.) (Amended by Ord. No. 92-5, 5/4/92)*

§ 90.22 RULES AND REGULATIONS.

The Park Committee shall annually review and recommend to the Governing Body appropriate rules and regulations for the management, use and operation of the Municipal Swimming Pool. The Governing Body retains the power to adopt rules and regulations for the management, use, and operation of the Municipal Swimming Pool. *(Ref. 17-949 RS Neb.) (Amended by Ord. No. 92-5, 5/4/92)*

MUNICIPAL CEMETERY

§ 90.70 NAME.

The name of the City cemetery shall be Rose Hill Cemetery.

§ 90.71 BURIAL PROHIBITED IN OTHER PLACES.

Burial shall be permitted only in the City cemetery, and specifically shall not be permitted in any church yard or any other place within the City.

§ 90.72 CEMETERY TAX; ANNUAL LEVY.

The Mayor and Council, for the purpose of defraying the cost of the care, management, improvement, beautification, and welfare of the City cemetery, may each year levy a tax not exceeding five and two-tenths cents (\$0.052) on each one hundred dollars (\$100.00) upon the actual value of all the taxable property in the City subject to taxation for general purposes, except intangible property, that is subject to taxation according to the laws of the State of Nebraska. Said tax shall be collected and paid to the City Treasurer as taxes for general municipal purposes are collected and paid to the City.

§ 90.73 CEMETERY FUND GENERALLY.

When collected and paid over to the City Clerk/Treasurer, all proceeds received from the Rose Hill Cemetery Association and the proceeds of the cemetery tax shall constitute and be known as the City cemetery general fund and shall be used for the general care, management, improvement, beautification, and welfare of the City cemetery and no other purpose. Such cemetery fund, and all moneys inuring thereto, shall remain in the custody of the City Clerk/Treasurer and shall be disbursed only in accordance with the provisions of this Article and applicable state law.

§ 90.74 CEMETERY RESERVE FUND CREATED.

There is hereby created a fund to be known as the cemetery reserve fund, the principal of which shall be invested by the City Clerk/Treasurer in the manner provided by law. The current income derived from the investment of these funds by the City Clerk/Treasurer will be available to the City for current repair and operational expense of the cemetery. The principal of the cemetery reserve fund shall be held intact as an invested fund and will not be available to the City except for development and improvement of new sections of the cemetery including, but not limited to, ornamentation, capital expenditures, and site development, or for new buildings or paving in any unpaved areas in the cemetery. From and after the effective date of this ordinance, one-half (½) of the proceeds received from the sale of lots shall be placed in this fund. The other half of the proceeds received from the sale of lots shall be available to the City for current repair and operational expense of the cemetery. This fund is further authorized to receive money from individual bequests or endowments when the restrictions on the use of said bequests or endowments do not conflict with the purpose of this reserve fund.

§ 90.75 PERPETUAL CARE.

Perpetual care on all lots in the City cemetery shall be furnished in consideration of the purchase price of any lot purchased after August 1, 1992. The perpetual care fund created prior to such date shall be maintained as a permanent fund, invested by the City Council as authorized by law, and the income shall be used in the care, ornamentation, and maintenance of the lots and burial spaces so endowed. All other monies accruing for cemetery purposes shall be credited, allocated, kept, and disbursed by the City Treasurer through the cemetery general fund.

§ 90.76 APPROVAL OF SERVICE CHARGES.

On or before the first (1st) day of May of each year it shall be the duty of the Cemetery Superintendent to submit to the City Council, a proposed schedule of charges which shall state the amount to be charged by the Superintendent for labor or services offered in connection with the operation and maintenance of the cemetery. Thereafter and not later than the first (1st) Monday in May of each year the Mayor and Council shall approve the proposed schedule of charges, if it deems the same reasonable, or if not, it shall, itself, establish a schedule of charges and the schedule of charges as approved by the Mayor and Council shall be in full force and effect until modified or superseded as herein provided. The term "services" shall include any and all charges such as grave digging, disinterring or reintering, setting of marker foundations, planting of shrubs, and all similar activities. It shall be the duty of the Superintendent to charge and collect for services as set out in the approved schedule of charges.

§ 90.77 PRICES FOR GRAVE SPACES.

The purchase price of the lots and burial spaces in the City cemetery shall be publicly exhibited in the City offices on a map or plat therein. The City Clerk's annual report to the Mayor and Council, shall include therein, among other things, a list of the lots or burial spaces sold during the preceding year, or since the date of his/her last report, legally describing them, together with the name of the purchaser and the price received for each lot or space. Future additions to said cemetery shall likewise be platted.

§ 90.78 LOTS; CONVEYANCE; RECORDING.

The Mayor and Council may convey for predetermined sums set by the Council annually cemetery lots by certificates signed by the Mayor, and countersigned by the Clerk, under the seal of the City, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right and fee simple to such lot for the sole purpose of interment under the regulation of the City Council.

§ 90.79 TRANSFER OF CERTIFICATES.

Transfers of certificates shall be made by surrender of the original certificates to the City Clerk who shall cancel the same, note such cancellation on the cemetery lot records

and shall issue new certificates in lieu thereof upon receipt of the same fee for recording expense and service as in the case of the issuing original certificates.

§90.80 DUPLICATE CERTIFICATES.

Duplicate certificates may be issued by the City Clerk under authority of the City Council upon proof of loss or destruction of the original, upon payment of the specified fees.

§ 90.81 PERMITS.

Burial shall be permitted in the City cemetery only on presentation of the statutory burial or removal permit. Reinterments and disinterments shall require similar permits.

§ 90.82 FISCAL RESTRICTIONS.

No claim shall be allowed against cemetery funds, nor shall any warrant against said funds be issued or paid, for any service rendered in connection with the sale of or the collection of the proceeds of the sale of any lot, part of a lot or burial space in said cemetery; and it shall be unlawful for any person to accept or contract to accept any commission or fee arising out of such transaction.

§ 90.83 PROTECTION; RULES AND REGULATIONS.

The Mayor and Council may pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars (\$100.00), regulating, protecting, and governing the cemetery, the owners of lots therein, visitors thereof, and trespasses therein.

§ 90.84 LOTS; OWNERSHIP AND USE; REGULATIONS.

The Mayor and Council may limit the number of cemetery lots which shall be owned by the same person at the same time. They may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots. They may prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots. Rules as provided for herein shall be adopted by resolution of the Council.

§ 90.85 APPOINTMENT.

The Mayor, subject to the consent of the Council, is hereby authorized to appoint a superintendent for the cemetery.

§ 90.86 CEMETERY SUPERINTENDENT; TERM.

The Cemetery Superintendent shall serve until he/she is removed by the Mayor.

§ 90.87 CEMETERY SUPERINTENDENT; DUTIES GENERALLY.

The duties of the Cemetery Superintendent shall be the general supervision, maintenance, and care of the cemetery.

§ 90.88 BURIAL PERMIT.

All persons desiring to bury a deceased person shall first be required to file a completed death certificate the Registrar of the County before any body may be buried in the Cemetery. If it is impossible to complete the certificate of death within the legal period of time prescribed by State law, the funeral director shall notify the Registrar and obtain his written approval before the deceased person may be buried in the cemetery. The burial permit so issued by the Registrar shall then be filed with the City Clerk. It shall be unlawful for the Cemetery Superintendent, or other person, to allow the interment of a body without first receiving such permit. The burial permit shall then be countersigned and dated by the City Clerk. The interment of any body shall be performed under the direct supervision of a licensed funeral director. Upon completion of the requirements herein, the City Clerk shall then issue a Municipal Burial Permit which shall entitle the applicant to bury a deceased person in the cemetery.

In the event that the removal of the body of any deceased person is requested, the City Clerk shall issue no permit until the applicant shall have first complied with the laws of the State of Nebraska with respect to such disinterment. (*Ref. 71-605 RS Neb.*)

§ 90.89 LOT CURBING.

It shall be hereafter unlawful for the owner of any lot to construct, maintain, or suffer to remain any curbing around any lot or burial place therein of a height greater than one inch (1").

§ 90.90 SHRUBS AND TREES.

It shall be unlawful, without the written permission of the City Council, to plant, maintain, or suffer to remain on any cemetery lot a shrub or tree attaining a height of more than four feet (4').

§ 90.91 MONUMENTS.

Persons desiring to erect monuments, tombstones, or other structures shall first procure a permit from the City Clerk.

§ 90.92 GRAVE DEPTH.

Graves shall not be less than five feet (5') deep; provided, nothing herein shall be construed to prohibit the use of mausoleums or other recognized methods of interring deceased persons if such a burial procedure is approved by the City Council. (*Amended by Ordinance No. 92-16, 10/19/92*)

§ 90.93 DESTRUCTION OF PROPERTY.

Any person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or gravestone placed in the cemetery, or any fence, railing, or other work for the protection or ornamentation of the cemetery, or who shall willfully destroy, cut, break, or injure any tree, shrub, or plant shall be deemed to be guilty of a misdemeanor. (*Ref. 28-519 RS Neb.*)

§ 90.94 VIOLATION; PENALTY

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Section shall be deemed guilty of a Class II Misdemeanor as defined by § 131.22 of this Code. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply. (*Amended by Ord. 02-05, 2/4/02, 07-05, 5/7/07*)

CHAPTER 91: FIRE REGULATIONS

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FIRE PREVENTION

§ 91.01 FIRE PREVENTION CODE.

The rules and regulations promulgated by the office of the State Fire Marshal of the State of Nebraska relating to fire prevention are incorporated by reference into this Code and made a part of this Article as though spread at large herein together with all subsequent amendments thereto. (*Ref. 18-132, 19-902, 19-922, 81-502 RS Neb.*) (*Amended by Ord. 02-04, 2/4/02*)

§ 91.02 FIRE PROHIBITED.

It shall be unlawful for any person to set out a fire at any location within the Municipality.

§ 91.03 SKY LANTERNS PROHIBITED.

(1) Flying lantern-type devices are prohibited from sale, possession, and use in the City's jurisdiction.

(2) For purposes of this section, flying lantern-type devices means devices that require a flame which produces heated air trapped in a balloon-type covering allowing the device to float in the air. Flying lantern-type devices shall not include hot-air balloons used for transporting persons. (*Neb. Rev. Stat. § 28-1255*)

§ 91.04 DEFINITIONS.

For the purpose of this Article, certain words, phrases, and terms shall be construed as specified below, unless the context otherwise requires:

- A. Fire Pits shall mean constructed of steel, concrete or stone, and constructed above ground with heavy steel screen covering.
- B. Portable Fire Pit shall mean a structure that is manufactured and intended to confine and control outdoor wood fires. Designed as a portable or moveable fire pit.
- C. Chimineas shall mean an outdoor patio fireplace, usually made from clay, intended to confine and control outdoor fires with controlled burning. (*Est. by Ord. 10-08, 7/19/10*)

§ 91.05 BUILDING PERMIT REQUIRED.

A building permit is required for a fire pit, but not for a chiminea or portable fire pit. Barrels, half barrels, drums, or similarly constructed devices are not fire pits, and are not allowed. Outdoor fireplaces do not include barbeque grills that are primarily for outdoor cooking. (*Est. by Ord. 10-08, 7/19/10*)

§ 91.06 REQUIREMENTS.

- A. The requirements for the issuance of a building permit by the City to have an outdoor fireplace are:
 - 1. A minimum of a ten foot clearance between an outdoor fireplace and combustible materials;
 - 2. Shall be constructed of concrete or an approved non-combustible material;
 - 3. Fuel fire area and openings shall be completely enclosed by a spark guard (wire mesh no greater than 1/2" square openings);
 - 4. Vent stacks, chimneys and chimineas shall have a steel screen cover made of heavy wire mesh;
 - 5. Size of the fuel area shall not be larger than 3' in diameter and a height of no more than 3';
 - 6. Outdoor fireplaces shall be placed on a stable non-combustible surface such as a concrete pad and only at grade level;
 - 7. Burn untreated wood or approved fireplace starter logs;
 - 8. Limit the amount of material being burned to ensure the flames are confined inside the fuel area of the fireplace. Do not allow the flames to extend above the pit or chimney;
 - 9. Keep a water supply, garden hose or fire extinguisher readily available in case of emergency;
 - 10. Do not burn an outdoor fireplace when winds are blowing over 12 mph or when weather conditions are extremely dry;
 - 11. All outdoor fireplaces must be under supervision by a person over the age of 18;
 - 12. Fires must be completely extinguished and embers cooled prior to 12:00 midnight;
 - 13. Smoke shall not create a nuisance for neighbors;

14. The burning of trash, plastic, or any other material that creates hazardous or unwanted fumes is prohibited. Only firewood or similar material appropriate for fireplace use can be burned within the corporate limits. (*Est. by Ord. 10-08, 7/19/10*)

§ 91.07 VIOLATION; PENALTY.

Any person who shall violate any of the provisions of Sections 91.04 through 91.07 shall be guilty of a Class II Misdemeanor as defined by § 131.22 of this Code. (*Est. by Ord. 10-08, 7/19/10*)

FIRES

§ 91.20 PRESERVATION OF PROPERTY.

The Fire Chief, or any officer in charge of the Waverly Fire and Rescue Department, shall have the authority and power to cause the removal of property whenever it shall become necessary for the preservation of more valuable property, the protection of human life, or to prevent the spreading of fire to adjoining property. The Fire Chief may direct the Municipal Firemen to remove any building, structure, or fence for the purpose of checking the progress of any fire. The Fire Chief shall have the authority to blow up, or cause to be blown up, with explosives any building or structure during the progress of a fire for the purpose of checking the progress of the same.

§ 91.21 ABATEMENT OF NUISANCE.

Whenever a nuisance exists as defined in this Code, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as part of the judgment in the case. (*Ref. 18-1720, 18-1722 RS Neb.*)

§ 91.22 EQUIPMENT.

It shall be unlawful for any person except the Fire Chief and the members of the Waverly Fire and Rescue Department to molest, destroy, handle or in any other way to interfere with the use and storage of any of the fire trucks and other apparatus belonging to the Municipality.

§ 91.23 INTERFERENCE.

It shall be unlawful for any person or persons to hinder or obstruct the Municipal Fire Chief or the members of the Waverly Fire and Rescue Department in the performance of their duty. (*Ref. 28-908 RS Neb.*)

§ 91.24 DRIVING OVER HOSE.

It shall be unlawful for any person, without the consent of the Fire Chief or Assistant Fire Chief, to drive any vehicle over unprotected hose of the Fire Department. *(Ref. 60-6,184 RS Neb.)*

§ 91.25 TRAFFIC.

It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire/rescue apparatus traveling in response to an alarm closer than five hundred feet or drive into or park such vehicle within the block where such apparatus has stopped in answer to an alarm. *(Ref. 60-6,183 RS Neb.) (Amended by Ord.02-04, 2/4/02)*

§ 91.26 FALSE ALARM.

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

POISONOUS AND FLAMMABLE GASES; EXPLOSIVES

§ 91.30 GENERAL REGULATIONS.

No poisonous or flammable substances shall be stored or transported within the zoning jurisdiction of the Municipality except in accordance with the provisions of this Article. In every case, such substances shall be handled in accordance with the statutory requirements of the United States and the State of Nebraska. The Municipal Clerk shall at all times, maintain within in his or her office, the most current version of all standard codes adopted by reference within this Article; Provided, however, that failure of the Clerk to do so shall not relieve any person of obligations imposed by this Article.

§ 91.31 DEFINITIONS.

Unless the context is shown to clearly intend otherwise, for the purposes of this Article, the definitions set forth in this Section shall prevail. Where technical terminology is utilized, but not defined within this Section, such terminology shall be construed in accordance with the most current version of the applicable publications of the American National Standards Institute (ANSI), and the National Fire Protection Association (NFPA), or their successor bodies.

- A. **COMBUSTIBLE LIQUID** – The term "combustible liquid" shall mean and include all substances which are defined herein as flammable liquids.
- B. **FLAMMABLE LIQUID** – The term "flammable liquid" shall mean and include all liquid having a flash point at or below 37.8° C. (100° F.).
- C. **FLAMMABLE SUBSTANCE** – The term "flammable substance" shall mean and include anhydrous ammonia and all substances which are defined herein as flammable liquids, combustible liquids, and/or liquefied petroleum gases.

- D. LIQUID – the term "liquid" shall be defined in accordance with the National Fire Protection Association Publications Number Thirty (30) (1973), as the same may be amended from time to time or at any time.
- E. LIQUEFIED PETROLEUM GAS – The term "liquefied petroleum gas" shall mean and include any material composed predominantly of the following hydrocarbons, either by themselves or as mixtures:
- PROPANE
PROPYLENE
BUTANE (normal butane or isobutane), and
BUTYLENE (including isomers).
- F. POISONOUS – The term "poisonous" when applied within this Article to any substance shall mean and include substances which are capable in reasonably anticipated strengths of causing death or permanent injury to human, animal, or plant life.
- G. TRAVELED ROUTE – The term "traveled route" shall mean and include the outer boundaries of any dedicated highway, street, alley, sidewalk, or other public right-of-way.
- H. ABOVE GROUND STORAGE FACILITY – The term "above ground storage facility" shall mean and include any facility, at least 90% of which lies above the earth's surface, which is permanently secured to the surface, and which is intended to be used as a permanently situated facility. *(Amended by Ord. No. 87-16, 1/4/88)*

§ 91.32 FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Flammable and combustible liquids located within the Municipality shall be handled in accordance with the National Fire Protection Association Publication Number Thirty (30) (1973), as the same may be amended from time to time and at any time. The Municipality may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, either by ordinance or by resolution.

§ 91.33 LIQUEFIED PETROLEUM GAS.

Liquefied petroleum gas located within the Municipality shall be handled in accordance with the National Fire Protection Association Publication Number Fifty-Eight (58) (1974), as the same may be amended from time to time and at any time. The Municipality may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, either by ordinance or by resolution.

§ 91.34 ANHYDROUS AMMONIA.

Anhydrous ammonia located within the Municipality shall be handled in accordance with the American National Standards Institute Publication Number K61.1 (1972), as the same may be amended from time to time and at any time. The Municipality

may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, by ordinance or by resolution.

§ 91.35 GASES.

