

**VILLAGE OF ELMWOOD
ORDINANCE NO. 2015-004**

AN ORDINANCE OF THE VILLAGE OF ELMWOOD, NEBRASKA TO REPEAL CODE SECTIONS 91.20 THROUGH 91.25 PROVIDING FOR ABATEMENT OF NUISANCES AND ENFORCEMENT PROCEDURES; TO ENACT NEW PROVISIONS FOR ABATEMENT OF NUISANCES AND ENFORCEMENT PROCEDURES; TO REPEAL ALL ORDINANCES, RESOLUTIONS AND PROVISIONS OF THE CODE OF ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE VILLAGE OF ELMWOOD THAT:

Section 1: Sections 91.20 through 91.25, inclusive, of the Village of Elmwood, Nebraska Code of Ordinances are hereby repealed, and replaced with the following provisions:

ARTICLE 1 GENERAL PROVISIONS

PURPOSE.

The VILLAGE OF ELMWOOD by this Article defines its authority to define, regulate, suppress and prevent nuisances, and to declare what shall be a nuisance for its jurisdiction and to provide services to abate same for the health and sanitation of ELMWOOD, NEBRASKA. (Neb. RS 18-1720)

DEFINITIONS.

- (A) **NUISANCE:** A nuisance consists of doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing:
1. Injures or endangers the comfort, repose, health, or safety of others;
 2. Offends decency;
 3. Is offensive to the senses;
 4. Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the 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
 7. Tends to depreciate the value of the property of others.
- (B) Nuisance includes, but is not limited to, the maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things 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. 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;
 3. 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;
 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. Hauling any garbage, waste, or refuse matter through the streets, alleys, and public ways except when the same is loaded and conveyed in such a way so none of the contents shall be spilled;
 6. Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity. Nothing herein contained shall prevent the temporary retention of waste in receptacles nor the dumping of non-putrefying waste in a place and manner approved by the municipality;

7. 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;
8. 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, tires of any size, whether mounted on rims or by themselves, or any other waste materials when any of the articles or materials create a condition in which flies or rats or other insects or rodents may breed or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity;
9. Any unsafe building, as defined elsewhere in this code, unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards, or other structures are a fire hazard, or a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity;
10. All places used or maintained as junk yards, or dumping grounds, or for the wrecking and dissembling 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;
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;
12. 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 (Neb. RS 17-555);
13. Undrained lots which hold or may hold stagnant water or any other nuisance;
14. Any condition which allows the perpetuating of insects and rodents;
15. 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;
16. Any vehicle in violation of SS 91.20 of the Village Code: *It shall be unlawful for any person in charge or control of any property within the municipality, other than municipal property, whether as owner, tenant, occupant, lessee, or otherwise, to allow any partially dismantled, inoperable, wrecked, junked, or discarded vehicle to remain on the property longer than 5 days. It shall be unlawful for any person in charge or control of any property within the Village, whether as owner, tenant, occupant, lessee, or otherwise, to allow any vehicle for which licensing and registration is required by law, which has been unregistered for more than 30 days, to remain on the property. This section shall not apply to a vehicle in an enclosed building, to a vehicle on the premises of a business enterprise operated in a lawful place and manner, when the vehicle is necessary to the lawful operation of the business, or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the municipality. Any vehicle allowed to remain on property in violation of this section shall constitute a nuisance and shall be abated. Any person violating this section shall be guilty of an offense.* "Vehicle" means the same as defined by Neb. RS Section 60-136: a "motor

vehicle, all- terrain vehicle, minibike, trailer, or semitrailer”. “Properly registered” means registered as required by Nebraska Statutes;

17. Lots, pieces of ground, and the adjoining streets and alleys with growth of weeds or noxious growth;
18. All other things specifically designated as nuisances elsewhere in this Code. (Neb. RS 18-1720)

ARTICLE 2

ABATEMENT SERVICES & NOTICE PROCEDURE FOR NUISANCES

(A) NUISANCE OFFICER.

The Village may 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

1. The Village may identify suspected nuisances, in which case the Village Clerk, shall upon direction of the Village Council, notify Nuisance Officer of the suspected location and, person(s) alleged to be in violation of any provision of this chapter and provide the address of such alleged nuisance.
2. The Village may request that the Nuisance Officer audit the Village for nuisances in the Village as defined by this Code. The Nuisance Officer shall then view the property or area for any violations of this Code with respect to nuisances. 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.

