

## **PREFACE**

This Municipal Code of Herman, Nebraska, adopted in 2010 and amended in 2013 contains all the ordinances of the Municipality of a general nature. A Table of Contents appears after this page. Convenient cross-references to the Statutes of Nebraska indicate the source of legislative power and supplement the text. Certain ordinances which are continued in force after this codification for the purpose of rights acquired, fines, penalties, forfeitures, liabilities incurred, and actions therefore have been omitted from this publication.

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## CHAPTER 1 –ADMINISTRATION

### Article 1 – Village Board

#### **§1-101: CORPORATE EXISTENCE**

The Village of Herman, Nebraska, having a population of less than eight hundred (800) inhabitants, is hereby declared to be a Village and shall be governed in all respects by the laws regulating villages.

#### **§1-102: CORPORATE SEAL**

The Village of Herman, in the office of the Village Clerk, shall own a common seal of the corporation, having engraved thereon the words "Village of Herman, Washington County, Nebraska, Seal." The Village Clerk shall affix an impression of said seal on all papers or documents executed in his/her official capacity. (Neb. Rev. Stat. section 17-502)

#### **§1-103: OFFICERS; BONDS; BLANKET BOND**

1. Official bonds of the Village shall be in form, jointly and severally, and shall be made payable to the Village in such penalty as the Board of Trustees may set by resolution; provided, the penalty amount on any bond shall not fall below the legal minimum, when one (1) has been set by the State of Nebraska, for each particular official. All official bonds of the Village Officials shall be executed by each principal named in such bonds and by at least two (2) sufficient sureties who shall be freeholders of the county, or by the official as principal, and by a guaranty, surety, fidelity or bonding company; provided, no Village Official still in his/her official term of office shall be accepted as surety on any other official's bond, contractor's bond, license bond or appeal bond under any circumstances. Only companies that are legally authorized to transact business in the State of Nebraska shall be eligible for suretyship on the bond of an official of the Village.

2. All said bonds shall obligate the principal and sureties for the faithful discharge of all duties required by law of such principal and shall inure to the benefit of the Village and any persons who may be injured by a breach of the conditions of such bonds. No bond shall be deemed to be given or complete until approved by the Board of Trustees and all sureties are endorsed in writing on the said instrument by the Village Clerk. The premium on any official bond required to be given may be paid out of the General Fund or other proper Village fund upon a resolution to that effect by the Village Board at the beginning of any Village year.

3. All surety and other bonds required by Village Ordinances or by Nebraska law for Village Officials may be provided by the purchase of a blanket bond, undertaking or equivalent insurance. The Village may pay the premium for the bond or insurance coverage. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by the law or by the Village Board requiring such bond or undertaking and on such terms and conditions as may be required. (Neb. Rev. Stat. section 10-209 through 10-411, 10-606 through 10-612, 12-1001,

17-529.08, 17-534, 17-905, 17-908, 17-911, 17-939, 17-958, 17-968, 18-1801 through 18-1805, 23-3513, 39-836)

4. All official bonds meeting the conditions herein shall be filed with the Village Clerk for the official records. Upon the payment of a fee which shall be set by resolution of the Village Board, it shall be the duty of the Village Clerk to furnish a certified copy of any bond so filed.

5. In the event that sureties on the official bond of any officer of the Village become insufficient in the opinion of the Village Board members, they may require by resolution a reasonable time within which such officer may give a new bond or additional sureties thereon as directed. In the event that such officer shall fail, refuse or neglect to give a new bond or additional sureties to the satisfaction and approval of the Village Board, then the office shall, by such failure, refusal or neglect, become vacant; and it shall be the duty of the Village Board to appoint a competent and qualified person to fill such office. Any official who is re-elected to office shall be required to file a new bond after each election. (Neb. Rev. Stat. section 11-103 through 11-118, 17-604)

#### **§1-104: VILLAGE OFFICIALS; OATH OF OFFICE**

All officials of the Village, whether elected or appointed, except when a different oath is specifically provided herein, shall, before entering upon their respective duties, take and subscribe the following oath which shall be endorsed upon their respective bonds:

"I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without mental reservation, and not for the purpose of evasion; and that I will faithfully and impartially perform the duties of the office of \_\_\_\_\_ according to law and to the best of my ability. And I do further swear that I do not advocate nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence; and that during such time as I am in this position I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or this State by force or violence. So help me God."(Neb. Rev. Stat. section 11-101)

