

CHAPTER 4

HEALTH AND SANITATION

ARTICLE 3. NUISANCES

4-301 NUISANCE; GENERALLY DEFINED. A nuisance consists of doing any unlawful act, omitting to perform a duty or suffering or permitting any condition or thing to be or exist; which act, omission, condition or thing:

1. Injures or endangers the comfort, repose, health or safety of others;
2. Offends decency;
3. Is offensive to the senses;
4. Unlawfully interferes with, obstructs, tends to obstruct or renders dangerous for passage any stream, Public Park, parkway, square, street or highway in the Municipality;
5. In any way renders other persons insecure in life or the use of property; or,
6. Essentially interferes with comfortable enjoyment of life and property or;
7. Tends to depreciate the value of the property of others.

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

1. Any odorous, putrid, unsound or unwholesome grain, meat, hides, skins, feathers, vegetable matter or the whole or any part of any dead animal, fish or fowl.
2. The emissions of smoke, dust, fumes, gases, mists, odors, or polluted air from any source that is injurious or dangerous to human health and safety.
3. Privies, vaults, cesspools, dumps, pits or like places which are not securely protected from flies or rats or other insects and rodents, or which are foul or malodorous.
4. Filthy, littered or trash-covered cellars, house yards, barnyards, stable yards, factory-yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings or premises.
5. Dead animals or dead animals buried within the corporate limits.
6. Animal manure in any quantity which is not securely protected from flies and the elements or which is kept or handled in violation of any ordinance of the Municipality.

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

8. Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish or any waste vegetable or animal matter in any quantity. Nothing herein contained shall prevent the temporary retention of waste in receptacles or the dumping of non-putrefying waste in a place and manner approved by the municipality.

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

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

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

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

13. Stock yards, 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 fowl and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the Municipality or are maintained and kept in such a manner as to be injurious to the public health;

14. Dead or diseased trees within the right-of-way of streets within the corporate limits of the Village, or on private property within the one mile zoning jurisdiction beyond the corporate limits (NRS 17-555);

15. Undrained lots which hold or may hold stagnant water or any other nuisance;
16. Any condition which allows the perpetuating of insects and rodents;
17. Storage, accumulation, keeping, placing, or allowing to remain trash, garbage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any junk or abandoned motor vehicles, tractors, trailers, machinery, and equipment;
18. Any vehicle which is not properly registered, or is inoperable, wrecked, junked, or partially dismantled and remaining longer than thirty (30) days on private property. This does not apply to a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the lawful operation of such business enterprise (such as a licensed salvage dealer, motor vehicle dealer or farm implement dealer), or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner, and so long as the premises which said vehicle is located is not a nuisance and is maintained in a healthful and safe condition. "Vehicle" means the same as defined by NRS Section 60-136: a "motor vehicle, all terrain vehicle, minibike, trailer, or semitrailer. "Properly registered" means as required by Nebraska Statutes;
19. Lots, pieces of ground, and the adjoining streets and alleys with growth of weeds or noxious growth;
20. All other things specifically designated as nuisances elsewhere in the Village Code.
(NRS 18-1720)

4-302 NUISANCE; ABATEMENT SERVICES AND NOTICE PROCEDURE.

(A) NUISANCE OFFICER. The village shall appoint an individual or organization to identify and enforce abatement of nuisances within the Village. Said individual or organization shall be identified as the "Nuisance Officer" and said appointment shall be identified by resolution of the Village.

(B) IDENTIFYING NUISANCES, The Village may identify suspected nuisances, in which case the Village Clerk, shall upon direction of the Village Board, notify Nuisance Officer of the suspected location, person or persons in violation of any provision of this chapter and provide the address of such alleged nuisance. The Village may request that the Nuisance Officer audit the Village for nuisances in the Village as defined by the Village Code. The Nuisance Officer shall then view the property or area for any violations of the nuisances of the Village. Nuisance Officer shall not go upon private property for said audit unless granted permission by the resident/owner of suspected property.

(C) CONFIRMING, DOCUMENTING AND PRESENTING NUISANCES. The Nuisance Officer shall identify and confirm that in his or her opinion a nuisance exists as defined by Federal, State or

Village law. Upon confirming that a nuisance exists, the Nuisance Officer shall document said nuisance with photographs and other evidence pertinent to the situation. The Nuisance Officer will also obtain the legal description of the property and identify the current owners and, if possible, the occupants of the property upon which nuisance exists. The Nuisance Officer shall then present this information to the Village governing board at a regular or special meeting for its confirmation that a nuisance exists as stated in Article 3.

