

Chapter 4

HEALTH AND SANITATION

Article 1. General Provisions

- §4-101** **HEALTH; REGULATIONS.** For purpose of promoting the health and safety of the residents of the Municipality, the Board of Health shall, from time to time, adopt such rules and regulations relative thereto and shall make such inspections, prescribe such penalties, and make such reports as may be necessary toward that purpose. *(Ref. 17-121 RS Neb.)*
- §4-102** **HEALTH; ENFORCEMENT OFFICIAL.** The Municipal Police Chief, as the Quarantine Officer, shall be the chief health officer of the Municipality. It shall be his duty to notify the Governing Body and the Board of Health of health nuisances and of every case of contagious, infectious, or malignant disease.
- §4-103** **HEALTH; STATE RULES.** The “Rules and Regulations Relating to Public Health,” Department of Health of the State of Nebraska are hereby incorporated by reference when the same are applicable to the Municipality, in their present form and as they may hereafter be amended. Three (3) copies of the said pamphlet are filed at the office of the Municipal Clerk and shall be available for public inspection at any reasonable time. *(Ref. 18-132 RS Neb.)*

Article 2. Contagious Disease

- §4-201 **DISEASE; SPREADING CONTAGION.** It shall be unlawful for any person to spread disease willfully or negligently, or to cause the spread of the same.
- §4-202 **DISEASE; MEDICAL ATTENTION REQUIRED.** It shall be unlawful for the parent, guardian, or other person responsible for any child to fail or neglect to secure proper medical treatment for the said child when he/she is afflicted with a contagious or infectious disease.

Article 3. Garbage Disposal

- §4-301 **GARBAGE; DEFINED.** The term “garbage” as used herein shall be defined to mean kitchen refuse, decayed waste, dead animals, or anything that may decompose and become offensive to the public health.
- §4-302 **RUBBISH; DEFINED.** The terms “rubbish” or “trash” as used herein shall be defined as discarded machinery, chips, pieces of wood, sticks, dead trees, branches, bottles, broken glass, crockery, tin cans, boxes, papers, rags, or any other litter or debris that is not an immediate hazard to the health of the residents of the Municipality.
- §4-303 **WASTE; DEFINED.** The term “waste” as herein defined shall mean cinders, ashes, plaster, brick, stone, sawdust, or sand.
- §4-304 **GARBAGE, TRASH, AND WASTE.** It shall be unlawful for any person to keep in, on, or about any dwelling, building, or premise, or any other place in the Municipality, decayed vegetable or animal substance, garbage, or refuse matter of any kind that may be injurious to the public health or offensive to the resident of the Municipality unless the same is kept in receptacles not exceeding a thirty (30) gallon capacity and as nearly air-tight as may be practical. It shall be unlawful to throw or sweep into the streets, alleys, parks, or other public grounds any dirt, paper, nails, pieces of glass, refuse, waste, or rubbish of any kind. No person may permit garbage, rubbish, waste, or refuse to collect and all persons shall remove the same from their property within twenty-four (24) hours after being notified to do so by the Municipal Police Chief who shall represent the Board of Health. Any person having garbage, rubbish, waste, or refuse that is subject to decay or fermentation within a short period of time shall be required to place the same in a standard garbage can with a tight cover, or a durable plastic container that is securely tied at its opening.
- §4-305 **LITTER; DEFINED.** The word "litter" shall mean all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property. "Litter" includes, but is not limited to: (a) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (b) wood, plaster, cement, brick, or stone building rubble; (c) grass, leaves, and worthless vegetation; (d) offal and dead animals; and (e) Any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk. Not included are wastes of primary processes of farming or manufacturing. Waste material shall be included and shall mean any material appearing in a place or in a context not associated with that material's function or origin. Ref. Section 17-123.01, Section 28-523, and Section 17-563(5)(a) all in the Revised Statutes of Nebraska as Amended.
- a) The City shall require the removal of litter so as to abate any nuisance occasioned thereby. Such removal Notice to abate the litter nuisance shall be given by the City through the City Police Department. The Notice shall give the owner of the real estate five (5) days after notice by publication and notice by certified mail to remove the litter so as to abate the nuisance occasioned thereby. Ref. Section 17-123.01 of the Revised Statutes of Nebraska as Amended.

b) If the owner fails to remove such litter, after five (5) days' notice by publication and by certified mail, the City, through its proper officers, shall remove the litter or cause the litter to be removed, and shall assess the cost thereof against the property so benefited as provided by Ordinance. Ref. Section 17-123.01 of the Revised Statutes of Nebraska as Amended. (litter: Ordinance #1049 6/13/07)

Article 4. Nuisances

§4-401 NUISANCE DEFINITION, GENERAL AND SPECIFIC.