1. Nuisance Officer shall identify and confirm that in his or her opinion a nuisance exists as defined by this Code.
2. Upon confirming that a nuisance appears to exist the Nuisance Officer shall document said nuisance with photographs and other evidence pertinent to the situation. Nuisance Officer will also obtain the legal description of the property and identify the current owners and, if possible, the occupants of the property upon which the nuisance exists.
3. Nuisance Officer shall then present this information to the governing body at a regular or special meeting for its confirmation that a nuisance exists as stated in Article 3.

ARTICLE 3

ENFORCEMENT

ENFORCEMENT PROCEDURES

The nuisance 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 violation. Violations of this Code with respect to nuisances may be enforced by:

- (1) Village administrative procedures;
- (2) Penal prosecutions through the Courts, and/or;
- (3) Civil procedures in the Courts.

Any of these procedures or any combination of these procedures may be used to enforce the nuisance provisions of this Code.

(A) ADMINISTRATIVE PROCEDURE

The Village may proceed with abatement of the nuisance violation with or without court involvement after the following procedure is followed:

1. After a nuisance violation is declared by the Governing Body, the Village Clerk shall notify the Nuisance Officer to serve notice thereof upon the agent, owner, or occupant.
2. The Nuisance Officer shall prepare and serve notice which shall describe the found nuisance and state the required date by which 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 agent, owner, or any occupant, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, said notice shall be given by a single publication in a newspaper of general circulation in the Village or county of the Village, or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The date of service shall be by the later of certified mail receipt, personal service or publication date.
4. Except for violations of Article 1-B-12, the accused violator may request in writing within five (5) days after notice of violation is served or published, a hearing before the Governing Body of the Village. For violation of Article 1-B-12, such written request for hearing is extended to thirty (30) days after service. (Neb. RS 17-555)
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 the hearing. Notice of said hearing and with the date and time shall be served upon the agent, owner, or occupant of the nuisance property by certified and regular mail.
7. The Hearing shall be a "show cause" hearing in which the agent, owner, or occupant of the nuisance property (objecting party) 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 Nuisance 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 their evidence. The rules of evidence are not required at said hearing, but all evidence must be relevant to the particular nuisance being heard. Testimony shall be under oath as administered by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.
8. No later than 14 days after the hearing and consideration of the evidence, the Governing Body may by majority vote rescind the resolution declaring a nuisance. If the resolution of violation is not rescinded, it shall stand. Furthermore, if the Objecting party or its designated agent fails to appear at the hearing or does not provide evidence, the Resolution declaring a nuisance shall stand. If the resolution is not rescinded, the Governing Body may, by resolution, extend the date that the agent, owner, or occupant, shall abate and remedy the said public nuisance, but in no case shall this time exceed 60 days from hearing date. The findings of the Governing Body shall be made no later than 14 days after the hearing and notice of its finding shall be served upon the Objecting party by regular US Mail within 5 days of the finding. The finding of this hearing is final, provided that an interested party or parties may appeal such decision to the appropriate court for adjudication.
9. If the Nuisance Officer determines the nuisance is not remedied and abated within the time period designated, the Village may 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 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 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 nuisance is not abated within fifteen (15) days after the notice is served upon the agent, owner, and occupant, and the Village Clerk has not received a request for hearing, the Nuisance Officer may request issuance of a citation for the code violation by local law enforcement.

1. The citation shall be prosecuted to the appropriate court by the Village Attorney or other designated prosecutor for the Village.
2. A person or persons found guilty of a violation shall be guilty of a misdemeanor and fined up to \$500.00 per each offense.
3. Each day, after the service of notice of a nuisance as provided in this section, shall constitute a separate offense.

(C) CIVIL COURT PROCEDURE.

The Governing Body may instruct by resolution the Village Attorney to file a civil action for the abatement of a nuisance. Said civil action 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 is in progress.

ARTICLE 4
EXPENSES

- (A) The actual cost to the Village in abatement of a nuisance, whether through Village personnel or through contract with a third party, shall be charged to the agent, owner, occupant, or person in possession, charge or control of such property. The billing shall be calculated at the actual cost of abatement plus a twenty-five (\$25.00) administrative fee.
- (B) The billing shall be submitted to the last known address of the agent, owner, occupant, or person in possession, charge, or control of such property as found in the County Treasurer's office by regular US Mail.
- (C) If said costs are not paid within sixty (60) days after the work is done and thirty (30) days after the expenses and costs are submitted to the owner, 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 violation(s) in a civil action in the courts of the appropriate county in Nebraska.

Section 2: All ordinances, resolutions, and provisions of the Code of Ordinances in conflict with this ordinance are hereby repealed.

Section 3: This Ordinance shall be in full force and effect from and after its passage, approval and publication according law.

Passed and approved this 18th day of March, 2015.

Attested to:

Approved as to legal Form:

Attorney of Record By: _____ Date _____