No person shall construct, enlarge, add to, or replace any facility constructed, used or intended to be used for the storage of poisonous gases within the zoning jurisdiction of the Municipality without first obtaining a permit issued by the Municipality. As a prerequisite to the issuance of such permit, the applicant must show within the application for such permit, the name of the substance to be stored, the place of storage, and the volume of the substance to be stored; the applicant shall further show that all interested State and Federal Departments and Agencies have been contacted and that the storage facility or the plans for such facility have been reviewed by such authorities. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence on the effective date of this Article; Provided, however, that a present use which is discontinued for sixty (60) days shall not be revived without a permit. The fee for issuance of such permit shall be ten dollars (\$10.00) and shall be paid to the Municipal Clerk at the time of initial application. Any fee assessed to the Municipality, by the Inspecting Department, or Agency shall be paid by the applicant to the Municipality in addition to the initial application fee. Such payment must be made prior to the issuance of the permit contemplated by this Section.

§ 91.36 PERMIT REQUIRED.

No person shall construct, enlarge, add to, or replace any facility constructed, used, or intended to be used for the storage of flammable or combustible liquids, liquefied petroleum gas, or anhydrous ammonia within the zoning jurisdiction of the Municipality without first obtaining a permit issued by the Municipality. As a prerequisite to the issuance of such permit, the applicant must show within the application for such permit, the name of the substance to be stored, the place of storage, and the volume of the substance to be stored; the applicant shall further show that the Nebraska State Fire Marshal's Office has been contacted and that the storage facility or the plans for such facility have been approved by the Nebraska Fire Marshal's Office. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence on the effective date of this Article; Provided, however, that no present use which is discontinued for sixty (60) days shall not be revived without a permit. The fee for issuance of such permit shall be ten dollars (\$10.00) and shall be paid to the Municipal Clerk at the time of initial application. Any fee assessed to the Municipality, by the Inspecting Department, or Agency shall be paid by the applicant to the Municipality in addition to the initial application fee. Such payment must be made prior to the issuance of the permit contemplated by this Section.

§ 91.37 RAILROAD TANK CARS UNLOADING.

It shall be unlawful for the operator of any train comprised of railroad tank cars containing any poisonous or flammable substance, including anhydrous ammonia, liquid fertilizer, liquefied petroleum gas, or flammable liquids, to stop or park such tank car or cars within the City of Waverly, Nebraska, and its zoning jurisdiction except to unload such

substances, and then only for a time not to exceed a reasonable time necessary to unload. (*Ref. 17-123 RS Neb.*)

§ 91.38 ABOVE GROUND STORAGE OF FLAMMABLE LIQUIDS PROHIBITED.

It shall be unlawful to store flammable liquids in above ground storage facilities within the zoning jurisdiction of the Municipality. This prohibition shall not apply to those storage facilities in existence on the effective date of this Article; Provided, however, that the use of such above ground flammable liquid storage facility shall be discontinued within five (5) years of the effective date of this Article. No present use of the above ground flammable liquid storage facility which is discontinued for a period of sixty (60) days subsequent to the effective date of this Article shall be resumed. Above ground flammable liquid storage facilities existing on the effective date of this Article may be repaired in place only, so long as their use is not discontinued for a period longer than the time allowed in this paragraph; but, no above ground flammable liquid storage tank which must be removed from its place of permanent installation in order to be repaired, may be restored to service.

§ 91.39 INSPECTION OF FUEL STORAGE FACILITIES REQUIRED.

Within thirty (30) days of the effective date of this Article all persons maintaining storage facilities for flammable liquids within the zoning jurisdiction of the Municipality shall report the same to the Municipal Clerk. Within ninety (90) days of the effective date of this Article, all facilities for the storage of flammable liquids located within the zoning jurisdiction of the Municipality shall be inspected, at the request of the Municipality, by the Nebraska State Fire Marshal's Office and the findings of the State Fire Marshal's Office shall be reported to Municipal Building Inspector. The Municipal Building Inspector shall maintain a list of all such facilities and shall request the Nebraska State Fire Marshal's Office to conduct annual inspections of all such facilities on or before April 1 of each year, and the Building Inspector shall maintain accurate records of each such inspection. The Municipal Building Inspector may at any time request the State Fire Marshal's Office to conduct supplemental inspections of any individual storage facility whenever he/she has reason to believe that such storage facility may pose a serious safety hazard to the Municipality. (*Amended by Ord. 02-04, 2/4/02*)

§ 91.40 ABATEMENT ORDERS; TERMINATION OF UNSAFE STORAGE FACILITIES.

The Nebraska State Fire Marshal's Office shall recommend to the Building Inspector that the use of any fuel storage facilities deemed to pose a serious safety hazard to the Municipality be immediately discontinued. Once such a recommendation has been made by the State Fire Marshal's Office such facility shall be deemed a public nuisance and it shall be the duty of the Building Inspector to issue an abatement order requiring the owner of such facility to immediately terminate its use and, at the owner's cost, to dismantle or remove the facility under the direction of the State Fire Marshal's Office. However, if in the judgment of the State Fire Marshal's Office, the facility can be restored to a safe condition through in place repairs (without removing the storage tank from its place of permanent installation), then the Building Inspector shall issue an abatement order requiring the owner of said facility, at the owner's cost, to restore the fuel storage facility to a safe

condition within a reasonable period of time. Such Abatement Orders may be issued in lieu of prosecution for violation and failure to comply with any such Abatement Order shall be deemed a violation of this Article. *(Amended by Ord. 02-04, 2/4/02, 02-16, 6/3/02)*

§ 91.41 STORAGE OF POISONOUS AND FLAMMABLE SUBSTANCES IN CLOSE PROXIMITY TO STRUCTURES, TRAVELED ROUTES, AND RAILROADS PROHIBITED.

- A. No person shall store poisonous or flammable substances within the zoning jurisdiction of the Municipality within seventy-five feet (75') of any structure, traveled route, or the centerline of any railroad track; Provided, however, that the same may be stored underground, not less than twenty-five feet (25'), from any structure, traveled route, or the centerline of any railroad track, so long as such installation is approved by the Nebraska State Fire Marshal's Office, and provided that such storage is otherwise permissible under the provisions of this Code.

- B. The prohibition imposed by paragraph A of this Section shall not apply to those storage facilities which fail to meet the standards set forth in paragraph A which are in existence on the effective date of this Article; Provided, however, that the use of such facilities shall be discontinued within five (5) years of the effective date of this Article. No present use of facilities prohibited by paragraph A of this Section which is discontinued for a period of sixty (60) days subsequent to the effective date of this Article shall be resumed. Above ground flammable substance storage facilities not in compliance with the provisions of paragraph A of this Section, and existing on the effective date of this Article, may be repaired in place only, so long as their use is not discontinued for a period longer than the time allowed in this paragraph; but, no such above ground flammable substance storage tank which must be removed from its place of permanent installation in order to be repaired, may be restored to service.

§ 91.42 AUTHORITY TO ENTER PRIVATE PROPERTY FOR INSPECTION OF STORAGE FACILITIES.

The Municipal Building Inspector and his or her designated representatives, including personnel of the Nebraska State Fire Marshal's Office, may enter private property at any reasonable time for the purpose of conducting inspections mandated by this Article. *(Amended by Ord. 02-04, 2/4/02)*

§ 91.43 INJUNCTION AS ADDITIONAL REMEDY.

The Mayor or local law enforcement officer shall take such action as is necessary and legal to enforce the provisions of this Article. As an additional remedy, the operation or maintenance of any facility in violation of any provision hereof which endangers the comfort, repose, health, safety, or peace of persons within the zoning jurisdiction of the Municipality shall be deemed, and is declared to be, a public nuisance, and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. No provisions of this Article shall be construed to impair any common law or statutory cause of action or legal remedy arising therefrom, nor shall the same preclude any person from maintaining any action for injury or damage arising from any violation of this Article or from any other law.

§ 91.44 VIOLATIONS AND PENALTIES.

A. NOTIFICATION OF VIOLATION. The Municipal Building Inspector shall notify the owner or authorized agent of the owner, of the storage facility which is found to be in violation of this Article, of such violation. The Building Inspector shall set a reasonable time for the owner to have the violation removed or corrected.

B. FINES. The owner or agent authorized by the owner to obtain facilities regulated by this article who knowingly permits a violation to remain uncorrected after the expiration of time set by the Building Inspector shall, upon conviction thereof by the court, be required to pay a fine of one hundred dollars (\$100.00) for each violation and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

Any person upon whom a duty is placed by the provisions of this Article who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of one hundred dollars (\$100.00) and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

§ 91.45 EXPLOSIVES; STORAGE REGISTRATION.

Any person, firm, or corporation storing or keeping for any period of time dynamite, gunpowder, nitroglycerine, or other high explosives within the Municipality shall register such information with the Municipal Clerk within ten (10) days after such explosives are brought into the Municipality. The Clerk shall provide such information to the Municipal Fire Chief and to the Governing Body. Transfer of explosives to another individual within the Municipality shall require the individual receiving the explosives to register the transfer and the new location of the explosives with the Municipal Clerk. Also, moving explosives to a new location by the owner shall require registration of that fact to the Municipal Clerk.

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

§ 91.46 EXPLOSIVES; TRANSPORTATION.

Any person wishing to transport high explosives in the Municipality shall first acquire a permit from the Chief Law Enforcement Officer and shall take such precautions and use such route as the Governing Body may prescribe. Nothing herein shall be

construed to apply to Law Enforcement Officers, or any of the Armed Services of the United States. No vehicle transporting explosives shall make an unscheduled stop for longer than five (5) minutes within the Municipality and in the event of mechanical failure, immediate notice of such breakdown shall be given to the Chief Law Enforcement Officer who shall then proscribe such precautions as may be necessary to protect the residents of the Municipality and a reasonable time for removal of the vehicle from the Municipality.

FIREWORKS

§ 91.70 DEFINITIONS AND GENERAL AUTHORITY.

For the purpose of this Article, the City's requirements for fireworks are the same as those contained in Title 157 NEB. ADMIN. CODE. To the extent anything herein conflicts with such Title 157, the requirements of Title 157 shall control. Certain words, phrases, and terms shall be construed as specified below, unless the context otherwise requires:

- A. Fireworks means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of consumer or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations.
- B. Permissible Fireworks shall mean only sparklers, Vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total explosive composition not to exceed fifty milligrams (50 mg.) each in weight, color wheels and any other fireworks approved by the State Fire Marshal. Permissible fireworks shall mean only those fireworks annually listed and promulgated by the State Fire Marshal in Title 157, Chapter 8, "Fireworks Acceptable in the State of Nebraska for the Year 20__".
- C. Sale shall include barter, exchange, or gifts, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.
- D. Retailer shall mean any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers. A retail license shall not be used to purchase fireworks for personal use outside the June 24 to July 5 selling window.

§ 91.71 UNLAWFUL ACTS.

Except as provided in Section 91.76, it shall be unlawful for any person to possess, sell, offer for sale, bring into the City or discharge, explode, or use any pyrotechnics, commonly known as fireworks, other than permissible fireworks.

§ 91.72 PERMISSIBLE; RETAIL SALE, LICENSE REQUIRED, FEE.

It shall be unlawful for any person to sell, hold for sale, or offer for sale at retail, any permissible fireworks in the City unless such person has first obtained a license from the City as a retailer.

Any person desiring to sell, or offer for sale, any permissible fireworks as a retailer shall make application to the City for a license authorizing the same. Applications shall be for proposed sales for the current calendar year only and shall be submitted to the City on or between March 1 and March 30 of the year in which the license is sought. Such application shall include the following information and such additional information as the City shall deem necessary:

1. The name, residence, and address of the applicant.
2. The location of the premises for which the license is sought.
3. When the license is sought in a permanent building, the applicant shall provide an accurate drawing or plan showing the location of the sales display within the building, together with aisles, exits, etc.
4. When the license is sought in a temporary structure or facility, the applicant shall provide a legal description of the premises.
5. A copy of the applicant's valid License for Sale of Fireworks issued by the Nebraska State Fire Marshall.

After consideration of the information contained in the application for license, the Administrator/Clerk/Treasurer may issue a permit after March 30th upon payment by the applicant of a fee of one thousand dollars (\$1,000.00). Any license issued under the provisions of this Section shall be valid only for the period of June twenty-fifth (25th) through and including July fourth (4th) and December twenty-ninth (29th) through and including December thirty-first (31st) of the year in which issued.

Factors that may be considered by the City in deciding whether to issue a license include, but are not limited to:

- A. Presence or absence of any past violations of applicant;
- B. Experience and expertise of applicant;
- C. Safety record of applicant; and
- D. Whether applicant is a civic organization committed to the betterment of the City.

The funds received under the provisions of this Section shall be deposited in the General Fund of the City. One-half of the funds collected may be provided for the July 4th community fireworks display. (*Amended by Ord. No. 98-19, 19/7/98, 02-08, 3/4/02; 09-14, 12/7/09; 10-13, 9/7/10*)

§ 91.73 PERMISSIBLE FIREWORKS.

Only permissible fireworks may be sold, held for sale or offered for sale at retail in the City pursuant to this Code and Title 157 NEB. ADMIN. CODE.

§ 91.74 RESERVED.

§ 91.75 CONSUMER; SALE, USE, HOURS RESTRICTED.

Consumer fireworks may be sold at retail, offered for sale at retail, discharged, exploded, or used within the City of Waverly, only from June twenty-fifth (25) through and including July fourth (4) and from December twenty-ninth (29) through and including December thirty-one (31) of each year; provided it shall be unlawful to discharge, explode or use permissible fireworks on said dates before eight (8:00) a.m., and after eleven (11:00) p.m., except on July fourth (4) and December thirty-one (31) when permissible fireworks may be lawfully discharged, exploded or used between the hours of eight (8:00) a.m. and twelve (12:00) midnight. (*Amended by Ord. No. 10-12, 8/16/10*)

§ 91.76 PROHIBITION NOT APPLICABLE.

The provisions of Section 91.71 shall not apply to:

- A. Any fireworks for purposes of public exhibitions or displays purchased from a distributor licensed under State law or the holder of a display license issued by the State Fire Marshal as provided by State law;
- B. Any public exhibition or display under the auspices of any governmental subdivision of the State; and
- C. Toy cap pistols or toy caps, each of which does not contain more than twenty-five hundredths of a gram of explosive material.

§ 91.77 FIREWORKS; UNLAWFUL DISCHARGING, FIRING, LAUNCHING, OR THROWING PROHIBITED.

It shall be unlawful for any person to discharge, fire, launch, or throw any fireworks or any object which explodes upon contact with another object:

- A. From or into any motor vehicle;
- B. Onto any street, highway, or sidewalk;
- C. At or near any person;
- D. Into or upon any building;
- E. Into or at any group of persons; or
- F. Into or upon the premises of another person.

For the purposes of this section, person shall mean any natural person or any private or public firm, corporation, or partnership.

§ 91.78 VIOLATION, PENALTY.

Any retailer violating any of the provisions of Sections 91.70 through 91.77 shall be guilty of a Class I Misdemeanor as defined by § 131.22 of this Code.

Any other person who shall violate any of the provisions of Sections 91.70 through 91.77 shall be guilty of a Class II Misdemeanor as defined by § 131.22 of this Code. (Amended by Ord. 07-05, 5/7/07)

CHAPTER 92: HEALTH AND SAFETY

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GENERAL PROVISIONS

§ 92.01 HEALTH REGULATIONS.

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

§ 92.02 ENFORCEMENT OFFICIAL.

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

§ 92.03 COUNTY BOARD OF HEALTH.

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

NUISANCES

§ 92.20 DEFINITION.

(A) *General definition.* A **NUISANCE** consists in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health, or safety of others.
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the municipality;
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others;
- (7) Constitutes graffiti. Graffiti, for purposes of this Article, shall mean any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was unauthorized by the owner or occupant of the property. (Ref. 18-1720 RS Neb.)(Amended by Ord. 11-04, 2/22/11)

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

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

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

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

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

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

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

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

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

(9) All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn out, wrecked, or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the

comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;

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

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

(12) The existence of graffiti;

(13) All other things specifically designated as nuisances elsewhere in this code. (Ref. 18-1720 RS Neb.) (Amended by Ord. 02-01, 2/4/02; 11-04, 2/22/11) Penalty, see § 10.99.

§ 92.21 ABATEMENT PROCEDURE.

It shall be the duty of every owner, occupant, lessee, or mortgagee of real estate in the Municipality to keep such real estate free of public nuisances. Upon determination by the Lancaster County Health Department that said owner, occupant, lessee, or mortgagee has failed to keep such real estate free of public nuisances, the Governing Body shall thereupon cause notice to be served upon the owner, occupant, lessee, mortgagee or agent thereof, by publication and by certified mail. Such notice shall describe the condition as found by the Lancaster County Health Department and state that said condition has been declared a public nuisance, and that the condition must be remedied at once. If the person receiving the notice has not complied therewith or taken an appeal from the determination of the Lancaster County Health Department within five (5) days after receipt of certified mail or within five (5) days after date of publication whichever is later, the Lancaster County Health Department shall notify the Governing Body of such non-compliance and the Governing Body shall, upon receipt of such notice, cause a hearing date to be fixed and notice thereof to be served upon the owner, occupant, lessee, or mortgagee, or agent of the real estate. Such notice of hearing shall be by personal service or certified mail, and require such party or parties to appear before the Governing Body to show cause why such condition should not be found to be a public nuisance and remedied. A return of service shall be required by the Governing Body. Such notice shall be given not less than five (5) days prior to the time of hearing, provided that whenever the owner, lessee, occupant, or mortgagee of such real estate is a non-resident or cannot be found in the State, then the Municipal Clerk shall publish, in a newspaper of general circulation in the Municipality, such notice of hearing for two (2) consecutive weeks, the last publication to be at least one (1) week prior to the date set for the hearing. Upon the date fixed for the hearing and pursuant to notice, the Governing Body shall hear all objections made by interested parties and shall hear evidence submitted by the Lancaster County Health Department. If after consideration of all of the evidence, the Governing Body shall find that

the said condition is a public nuisance, it shall, by resolution, order and direct the owner, occupant, lessee, or mortgagee to remedy the said public nuisance at once; Provided, the party or parties may appeal such decision to the appropriate court for adjudication, during which proceedings the decision of the Governing Body shall be stayed. Should the owner or occupant refuse or neglect to promptly comply with the order of the Governing Body, the Governing Body shall proceed to cause the abatement of the described public nuisance. Upon completion of the work by the Municipality, a statement of the cost of such work shall be transmitted to the Governing Body, which is authorized to bill the property owner or occupant, or to levy the cost as a special assessment against the land. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments. (*Ref. 17-573, 18-1720 RS Neb.*) (*Amended by Ord. 02-01, 2/4/02*)

§ 92.22 JURISDICTION.

The City Clerk and Building Inspector of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Municipality and court shall extend to, and the territorial application of this Chapter shall include, all territory adjacent to the limits of the Municipality within one (1) mile thereof and all territory within the corporate limits. (*Ref. 18-1720 RS Neb.*)(*Amended by Ord. 02-01, 2/4/02*)

§ 92.23 ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL.