4-303 NUISANCE; ENFORCEMENT PROCEDURES. The nuisance, health and/or sanitation violation is brought to the Governing Body by the Village Nuisance Officer, or the Board of Health or upon the Governing Body's own action. The Governing Body then may declare by resolution a nuisance, health and/or sanitation violation. The nuisance, health, and /or sanitation ordinances may be enforced by: (1) Village administrative procedures; (2) Penal prosecutions through the Courts, and/or; (3) by civil procedures in the Courts. Any of these procedures, or any combination of these procedures may be used to enforce the nuisance, health and/or sanitation ordinances of the Village.

(A) ADMINISTRATIVE PROCEDURE. The Village may proceed with abatement of the nuisance, sanitation, and/or health violation with or without court involvement after the following procedure is followed:

1. After a nuisance is declared the Village Clerk notifies the Nuisance Officer to serve notice upon the violator(s).
2. The Nuisance Officer shall prepare and serve notice which shall describe the found nuisance and state the required date of abatement and removal of the nuisance shall be accomplished. The notice shall also provide information as to how the interested parties may request a hearing before the Governing Body described in paragraph 4 herein.
- 3 The notice shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If the notice by personal service or certified mail is unsuccessful, said notice shall be given by a single publication in a newspaper of general circulation in the Village or county of the Village, and by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The date of service is determined by the later certified mail receipt, personal service or publication date.
4. The accused violator (owner/agent/occupant) may request in writing a hearing before the Governing Body of the Village within five (5) days after notice of violation is served or published. For tree nuisance violations the period for requesting a hearing is extended to thirty (30) days after the service.
5. If no request for a hearing is received in the required time period, the Governing Body may cause a hearing to be held. This option is at the sole discretion of the Governing Body to be used in exceptional cases.
6. If a hearing is requested, the Village Clerk shall fix date of said hearing to be no later than 15 days from receipt of the request for hearing. Notice of said hearing and with the date and time shall be served upon the agent, owner, and of the nuisance property by certified and regular mail.

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

8. No later than 14 days after the hearing and consideration of the evidence, the Governing Body may by majority vote rescind the resolution of violation. If the resolution of violation is not rescinded, it shall stand. Furthermore, if the Objector or its designated agent fails to appear at the hearing or does not provide evidence, the nuisance shall stand. If the resolution is not rescinded, the Governing Board may, by resolution, extend the date the owner, occupant, lessee, or mortgagee shall abate and remedy the said public nuisance, but in no case shall this time exceed 60 days. The findings of the Governing Board shall be made no later than 14 days after the hearing and notice of its findings shall be served upon the Objecting party by regular US Mail within 5 days of finding. The finding of this hearing is final, provided that an interested party or parties may appeal such decision to the appropriate court for adjudication.

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

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

(B) PENAL COURT ENFORCEMENT PROCEDURE. If the declared nuisance, health, and/or sanitation are not abated within fifteen (15) days that the notice is served upon the owner and/or occupant, and the Village Clerk has not received a request for hearing, the Nuisance officer may cause issue of a citation for the code violation.

1. The citation shall be prosecuted to the appropriate court by the Village Attorney or other designated prosecutor of the Village.

2 A person or persons found guilty of these violations shall be guilty of a misdemeanor and fined up to \$500.00 per each offense.

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

(C) CIVIL COURT PROCEDURE. The Governing Board may instruct by resolution the Village Attorney to file a civil action for the abatement of the nuisance. Said civil suit may commence after fifteen (15) days notice has been served as stated in Article 2 of this Chapter, and may be filed and prosecuted at the same time any other enforcement procedure has commenced, terminated or in progress.

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

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

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

4-304 NUISANCE; EXPENSES.

(A) When the Village has affected the abatement of the nuisance, health and/or sanitation violation through either Village employees or through contract with a third party and had incurred expenses and costs thereof, the actual cost thereof shall be charged to the owner, agent, occupant or person in possession, charge or control of such property. The billing shall be calculated at the actual cost of abating the nuisance plus a twenty- five-dollar (\$25.00) administrative fee.

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

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

4-305 NUISANCE; PENALTY. Any person violating the provisions of Chapter 4, Article 3 of the Municipal Code of the Village of Brady shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined in the sum of no less than \$100.00 and no more than \$500.00 for a first offense. Fines for second and subsequent offenses shall be no less than \$200.00, and no more than \$500.00 per offense.

4-306 NUISANCE. ENFORCEMENT. It shall be unlawful for any person to prevent any police officer or public safety employee from entering upon private property for purposes of carrying out his duties hereunder or to interfere with him in the lawful performance of his duties under the provision of this Chapter.