- (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) Is offensive to the senses;
 - (3) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the city;
 - (4) In any way renders other persons insecure in life or the use of property; or
 - (5) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.
- (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 city;
 - (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 city, 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) Litter, 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; litter shall include, but not be limited to, the following:
 - a. Trash, rubbish, refuse, garbage, paper, rags, and ashes;
 - b. Wood, plaster, cement, brick, or stone building rubble;
 - c. Grass, leaves, and worthless vegetation;
 - d. Any machine or machines, vehicle or vehicles, or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;
- (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 said building, 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;
- (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;
- (12) Storage, accumulation, keeping, placing, or allowing to remain of trash, garage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any motor vehicles, tractors, trailers, machinery, and equipment;
- (13) The storage, keeping or abandonment of parts, including scrap metals, from machinery, or parts thereof, except in enclosed buildings or garages

or where otherwise authorized by the city zoning regulations.

- (14) The permitting of emission of smoke from any source that is polluted. 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.
- (15) The obstruction or impeding without legal authority any river or collection of water or to corrupt and render unwholesome or impure any watercourse, stream, or other water within the corporate limits of the city. The standards For water quality established or adopted by the State of Nebraska shall be presumptive evidence as to when the water is deemed to be polluted under this section.
- (16) The abandoning, on public property, of personal property. For purposes of this subsection, "public property" shall mean any public right of way, street, highway, alley, park, or other state, county, or city owned property. For purposes of this subsection, "abandon" shall mean any personal property left on public property for more than 24 hours, except when the leaving of said personal property on said portion of public property, at that location, is legally permitted. For purposes of this subsection, "personal property" shall not include any motor vehicle for which a registration, from the State of Nebraska, is required to operate said motor vehicle on those portions of public property which constitute a street, highway, or alley.
- (17) Any building and structure and other physical things and conditions that are in conflict with or in violation of any provision of the Property Maintenance Code.
- (18) All other things specifically designated as nuisances elsewhere in this code.

§ 4-402 NUISANCES; ABATEMENT PROCEDURE.

- (A) Duty. It shall be the duty of every owner, occupant, lessee, trustee and/or mortgagee of real estate in the city to keep such real estate free of public nuisances. All, or any part of said premises found, as provided herein, to constitute a public nuisance shall be abated by rehabilitation, demolition, or repair pursuant to procedures set forth herein.
- (B) Nonexclusive Procedure. The procedure set forth in this subchapter for abatement of a nuisance is nonexclusive and is in addition to the procedure for abatement of litter.
- (C) Enforcement. When the Board of Health of the City of David City, Nebraska declares or finds that any premises within the jurisdiction for nuisances contained in Section 4-403 of this Code may be maintained contrary to one or more of the provisions of Section 4-401 of the Code, EXCEPT subsection (16) thereof, the City Administrator of the City shall mail a Notice to the owner, occupant, lessee, mortgagee, and/or trustee of the premises. The Notice shall state the conditions which constitute the public nuisance and shall order the abatement of the nuisance within the time period set forth in the Notice, and shall be substantially in the following form:

NOTICE OF NUISANCE

TO: (Owner, Occupant, Lessee, Mortgagee, Trustee)
Addresses)

- (1) Conditions Which Constitute the Public Nuisance:
(State all applicable conditions from Section 4-401)
- (2) Abatement of the Nuisance Outlined Above SHALL be Completed on or Before: (State day, date, and time)

City Administrator
City of David City, Nebraska

- (D) Form of Proper Service of Notice. Service of said Notice shall be by depositing a copy of said Notice in the United States Postal Service enclosed in a sealed envelope and with postage thereon fully prepaid. Said mail shall be registered or certified and addressed to said owner, occupant, lessee, mortgagee, and/or Trustee at the last known address of said parties as disclosed by the current tax rolls, and if there is no known address, then in care of the property address. Service is complete at the time of such deposit. "Owner" as used herein shall mean any person in possession and also any person having or claiming to have any legal or equitable interest in said premises. The failure of any person to receive such Notice shall not affect the validity of the proceedings hereunder.
- (E) Affect of Failure to Abate. If the nuisance is not abated within the period given in the Notice, the City Administrator of the City may determine to proceed to abate the nuisance pursuant to the provisions of this Code.

- (F) Hearing. If the owner, as defined aforesaid, of the premises upon which the City Administrator of the City has determined that there exists a nuisance, shall, within the time period given to the owner by the City Administrator of the City for the abatement of said nuisance, file a written notice with the City Clerk for a hearing before the City Council concerning such determination, the City Clerk shall fix a date and time to hear the matter. The written Notice shall include the name and address, including mailing address, of the owner. The City Clerk shall then issue a Notice of the hearing date and time by mailing a copy to the petitioner's address no later ten (10) days prior to the date of the hearing.