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

§ 92.24 DEAD OR DISEASED TREES.

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

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

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

POLLUTION

§ 92.40 AIR POLLUTION PROHIBITED.

It shall be unlawful for any person, firm, or corporation to permit the emission of smoke from any source that is injurious or offensive to the residents of the Municipality, in the judgment of the Lancaster County Health Department. Air shall be considered to be polluted when the discharge into the open air of dust, fumes, gases, mist, odors, smoke, or any combination thereof is of such character and in a quantity which to any group of persons interferes with their health, repose, or safety, or causes severe annoyance or discomfort or is offensive and objectionable to normal persons and causes injury to real and personal property of any kind. The standards for air pollution established or adopted by the State of Nebraska shall be presumptive evidence as to when the air is deemed to be polluted under this Section. It is hereby unlawful for any such person, firm, or corporation to permit or cause the escape of the aforesaid nuisances, and the escape of the said dust, fumes, gases, mists, odors, and smoke is hereby declared to be a nuisance, and shall be summarily abated upon written notice by the Municipality to the violator. Such abatement may be in addition to the penalty for air pollution in the Municipality. (*Ref. 18-1720 RS Neb.*) (*Amended by Ord.02-01, 2/4/02*)

§ 92.41 WATER POLLUTION PROHIBITED.

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

§ 92.42 NOXIOUS USE OF BUILDING OR PREMISE.

It shall be unlawful for any person to use a building or premise in any part of the Municipality for any trade, industry, or other purpose that is detrimental to the public health, safety, and welfare. Such a noxious or offensive use is hereby declared to constitute a public nuisance. (*Ref. 18-1720 RS Neb.*)

RODENTS AND INSECTS

§ 92.55 EXTERMINATION REQUIRED.

It shall be the duty of the owner, lessee, or occupant of any dwelling or building to be responsible for the active and continued extermination of any insects, rodents, or other pests therein, or on the premises. In the event that the owner, lessee, or occupant of any dwelling or building neglects, fails, or otherwise refuses to control and actively exterminate the insects, rodents, and other pests in and about his or her premises, the Board of Health shall issue notice for him or her to do so. If that owner, lessee, or

occupant has not made a good faith effort to exterminate the pests within 5 days, the premises shall be deemed to be a nuisance and a health hazard. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

§ 92.56 OCCUPANT RESPONSIBILITY.

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

§ 92.57 OWNER RESPONSIBILITY.

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

NOISE CONTROL

§ 92.58 DEFINITIONS.

For the purposes of this Article only, certain words and phrases used therein are defined as follows:

AMBIENT NOISE shall mean the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.

A-WEIGHTED SOUND LEVEL shall mean the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

COMMERCIAL AREA shall mean any area in the MX, LC, CC, DT, or GC Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

CONSTRUCTION shall mean any site preparation, assembly, erection, substantial repair, alteration, or similar action on public or private property.

DECIBEL (dB) shall mean a logarithmic and dimensionless unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure which is twenty (20) micropascals [twenty (20) micronewtons per square meter.]

EMERGENCY shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demand immediate action.

EMERGENCY WORK shall mean any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

EQUIVALENT A-WEIGHTED SOUND LEVEL (L_{eq}) shall mean the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. For the purposes of this Article, a time period of one (1) hour shall be used, unless otherwise specified.

GROSS VEHICLE WEIGHT RATING (GVWR) shall mean the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GVWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

HEALTH OFFICER shall mean the director of the Lincoln-Lancaster County Health Department, or his representatives, agents, or employees.

IMPULSIVE SOUND shall mean sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms. The C-weighting filter network shall be used for measurement purposes.

INDUSTRIAL AREA shall mean any area in the LI or GI Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

MOTOR VEHICLE shall mean any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck trailers, semi-trailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies, racing vehicles, or all-terrain vehicles but not including motorcycles.

MOTORBOAT shall mean any vessel which operates on water which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices, and hover craft.

MOTORCYCLES shall mean an unenclosed motor vehicle having a saddle for the use of the operator and two (2) or three (3) wheels in contact with the ground, including, but not limited to motor scooters, mini-bikes, and motor-driven cycles.

MUFFLER shall mean a device for diminishing the sound of projected noise from an internal combustion engine, commercial, or industrial blowers, where necessary.

NOISE shall mean any sound not occurring in the natural environment which causes or tends to cause an adverse psychological or physiological effect on humans.

NOISE DISTURBANCE shall mean any sound not occurring in the natural environment which would tend to annoy or disturb humans with reasonable sensitivities, or which injures or endangers the comfort, health, welfare, hearing, peace, or safety of other persons.

NOISE DISTURBANCE shall mean any sound not occurring in the natural environment which would tend to annoy or disturb humans with reasonable sensitivities, or which injures or endangers the comfort, health, welfare, hearing, peace, or safety of other persons.

NOISE SENSITIVE ZONE shall mean any area designated pursuant to the Waverly Zoning Ordinance, adopted by reference in this Code, for the purpose of insuring exceptional quiet.

PERSON shall mean any individual, association, partnership, or corporation.

POWERED MODEL VEHICLE shall mean any self-propelled airborne, waterborne, or landborne plane, vessel, or vehicle which is not designed to carry passengers, including but not limited to, any model airplane, boat, car, or rocket.

PUBLIC RIGHT-OF-WAY shall mean any street, avenue, boulevard, highway, sidewalk, or alley or similar place which is owned or controlled by a government entity.

PUBLIC PLACE shall mean real property or structures thereon which are owned or controlled by a government entity.

PURE TONE shall mean any sound which can be distinctly heard as a single pitch or a set of single pitches.

REAL PROPERTY BOUNDARY shall mean an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one (1) person from that owned by another person, but not including intra-building real property divisions.

RESIDENTIAL AREA shall mean any area in the R-1, R-2, R-3, and R-4 Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

RMS SOUND PRESSURE shall mean the square root of the time-averaged square of the sound pressure, denoted Prms.

SOUND shall mean an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium. The description of the sound may include any characteristic of such sound, including duration, intensity and frequency.

SOUND LEVEL shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, C, Flat, or Linear, as specified in American National Standards Institute specifications for sound meters (ANSI S1.4-1971, or the latest approved revision thereof.) If the frequency weighting employed is not indicated, the A-weighting shall apply.

SOUND LEVEL METER shall mean an instrument which includes a microphone, amplifier, RMS Detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels.

SOUND PRESSURE shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

SOUND PRESSURE LEVEL shall mean twenty (20) times the logarithm to the base of ten (10) of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micropascals ($20 \times 10^6 \text{ N/m}^2$). The sound pressure level is denoted l_p or SPL and is expressed in decibels.

VIBRATION shall mean an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference.

WEEKDAY shall mean any day Monday through Friday. (*Amended by Ord. 02-01, 2/4/02*)

§ 92.59 ADMINISTRATION.

The noise control program established by this Article shall be administered by the Lincoln-Lancaster County Health Department. In order to implement and enforce this Article and for the general purpose of sound and vibration abatement and control, the Health Officer shall have, in addition to any other authority vested in it, the power to:

- A. Conduct, or cause to be conducted, research, monitoring, and other studies related to sound and vibration.
- B. Conduct programs of public education regarding the causes, effects, and general methods of abatement and control of noise and vibration, or regarding the actions prohibited by this Article or by any applicable state or federal regulations.
- C. Work to coordinate the noise and vibration control activities of the Municipality, and cooperate with all appropriate local, state, and federal agencies or private persons or organizations to promote compliance with this Article and to promote uniform noise and vibration standards.
- D. Consult with any Municipality official or agency responsible for any proposed or final standard, or similar action on the advisability of revising such action if the Health Officer has reason to believe that such action is not consistent with this Article.
- E. Review public projects which are subject to mandatory review or approval by Municipal commissions and/or committees, department for compliance with this Article, if such projects are likely to cause sound or vibration in violation of this Article.

- F. Conduct inspections, surveys and examinations of properties for the purpose of determining compliance with or violation of this Article. (*Amended by Ord. 02-01, 2/4/02*)

§ 92.60 HEALTH OFFICER DUTIES.

In order to implement and enforce this Article effectively, the Health Officer shall within reasonable time after the effective date of this Article:

- A. Prepare recommendations, to be approved by the City Council, for the designation of noise-sensitive areas or zones which contain noise sensitive activities. Noise-sensitive activities include, but are not limited to houses within commercial areas, (excluding apartments located within commercial structures), operations of schools, libraries open to the public, churches, retirement homes, hospitals, nursing homes, auditoriums, concert halls, and music shells.
- B. Investigate and pursue possible violations of this Article, and take any legal and proper action necessary to abate such violations.
- C. Study the existing transportation systems, such as truck routes within the community; determine areas with sensitivity to sound and vibration caused by transportation; recommend changes or modifications to transportation systems to minimize the sound and vibration impact on residential areas and noise-sensitive zones; and assist in or review the total transportation planning of the community, including new roads, highways, bus routes, airports, and other systems for public transportation, to ensure that the impact of sound and vibration receives adequate consideration.
- D. Develop a generalized sound level map of the City, a long-term plan for achieving quiet in the City and integrate this plan into the planning process of the City.
- E. Administer noise program grants and other funds and gifts from public and private sources, including the State and Federal governments.

§ 92.61 HEALTH OFFICER, PERIODIC REPORTS.

The Lincoln-Lancaster County Health Department Health Officer shall evaluate and report, as needed, on the effectiveness of the City Noise Control Program and make recommendations for any legislative or budgetary changes necessary to improve the program. This report shall be made to the City Council. (*Amended by Ord. 02-01, 2/4/02*)

§ 92.62 NOISE DISTURBANCES PROHIBITED.

- A. No person shall make, continue, or cause to be made or continued, any noise disturbance. Without limiting the foregoing, the following acts and the causing thereof, are declared to be in violation of this prohibition:
 - 1. Radios, television sets, musical instruments, and similar devices: Operating, playing, or permitting the operation or playing of any radio, television,

phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance across a residential real property boundary or within a noise-sensitive zone, except for activities open to the public and for which any required permit has been issued.

2. Loudspeakers/public address systems: Using or operating for any purpose any loudspeaker, public address system, or similar device in such a manner as to cause a noise disturbance across a residential property boundary or within a noise-sensitive zone.
3. Animals and birds: Owning, possessing, or harboring any animal or bird which makes sounds which create a noise disturbance across a residential property boundary or within a noise-sensitive zone.
4. Loading and unloading: Loading, unloading, opening, closing, or handling of boxes, carts, containers, building materials, or similar materials in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise-sensitive zone.
5. Construction: Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work:
 - a. Between the hours of ten o'clock (10:00) p.m. and six o'clock (6:00) a.m. the following day on any day in such a manner as to create a noise disturbance across a residential real property boundary or noise-sensitive zone, except for emergency work of public service utilities or by variance issued pursuant to this Article.
 - b. This Section shall not apply to the use of domestic power tools of a type normally found in the home.
6. Vehicle or motorboat repairs and testing: Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential property boundary or within a noise-sensitive zone.
7. Powered model vehicles: Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary, in a public space or within a noise-sensitive zone. Maximum sound levels in the public space shall conform to those set forth for residential land use in Table 4, Section 92.64. Maximum sound levels for residential property and noise-sensitive zones shall be governed by Section 92.64 and Subsection 9(a) of this Section, respectively.
8. Stationary non-emergency signaling devices: Sounding or permitting the sounding of any signal from any stationary bell, chime, whistle, siren, or similar device intended primarily for non-emergency purposes, from any place, in such a manner as to create a noise disturbance across a residential property boundary or within a noise-sensitive zone.

Devices used in conjunction with places of religious worship, public and private educational institutions, and railroad grade crossing warning devices shall be exempt from the operation of this provision.

9. Within noise-sensitive zones:
 - a. Creating or causing the creation of any sound within any noise-sensitive zone designated in Section 92.60, so as to disrupt the activities normally conducted within the zone or interfere with the functions of such activity, provided, that conspicuous signs are displayed indicating the presence of the zone; or

- b. Creating or causing the creation of any unnecessary or unusually loud sound within any noise-sensitive zone, designated pursuant to Section 92.60 while such zone is in use for any of the activities for which exceptional quiet is necessary; Provided, that conspicuous signs are displayed indicating the presence of the zone.
10. Tampering: Removing, impairing, or rendering inoperative by any person other than for purposes of maintenance, repair or replacement, of any muffler, or noise control device, or noise label of any product, or use of a product which has a muffler, or noise control device or noise label removed or rendered inoperative, with knowledge that such action has occurred.
11. Horns, signaling devices, etc.: The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any street or public place of the City so as to create a noise disturbance across a residential real property boundary or noise-sensitive zone except as a danger warning.
12. Portable air compressors: No person shall operate a portable air compressor which produces an average sound level in excess of seventy-six (76) dBA.
13. Tampering with sound monitoring equipment: The removing or rendering inaccurate or inoperative any sound equipment monitoring device positioned by or for the Health Officer; provided such device or the immediate area is clearly labeled to warn of the potential illegality.
14. Adequate mufflers:
 - a. No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler in good working order and in constant operation;
 - b. No person shall remove, impair, or render inoperative, or cause to be removed, impaired;
15. Refuse collection vehicle:
 - a. No person shall operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse between the hours of four o'clock (4:00) p.m. and six o'clock (6:00) a.m. the following day in a residential area or noise-sensitive zone; or
 - b. Collect refuse with a refuse collection vehicle between the hours of four o'clock (4:00) p.m. and six o'clock (6:00) a.m. the following day in a residential area or noise-sensitive zone.
16. Standing motor vehicles: No person shall operate or permit the operation of any motor vehicle with a gross weight rating (GVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached to such vehicle, for a period longer than five (5) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, within one hundred fifty feet (150') [forty-six meters (46m)] of a residential area or designated noise-sensitive zone in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise-sensitive zone. Emergency vehicles in the performance of their duty shall be exempt from this subsection.
17. Fans or blowers: Operating or permitting the operation of fans or blowers for the purpose of drying, cooling, or transfer of air in such a manner as to cause a noise disturbance across a residential real property or commercial real property boundary or within a noise-sensitive zone, in accordance with Table 4, Section 4-509.

B. When the maximum sound levels listed in Table 4 of Section 92.64 are deemed necessary to determine the existence of a noise in Subparts (1), (2), (4), (6), (7), and (16) of Subsection A., the time base for determination of the maximum Leq level shall be ten (10) minutes rather than one (1) hour.

§ 92.63 RAIL CARRIER OPERATION.

A. No rail carrier shall operate any locomotive(s), singly or in combination, in a stationary condition, for a period that exceeds five (5) minutes in any one (1) hour period within six hundred feet (600') of any residential area or noise sensitive zone.

B. No rail carrier shall operate any locomotive or combination of locomotives when moving at any time under any condition of grade, load, acceleration, or deceleration in such a manner that the sound level emitted by the locomotive exceeds the level set forth in Table 3 below.

All readings shall be taken at one hundred feet (100') [thirty meters (30m)] from the centerline of any section of track which exhibits less than a two degree (2°) curve or a radius of curvature greater than two thousand eight hundred sixty-five feet (2,865') [eight hundred seventy-three meters (873m)].

TABLE 3
RAIL CARRIER OPERATIONS UNDER MOVING CONDITIONS

	Sound Level Limit, in dBA
Manufactured on or before December 31, 1979	96 dBA
Manufactured after December 31, 1979	90 dBA

No rail carrier shall operate any rail car or combination of rail cars which while in motion produce sound levels in excess of:

1. Eighty-eight (88) dBA at rail car speeds up to and including forty-five (45) mph [seventy-two(72) km/hr]; or
2. Ninety-three (93) dBA at rail car speeds greater than forty-five (45) mph [seventy-two (72) km/hr].

All measurements shall be taken in accordance with procedures outlined in this Section and on any section of track which is free of special track work or bridge or trestles.

C. Nothing in this Section shall be construed to prohibit, restrict, penalize, enjoin, or in any other manner regulate the movement of rail carriers which are in all respects conducted in accordance with, or pursuant to, applicable Federal laws or regulations.

§92.64 MAXIMUM PERMISSIBLE SOUND LEVELS BY RECEIVING LAND USE.

- A. No person shall create or operate or cause to be created or operated on any property in the AG, R-1, R-2, R-3, R-4, MX, LC, CC, DT, GC, LI, AND GI Zoning Districts as designated pursuant to Article 4 of the Waverly Zoning Ordinance, any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 4 below when measured at or within the property boundary of the receiving land use.

TABLE 4.
SOUND LEVELS BY RECEIVING LAND USE

Receiving Land-Use Category	Time	Maximum One-Hour *Leq Level
R1, R2, R3, R4	7:00 a.m. – 10:00 p.m.	65
MX, LC, CC, DT, GC, LI	10:00 p.m. – 7:00 a.m.	55
GI, AG	7:00 a.m. – 10:00 p.m.	65
	10:00 p.m. – 7:00 a.m.	55

*Leq is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. It is the average sound level and accurately portrays the sound the human ear actually hears.

- B. Exemptions. The provisions of this Article shall not apply to:

1. Activities covered by the following Sections: 92.62(5) (Construction), 92.62(8) (Stationary Non-Emergency Signaling Devices), and 92.62(15) (Refuse Collection Vehicles).
2. The unamplified human voice;
3. Interstate railway locomotives and cars, and any railway facility subject to regulation by the U.S. Environmental Protection Agency;
4. Agricultural activities conducted on agriculturally zoned land;
5. Domestic lawn and garden tools.

§ 92.65 EMERGENCY EXCEPTION.

The provisions of this Article shall not apply to:

- A. The emission of sound for the purpose of alerting persons to the existence of an emergency, or
- B. The emission of sound in the performance of emergency work.

Nothing in this Section, however, shall be construed to permit law enforcement, ambulance, fire or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary.

§ 92.66 VARIANCES, APPEAL.