#### **§1-105: ELECTED OFFICIALS; COMPENSATION**

The compensation of any elected official of the Village shall not be increased or diminished during the term for which he/she shall have been elected except when there has been a merger of offices; provided, the compensation of the members of the Village Board, a board or commission may be increased or diminished at the beginning of the full term of any member whether or not the terms of one (1) or more members commence and end at different times. No elected official may be rehired at a greater salary if he/she resigns and desires to be rehired during the unexpired term of office. Such official may be rehired after the term of office during

which he/she resigned at a greater salary. All salaries shall be set by ordinance of the Village Board and will be available for public inspection at the Village Office. (Neb. Rev. Stat. section 17-209.02, 17-612)

**§1-106: ELECTED OFFICIALS; CONFLICT OF INTEREST**

1. For purposes of this section, “officer” shall mean:

A. Any member of any board or commission of the Village,

B. Any appointed official if such Village Official serves on a board or commission which spends and administers its own funds and is dealing with a contract made by such Board or commission, or

C. Any elected Village Official.

2. Unless specified otherwise, volunteer firefighters and ambulance drivers shall not be considered officers for purposes of this section, with respect to their duties as firefighters and ambulance drivers.

3. No officer of the Village shall be permitted to benefit from any contract to which the Village is a party. The existence of such an interest in any contract renders the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment thereof with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the Village or by any resident thereof and must be brought within one (1) year after the contract is signed or assigned. Any such decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the Village has benefited thereby. The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child (A) has an ownership interest of five percent (5%) or more in any business involved in the contract or (B) will receive a direct pecuniary fee or commission as a result of the contract; provided, however, if such officer (a) is an employee of the business involved in the contract and (b) has no ownership interest or will not receive a pecuniary fee such officer shall not be deemed to have an interest within the meaning of this section.

4. The provisions of this section shall not apply if the interested officer:

A. Makes a declaration on the record to the Village Board responsible for approving the contract regarding the nature and extent of his/her interest, prior to official consideration of the contract;

B. Does not vote on the matter of granting the contract, except that if the number of members of the Board declaring an interest in the contract would prevent the Board, with all members present, from securing a quorum on the issue, then all members may vote on the matter; and

C. Does not act for the Village as to inspection or performance under the contract in which he or she has an interest.

5. The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of the Village by a financial institution shall not be considered a contract under the provisions of this section. The ownership of less than five percent (5%) of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section. Notwithstanding the provisions of subsections A thru C above, if an officer's parent, spouse or child is an employee of the Village, the officer may vote on all issues of the contract which are generally applicable to all employees or all employees within a classification and do not single out his/her parent, spouse, or child for special action. If an officer has the power to employ personnel and he or she hires his/her parent, spouse, or child, such officer shall disclose the hiring pursuant to subsections (6)(A) thru (E) below, except that if the parent, spouse, or child is already employed in the position at the time the officer takes office and such position does not change, no disclosure need be made. Notwithstanding any other provision of this section, any contract entered into with an interested officer shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the Village.

6. The Village Clerk shall maintain, separately from other records, a ledger containing the information listed in subsections (A) thru (E) of this section about every contract entered into by the Village in which an officer has an interest as specified above for which disclosure is made as provided in subsections (4)(A) thru (C) above. Such information shall be kept in the ledger for five (5) years from the date of the officer's last day in office and shall include the:

- A. Names of the contracting parties;
- B. Nature of the interest of the officer in question;
- C. Date that the contract was approved by the Village;
- D. Amount of the contract; and
- E. Basic terms of the contract.

7. The information supplied relative to the contract shall be provided to the clerk not later than ten (10) days after the contract has been signed by both parties. The ledger kept by the clerk shall be available for public inspection during the normal working hours of the office in which it is kept.

8. An open account established for the benefit of the Village or entity thereof, with a business in which an officer has an interest, shall be deemed a contract subject to the provisions of this section. The statement required to be filed pursuant to this section shall be filed within ten (10) days after such account is opened. Thereafter, the clerk shall maintain a running account of all amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to the provisions of this section.

9. The Village may enact ordinances exempting from the provisions of this section, contracts involving one hundred dollars (\$100.00) or less in which an officer of the Village may have an interest.

10. No officer, including volunteer firefighters and ambulance drivers, shall receive any pay or perquisites from the Village other than his/her salary. The Village Board shall not pay or appropriate any money or other valuable thing to pay a person who is not an officer for the performance of any act, service, or duty, which shall come within the proper scope of the duties of any officer of the Village.(Neb. Rev. Stat. section 17-611, , 18-305 thru 18-312, 70-624.04)

### **§1-107: ELECTIVE OFFICIALS; VACANCIES**

1. Every elective office shall be vacant upon the happening of any of the events specified in Neb. Rev. Stat. section 32-560.