At the time fixed in the Notice, the City Council, shall hear the testimony of all competent persons desiring to testify respecting the condition constituting the nuisance, including the estimated cost of abatement and other matters which may be pertinent. At the conclusion of the hearing, the City Council shall, by resolution, declare its findings. If the City Council so concludes, it may declare the condition existing to be a nuisance and direct the City Administrator to proceed to abate the nuisance pursuant to the provisions of this Code. Such final determination shall be considered a final order of the City. Said Notice shall be substantially in the following form:

NOTICE OF ADOPTION OF RESOLUTION NO. _____

TO: _____

YOU ARE HEREBY NOTIFIED THAT ON _____, 20____, the City of David City, Nebraska, by Resolution No. _____, after notice and hearing as specified in said Resolution, did determine that the following constitute a public nuisance, to-wit:

Upon the following described real estate, to-wit: _____

You are granted ____ days from the date of this Notice to abate said nuisance. Failure to abate said nuisance shall result in said nuisance being abated by the City of David City, Nebraska, and the cost of abatement shall be assessed upon said premises and constitute a lien upon said premises until paid.

Dated: _____

CITY OF DAVID CITY, NEBRASKA

By: _____
City Clerk

- (G) Extension of Time. The City Administrator may grant an extension of time to abate the nuisance if, in the City Administrator's opinion, good cause for an extension exists.
- (H) Abatement by City. If the person fails to abate the nuisance within the time set forth, the City Administrator may order the abatement of the nuisance.

- (I) Record of Expenses. The City Clerk shall keep an itemized account of the expenses involved in abating the nuisance. The City Clerk shall post conspicuously on the property and shall also mail to the owner of the property a statement showing the expenses of the abatement, together with a Notice of the time and place when the statement will be submitted to the City Council for approval and confirmation and at which time the City Council may consider the objections and protests to the cost of the work. Said notice shall be substantially in the following form:

NOTICE OF HEARING ON EXPENSE
OF ABATEMENT OF NUISANCE

TO: _____

Pursuant to Section 4-402(I) of the Municipal Code of the City of David City, Nebraska, you are hereby notified that the following is a statement showing the expense incurred by the City of David City in abating a nuisance upon the following described real estate, to wit:

Said expenses are as follows:

You are further notified that said Statement of Expenses shall be submitted to the City Council for consideration on the ____ day of _____, 20____, at _____ o'clock _____.M., David City, Nebraska, at which time you may appear to object or protest the expenses incurred in the abatement of said nuisance.

CITY OF DAVID CITY, NEBRASKA

By: _____
City Clerk

- (J) Hearing on Statement of Expenses. At the time fixed for hearing on the statement of expense, the City Council shall consider the statement and protest or objections raised by the persons liable to be assessed for the costs of the abatement. The City Council may revise, correct, or modify the statement as it considers just and thereafter shall confirm the statement by motion or resolution. The decision of the City Council on all protests and objections which may be and shall be final and conclusive. The procedure governing the hearing shall be provided by Section 4-402(F).
- (K) Expenses as a Special Assessment Against the Property-. If the property owner does not pay the expense of abating the nuisance within five (5) days after the City Council confirms the cost of abatement, the costs shall become a special assessment against the real estate upon which the nuisance was abated. The assessment shall continue until it is paid, together with interest applicable per statutes of the State of Nebraska.
- (L) Notice of Special Assessment. The City shall file in the offices of the County Clerk and County Treasurer of Butler County, Nebraska a certificate substantially in the following form:

NOTICE OF SPECIAL ASSESSMENT

Under the authority of the David City Municipal Code, the City did on _____, 20_____, abate a nuisance upon the real estate hereinafter described and then on _____, 20_____, did assess the cost of the abatement upon the real estate. The City of David City claims a special assessment on the real estate for the expense of doing the work in the amount of \$_____. This amount is a special assessment against the real estate until it is paid, with interest as set by the applicable statutes of the State of Nebraska, until discharged of record. The real estate referred to above, and upon which the special assessment is claimed is that certain parcel of land situated within the jurisdiction of the City of David City, County of Butler, State of Nebraska and more particularly described as follows:

DATED: _____

CITY OF DAVID CITY, NEBRASKA

By: _____
City Clerk

- (M) Alternatives. Nothing in the foregoing sections shall be deemed to prevent the City Administrator from directing the City Attorney to commence a civil and/or criminal proceeding to abate a public nuisance under applicable civil or penal code provisions as an alternative to the proceedings set forth herein.
- (N) Procedure in Case of Emergency. When the conditions which constitute the nuisance pose an immediate threat to the public peace, health, or safety, the City Administrator may order the nuisance abated immediately.
- (O) Expenses Collected by Civil Action. If the property owner does not pay the expense of abating the nuisance within five (5) days after the City Council confirms the cost of abatement, the City may collect the costs associated with said abatement from the property owner and enforce the collection by civil action of any court of competent jurisdiction. (Ordinance No. 1050 6-13-07)

§4-403 **NUISANCES; JURISDICTION.** The Mayor and Chief of Police of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Mayor, Chief of Police, and court shall extend to, and the territorial application of this Chapter shall include, all territory adjacent to the limits of the Municipality within two (2) miles thereof and all territory within the corporate limits. (Ref. 18-1720 RS Neb.)