- A. The City Council shall have the authority to grant an initial variance to the strict application of Sections 92.62, 92.63(A), 92.64(4) for a period of not to exceed fifteen (15) calendar days. Any person seeking such a variance shall contain the information which demonstrates that bringing the source of sound activity for which a variance is sought into compliance with this Article would constitute an unreasonable hardship on the applicant, on community or other persons.
- B. The City Council shall have the authority to grant an extension to any variance. Any person seeking such an extension shall file an application with the City Clerk. Notice of an application for an extension shall be posted by a sign placed in a conspicuous place on or near the property upon which action is pending. No extension shall be granted for a period of two (2) days from and after posting of the property.
- C. Any individual who claims to be adversely affected by allowance of any requested extension of a variance may, prior to the end of the two (2) day period after posting of the property, file a statement with the City Clerk containing any information to support the claim. If the City Council finds that a sufficient controversy exists regarding an application, a public hearing shall be held. All such hearings shall be during the next regularly scheduled council meeting. In determining whether to grant or deny any application, the City Council shall balance the hardship to the applicant, the community, and other persons of not granting the variance or extension against the adverse impact on the health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance or extension. Applicants for variances of extensions and persons contesting extensions may be required to submit any information the municipality may reasonably require. In granting or denying an application, the City Clerk shall place on public file a copy of the decision and the reasons for denying or granting the variance or extension and the criteria to be considered in deciding whether to grant variances and extensions.

Variances or extensions shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The variance or extension shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance or extension shall terminate such variance or extension and subject the applicant to those provisions of this Article regulating the source of sound or activity for which the variance or extension was granted.

The City Council may issue guidelines defining the procedures to be followed in applying for a variance or extension and the criteria to be considered in deciding whether to grant variances and extensions. (*Amended by Ord.02-01, 2/4/02*)

§ 92.67 ABATEMENT ORDERS.

- A. The city council or other agency responsible for enforcement of any provision of this Article may issue an order requiring abatement of any source or sound alleged to be in violation of this Article within a reasonable time period. Such abatement orders may be issued in lieu of prosecution for violation, and failure to comply with any abatement order shall be a violation for this Article.

- B. The city council shall order an immediate halt to any sound which exposes any person to continuous sound levels in excess of those shown in Table 5 below or to impulsive sound levels in excess of those shown in Table 6 below; Provided, that no such order shall be issued if the only persons exposed to sound levels in excess of those listed in Tables 5 and 6 are exposed as a result of:
 - 1. Trespass,
 - 2. Invitation upon private property by the person causing or permitting the sound, or
 - 3. Employment by the person or contractor of the person causing or permitting the sound.

- C. Any person, firm, partnership, association, corporation, company or organization of any kind who violates an order issued pursuant to this Section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense.

TABLE 5
CONTINUOUS SOUND LEVELS WHICH POSE AN
IMMEDIATE THREAT TO HEALTH AND WELFARE*

Sound Level Limit in dBA	Duration
90	24.0 Hours
93	12.0 Hours
96	6.0 Hours
99	3.0 Hours
102	1.5 Hours
105	45.0 Minutes
108	22.0 Minutes

* Use equal energy time intensity trade-off if levels vary, find energy equivalent over twenty-four (24) hours.

TABLE 6
 IMPULSIVE SOUND LEVELS WHICH POSE AN
 IMMEDIATE THREAT TO HEALTH AND WELFARE

Sound Level Limit in dBA	Number of Repetitions Per 24-Hour Period
145	1
135	10
125	100

(Amended by Ord. 02-01, 2/4/02, 07-05, 5/7/07)

§ 92.68 PENALTY.

- A. Any person, firm, partnership, association, corporation, company, or organization of any kind violating any of the provisions of this Article, except Section 92.67 shall be deemed guilty of a Class II Misdemeanor as defined by §131.22 of this Code. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense.
- B. The fines listed for the various increments above the decibel (dBA) limits do not include court costs.

TABLE 7
 FINE SCHEDULE FOR VIOLATIONS OF SOUND LEVEL
 LIMITS FOR MOTORIZED VEHICLES AND MOTORCYCLES
 ON PUBLIC RIGHT-OF-WAY

Incremental Range in Excess of Sound Level Limit (dBA)	Amount of Fine (\$)
1-3	10
4-6	25
7-10	35
11-13	45
14-17	55
18-21	65
22-25	75
26-29	85
30+ 100	

(Amended by Ord. 07-05, 5/5/07)

§ 92.69 ADDITIONAL REMEDY, INJUNCTION.

The Municipality shall take such action as necessary and legal to enforce the provisions of this Article. As an additional remedy, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provisions hereof and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health, or peace of residents in the area shall be deemed, and is

declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. No provision of this Article shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, or any person for injury or damage arising from any violation of this Article of from other law. (*Amended by Ord. 02-01, 2/4/02*)

CHAPTER 93: PUBLIC WAYS AND PROPERTY

Section

Municipal Property

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- 93.02 Sale and conveyance
- 93.03 Obstructing view on corner lots; sight triangle obstructions
- 93.04 Obstructing view on corner lots; exceptions to restrictions
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Sidewalks

- 93.30 Definitions; duty to keep clean
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- 93.62 Improvement districts, objections
- 93.63 Improvement of streets on corporate limits
- 93.64 Curb and gutter; cutting curb; closing cuts
- 93.65 Deferral from special assessments

MUNICIPAL PROPERTY

§ 93.01 MAINTENANCE AND CONTROL.

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

§ 93.02 SALE AND CONVEYANCE.

The Municipality shall have the power by ordinance to sell and convey all public squares, streets, and alleys, but not including land used for park purposes within the Municipality; Provided, a petition containing the signatures of three-fourths ($\frac{3}{4}$) of the property holders of the Municipality, has been presented to the Governing Body, and a notice of the petition has been published not less than four (4) weeks in each paper of general circulation in the Municipality. (*Ref. 17-567 RS Neb.*)

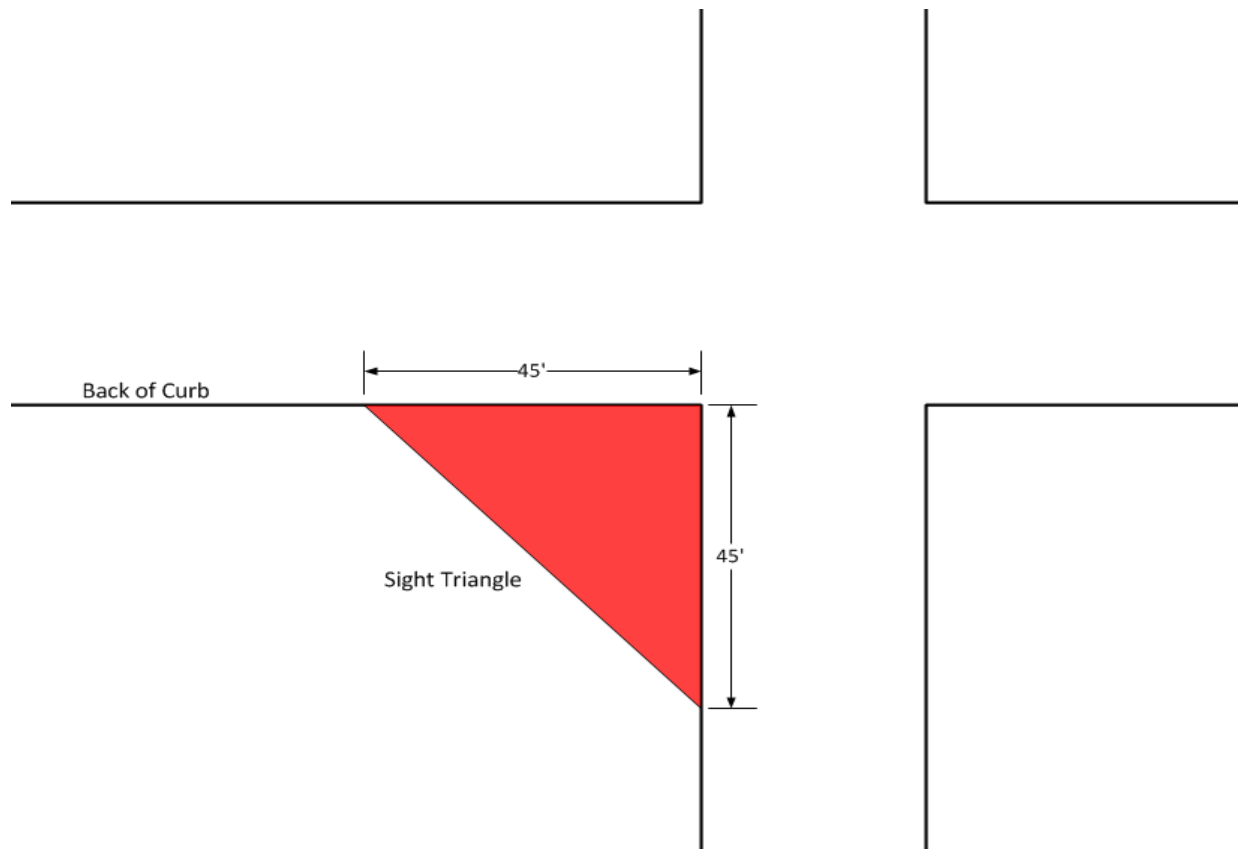
§ 93.03 OBSTRUCTING VIEW ON CORNER LOTS; SIGHT TRIANGLE OBSTRUCTIONS.

Specified areas along street intersection approach legs and across their included corners should be clear of obstructions that might block a driver's view of potentially conflicting vehicles. These specified areas are known as clear sight triangles. The dimensions of the legs of the sight triangles are dependent upon design speed of the intersecting roadways and the type of traffic control used at the intersection. Intersection sight distance in the City of Waverly shall be maintained per paragraphs A and B as described below:

A. Except as otherwise provided in the Waverly Municipal Code, it is hereby determined that in order to protect and preserve the public welfare and safety, within the defined intersection sight triangle area defined in paragraph B, it shall be unlawful for any person to install, plant, place, set out, or maintain, or to allow to be installed, planted, placed, set out, or maintained, or to permit to exist any tree, hedge, shrubbery, plant, natural growth, sign, fence, or other obstruction to the view which is higher than thirty inches (30") above either:

1. the top of the curb return at the applicable corner of the intersection; or,
2. the nearest paved roadway surface, where there is no curb; or,
3. the existing traveled roadway at the corner in question where there is no curb or paved roadway.

B. For major controlled intersections (e.g. stop, yield, signals etc.) and intersections with collector streets and arterial streets, the intersection sight distance triangles shall be defined as per the AASHTO Policy on Geometric Design of Highways and Streets, latest edition. For all other minor and uncontrolled intersections (residential streets) the intersection sight distance triangles on each leg of an intersection shall be defined as a triangle formed by the adjacent curb lines of intersecting streets and the line joining points 45 feet on each side line from their point of intersection (as shown below). No landscaping shall be planted in such areas, which will materially obstruct the view of drivers approaching the street intersection.



At intersections of a sidewalk and alley or non-residential driveway or parking lot access, the intersection sight triangle is defined as a triangle whose legs extend 10 feet back from the sidewalk along the nearest edge of the alley or driveway, and 20 feet parallel to and along the back of the sidewalk back from the intersecting alley or driveway.

C. Any obstruction maintained or existing in violation of this Article shall be deemed a public nuisance and shall be removed within one hundred twenty (120) days of the effective date of this Article as provided for herein. (*Amended by Ord. #02-14, 5/20/02; 05-08, 7/18/05; 06-06, 1/3/06; 15-09, 12/8/15*)

§ 93.04 OBSTRUCTING VIEW ON CORNER LOTS; EXCEPTIONS TO RESTRICTIONS.

The restrictions imposed within §8-103 of this Code shall not apply to the following:

- A. Buildings and accessory buildings constructed prior to the original effective date of this Article. The definitions of "building" and "accessory building" found in the Waverly Zoning Ordinance, as the same may be amended from time to time and at any time, shall apply for the purposes of this Article.
- B. Public utility poles.
- C. Official traffic control devices.
- D. Locations where the contour of the ground on the original effective date of this Article is such that there can be no cross visibility at the intersection.
- E. Trees trimmed to the trunk so as to permit unobstructed cross visibility to a line at least eight feet (8') above the level of the reference point as defined in §8-103 of this Code, or trimmed to one half (½) the height of the tree, whichever is less.
- F. Coniferous trees which were planted and have grown to a height of no less than four feet (4') prior to the original effective date of this Section, when and only when, in the judgment of the Governing Body acting by motion, and on the recommendation of a representative of the Nebraska State Highway Department, the intersection at which they are situated can be safely controlled with traffic control devices, notwithstanding the presence of such trees.

§ 93.05 OBSTRUCTION OF PUBLIC RIGHT-OF-WAY, GENERALLY.

It shall be unlawful for any person to obstruct or encumber by fences, gates, signs, buildings, accessory buildings, other structures, vegetation, or otherwise, any of the streets, alleys, or sidewalks of the Municipality. Such obstructions shall be deemed a public nuisance and may, after notice, be removed by the Municipality without compensation to the property owner, and at the expense of the owner of the property involved, in accordance with the procedures set forth within this Article.

§ 93.06 PERMITTED OBSTRUCTION OF STREET, SIDEWALK, AND ALLEY SPACE.

Persons engaged in the erection, construction, reconstruction, wrecking, or repair of any building, or the construction or repair of a sidewalk along any street, sidewalk, or alley may occupy the public street, sidewalk, or alley space with such building material and equipment as long as it is necessary; Provided, that such persons shall make application to and receive a permit in writing from the Building Inspector and/or Zoning Administrator authorizing such obstruction. No permit for the occupancy of the street, sidewalk, or alley space and more than one-third (1/3) of the roadway adjacent to the real

estate upon which any building is to be constructed, erected, reconstructed, wrecked, or repaired, shall be granted; and Provided further, that a suitable passage way shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the Building Inspector and/or Zoning Administrator. *(Amended by Ord. #02-14, 5/20/02)*

§ 93.07 SIDEWALKS; OVERHANGING BRANCHES.

The owner or occupant of any real estate abutting or adjacent to any street, sidewalk, alley, or other public way over which there extend branches of trees, shrubs, or other bushes, shall at all times keep the branches or limbs thereof trimmed to a height of not less than eight feet (8') above the surface of any sidewalk and fourteen feet (14') above the surface of any street, alley, or other public way, and shall not allow the same to interfere with the lighting from street lights of such street, sidewalk, or alley. *(Amended by Ord. No. 97-9, 11/4/97; 09-13, 11/2/09)*

§ 93.08 NOTICE TO REMOVE OBSTRUCTIONS.

If any tree, hedge, shrubbery, planting, natural growth, sign, fence or other obstruction is installed, planted, placed, set out, maintained, or permitted to exist in violation of this Article, the Building Inspector and/or Zoning Administrator shall give to the owner of the premises upon which or adjacent to which such obstruction exists, written notice that said obstruction violates the requirement of this Article, creating a hazard to the safety of the public.

Such notice shall notify the owner or occupant that if the obstruction is not destroyed, removed, or trimmed to comply with the provisions of this Article within five (5) days from the date of the mailing of the notice, or in the event that it is not possible to determine the owner of the real estate or to locate the owner of said real estate, then and that event, within five (5) days from the date of the posting of the notice, that the Municipality shall perform the required act and shall assess the costs against the property. Such notice shall be given the owner or occupant by publication at least once in a daily newspaper in general circulation in the City of Waverly, no less than five (5) days prior to the date the obstruction is to be removed, and by postage prepaid United States Certified Mail, return receipt requested, no less than five (5) days prior to the date the obstruction is to be removed as follows:

A. In the event that the owner is a resident of the Municipality, then said notice shall be mailed to resident owner at the address of the resident property owner as listed on the current tax rolls at the time the notice is given, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

B. In the event that the owner is a non-resident of the Municipality or cannot be found therein, then said notice shall be given by postage prepaid Certified United States Mail return receipt requested, addressed to the last known address of any tenant or other person having the care, custody, or control of such real estate, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

C. In the event that the owner is a non-resident of the Municipality and there is no tenant, occupant, or other person with the Municipality to whom the notice can be given, then said notice shall be mailed to the non-resident owner at the address of the non-resident property owner as listed on the current tax rolls at the time the notice is given, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

D. In the event that it is not possible to determine the owner of the real estate or if it is not possible to locate the owner of said real estate, then it shall be the duty of the Building Inspector and/or Zoning Administrator or his/her agent to post a copy of the notice on the premises, and such posted notice shall, together with the publication required herein, be deemed sufficient notice. *(Amended by Ord. #02-14, 5/20/02)*

§ 93.09 REMOVAL AND ASSESSMENT OF COST.

In the event that any obstruction is not removed or abated by the date required within the notice given hereunder, the Governing Body may, by motion, order the obstruction removed under the direction of the Building Inspector and/or Zoning Administrator, and the costs thereof shall be chargeable to the property owner at the same rate as that set by resolution (or otherwise), for the removal of weeds. Such action shall take place at the regular or special meeting of the Governing Body and shall be placed upon the agenda thereof according to law. *(Amended by Ord. #02-14, 5/20/02)*

§ 93.10 VIOLATIONS AND PENALTIES.

Any person who permits a violation of this Article to remain uncorrected after service of the notice required hereunder, and after the expiration of time set by the Building Inspector and/or Zoning Administrator shall, upon conviction thereof by the court, be required to pay a fine of fifty dollars (\$50.00) for each violation and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

Any person upon whom a duty is placed by the provisions of this Article who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of fifty dollars (\$50.00) and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation. *(Amended by Ord. #02-14, 5/20/02)*

§ 93.11 ENFORCEMENT; ENTRY UPON PRIVATE PROPERTY.

The Mayor, or any department or person designated by the Mayor, is charged with the enforcement of this Article, and to that end any enforcement official authorized by the Mayor may enter upon private property at reasonable hours for the purpose of determining whether there is a violation of this Article and may then, when required under this Article, enter private property for the purpose of clearing prohibited obstructions or encroachments.

§ 93.12 VEHICLES PARKED IN SIDEWALK SPACE.

It shall be unlawful for any person within a residentially zoned district to park or place, or cause to be parked or placed, any motor vehicle or trailer upon any part of the sidewalk space or that space between the curb line and the lot line that hasn't been designated for parking. *(Amended by Ord. 02-05, 2/4/02)*

SIDEWALKS

§ 93.30 DEFINITIONS; DUTY TO KEEP CLEAN.