2. Except as otherwise provided in subsection four (4) or five (5) of this section, vacancies in Village elected offices shall be filled by the Board of Trustees for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the Board at a regular or special meeting and shall appear as a part of the minutes of such meeting. The Board shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the Village or by posting in three public places in the Village the office vacated and the length of the unexpired term.

3. The Chairperson of the Board shall, within four (4) weeks after the meeting at which such notice of vacancy has been presented or upon the death of the incumbent, call a special meeting of the Board or place the issue of filling such vacancy on the agenda at the next regular meeting at which time the Chairperson shall submit the name of a qualified registered voter to fill the vacancy for the balance of the unexpired term. The Board shall vote upon such nominee, and if a majority votes in favor of such nominee, the vacancy shall be declared filled. If the nominee fails to receive a majority of the votes, the nomination shall be rejected and the Chairperson shall, at the next regular or special meeting, submit the name of another qualified registered voter to fill the vacancy. If the subsequent nominee fails to receive a majority of the votes, the Chairperson shall continue at such meeting to submit the names of qualified registered voters in nomination and the Board shall continue to vote upon such nominations until the vacancy is filled. All Trustees present shall cast a ballot for or against the nominee. Any member of the Board who has been appointed to fill a vacancy on the Board shall have the same rights, including voting, as if such person were elected.

4. The Chairperson and Board of Trustees may, in lieu of filling a vacancy in a Village elected office as provided in subsections two (2) and three (3) of this section, call a special election to fill such vacancy.

5. If vacancies exist in the offices of a majority of the members of the Board of Trustees, the Secretary of State shall conduct a special election to fill such vacancies.

6. No official who is removed at a recall election or resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his/her removal or the removal of any other member of the same Village Board during the remainder of his/her term of office. (Neb. Rev. Stat. section 32-560, 32-569, 32-1308)

**§1-108: PUBLIC BODY DEFINED**

1. “Public body” as used in this article shall mean:

A. The Village Board of the Village,

B. All independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies, now or hereafter created by Constitution, statute, Village Ordinance or otherwise pursuant to applicable law as amended from time to time, and

C. Advisory committees of the bodies listed above.

2. This article shall not apply to subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy or taking formal action on behalf of their parent body. (Neb. Rev. Stat. section 84-1409(1))

**§1-109: MEETINGS DEFINED**

“MEETINGS” shall mean all regular, special, or called meetings, formal or informal, of a public body for the purposes of briefing, discussion of public business, formation of tentative policy or the taking of any action. (Neb. Rev. Stat. 84-1409(2))

**§1-110: MEETINGS; RIGHTS OF PUBLIC**

1. Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 1-126 herein may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

2. Public bodies shall make available at least one (1) current copy of the Open Meetings Act, as amended from time to time, posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

3. It shall not be a violation of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not

be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

4. No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself/herself.

5. No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

6. No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

7. The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

8. Public bodies shall make available at the meeting or the in-state location for a telephone conference call or video conference, for examination and copying by members of the public, at least one (1) copy of all reproducible written material to be discussed at an open meeting. (Neb. Rev. Stat. section 84-1408, 84-1412)

### **§1-111: VILLAGE BOARD; POWERS AND DUTIES**

The Village Board of Trustees shall have all powers granted under the laws of the State of Nebraska, as amended from time to time, including but not limited to the following:

1. To pass ordinances to prevent and remove nuisances;
2. To prevent, restrain and suppress gambling and disorderly houses;
3. To license and regulate amusements;
4. To establish and provide for police protection;
5. To prevent the spread of contagious diseases;
6. To regulate business;
7. To erect, repair, construct and regulate public ways and property;
8. To maintain good government, public welfare and domestic tranquility;
9. To enforce all ordinances by imposing penalties upon inhabitants or other persons for violation thereof not exceeding that amount permitted by Nebraska law for violation of a municipal code for each offense, recoverable with costs, together with enforcement by injunction where necessary.

### **§1-112: VILLAGE BOARD; TERMS, ELECTION**

The term of office of each member of the Board of Trustees is four (4) years. The election of the Board of Trustees shall be held on the date of the statewide general election.