Article 5. Garbage and Refuse Collection

- §4-501** **GARBAGE AND REFUSE COLLECTION; AUTHORITY.** The governing body for the city may provide for the collection and removal of garbage or refuse found upon any lot or land within its corporate roads, or alleys abutting such lot or land which constitutes a public nuisance. The city may require the owner, duly authorized agent, or tenant of such lot or land to remove the garbage or refuse from such lot or land and streets, roads, or alleys. *(Ref. 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb).*
- §4-502** **GARBAGE AND REFUSE COLLECTION; NOTICE; REMOVAL.** Notice that removal of garbage or refuse is necessary shall be given to each owner or owner's duly authorized agent and to the tenant if any. Such notice shall be provided by personal service or by certified mail. After providing such notice, the city through its proper offices shall, in addition to other proper remedies, remove the garbage or refuse, or cause it to be removed, from such lot or land and streets, roads, or alleys. *(Ref. 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.)*
- §4-503** **GARBAGE AND REFUSE COLLECTION; NUISANCE.** If the Mayor declares that the accumulation of such garbage or refuse upon any lot or land constitutes an immediate nuisance and hazard to public health and safety, the city shall remove the garbage or refuse, or cause it to be removed, from such lot or land within forty-eight hours after notice by personal service or following receipt of a certified letter in accordance with section 4-502 if such garbage or refuse has not been removed. *(Ref 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.)*
- §4-504** **GARBAGE AND REFUSE COLLECTION; LIEN.** Whenever a city removes any garbage or refuse, or causes it to be removed, from any lot or land pursuant to this article, it shall, after a hearing conducted by the governing board, assess the cost of the removal against such lot or land. *(Ref 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.)*

Article 6. Garbage Collectors

§4-601 **GARBAGE COLLECTORS; LICENSE.** It shall be unlawful for any persons, corporations or other legal entities to collect, haul or convey wastes, refuse, garbage, rubbish, junk, hazardous waste, or solid waste (as those terms are defined under the laws of the State of Nebraska) for hire within the incorporated area of the City without first having procured a license to do so.

Application for a license to collect, haul or convey wastes, refuse, garbage, rubbish, junk, hazardous waste or solid waste for hire shall be made to the City Clerk upon blanks furnished by the City Clerk. Said application blanks shall set forth the name and residence of the applicant, the business address of the applicant, the ownership of the vehicle or vehicles to be used, the number and kinds of vehicles to be used, with a definite description of each such vehicle and such other information as may be required to satisfactorily identify the applicant and vehicles. The applicant shall pay to the City Clerk the required licensed fee as hereinafter provided. Such applicant shall comply with all ordinances or regulations of the City and State of Nebraska respecting the collecting, hauling or conveying of wastes, refuse, garbage, rubbish, junk, hazardous waste or solid waste.

It shall be unlawful for any persons, corporations, or other legal entities licensed under this section, or any other persons, to haul or convey any solid waste generated within the corporate limits of the City to any facility or system (as those terms are defined under State law) with which the City, either alone or in combination with other cities, villages or counties, has not contracted for the safe and sanitary disposal of solid waste generated within the City's jurisdiction area.

All persons, corporations, or other legal entities licensed under this section may provide, in addition to services regarding the collection, hauling, and conveying of solid waste, assistance in providing services for curb side pick-up of recyclable materials, yard waste, and discarded appliances.

All persons, corporations, or legal entities licensed under this section shall cooperate with their customers within the City in finding outside sources for the collection, hauling, conveying and disposal of hazardous waste generated within the corporate limits of the City.

§4-602 **GARBAGE COLLECTORS; LICENSE FEE.** An annual license fee of \$50.00 shall be charged for each licensed hauler within the City. All license fees shall be due and payable on October 1st of each year and shall expire on September 30th of each year.

Article 7. Penal Provisions

- §4-701** **VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.
- §4-702** **ABATEMENT OF NUISANCE.** Whenever a nuisance exists as defined in this Chapter, 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 a part of the judgment in the case. (*Ref. 18-1720, 18-1722 RS Neb.*)