- A. For the purposes of this Article, unless the context is shown to clearly intend otherwise, the following words, terms, and phrases shall be given the meaning set forth below:
1. Sidewalk shall mean a walkway, which whether paved or unpaved, and which, whether or not within a street right-of-way, is situated along or is associated with a Municipal street; Provided, that the term sidewalks shall include walkways which the Governing Body has the authority to construct or order constructed and maintained as sidewalks along or in conjunction with the Municipal streets, but which with the permission of the Governing Body are constructed outside the street right-of-way, a reasonable distance from the paved roadway, in order to protect pedestrians, and in lieu of a sidewalk with the street right-of-way.
 2. Private walkway shall mean any walkway which is situated on real estate in private ownership and which does not fall within the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
 3. Other public walkway shall mean any walkway which is situated on real estate held by the United States, the State of Nebraska, or any governmental subdivision other than the City of Waverly, Nebraska, which does not fall with the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
 4. Municipal walkway shall mean any walkway which is situated within a Municipal right-of-way or on other real estate held by the Municipality which does not fall within the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
- B. It shall be unlawful for the occupant or owners of any lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substances to accumulate on the sidewalks along or contiguous to said property or to permit any snow, sleet, ice, mud, or other substances to remain upon said sidewalk. All sidewalks within the Municipality shall be cleared of precipitation within five (5) hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before ten o'clock (10:00) a.m. the following day. Whenever substances other than precipitation shall accumulate upon sidewalks, the same shall be removed within forty-eight (48) hours of accumulation after service of notice upon such owners of occupants.

- C. Municipal walkways shall be cleared by the Municipality.
- D. Responsibility for clearing private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same shall not be subject to the provisions of this Section. *(Ref. 17-557 RS Neb.) (Amended by Ord. No. 8-200.01 4/5/82)*

§ 93.31 NOTICE TO CLEAN; ASSESSMENT.

Notice to remove any encroachment or substance from a sidewalk shall be made upon the owner, agent or occupant of the abutting property, said notice to demand the removal of such encroachment and/or substance. Notice may be given by personal service or by publication. In the event the property owner or occupant refuses or neglects to remove all such encroachments within: (a) twenty-four (24) hours after personal service, or (b) within five (5) days if notice is by publication, then the City may cause such encroachments and/or substances to be removed, and the cost of such removal to be paid out of the Street Fund. The Governing Body shall assess the cost of the notice and removal against such abutting property as a "special sidewalk assessment," which shall be levied and collected as special taxes in addition to general revenue taxes, and shall be subject and shall draw interest from the date of the assessment. *(Amended by Ord. No. 07-17, 12/17/07)*

§ 93.32 MAINTENANCE.

- A. Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, along or contiguous with any sidewalk shall fail to construct or repair any sidewalk along or contiguous with his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, the Municipality shall accept no liability for damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the Governing Body shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. *(Ref. 17-557.01 RS Neb.)*
- B. Municipal walkways shall be maintained by the Municipality.
- C. Responsibility for maintaining private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same not shall be subject to the provisions of this Section. *(Amended by Ord. No. 8-200.03, 4/5/82)*

§ 93.33 REPAIR.

- A. The Governing Body may require sidewalks within the Municipality to be repaired. Notice to the owners of property along or contiguous with sidewalks in disrepair shall require said owners, within forty-eight (48) hours from issuance of notice, to make arrangements to have the sidewalk repaired. Said repairs shall be completed within twenty-one (21) days after issuance of said notice. No special assessment shall be levied against the property unless said owner shall neglect or refuse to repair within the time prescribed, and in the event that such owner fails to repair, the Municipality shall cause the repairs to be made and assess the property owner the expense of such repairs. In the event the property owner is a non-resident of the county in which the property is situated, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.
- B. Municipal walkways shall be repaired by the Municipality.
- C. Responsibility for the repair of private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same shall not be subject to the provisions of this Section. *(Amended by Ord. No. 8-200.04, 4/5/82)*

§ 93.34 CONSTRUCTION BY OWNER.

All new residential construction shall install sidewalks within twelve (12) months from the date of the Building Permit. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

Said owner shall make application in writing for a permit and file such application at the City Office. The permit shall give a description of the lot, or piece of land along which the sidewalk is to be constructed. The Building Inspector shall issue the desired permit unless good cause shall appear why said permit should be denied; Provided, if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the Building Inspector shall submit the application to the Governing Body who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed said sidewalk at any other location, grade, or elevation than so designated by the Municipality. All sidewalks shall be built and constructed on the established grade, or elevation, and if there is no established grade, then on the grade or elevation indicated by the Building Inspector. *(Amended by Ord.02-05, 2/4/02)*

§ 93.35 MUNICIPAL CONSTRUCTION.

The Governing Body may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the Municipality. Notice of the Governing Body's intention to construct said sidewalk shall be given by the Municipal Clerk by publication of notice one (1) time in a legal newspaper of general circulation in the Municipality.

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

Said notice shall notify the owner of the premise of the passage of the resolution ordering him to construct or cause to be constructed a sidewalk within thirty (30) days after the date of publication and further that if he fails to construct the sidewalk or cause the same to be done within the time allowed, the Municipality will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special tax against the premise; Provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against the property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-522, 17-523 RS Neb.*)

§ 93.36 CONSTRUCTION BIDS.

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

§ 93.37 CONSTRUCTION BY PETITION.

If the owners of the record title representing more than sixty percent (60%) of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the Governing Body to make the same, the Governing Body shall proceed in all things as though such construction had been ordered by it. Upon the petition of any freeholder who is an abutting owner in fee simple of property subject to assessment

for sidewalk improvements, the Governing Body may order permanent sidewalks built in accordance with this Article upon the freeholder making, executing, and delivering to the Municipality an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed and that the petitioner gives and grants to the Municipality the right to assess and levy the costs of such construction against the freeholder's real estate abutting the sidewalk improvement and promises to pay such costs with the interest. The total cost of such improvement shall be levied, allocated, financed, and specially assessed as provided by law. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§ 93.38 WHERE PLACED.

Sidewalks in residential areas shall be four feet (4') in width and placed on the street at the lot line. Sidewalks shall slope one fourth inch ($\frac{1}{4}$ ") per foot toward the street and shall be placed at a grade that will not impede the flow of water to the street. Where special problems arise as to grade, or conformity with existing sidewalks, the owner shall apply to the City Council for direction in placing the sidewalk and the council may make such deviations as seem reasonable to achieve the best sidewalk system under the prevailing conditions.

Owners of property at the intersection of curb lines shall extend their sidewalks to the curb lines.

Sidewalks in the business section of the City shall be eight feet (8') in width and plumb with the curb line and shall slope one-fourth inch ($\frac{1}{4}$ ") per foot to the curb.

§ 93.39 MATERIAL TO BE USED; EXTENT OF REPAIRS PERMISSIBLE.

All sidewalks on either side of the streets and avenues of this City, in front of or along any lot, lots, or lands abutting upon the same, shall be constructed of cement. No person shall construct, reconstruct, or replace any sidewalk of any other material within the limits of this City. In no case shall a permit be granted where the amount of repairs in the aggregate exceeds one third ($\frac{1}{3}$) of the running feet in said walk.

§ 93.40 MANNER OF CONSTRUCTION.

All cement sidewalks shall be laid upon a four inch (4") bed or foundation of well compacted gravel, coal cinders, or well-tamped dirt, having a covering of at least one inch (1") of sand and having an inclination toward the gutter. All sidewalks of cement hereafter constructed shall be four inches (4") in thickness and the first three inches (3") above the foundation shall conform to the above specifications.

§ 93.41 CONSTRUCTION NOT IN ACCORD WITH REGULATIONS.

In case any lot owner or the owners of a piece of land within the corporate limits of this City, under notice given or otherwise, shall construct a sidewalk in violation of this Article, the officer or officers in charge of streets and highways may stop the work of such construction and order the same to be constructed in accordance with this Article and the work already done to be changed, and on the failure of such owner to change any such work, the Municipal and City Council shall forthwith change said work and the expense of the same shall be assessed and taxed to said lot and collected as if taxed, as provided by law.

STREETS

§ 93.50 NAMES AND NUMBERS.

The Governing Body may at any time, by ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along such streets shall retain such numbers as the Governing Body may require. It shall be the duty of the Municipal Clerk upon the erection of any new building or buildings to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

§ 93.51 CROSSINGS.

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

§ 93.52 WIDENING OR OPENING.

The Governing Body shall have the power to open or widen any street, alley, or lane within the limits of the Municipality; to create, open, and improve any new street, alley, or lane; Provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance. (*Ref. 17-558, 17-559, 76-704 et seq. RS Neb.*)

§ 93.53 EXCAVATION.

It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the chief Municipal street official authorizing such excavations.

§ 93.54 DRIVING STAKES.

It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the chief Municipal Street official.

§ 93.55 MIXING CONCRETE.

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

§ 93.56 HARMFUL LIQUIDS.

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

§ 93.57 EAVE AND GUTTER SPOUTS.

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

§ 93.58 HEAVY EQUIPMENT.

It shall hereafter be unlawful for any person or persons to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing an any unpaved street without first having protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant again the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter, or curb; Provided, where heavy vehicles, structures, and machines move along paved or unpaved streets the Municipal Police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed. Nothing in this Section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths of an inch (5/16") in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch (7/64") between October 1, and April 15; Provided, that school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets; and it shall be permissible to use tire chains of reasonable proportions upon any vehicle

when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid. (*Ref. 39-6,131 RS Neb.*)

§ 93.59 PIPELINES AND WIRES.

Poles, wires, gas mains, pipelines, and other appurtenances of public service companies shall be located, or erected over, upon, or under the streets, alleys, and common grounds of the Municipality. Application for location of the above shall be made to the Governing Body in writing. Approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, conduits, gas mains, pipelines, and wires shall at all times erect and locate their poles, wires, gas mains, pipelines, and other appurtenances at such places and in such manner as shall be designated by the Governing Body. Such poles, wires, gas mains, pipelines, and other appurtenances, shall be removed or relocated by said companies at their own expense when requested to do so by the Governing Body. Any such relocation shall be ordered by resolution of the Governing Body and the Municipal Clerk shall notify any and all companies affected. Said companies shall, within twenty-four (24) hours after receiving notice, at their own expense, cause the poles, wires, gas mains, pipelines, or other appurtenances to be removed. The Governing Body shall designate another location as closely as possible where said poles, wires, gas mains, pipelines, or other appurtenances, may be reset or placed. All poles, wires, gas mains, pipelines, or other appurtenances, shall be reset, placed, or erected in such a manner that they will not interfere with the water system; sewerage system; poles, wires, and mains of any public utility; adjacent buildings; or with travel on the public ways and property. Whenever possible, all pole lines, wires, gas mains, pipelines, or appurtenances shall be confined to the alleys of the Municipality. Streets, sidewalks sidewalk spaces, and other public property disturbed in the course of work shall be restored in a manner satisfactory to the Municipality and to a condition at least equal to that before the work commenced.

§ 93.60 CONSTRUCTION ASSESSMENT.

To defray the costs and expenses of street improvements, as may be authorized by law, the Governing Body shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The Governing Body sitting as the Board of Equalization shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the Governing Body at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some legal newspaper published, or of general circulation, in the Municipality at least four (4) weeks before the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as "special assessments for improvements" and with the cost of notice shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other

Municipal taxes and shall be certified to the County Clerk by the Municipal Clerk forthwith after the date of levy, for collection by the Treasurer of said County unless otherwise specified. After it shall become delinquent, said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-511, 17-524 RS Neb.*)

§ 93.61 PETITION FOR IMPROVEMENTS.

Whenever a petition signed by the owners of record title representing more than sixty percent (60%) of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the Municipal Clerk, petitioning therefore, the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefore, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys, especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement. The Governing Body shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the Governing Body should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (*Ref. 17-510 RS Neb.*) (*Amended by Ord. No. 83-23, 10/11/83*)

§ 93.62 IMPROVEMENT DISTRICTS, OBJECTIONS.

Whenever the Governing Body shall deem it necessary to make any improvements allowed by statute, the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district or districts for six (6) days in a legal newspaper of the Municipality, if a daily newspaper, or for two consecutive weeks, if the same be a weekly newspaper. If the owners of the record title representing more than fifty percent (50%) of the front footage of the property directly abutting on the street, streets, alley, or alleys to be improved, shall file with the Municipal Clerk within twenty (20) days after the first publication of said notice, written objections to the creation of such district or districts, said improvements shall not be made as provided in said ordinance; but said ordinance shall be repealed. If said objections are not filed against the district in the time and manner aforesaid, the Governing Body shall forthwith cause such work to be done or such improvements to be made, and shall contract therefore, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement. (*Ref. 17-511 RS Neb.*)

§ 93.63 IMPROVEMENT OF STREETS ON CORPORATE LIMITS.

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

§ 93.64 CURB AND GUTTER; CUTTING CURB; CLOSING CUTS.

It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever, or to close any existing cut into any paving, curb, or sidewalk, without first having obtained a written permit from the Governing Body therefore. The maximum residential curb cut shall not exceed thirty (30) feet. A maximum of one curb cut shall be allowed per residential lot per street frontage. Before any person shall obtain a permit, he shall inform the Municipal Clerk of the place where such cutting is to be done, and it shall be the chief street official's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut or closed. When cutting into any paving, curb, or sidewalk, it shall be the duty of the party to cut or close the paving, curb, or sidewalk under such rules and regulations as may be prescribed by the Governing Body; Provided that the use of jack hammers or other similar crushing devices to cut into or remove any paving, curb, or sidewalk is prohibited. When the applicant is ready to close the opening made, he shall inform the chief street official, who shall supervise and inspect the materials used and the work done in closing the cut. It shall be discretionary with the Governing Body to order the chief street official to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Governing Body may consent to the work of cutting and closing the paving, curb or sidewalk to be done by the party holding such permit. Before any permit is issued by the Governing Body, the applicant for such permit shall deposit with the Municipal Treasurer a sum set by resolution of the Governing Body for all work to be done. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the Municipality for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the Municipality. In the event the Municipality elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the Municipality until the work is completed to the satisfaction of the chief street official or of the committee of the Governing Body on streets and alleys.

In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the Municipality, or at the discretion of the Governing Body, demonstrate proof of insurability, with a good and sufficient surety or sureties to be approved by the Governing Body in a sum set by resolution of the Governing Body. Any unused cuts in the paving, curb, or sidewalk shall be closed by the owner of the property which would have been served by the cut as provided in this Ordinance. (*Amended by Ord. No. 90-7, 6/18/90; 02-05, 2/04/02*)

§ 93.65 DEFERRAL FROM SPECIAL ASSESSMENTS.

Whenever the Governing Body of a Municipality creates a paving district which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this Section, the terms agricultural use and agricultural use zone shall have the meaning specified in Section 77-1343 Reissue Revised Statutes of Nebraska 1943.

Any owner of record title eligible for the deferral granted by this Section shall, to secure such assessment, make application to the Governing Body of the Municipality within ninety (90) days after creation of the paving district. Any owner of record title who makes application for the deferral provided by this Section shall notify the County Register of Deeds of such application in writing prior to approval by the Governing Body. The Governing Body shall approve the application of any owner of record title upon determination that the property (a) is within an agricultural use zone and is used exclusively for agricultural use, and (b) the owner has met the requirement of this Section.

The deferral provided for in this Section shall be terminated upon any of the following events:

1. Notification by the owner of record title to the Governing Body to remove such deferral;
2. Sale or transfer to a new owner who does not make a new application within sixty (60) days of the sale or transfer, except as provided in subdivision 3 of this Section;
3. Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five (125) days of the transfer;
4. The land is no longer being used as agricultural land; or
5. Change of zoning to other than an agricultural zone.

Whenever property which has received a deferral pursuant to this Section becomes disqualified for such deferral, the owner of record title of such property shall pay to the Municipality an amount equal to:

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

In cases where the deferral provided by this Section is terminated as a result of a sale or transfer described in subdivision 2 or 3 of this Section the lien for assessments had interest shall attach as of the day preceding such sale or transfer. (*Ref. 19-2428 et seq. RS Neb.*) (*Ord. No. 83-22, 10/17/83*)

CHAPTER 94: ANIMALS

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GENERAL PROVISIONS

§ 94.01 DEFINITIONS AND SHORT TITLE.

- A. This Ordinance shall be known and may be cited as "The Waverly Animal Protection Ordinance." For the purpose of this Article, the following definitions shall prevail.
- B. Person. The word person shall include all natural persons, artificial persons, including, but not limited to, firms, partnerships, associations, corporation, companies, political and corporate bodies, societies, communities, the public generally, individuals, joint stock companies, and shall include all aggregate organizations of any character whatsoever.
- C. Pet Shop. The term "pet shop" shall mean any commercial retail establishment or premises or part thereof maintained for the purchase, sale, or breeding of animals of any type, and shall also include any places where cleaning, caring, and grooming services are provided for animals; Provided, however, that the term shall not include livestock auction houses, the place of business of licensed veterinarians, boarding kennels, or animal shelters.
- D. Owners. The term "owner" as used in this Article, shall mean any person or persons, who shall harbor or permit any animal to be in or about his, her, or its house, store, or enclosure, or to remain to be fed in or about his, her, or its house, store, or enclosure for a period of ten (10) days or more.

- E. Animal. The term "animal" shall mean any vertebrate member of the animal kingdom, excluding humans.
- F. Unusual Animal. The term "unusual animal" shall mean any poisonous or potentially dangerous animal not normally considered domesticated and shall include animals prohibited by the City of Waverly, State of Nebraska, or by Federal requirements, and also:
1. Class Mammalia; Order Carnivora, Family Felidae, (Such as lions, tigers, jaguars, leopards, and cougars) except commonly accepted domesticated cats and hybrids involving same; Family Canidae, (such as wolves, coyotes, and fox) except domesticated dogs and hybrids involving same; Family Mustelidae, (such as weasels, martins, fishers, skunks, wolverines, mink, and badgers); Family Procyonidae, (such as raccoon); Family Ursidae, (such as bears); Order Primata (such as monkeys and chimpanzees); and, Order Chiroptera (such as bats).
 2. Poisonous reptiles, cobras, and their allies (Elapidae, Hydrophiidae); vipers and their allies (Crotalidae, Viperidae); boonslang and kirtland's tree snake; and gila monster (Heleodermatidae).
- G. Livestock. The term "livestock" shall mean any domestic cattle, horses, mules, donkeys, sheep, goats, swine, or fowl.
- H. Chicken. The term "chicken" shall mean a domesticated chicken (*Gallus domesticus*). (Amended by Ord. 10-01, 3/15/10)

§ 94.02 UNUSUAL ANIMALS AND LIVESTOCK PROHIBITED; EXCEPTIONS.

It shall be unlawful for any person to own, harbor, or have under his or its care, custody, or control any unusual animal or livestock within the corporate limits of the City, except as provided in this Section and Article. It shall be unlawful for any pet shop to sell, give, transfer, import into the corporate limits of the City any unusual animal or livestock.