### **§1-113: VILLAGE BOARD; NUMBER AND QUALIFICATIONS**

1. The Village Board of Trustees shall consist of five (5) members who shall be citizens of the United States, residents of the Village and registered voters. Every trustee so elected and so qualified shall hold his/her office for a term of four years; provided, a trustee's term shall expire and the office will become vacant upon moving from the Village. The Board of Trustees shall, before entering upon the duties of their office, take an oath to support the Constitution of the United States and the Constitution of the State of Nebraska, and faithfully and impartially to discharge the duties of their office.

2. The Board of Trustees shall qualify and meet at the first (1<sup>st</sup>) regular meeting in December and shall organize, elect a Chairperson of the Board and appoint the Village Officers required by law. The outgoing officers and members of the Board shall present their reports. Upon the outgoing Board's completion of its business, such outgoing members shall surrender their offices to the incoming members, and each shall thereupon surrender to his/her successor in office all property, records, papers and monies belonging to the same.(Neb. Rev. Stat. section 17-202 through 17-204)

### **§1-114: CHAIRPERSON OF THE BOARD OF TRUSTEES; DUTIES**

1. At its first meeting in December of each election year, the Village Board shall select one (1) of its own bodies who shall be the Chairperson of said board and whose term as Chairperson shall be two (2) years, until the next general election. The Chairperson shall preside over all meetings of the Board of Trustees. The Board shall also elect a Vice-Chairperson, who shall preside at all meetings at which the Chairperson is not present or shall preside on all meeting items in which the Chairperson has recused himself/herself.

2. The village Chairperson shall have charge over all property belonging to the Village which is not in particular charge of any officer. He/she shall require all village officers and employees to give him/her a receipt for any and all articles belonging to the Village now in their charge and all that may thereafter come under their charge. All outgoing village officers and village employees shall deliver over to the Chairperson or account to him/her for all articles used by them in the duties of their office whenever their term of office or employment with the Village ceases.

3. The Village Chairperson shall also:

A. Examine each and every appropriation ordinance and satisfy himself/herself as to the correctness of the same before giving approval.

B. Along with the Board of Trustees, audit all financial reports of the Village Treasurer. If found to be correct, they shall be endorsed and shall be filed in the office of the Village Clerk.

C. Sign the Village Clerk's minutes of all meetings after they have been spread at large upon the journal when the same shall be approved by the action or the acquiescence of the Board.

D. Sign all warrants for the payment of money when ordered by the Board.

E. Sign all ordinances, resolutions and orders which have been passed, approved and declared to be the law of the Village.

F. Cause the ordinances of the Village to be carried into effect.

G. Promote the peace and welfare of the Village.

H. Require all officers to be faithful in the performance of their duties as prescribed by law and the Village Ordinances for the peace and order of the Village.

I. Call special meetings of the Board of Trustees at his/her discretion or as provided by the provisions of this code.

J. Be Chairperson of the Board of Health, ex officio.

K. Act as the purchasing agent for the Village at the specific direction of the Board of Trustees.

#### **§1-115: VILLAGE BOARD; CHANGE IN OFFICE**

The Chairperson and Board of Trustees shall meet at the regular meeting of the Board in December, in each election year, and the outgoing officers and outgoing members of the Board of Trustees shall present their reports, and upon the outgoing Board having completed its business, the outgoing trustees shall surrender their offices to the incoming trustees, and the outgoing officers shall thereupon each surrender to his/her successor in office all property, records, papers, and moneys belonging to the same. (Neb. Rev. Stat. section 17-204)

#### **§1-116: VILLAGE BOARD; RE-ORGANIZATIONAL MEETING**

1. The newly elected Village Board members shall convene at the Village Office at the first (1<sup>st</sup>) regular meeting in December, in each election year immediately after the prior Board adjourns and proceed to organize themselves for the ensuing year. The Chairperson pro tempore shall call the meeting to order. The Board shall then proceed to examine the credentials of its members and other elective officers of the Village to see that each has been duly and properly elected and to see that such oaths and bonds have been given as are required. After ascertaining that all members are duly qualified, the Board shall then elect one (1) of its own bodies who shall be styled as Chairperson of the Board of Trustees. The Chairperson shall then nominate his/her candidates for appointive offices and said officers shall hold office until their successors are duly appointed and qualified. The Chairperson shall then proceed with the regular order of business.