- A. This Section shall not be construed to prohibit:
1. a public zoo, circus, Humane Society, or other public exhibition or carnival from displaying unusual animals or livestock as exhibits;
 2. primary or secondary schools, colleges or universities from using unusual animals or livestock for research or teaching;
 3. commercial research and development laboratories operating in a non-residential zoned area creating products to be licensed to combat illnesses caused by venomous and unusual animals;
 4. wildlife rescue organizations with appropriate permits from the Nebraska Game and Parks Commission from rehabilitation or sheltering unusual animals;
 5. individuals authorized by the State of Nebraska from sheltering animals belonging to a public zoo that require rehabilitation; or individuals from owning or possessing chickens provided such ownership and possession complies with Section 94.11 of this Article and all applicable zoning and building regulations. (Amended by Ord. 10-01, 3/15/10; Ord. 18-08)

§ 94.03 SEIZURE OF UNUSUAL ANIMALS; IMPOUNDMENT; FEES; DISPOSITION.

- A. When any unusual animal is off of the premises and not under the direct physical control of the owner or is infected with a disease posing a threat to the public health and safety as determined by any Humane Officer or Law Enforcement Official, the same are hereby empowered to seize such animal. Such unusual animal may be impounded and in the case of the impoundment of such an animal it shall be subject to the same impoundment fees and costs and the owner shall be notified in substantially the same manner as provided for unlicensed dogs under the provisions of the Waverly Dog Ordinance as the same may be amended from time to time and at any time; Provided, however, in the event that the City Clerk determines that such animal should be sold, the owner shall, in addition to any other notice requirement imposed hereunder, be informed that unless the animal is claimed and the impoundment fees and all costs incident to impoundment paid within seventy-two (72) hours after notice, the animal will be sold at a time and place to be designated in such notice.
- B. Any such impounded animal shall be kept and maintained at the Municipal Animal Shelter or other appropriate place for a period of seventy-two (72) hours after notice or from the time it becomes eligible for release, whichever is later. If the owner shall fail to claim the animal within the above-specified time period, title to such animal shall immediately vest in the City of Waverly, Nebraska, and the City Clerk may sell, destroy, or otherwise dispose of such animal as he or she shall deem appropriate.
- C. In the event of sale, any funds received, less expenses and pound fees and costs incurred by the City of Waverly, Nebraska, shall be paid to the owner, any deficiency shall be the responsibility of the owner and shall be paid to the City of Waverly, Nebraska, within ten (10) days of the date of the sale. In the event the owner fails to claim the proceeds of any such sale, such funds, shall, after deducting expenses and pound fees and costs as aforesaid, be held for the owner by the City Treasurer for a period of one (1) year. If not claimed by the owner within one (1) year, title to said proceeds shall vest in the City of Waverly, Nebraska, and shall be deposited to the general fund. All pound fees collected by the City of Waverly, Nebraska, under this Article shall be deposited to the general fund.
- D. In the event such animal is destroyed, the cost of destruction together with the impoundment fees and other costs incurred by the City of Waverly, Nebraska, shall be paid to the City within ten (10) days of the date such animal is destroyed.
- E. Any impounded animal may be released immediately to the owner upon payment of the impoundment fees and all costs incurred by the City of Waverly, Nebraska, in connection with such impoundment and on the condition that the owner shall immediately remove such animal from the City. In the case of diseased animal, such animal may be released only after a Humane Officer has determined that the health and safety of the public is no longer threatened.
- F. In the event that the owner of any unusual animal, subsequent to the destruction of his/her animal, shall fail to pay the fees which have accrued hereunder, within the

time provided, or shall fail to remove such animal from the City after release from impoundment, he/she shall be deemed to be guilty of a misdemeanor, and the Municipal Attorney shall file a separate complaint against such owner for violation of this subsection. When any person shall be charged with violation of this subsection, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. If upon the trial for violation of this subsection it shall appear to the Judge of the County Court that such person charged be guilty as charged in said complaint said Judge may, in addition to the usual judgment or conviction, order the person so offending to pay to the City of Waverly, Nebraska, all fees which have accrued under this Chapter in connection with any animal which has been destroyed or, if approved, may order the destruction or removal from the City of any animal which the owner has failed to remove subsequent to release from impoundment.

§ 94.04 RUNNING AT LARGE.

It shall be unlawful for the owner of any livestock or unusual animal or other animal to permit the same to be driven or run at large on any of the public ways, parks, or other public property, or upon the property of another, or to be tethered or staked out in such manner so as to allow such animal to reach or pass into any public way within the corporate limits of the City of Waverly, Nebraska. (*Ref. 17-547 RS Neb.*)

§ 94.05 CRUELTY.

It shall be unlawful for any person to torture or torment, or to inhumanely, unnecessarily, or cruelly beat, misuse, overwork, or otherwise abuse any animal or to willfully or cruelly neglect to provide suitable and sufficient sustenance or shelter for such animal or animals at any season of the year within the City. (*Ref. 28-1008, 28-1009 RS Neb.*)

§ 94.06 KILLING AND INJURING.

No person shall kill or injure any animal by the use of firearms, stones, clubs, poisons, or any other manner unless the animal is vicious or dangerous and cannot be captured without danger to the persons attempting to effect a capture of the said animal. (*Ref. 28-1008, 28-1009 RS Neb.*)

§ 94.07 ANIMAL FIGHTS.

It shall be unlawful for any person or persons within the limits of the City of Waverly, Nebraska, to set dogs or other animals or fowls to fighting, by agreement or otherwise, or in any manner to urge, forward, or encourage the same.

§ 94.08 SELLING DYED ANIMALS.

No wild or domestic animal or fowl that has been dyed or otherwise colored artificially may be sold or offered for sale, raffled, offered or given as a prize, premium, or advertising device, or displayed in any store, shop, carnival, or other public place.

§ 94.09 DOMESTICATED DOGS AND CATS; SKINNING; SELLING OF SKINS; PROHIBITED.

It shall be unlawful for any person to skin, or to buy or sell, or to attempt to buy or sell, the skin or skins of any domesticated dog or cat within the City of Waverly, Nebraska, or to cause such animal to be skinned, or to cause such skin to be bought or sold within the City of Waverly, Nebraska.

§ 94.10 ENFORCEMENT.

The enforcement of the provisions of this Chapter shall be under the direction of the Mayor, the Humane Officers and the Law Enforcement Officials. For the purpose of enforcing this Chapter or abating any nuisance existing hereunder, any Humane Officer or Law Enforcement Official may enter private premises.

§ 94.11 CHICKENS; PERMIT REQUIREMENTS; RESTRICTIONS.

- A. It shall be unlawful for any person to permit or allow any chicken to run or fly at large within the corporate limits of the City.
- B. It shall be unlawful for any person to own, keep, harbor, or have under his or its care, custody or control any cock or rooster chicken two (2) months of age or older. The unlawful keeping or harboring of cocks or roosters is hereby declared to be a public nuisance.
- C. It shall be unlawful for any person to own, keep, harbor, or have under his or its care, custody or control any chicken without a valid annual permit issued by the City. The fee for an annual chicken permit shall be established by the City. No permit shall be assignable or transferable either as to permittee, location or chickens.
- D. The requirements for the issuance of a permit by the City to own, keep, harbor, or have custody or control over a chicken are:
 - a. No more than three (3) chickens shall be permitted on any lot of one (1) acre or less. No more than four (4) chickens shall be permitted on any lot of more than one (1) acre.
 - b. The chickens must be housed in a chicken facility and run approved by the City, such chicken facility and run to be maintained in compliance with all of the City's requirements as a condition of the permit. The requirements for the chicken facility and run include:
 - i. The chicken facility and run must be in good repair, capable of being maintained in a clean and sanitary condition, free of vermin, obnoxious smells and substances;
 - ii. The chicken facility and run shall not constitute a nuisance or disturb neighboring residents due to noise, odor or threats to public health;
 - iii. The chicken facility and run shall prevent chickens from roaming at large;
 - iv. The run shall be constructed to include metal wire fencing anchored to the ground and a fully enclosed roof or similar enclosure to prevent escape by chickens and entry by predators and general members of the public;

- v. The chicken facility shall be constructed of durable material and the flooring of any chicken facility shall be of a waterproof hard-surface non-porous material;
 - vi. The chicken facility shall provide not less than three (3) cubic feet per occupant chicken, and the run shall provide not more than five (5) cubic feet per occupant chicken;
 - vii. The chicken facility and run shall be located so as to be at least thirty (30) feet from any dwelling, sidewalk, street, alley, road, public building, park or recreation area; and
 - viii. The chicken facility and run shall comply with all applicable City building and zoning codes and must be consistent with the requirements of any land use regulation.
- c. Offal, manure and waste material shall not be permitted to accumulate nor be confined in any manner that is conducive to the breeding or attraction of flies, mosquitoes or other noxious insects or in any manner that endangers the public health or safety. All permit applicants must provide a statement of the method in which offal, manure and waste material accumulating from the chickens will be sanitarily disposed of at least once every seven (7) days;
 - d. All grain, feed and feedstuffs intended for use as food for chickens shall be kept in tightly-fitted containers constructed to keep out vermin and wild animals; and
 - e. The permit application shall be accompanied by adequate evidence, as determined by the City, that the applicant has notified all property owners and residents within 150 feet of the property lines of the property on which the chickens will be located, of the application. The City may consider resident objections in deciding whether to issue a permit under this Section.
- E. The slaughtering or destruction of chickens within the corporate limits of the City shall be prohibited. *(Amended by Ord. 10-1, 3/15/10)*

§ 94.12 PENALTY FOR VIOLATION.

Except as otherwise provided in herein, any person upon whom a duty is placed by the provisions of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a Class II Misdemeanor as defined by section 131.22 of this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be fifty dollars (\$50.00). Each day such violation continues shall be deemed a separate offense. *(Amended by Ord. 07-05, 5/7/07; Ord. 10-1, 3/15/10)*

DOGS; GENERAL PROVISIONS

§ 94.20 SHORT TITLE; DEFINITIONS.

This Article shall be known as and may be cited as "THE WAVERLY DOG ORDINANCE." For the purpose of this Chapter, the following definitions shall prevail:

- A. Dog: The term "dog", whenever used in this Chapter, shall mean an animal of Canine or Canidae family, regardless of sex.

- B. Inoculation, Vaccination, or Vaccination for Rabies: The terms "inoculations," "vaccination," or "vaccination for rabies," whenever used in this Chapter, shall mean the inoculation of a dog, cat, or other animal with a vaccine approved by the State Veterinarian and as required by the Nebraska Statutes, or approved by the Lincoln-Lancaster County Department of Health. (*Ref. 71-4401 to 71-4412 RS Neb.*)
- C. Own: The term "own," as used in this Chapter, unless otherwise indicated in the text, shall be deemed to mean and include, own, keep, harbor, or have charge, custody, or control of, a dog.
- D. Owner: The term "owner," as used in this Chapter, shall mean any person or persons, firm, association, corporation, or other entity, who shall harbor or permit any dog to be in or about his or her house, store, or enclosure, or to remain to be fed in or about his or her house, store, or enclosure, for a period of ten (10) days or more. (*Ref. 54-606, 71-4401 RS Neb.*)
- E. Person: The term "person," as used in this Chapter, shall mean and include any individual, firm, corporation, association, partnership, or any other entity.
- F. Kennel: The term "kennel," as used in this Chapter, shall be deemed to mean the house, store, yard, enclosure, or place where more than three (3) dogs over the age of six (6) months, are harbored or kept, provided, however, that this definition shall not apply to any animal shelter, not to the place of business of licensed veterinarians.
- G. Spayed Female Dog: The term "spayed female dog," as used in this Chapter, shall be construed to include any female dog which has been spayed or otherwise rendered incapable of reproduction.
- H. Neutered Male Dog: The term "neutered male dog," as used in this Chapter, shall be construed to include any male dog which has been neutered or otherwise rendered incapable of reproduction. (*Amended by Ordinance 03-01, 2/17/03*)
- I. Dangerous Dog: The term "dangerous dog" as used in this Chapter shall mean any dog that:
1. has killed or inflicted severe injury on a human being on public or private property;
 2. has killed a domestic animal without provocation while the dog was off the owner's property;
 3. has been previously determined to be a potentially dangerous dog according to this Chapter and such dog subsequently bites, attacks, or endangers the safety of humans or domestic animals;
 4. any dog that has been trained for dog fighting, animal fighting or animal biting, or is owned or kept for such purposes;

5. any dog trained to attack human beings, upon command or spontaneously in response to human activities except dogs owned by and under the control of a law enforcement officer or a law enforcement agency of the State of Nebraska or the United States or a branch of the armed forces of the United States;

Under (1) and (3) herein, a dog shall not be considered a dangerous dog if the conduct of the dog in question is directed at a person:

1. who, at the time, was committing a willful trespass or any other tort upon the property of the owner of the dog;
2. who, at the time, was tormenting, abusing, or assaulting the dog;
3. who has, in the past, been observed or reported to have tormented, abused or assaulted the dog; or
4. who, at the time, was committing or attempting to commit a crime against the person, against public peace, or relating to property.

J. Potentially Dangerous Dog: The term “potentially dangerous dog” as used in this Chapter shall mean:

1. Any dog that when provoked:
 - a. inflicts a wound on a human or injures a domestic animal either on public or private property, or
 - b. chases or approaches a person upon streets, sidewalks, or any public property in an outward appearance of aggressive or dangerous behavior; or
 - i. Any 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. (*Amended by Ord. No. 05-12, 9/6/05; 15-18, 11/24/15*)

§ 94.21 VACCINATION AGAINST RABIES REQUIRED; VACCINATION TAG.

Any person within the City owning a dog six (6) months of age or older shall have such dog vaccinated against rabies. Young dogs shall be vaccinated within thirty (30) days when they have reached six (6) months of age. Unvaccinated dogs acquired or moved into the Municipality must be vaccinated within thirty (30) days after purchase or arrival, unless under six (6) months of age as specified above. It shall be the duty of every person owning, keeping, or harboring a dog within the City of Waverly to require their veterinarian, at the time of vaccinating any dog, to provide a copy of a uniform rabies vaccination certificate to the Lincoln-Lancaster County Department of Health and to the Waverly Municipal Clerk and to provide a rabies vaccination tag to the owner. It shall be the duty of every veterinarian administering any rabies vaccination within the City of

Waverly to provide a copy of the rabies vaccination certificate as required above. The rabies vaccination tag shall be attached to and kept upon the collar or harness of the dog. Dogs shall be vaccinated within the three (3) year period immediately prior to the last date of vaccination if the last vaccination was with chick embryo Low Egg Passage flurry vaccine or within the one (1) year period immediately prior to the last date of vaccination if the last vaccination was with killed or inactivated vaccine. Dogs may be vaccinated with any other vaccine approved by the State Veterinarian or otherwise authorized by the laws of the State of Nebraska, and the intervals of any other antirabies vaccines shall be set by the State Veterinarian. (*Ref. 71-4401 to 71-4412 RS Neb.*) (*Amended by Ord. No. 17-04,2/28/2017*)

§ 94.22 EXCEPTIONS TO RABIES VACCINATION; DOGS HELD FOR RESEARCH.

The vaccination provisions of this Article with respect to dogs assigned to a bona fide research institution shall not apply if such dogs are kept under strict supervision of research personnel, and are kept in a kennel or similar holding facility, nor shall such vaccination provisions apply to dogs which are otherwise exempt from vaccination requirements under Nebraska law.

§ 94.23 LICENSE.

Any person who shall own, keep, or harbor a dog over the age of six (6) months within the Municipality shall within thirty (30) days after acquisition of the said dog acquire a license for each such dog annually by or before the thirty-first (31st) day of January of each year. Such tax shall be delinquent from and after February first (1st); Provided, the possessor of any dog brought into or harbored within the corporate limits subsequent to January first (1st) of any year, shall be liable for the payment of the dog tax levied herein and such tax shall be delinquent if not paid within thirty (30) days thereafter. Licenses shall be issued by the Municipal Clerk upon the payment of a license fee in accordance with the following schedule:

Male Dog - \$20.00
Neutered Male Dog - \$10.00
Female Dog - \$20.00
Spayed Female Dog - \$10.00

Provided, that the sum of five dollars (\$5.00) shall be added to the license fees set forth in the foregoing schedule for each license obtained after February first (1st) or otherwise delinquent. Dogs shall be licensed for the reduced fee provided for spayed and neutered dogs only upon presentation of a certificate of neutering signed by a licensed veterinarian or upon presentation of other handwritten verification signed by a licensed veterinarian that such dog is no longer capable of reproduction.

Such license shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog. The owner shall state at the time of the application is made and upon printed forms provided for such purpose, the following information:

- A. The name and address of the owner of the dog;
- B. The license number of the tag issued for such dog;

- C. The breed, age, color, name, and sex of the dog;
- D. Such other information as the Municipal Clerk may require for the purpose of identification.

A uniform certificate of rabies vaccination or reasonable facsimile thereof sufficient to comply with the requirement of Section 94.21 of this Code shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown. (*Ref. 17-526, 54-603, 71-4401 to 71-4412 RS Neb.*) (*Amended by Ord. No. 87-13, 9/8/87, 02-03, 2/4/02; 10-05, 5/3/10*)

§ 94.24 LICENSE TAGS.

Upon the payment of the license fee and the presentation of a satisfactory proof of vaccination, the Municipal Clerk shall issue to the owner of a dog a license certificate and a metallic tag for each dog so licensed. Said license certificate shall be issued in duplicate, the original of which shall be delivered to the owner of the dog, who shall retain it as evidence of the dog's license; the duplicate shall be retained by the Municipal Clerk. The metallic tags shall be of such design as shall be approved by the Municipal Clerk, shall bear the license number shown on the license, and shall have die-stamped thereon the license number, the words "DOG TAG – WAVERLY, NEBRASKA," and the year for which issued. The metallic tags so issued shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the owner to keep or harbor said dog until the thirty-first (31st) day of December following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag was issued in accordance with the provisions herein, the Municipal Clerk shall issue a duplicate or new tag for the balance of the year of which the license tax has been paid and shall charge and collect one dollar (\$1.00) for each duplicate or new tag so issued. All license fees and collections shall be immediately credited to the Governing Body. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year. (*Ref. 17-526, 54-603 RS*)

§ 94.25 WRONGFUL LICENSING.

It shall be unlawful for the owner of any dog to permit or allow such dog to wear any other license tag than the identical one issued for such dog by the Municipality in which such owner resides, and for the license year for which issued. (*Ref. 17-526, 54-603*)

§ 94.26 WEARING OF COLLARS; IDENTIFICATION; REMOVAL OF LICENSE TAG; RELEASE FROM RESTRAINT; WHEN PROHIBITED.

Every dog within the Municipality shall wear a collar or harness and license tag at all times. It shall be unlawful for any person to remove, or cause to be removed, the collar, harness, or metallic license tag, or rabies vaccination tag from any licensed dog or release any dog from such restraint as is required by 94.31(B) of this Article without the permission of the owner. (*Ref. 54-605 RS Neb.*)

§ 94.27 EXCEPTIONS TO LICENSE; TRANSIENT DOGS.

The provisions of this Article with respect to licensing and vaccination against rabies shall not apply to a dog owned by any person temporarily remaining within the City for less than thirty (30) days. The provisions of this Article with respect to licensing and vaccination against rabies shall not apply to any dog owned by a bona fide resident of any other Municipality who works within the City of Waverly, whether or not, in excess of thirty (30) days; Provided, however, that such dogs must be vaccinated against rabies in accordance with the provisions of Nebraska law and properly licensed by the Municipality in which the owner resides.

§ 94.28 PROCLAMATION.

It shall be the duty of the Mayor, whenever in his or her opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any dog to muzzle the same, or to confine such dogs for a period of not less than thirty (30) days or more than ninety (90) days from the date of such proclamation, or until such danger is passed. The dogs may be harbored by any good and sufficient means in a house, garage, or yard on the premises wherein said owner may reside. Upon issuing the proclamation it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided. (*Ref. 17-526 RS Neb.*)

§ 94.29 KILLING AND POISONING.

It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to a dog, or in any manner to injure, main, or destroy, or to place any poison, or poisoned food where the same is accessible to a dog, except as elsewhere specifically authorized in this Code or by Nebraska law. (*Ref. 54-604, 54-605 RS*)

§ 94.30 DOGS – OTHER ANIMALS; SEIZURE FOR PROTECTION OF ANIMAL.

When, in the judgment of any Humane Office, any dog or other animal is deprived of food or fresh water or maintained under cruel or inhumane circumstances, the Municipality may seize such dog or other animal and provide for its well-being until, in the judgment of the Humane Officer, such animal will be properly cared for if returned to its owner. While such dog or other animal is under the care of the Municipality, the owner of such animal shall be charged for boarding fees at the rates provided under this Chapter for dogs and cats or shall be charged the actual costs of maintaining any other animals. Failure to pay the costs which accrue under this or any other Section within Sections 94.20 to 94.73 shall be deemed a separate offense which may not be disposed of by waiver of appearance and plea of guilty. Upon conviction for violation of this Section the court may order the person so offending to pay to the City of Waverly all fees which have accrued under Sections 94.20 to 94.73 with respect to such defendant. When in the judgment of the Humane Officer, the owner of any animal seized under this Section is unwilling or unable to properly care for such animal, title to such dog or other animal shall immediately vest in the Municipality and the Municipality shall thereafter find a suitable home for such animal, or if the same is not possible within a reasonable period of time, the Municipality shall dispose of the animal in a humane manner.

§ 94.31 RUNNING AT LARGE.

- A. It shall be unlawful for the owner of any dog to allow such dog to run at large, whether licensed or not, at any time within the Municipality and any dog found to be running at large may be destroyed by the Municipality or may be impounded in a suitable animal shelter by any Humane Officer designated by the Municipality, by any Law Enforcement Officer, or by any Municipal Officer or employee at the direction of the Mayor or the Municipal Clerk.
- B. For the purposes of this Article, the term "running at large" is defined to mean any dog found off the premises of the owner and not physically restrained by means of a leash, cord, wire, rope, or chain, held by a responsible person no less than eight (8) years of age; confined to a cage or under other suitable and humane means of physical restraint.
- C. It shall be the duty of the Humane Office, or in his or her absence or unavailability, it shall be the duty of the Law Enforcement Officer on duty, to cause any dog found to be running at large within the Municipality to be taken up and impounded. No dog found running at large shall be released from impoundment until the owner of said dog shall have obtained a license as provided in this Chapter and the impoundment fee or other fees have been paid or other satisfactory arrangements have been made. *(Ref. 17-506, 54-607 RS Neb.)*

§ 94.32 UNCOLLARED.

All dogs found running at large within the Municipality without a collar or harness or without a current and valid license as required by this Article are hereby declared a public nuisance. Uncollared or unlicensed dogs found running at large may be destroyed by the Municipality or may be impounded in any suitable Animal Shelter by any Humane Officer designated by the Municipality, any Law Enforcement Officer, or any Municipal Officer or employee at the direction of the Mayor or the Municipal Clerk. *(ref. 17-526, 54-605 RS Neb.)*

§ 94.33 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.

- A. **DANGEROUS AND POTENTIAL DANGEROUS DOGS; PROHIBITED:** It shall be unlawful for any person to keep or harbor a dangerous or a potentially dangerous dog within the City without complying with the provisions of this Chapter.
- B. **DANGEROUS AND POTENTIALLY DANGEROUS DOGS; PROCEDURE:** Whenever it shall come to the attention of the City that any person within the City's corporate limits is keeping or harboring a dangerous dog or a potentially dangerous dog as defined in this Chapter, the City Clerk shall notify the owner of such animal in writing that such dog must be registered as a dangerous or potentially dangerous dog within ten (10) days after the receipt of such written notice. Said notice shall be served either in person or by mailing such notice by certified or registered mail.

C. REGISTRATION REQUIREMENTS; DANGEROUS DOGS:

1. The owner of any dangerous dog shall register such dog with the City Clerk and upon registration shall provide the following:
 - a. The name, address, and telephone number of the owner;
 - b. A written description and representation indicating the owner has and will continue to comply with the confinement provisions of the Chapter;
 - c. Written evidence from a licensed veterinarian that the dog is currently neutered or spayed;
 - d. A written acknowledgement that the owner shall notify the City Clerk immediately if said dog is known by the owner to be running at large, unconfined, or when the owner has any knowledge of belief that the dog has bitten or is alleged to have bitten a human being or another animal;
 - e. A written acknowledgement that the owner of said dog shall notify the City Clerk of any changes in material recorded as a part of the registration within twenty-four (24) hours of said change. Changes in material recorded as part of the registration shall include information that the dog has been sold, given away, or otherwise transferred to any other person, and in the event the registered owner shall provide the Clerk with the name, address and phone number of such person; and
 - f. A non-refundable annual registration fee of Fifty Dollars (\$50.00), which fee shall be in addition to any other license fee required by this Chapter.
2. Upon satisfactory completion of all the requirements of this section the City Clerk shall issue a registration certificate which shall be used to assign the dog a permanent number. At the time of registration the City Clerk shall either order the owner to have any dangerous dog tattooed by a licensed veterinarian permanently marking the number assigned herein by tattoo upon the inner side of the dangerous dog's right ear or order the owner to have a microchip inserted in any dangerous dog by a licensed veterinarian within thirty (30) days of the date of registration. The owner shall provide the City Clerk with the animal's microchip number within thirty (30) days of the date of the registration. It shall be unlawful for any owner of such dangerous dog to fail to so mark, tattoo or microchip such dangerous dog as provided herein. It shall be unlawful to any person other than a licensed veterinarian to remove any tattoo, microchip or any other marking used for identification.
3. The registration requirements including the notification requirements acknowledged therein shall be construed as affirmative duties upon the owner, failure of which shall constitute a violation of this section.
4. It shall be unlawful for any person registering a dog to falsify or misrepresent material recorded as a part of registration.

A. REGISTRATION REQUIREMENTS; POTENTIALLY DANGEROUS DOGS:

1. The owner of any potentially dangerous dog shall register such dog with the City Clerk and upon registration shall provide the following:
 - a. The name, address, and telephone number of the owner;
 - b. A written acknowledgement that the owner shall notify the City Clerk immediately or when the owner has any knowledge or belief that the dog has bitten or is alleged to have bitten a human being or another animal;
 - c. A written acknowledgement that the owner of said dog shall notify the City Clerk of any changes in material recorded as a part of the registration within twenty-four (24) hours of said change. Changes in material recorded as part of the registration shall include information that the dog has been sold, give away, or otherwise transferred to any other person, and in the event the registered owner shall provide the director with the name, address, and telephone number of such person; and
 - d. A non-refundable registration fee of Twenty-Five Dollars (\$25.00), which fee shall be in addition to any other license fee required by this Chapter.
2. Upon satisfactory completion of all the requirements of this section the Clerk shall issue an annual registration certificate which shall be used to assign the dog a permanent number.
3. The registration requirements including the notification requirements acknowledge therein shall be construed as affirmative duties upon the owner, failure of which shall constitute a violation of this section.
4. It shall be unlawful for any person registering a dog to falsify or misrepresent material recorded as a part of the registration.

B. DANGEROUS DOGS; SECURELY CONFINED:

1. It shall be unlawful for the owner of a dangerous dog to fail, neglect, or refuse to securely confine such dog, in a humane manner, indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the dog from escaping. For materials used to provide a securely enclosed and locked pen or structure as required herein, such materials shall, at a minimum, comply with the following:
 - a. Any fencing material used shall not have openings with a diameter of more than two (2) inches, or in the case of wooden fence materials, gaps of more than two (2) inches wide;
 - b. Any gates within such pen or structure shall be lockable or of such design to prevent the entry of children or the escape of the dog.

2. The required pen or structure shall have secure sides and a secure top. Any top provided shall be a fence outrigger on the top of the fencing material or an equivalently secured top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground. The pen or structure shall also protect the dog from the elements.
3. The required pen or structure shall have secure sides and a secure top. Any top provided shall be a fence outrigger on the top of the fencing material or an equivalently secured top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground. The pen or structure shall also protect the dog from the elements.
4. The owner of a dangerous dog shall securely restrain such dog by chain or leash when moving the dog to or from such pen or structure.

C. DANGEROUS DOGS; LEASH REQUIRED: It shall be unlawful for any owner of a dangerous dog to permit such dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash and properly muzzled to reasonably prevent the dog from biting.

D. DANGEROUS DOGS; WARNING SIGNS: The owner of a dangerous dog shall display signs warning that there is a dangerous dog on the property. These signs shall be placed so as to be readily discernible and clearly visible from the public sidewalk or property line at any actual or customary point of entry to the premises. An additional sign shall be conspicuously displayed on any pen or structure provided for such dangerous dog.

E. DANGEROUS DOGS; CONFISCATION: Any dangerous dog may be immediately confiscated by a City Law Enforcement Officer if in violation of this Chapter. The owner shall be responsible for the reasonable costs incurred for the care of a dangerous dog confiscated or for the destruction of any dangerous dog as authorized herein. In addition to any other penalty, a Court may order the destruction of a dangerous dog in an expeditious and humane manner.

F. BITES UNLAWFUL: It shall be unlawful for the owner of any dangerous or potentially dangerous dog required to be registered under this section to permit or allow such dog to kill, bite, chase, attack, injure, wound, or endanger in such a way that the dog may be considered either a dangerous dog or a potentially dangerous dog. In addition, any such dangerous dog required to be registered under this section shall be immediately confiscated by a City Law Enforcement Officer, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

G. APPEALS: The determination that any dog is dangerous or potentially dangerous as defined herein shall be deemed to have been made upon notice to the owner of such dog as provided in subsection B herein. Upon such notification and after the expiration of eleven (11) days from the date of such notice, the determination shall be final and binding upon the City and upon the owner unless within ten (10) days after notice, the owner requests, in writing, a review of the determination by the Director of the Lancaster County Health Department. At such review the owner may present any written statements or documentary evidence relevant to the determination. The director

shall make a final and binding determination after such review within fifteen (15) days of the date of review. The owner may appeal any final determination to the district court as provided by law. *(Amended by Ord. No. 05-12, 9/6/05)*

§ 94.34 MULTIPLE BITING INCIDENTS; REMOVAL FROM MUNICIPALITY.

When any designated Municipal Humane Officer or the Municipal Clerk shall receive verification through the affidavit of any victim or eye-witness to any biting incident by any dog, through the official report of any Humane Officer or Law Enforcement Officer, or shall have first-hand personal knowledge that any dog has been involved in two (2) or more biting incidents in which said dog has bitten one (1) or more individuals or animals, he or she shall order that such dog be destroyed or removed from the Municipality (at the option of the owner), within ten (10) days of the date of the most recent biting incident or in the event such dog has been placed under mandatory observation, then immediately upon expiration of any mandatory observation period required under this Chapter. Notice of such order shall be sent by postage prepaid, certified United States mail, return receipt requested to the owner of such dog, shall include a copy of this Section, and shall specify the date on or before which such dog must be destroyed or removed from the Municipality. Any person who fails to comply with such order shall be deemed guilty of a misdemeanor. If upon trial for violation of this Section, it shall appear to the Judge of the County Court that such person be guilty as charged in said complaint, in addition to the usual judgment or conviction, said Judge may order such disposition of the offending dog as may seem reasonable and proper. When any person shall be charged with violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. *(Ref. 17-526 RS Neb.)*

§ 94.35 CAPTURE IMPOSSIBLE.

Any designated Humane Officer or any Law Enforcement Officer designated by the Municipality shall have the authority to tranquilize or to kill any dog showing vicious tendencies, or the characteristics of rabies which tendencies or characteristics make capture impossible because of the danger involved when such killing or tranquilizing appears reasonably necessary to prevent injury to any person. *(Ref. 54-605 RS Neb.)*

§ 94.36 LIABILITY OF OWNER; RESTITUTION; PROPERTY DAMAGE OR PERSONAL INJURY; WAIVER DISALLOWED.

It shall be unlawful for any person to allow a dog owned, kept, or harbored by him or her, or under his or her charge or control, to injure any person or to destroy any real or personal property of any description belonging to another person. If upon the trial for any violation of Sections 94.20 to 94.73 which involves personal injury or property damage, it shall appear to the Judge of the County Court that the person charged be guilty as charged in said complaint, said Judge may, in addition to the usual judgment and conviction, order the person so offending to make restitution to the party injured in an amount equal to the value of the property so damaged or destroyed together with medical expenses incurred by any injured person or persons. When any person shall be charged with a violation of any provision of this Chapter involving injury to person or damage to real or personal property, such complaint may not be disposed of by way of Waiver of

Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526, 54-601, 54-602 RS Neb.*)

§ 94.37 BARKING AND OFFENSIVE.

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, street, or alleys in the Municipality. Upon written complaint of two (2) or more affected persons from different households, filed with any thirty (30) day period with the Municipal 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 Humane Officer or in his or her absence, the Law Enforcement Official on duty shall investigate the complaint and, if in his or her opinion the situation warrants, shall issue an appropriate citation for violation of this Section. The provisions of this Section shall not be construed to apply to any Animal Shelter or to the place of business of licensed veterinarians. (*Ref. 17-526 RS Neb.*)

§ 94.38 ODORS.

No person shall allow any dog or dogs which he or she owns, harbors, or keeps to be maintained in such manner that foul or offensive odors are produced on or around the premises on which such dog is kept. Upon conviction of violation of this Section the Judge of the County Court may declare that such odors constitute a public nuisance, and in addition to the usual judgment or conviction, order the abatement of such nuisance. When any person shall be charged with violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*)

§ 94.39 INTERFERENCE WITH POLICE.

It shall be unlawful for any person to hinder, delay, or interfere with any Law Enforcement Officer or designated Humane 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 the breaking open of any animal shelter, any ambulance wagon, or other vehicle used for the collecting or conveying of dogs to such shelter. (*Ref. 28-906 RS Neb.*)

§ 94.40 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.

§ 94.41 KENNELS DEFINED, PROHIBITED.

More than three (3) dogs in excess of six (6) months of age, per family or residence, shall constitute a kennel. No kennels shall be maintained within the Municipality; provided, however, the provisions of this Section shall not apply to any

Municipal Animal Shelter, or to hospitals operated by veterinarians duly licensed under the laws of the State of Nebraska, keeping dogs for others for treatment or boarding.

If upon the trial of the offense mentioned in this Section, it shall appear to the County Judge that the person be guilty as charged in said complaint, said Judge may, in addition to the usual judgment of conviction, declare said dog kennel a public nuisance, order the party or parties so convicted to abate said nuisance forthwith, and in the event that the party or parties convicted shall fail to do so, order the Municipal Law Enforcement Personnel to remove to a suitable animal shelter said dog or dogs so kept and harbored in violation of this Section, there to be impounded and placed in suitable homes or disposed of in accordance with the terms of this Article. When a complaint is filed for violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty, and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*)

§ 94.42 MUNICIPAL ANIMAL SHELTER, HUMANE OFFICER.

The Municipality shall provide a temporary Municipal Animal Shelter. The Mayor may, when necessary, employ or appoint annually a Chief Humane Officer and one (1) or more additional Humane Officers who shall manage the temporary Municipal Animal Shelter, issue citations for violation of the provisions of Sections 94.20 to 94.73, and perform such duties as the Mayor shall direct and such other duties as may be imposed by Sections 94.20 to 94.73. (*Amended by Ord. 02-03, 2/4/02*)

§ 94.43 MUNICIPAL ANIMAL SHELTER, HUMANE OFFICER, CONTRACT WITH HUMANE SOCIETY.

The Mayor shall have the authority, with the approval of the City Council, to contract with any Humane Society or like institution to handle boarding and disposal of dogs or other animals required under this Chapter and to perform the duties assigned to Humane Officers under this Chapter and may designate such institution to fulfill the duties of the Humane Officers.

§ 94.44 IMPOUNDING.

- A. It shall be the duty of the Humane Officers or in the event of his, her, or their absence or unavailability it shall be the duty of the Law Enforcement Officer on duty to capture, secure, and remove in a humane manner to a Municipal Animal Shelter or other appropriate shelter any dog violating any of the provisions of this Article, except Section 94.37. The dogs so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day.
- B. Each impounded dog except those impounded for lack of a current rabies vaccination shall be kept and maintained at an appropriate animal shelter for a period not less than seventy-two (72) hours after notice has been given unless reclaimed earlier by the owner. All dogs impounded for the lack of a current rabies vaccination shall be held for not less than one hundred twenty (120) hours, unless sooner redeemed or released as herein provided, and if not so redeemed or released at the expiration of the time limit of one hundred twenty (120) hours may be destroyed in a humane manner.

Unlicensed dogs shall be transported immediately to the Capital Humane Society or other animal shelter for impoundment or disposal as provided hereunder. Dogs licensed as required hereunder shall be held in the Municipal Animal Shelter for no less than twenty-four (24) hours after the notice required hereunder has been mailed and may thereafter be transported to any other appropriate animal shelter. Notice of impoundment of all animals, including any significant marks of identification, shall be posted at the office of the City Clerk and at the Municipal Pound within twenty-four (24) hours after impoundment. And in addition, if the name and/or address of the owner is known to the Municipal Clerk, or is reasonably ascertainable, notice of such impoundment shall be mailed to said owner by postage prepaid, certified United States mail, return receipt requested, within twenty-four (24) hours after impoundment. Such notice shall be deemed to be sufficient if it includes the following:

1. A copy of §94.44 of the Waverly Municipal Code;
2. The date the dog was impounded;
3. A description of the dog;
4. The address and telephone number of the Municipal offices;
5. The address and telephone number of any other agency or institution which at the time of the notice has, or may in the future have, the physical control of the impounded dog;
6. The accrued costs to date and an estimate of the costs which are expected to accrue on a daily basis incident to impoundment and/or destruction of the dog; and,
7. The date, time, and place at which the dog will be destroyed if not claimed.
(Amended by Ord. 22-01, 3/8/22)

- C. When any impounded dog is claimed and returned to the owner within twenty-four (24) hours of impoundment, the Municipal Clerk shall not be required to provide the notice which would otherwise be required hereunder.

Any dog may be reclaimed by its owner during the period of impoundment by payment of all accrued impoundment and boarding fees and the cost of certified mailing as provided for in this Article. Upon claiming any such dog, the owner shall be required to comply with the licensing and rabies vaccination requirements before said dog is released. If the dog is not claimed at the end of the applicable waiting period as required by this Section, the Municipality may, after the notice required by this Section has been given, cause the disposal of any such dog in accordance with the applicable rules and regulations pertaining to the same; Provided, however, that if, in the judgment of the Municipality, or its agent or any animal shelter, a suitable home can be found for any such dog within or without the Municipality, said dog shall be turned over to that person and shall not be destroyed and the new owner shall then be required to pay all fees required hereunder and meet all licensing and vaccinating requirements provided in this Chapter. The Municipality shall, after notice and the expiration of the applicable waiting period required by this Section, acquire legal title to any unlicensed dog impounded in the Animal Shelter or other authorized shelter.

- D. All dogs required hereunder to be destroyed shall be destroyed and buried in the summary and humane manner as prescribed by the Board of Health. (*Ref. 17-548, 71-4409 RS Neb.*)

§ 94.45 IMPOUNDMENT FEES.

- A. Fees. There shall be a boarding fee of three dollars (\$3.00) per day, or part thereof, payable to the City of Waverly for each day a dog is impounded by the Municipality. In addition there shall be a general impoundment fee of fifteen dollars (\$15.00) for each impoundment of any dog.

All such fees shall be paid to the City of Waverly before any dog is released. In the event the dog is being held by the Capitol Humane Society or other authorized animal shelter, said dog shall not be released until the owner presents a receipt to the authorized animal shelter showing that all fees required hereunder have been paid to the City of Waverly and, in addition, the owner shall pay the daily or flat rate boarding fee charged by the Humane Society or other authorized Animal Shelter.

- B. Dogs, Destruction; Applicable Fees. In the event that any dog is destroyed at the direction of the City of Waverly, the owner of the dog which is destroyed shall, within ten (10) days of the date of the destruction of such dog, pay all applicable pound fees levied by the City of Waverly and/or its agents, and shall pay a reasonable fee for destroying such dog, but no complaint shall be filed in the County Court against the owner of said dog; Provided, however, that in the event that the owner, subsequent to the destruction of his or her dog, shall fail to pay the fees which accrue under this Section, within the time provided herein, he or she shall be deemed to be guilty of a misdemeanor, and the Municipal Attorney shall file a separate complaint against such dog owner for violation of this subsection. When any person shall be charged with violation of this subsection, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. If upon the trial for violation of this subsection, it shall appear to the Judge of the County Court that the person charged be guilty as charged in said complaint said Judge may, in addition to the usual judgment or conviction, order the person so offending to pay to the City of Waverly all fees which have accrued under this Chapter in connection with the dog which has been destroyed.

§ 94.46 DUTY TO PLACE UNDER OBSERVATION; WHEN REQUIRED, PROCEDURE.

When any person owning a dog or other animal has been notified by any person injured or by someone in his or her behalf, or has knowledge of said injury, that said person has been bitten or attacked by said dog, or other animal, or when any person owning a dog or other animal has been notified by any person that said dog or other animal has been bitten by a rabid animal, the owner shall immediately place the dog or other animal under the care and observation of the Municipality or a licensed veterinarian the expense thereof to be borne by the owner of such dog, and failure of the owner to submit said dog or other animal within twenty-four (24) hours after notice of said bite or attack to the Municipality or its authorized agent or a licensed veterinarian shall constitute a violation of this Chapter. The Municipality or its agent or a licensed veterinarian shall impound said dog or other animal for care and observation for a period of ten (10) days or for such other period as required by Chapter 71, Article 44, Reissued Revised Statutes of Nebraska, 1943, and the amendments thereto, in compliance with standards adopted by the Board of Health. It

shall be lawful for the Municipality or any agent of the Municipality or the custodial veterinarian to destroy in a humane manner any dog or other animal that has been determined by a licensed veterinarian to have rabies, or which has been impounded for observation after the period of observation has expired unless the owner shall, within five (5) days after notice of the expiration of impoundment has been given, redeem such dog by paying such expense incident to such impounding, observation, or treatment. It shall be illegal for any person to release any dog or other animal held for observation to any person prior to expiration of the period of observation. Before any such dog or other animal is released, the person to whom it is released shall submit proof, in the form of a certificate issued by a licensed veterinarian or other person authorized by law to administer rabies inoculation, that such dog or other animal does not have rabies and has been properly inoculated for rabies. (*Ref. 71-4406 RS. Neb.*)

§ 94.47 ENFORCEMENT.

The enforcement of the provisions of this Chapter shall be under the direction of the Mayor. For the purpose of enforcing Sections 94.20 to 94.73 or abating any nuisance existing hereunder, the designated Humane Officer or any Law Enforcement Officer may enter private premises.

§ 94.48 ANIMAL CONTROL VIOLATION, CITATION.

- A. Whenever a designated Humane Officer of the Municipality or any Law Enforcement Officer shall observe any violation of Sections 94.20 to 94.73, it shall be his, her, or their duty to issue an appropriate citation. It shall be the duty of the Municipal Attorney to promptly prosecute all violations of this Article.
- B. At the time of the commission of the alleged violation, the accused may be served with a printed notice requiring him or her to make such appearance on or before the date specified thereon and advising whether execution of a Waiver of Appearance and Plea of Guilty has been made available by the court for such violation. Said notice shall further apprise the accused that upon direct refusal or failure to so appear, a warrant shall be issued for his or her arrest, that he or she must appear at said court during the hours fixed by the Judges of the County Court as shown on said notice.

§ 94.49 GENERAL PROHIBITIONS AND DUTIES

- A. It shall be prohibited for any person to permit or allow an animal owned by that person or under that person's custody or control to defecate upon public property, park property, public right-of-way, or the property of another unless such person shall immediately thereafter clean up, remove and dispose of the feces so deposited.
- B. It shall be the duty of every person owning or having the custody or control of an animal to clean up, remove and dispose of the feces deposited by such animal upon public property, park property, public right-of-way or the property of another. (*Amended by Ord. 02-21, 8/19/02*)

§ 94.50 PENALTY FOR VIOLATION.

- A. Except as otherwise provided herein, any person upon whom a duty is placed by the provisions of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a Class I Misdemeanor as defined by section 131.22 of this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be fifty dollars (\$50.00).
- B. Any person upon whom a duty is placed by the provision of §94.31, §94.32, and/or §94.37, of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be ten dollars (\$10.00).
- C. Any person upon whom a duty is placed by the provisions of §94.41 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code.
- D. Any person upon whom a duty is placed by the provisions of §94.29 and §94.33 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be One Hundred Dollars (\$100.00).
- E. Any person upon whom a duty is placed by the provisions of §94.46 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be seventy dollars (\$70.00).
- F. Any person upon whom a duty is placed by the provisions of §94.34 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code.
- G. Each day that a violation of any Section of this Article continues shall constitute a separate and distinct offense and shall be punishable as such. The penalties herein provided shall be cumulative with and in addition to any penalty or forfeiture elsewhere in this Article provided. *(Amended by Ord. 02-21, 8/19/02; amended by Ord. No. 05-12, 9/6/05, Ord. 07-05, 5/7/07)*

CATS

§ 94.60 SHORT TITLE; DEFINITIONS.

This Article shall be known as and may be cited as “THE WAVERLY CAT ORDINANCE”. For the purpose of this Article, the following definitions shall prevail:

A. Cat: The term “cat,” whenever used in this Article, shall mean any cat except feral cats and shall apply to all non-feral cats, whether male or female.

B. Inoculation, Vaccination, or Vaccination for Rabies: The terms “inoculation”, “vaccination”, or “vaccination for rabies”, whenever used in this Article, shall mean the inoculation of a cat with a vaccine approved by the Lincoln-Lancaster County Department of Health.

C. Own: The term “own”, as used in this Article, unless otherwise indicated in the text, shall be deemed to mean and include, own, keep, harbor, or have charge, custody, or control of, a cat.

D. Owner: The term “owner”, as used in this Chapter, shall mean any person or persons, firm, association, corporation, or other entity, who shall harbor or permit any cat to be in or about his or her house, store, or enclosure, or to remain to be fed in or about his or her house, store, or enclosure, for a period of ten (10) days or more.

E. Person: The term “person”, as used in this Article, shall mean and include any individual, firm, corporation, association, partnership, or any other entity.

F. Cattery: The term “cattery”, as used in this Article, shall be deemed to mean the house, store, yard, enclosure, or place where more than three (3) cats over the age of six (6)

G. months, are harbored or kept, provided, however, that this definition shall not apply to any animal shelter, nor to the place of business of licensed veterinarians.

G. Spayed Female Cat: The term “spayed female cat”, as used in this Article, shall be construed to include any female cat which has been spayed or otherwise rendered incapable of reproduction.

H. Neutered Male Cat: The term “neutered male cat”, as used in this Article, shall be construed to include any male cat which has been neutered or otherwise rendered incapable of reproduction. *(Amended by Ordinance 03-01, 2/17/03)*

§ 94.61 VACCINATION AGAINST RABIES REQUIRED; VACCINATION TAG.

Any person within the City owning a cat four (4) months of age or older shall have such cat vaccinated against rabies. Cats, cat owners, veterinarians, and other persons shall be subject to the same requirements which are imposed with regard to vaccination of dogs by the applicable sections of the Waverly Dog Ordinance; Provided, however, that cats

shall be vaccinated against rabies at the intervals and with the vaccine or vaccines approved by the Lincoln-Lancaster County Department of Health.

§ 94.62 EXCEPTIONS TO RABIES VACCINATION; CATS CONFINED TO A LICENSED CATTERY.

The vaccination provisions of this Article shall not apply with respect to cats which are constantly confined within a cattery which is duly licensed under the provisions of this Article; Provided, however, that in the event any cat which is confined to a licensed cattery which is maintained within the Municipality is found running at large and impounded, or the owner cited for allowing said cat to run at large, such cat shall thereafter be vaccinated periodically in accordance with §94.61 of this Code.

§ 94.63 LICENSE; LICENSE TAGS; WRONGFUL LICENSING; WEARING OF COLLARS, REMOVAL, IDENTIFICATION; REMOVAL OF LICENSE TAG; EXCEPTIONS TO LICENSE, TRANSIENT CATS.

Cats, cat owners, and persons shall be subject to the same requirements and duties imposed upon dogs, dog owners, and persons by the Waverly Dog Ordinance, with respect to licensing; license tags; wrongful licensing; wearing of collars; identification; removal of license tags; and exceptions to license transient cats; Provided, however, that the following exceptions to the above shall apply:

- A. License Fees: Cat licenses shall be issued by the Municipal Clerk upon payment of a license fee in accordance with the following schedule:
 - 1. Male Cat - \$20.00
 - 2. Neutered Male Cat - \$10.00
 - 3. Female Cat - \$20.00
 - 4. Spayed Female Cat - \$10.00

- B. License Tags. Cat license tags shall have die-stamped thereon the license number, the words "CAT TAG – WAVERLY, NEBRASKA," and the year for which issued. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year and different in appearance from dog tags for the same year.

- C. Wearing of Collars or Harnesses. It shall be the duty of all persons owning cats to provide such cats with collars or harnesses which are elastic or otherwise constructed so as to prevent cats, to the extent possible, from becoming entangled, trapped, or injured due to the wearing of such collar or harness. *(Amended by Ord. No. 87-14, 9/8/87; 10-05, 5/3/10)*

§ 94.64 EXCEPTIONS TO LICENSE; CATS CONFINED TO LICENSED CATTERY.

The provisions of this Article with respect to licensing of cats shall not apply to cats constantly confined to a cattery licensed under the provisions of this Article; Provided, however, that in the event any cat which is confined to a licensed cattery which is maintained within the Municipality is found running at large and is impounded or the

owner cited for allowing such cat to run at large, such cat shall thereafter be licensed annually in accordance with this Code.

§ 94.65 PROCLAMATION; KILLING AND POISONING; MISTREATMENT; SEIZURE FOR PROTECTION OF ANIMAL.

The requirements and duties imposed upon dogs, dog owners, and persons by the Waverly Dog Ordinance with respect to proclamations by the Mayor, involving public danger involving rabies; killing and poisoning; and injuring of dogs; and seizure of mistreated animals for protection, shall apply to cats, cat owners, and persons with respect to cats.

§ 94.66 RUNNING AT LARGE; UNLICENSED.

- A. For the purposes of this Article the term "running at large" is defined to mean any cat which is not confined within a cage, dwelling house, or other structure or enclosure from which a cat is unable to escape.
- B. It is hereby declared unlawful for any owner, keeper, or harbinger of any cat to allow such cat to run at large, unless such cat is currently licensed and a valid registration tag is attached to its collar or harness.

§ 94.67 IMPOUNDING.

- A. It shall be the duty of the Humane Officer or in the event of his or her, absence or unavailability it shall be the duty of the Law Enforcement Officer on duty to cause any cat found to be running at large without a collar or harness to which a current and valid registration tag is attached, within the Municipality to be taken up and impounded. No cat found running at large without a collar or harness to which a current and valid registration tag is attached shall be released from impoundment until the owner of said cat shall have obtained a license as provided in this Chapter and the impoundment fee or other fees have been paid or other satisfactory arrangements have been made.
- B. Those portions of the Waverly Dog Ordinance contained within the provisions of this Code with respect to impounding, impoundment fees, and observation in the event of biting or attach by dogs shall be applicable to cats, cat owners, and persons.

§ 94.68 MULTIPLE BITING INCIDENTS; REMOVAL FROM MUNICIPALITY.

The provisions of the Waverly Dog Ordinance with respect to biting incidents set out in this Code shall be applicable to cats, cat owners, and persons.

§ 94.69 LIABILITY OF OWNER; RESTITUTION; PROPERTY DAMAGE OR PERSONAL INJURY; WAIVER DISALLOWED.

The provisions of the Waverly Dog Ordinance set out in this Code with respect to liability of owners; restitution for property damage or personal injury; and disallowance of waivers shall be applicable to cats, cat owners, and persons.

§ 94.70 INTERFERENCE WITH AUTHORITIES.

It shall be unlawful for any person to hinder, delay, or interfere with any Law Enforcement Officer or designated Humane 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 the breaking open of any animal shelter, any ambulance wagon, or other vehicle used for the collecting or conveying of cats to such shelter.

§ 94.71 CATTERY REGISTRATION AND LICENSING.

More than three (3) cats in excess of six (6) months of age, per family or residence, shall constitute a cattery. No catteries shall be maintained within the Municipality; provided, however, the provisions of this Section shall not apply to any Municipal Animal Shelter, or to hospitals operated by veterinarians duly licensed under the laws of the State of Nebraska, keeping cats for others for treatment or boarding.

If upon the trial of the offense mentioned in this Section, it shall appear to the County Judge that the person be guilty as charged in said complaint, said Judge may, in addition to the usual judgment of conviction, declare said cattery a public nuisance, order the party or parties so convicted to abate said nuisance forthwith, and in the event that the party or parties convicted shall fail to do so, order the Municipal Law Enforcement Personnel to remove to a suitable animal shelter said cat or cats so kept and harbored in violation of this Section, there to be impounded and placed in suitable homes or disposed of in accordance with the terms of this Article. When a complaint is filed for violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty, and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*) (*Amended by Ord. 03-01, 2/17/03*)

§ 94.72 ANIMAL CONTROL VIOLATION, CITATION.

- A. Whenever a designated Humane Officer of the Municipality or any Law Enforcement Officer shall observe any violation of this Article, it shall be his or her duty to issue an appropriate citation; Provided, however, that a warning citation shall be issued for the first (1st) violation of § 94.66 of this Code by any person.

No complaint shall be filed by the Municipal Attorney when any person who is issued a warning citation for violation of § 94.66 of this Code shall pay all fees required under this Article and comply with the licensing and vaccination requirements within five (5) days of issuance of such warning citation. When a warning citation only is mistakenly issued for a second (2nd) or subsequent violation of § 94.66 of this Code by any person and in all other cases, it shall be the duty of the Municipal Attorney to promptly prosecute violations of this Article.

- B. At the time of the commission of the alleged violation, the accused may be served with a printed notice requiring him or her to make such appearance on or before the date specified thereon and advising whether execution of a Waiver of Appearance and Plea

of Guilty has been made available by the court for such violation. Said notice shall further apprise the accused that upon direct refusal or failure to so appear, a warrant shall be issued for his or her arrest, that he or she must appear at said court during the hours fixed by the Judges of the County Court as shown on said notice.

§ 94.73 PENALTY FOR VIOLATION.

- A. Except as otherwise hereafter provided in this Section, any person upon whom a duty is placed by the provisions of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a Class II Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be fifty dollars (\$50.00).
- B. Any person upon whom a duty is placed by the provision of § 94.66 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class II Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be twenty-five dollars (\$25.00).
- C. Any person upon who a duty is placed by the provisions of § 94.71 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class II Misdemeanor as defined by this Code. If such violation is disposed of a pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be twenty-five dollars (\$25.00).
- D. Any person upon whom a duty is placed by the provisions of § 94.67 of this Article which involves failure to submit a cat for observation and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be seventy dollars (\$70.00).
- E. Any person upon whom a duty is placed by the provisions of § 94.68 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code.
- F. Each day that a violation of any Section of this Article continues shall constitute a separate and distinct offense and shall be punishable as such. The penalties herein provided shall be cumulative with and in addition to any penalty or forfeiture elsewhere in this Article provided. *(Amended by Ord. 07-05, 5/7/07)*