2. It is hereby made the duty of each and every member of the Board or of its successors in office and of each officer hereafter elected to any office to qualify prior to the first (1<sup>st</sup>) regular meeting in December, following his/her election. Immediately upon the assembly of the newly elected Board at the first regular meeting in December, following the election, each officer elected at the regular Village election shall take possession of his/her office. Each appointive officer who is required to give bond shall qualify by filing the required bond, approved by the Board of Trustees, in the office of the Village Clerk within two (2) weeks from the date of his/her said appointment; provided, on said bond shall be endorsed the same oath as required of a Village Trustee. Failure to qualify by elective or appointive officers within the time and manner provided in this section shall and does in itself create a vacancy in the office to which said person failing to qualify shall have been elected or appointed.

**§1-117: VILLAGE BOARD; STANDING COMMITTEES**

1. At the organizational meeting of the Village Board, the Chairperson shall appoint members of such standing committees as the Board may create by ordinance or resolution. The membership of such committees may be changed at any time by the Chairperson, who shall be an ex officio member of each standing committee. The members of the committees shall serve a term of office of one (1) year unless reappointed.

2. The following standing committees shall be appointed or reappointed each year until changed by the Village Board:

- A. Parks,
- B. Sewer,
- C. Water,
- D. Finance,
- E. Legion Hall,
- F. Fire Department,
- G. Ordinances,
- H. Streets and Alleys,
- I. Cemetery,
- J. Solid Waste, and
- K. ADA.

**§1-118: MEETINGS; NOTICE TO NEWS MEDIA**

The Village Clerk, Secretary or other designee of the Board shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting. (Neb. Rev. Stat. section 84-1411)

### **§1-119: MEETINGS; NOTICE, AGENDA**

The Village Board shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by the Board and recorded in its minutes. Such notice shall be transmitted to all members of the Board and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, kept continually current, shall be readily available for public inspection at the Village office during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than twenty four (24) hours before the scheduled commencement of the meeting or forty eight (48) hours before the scheduled commencement of a meeting of the Village Board scheduled outside the corporate limits of the Village. The Board shall have the right to modify the agenda to include items of an emergency nature only at such public meeting. (Neb. Rev. Stat. section 84-1411)

### **§1-120: MEETINGS; PLACE, DAY AND TIME**

The meetings of the Village Board shall be held at the Village Hall or other location set by the Board by resolution. Regular meetings shall be held on the first (1<sup>st</sup>) Tuesday of each month at the hour of 7:00 P.M. A special meeting may be called by the Chairperson or by a majority of the Village Board for those purposes which shall be submitted in writing to the board members prior to said meeting. The call and object of said special meeting shall be entered upon the journal by the Village Clerk, as well as the disposition of said meeting.

### **§1-121: MEETINGS; QUORUM**

A majority of the members of the Village Board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day and compel the attendance of the absent members; provided that on the request of any two (2) members, whether a quorum is present or not, all absent members shall be sent for and compelled to attend. At the hour appointed for the meeting, the Village Clerk shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present, the Village Board shall be called to order by the Chairperson. The Vice-Chairperson shall preside in the event that the Chairperson is not present. The Board of Trustees shall go into an executive session only upon a motion duly made, seconded and passed by a majority of the Board in open session. (Neb. Rev. Stat. section 17-204, 17-205)

### **§1-122: MEETINGS; ORDER OF BUSINESS**

All meetings of the Village Board shall be open to the public throughout the entire duration of the meeting except such portions that occur in closed session. Promptly at the hour set by law on the day of each regular meeting, the members of the Board, the Chairperson, the Village Clerk and such other Village Officials as may be required shall take their regular stations in the Village Hall and the business of the Village shall be taken up for consideration and disposition.

## **§1-123: MEETINGS; PARLIAMENTARY PROCEDURE**

1. The Chairperson shall preserve order during meetings of the Village Board and shall decide all questions of order, subject to an appeal to the Village Board. When any person is called to order, he/she shall be seated until the point is decided. When the Chairperson is putting the question, no person shall leave the meeting room. Every person present, before speaking, shall rise from his/her seat and address himself/herself to the presiding officer and while speaking shall confine himself/herself to the question. When two (2) or more persons rise at once, the Chairperson shall recognize the one (1) who spoke first.

2. All resolutions or motions shall be reduced to writing before being acted upon, if requested by the Village Clerk, or any member of the Village Board. Every member of the Village Board, who is present when a question is voted upon, shall cast his/her vote unless excused by a majority of the Village Board present. No motion shall be put or debated unless seconded. When seconded, it shall be stated by the Chairperson before being debatable. In all cases where a motion or resolution is entered on the minutes, the name of the member of the Village Board making the motion, or resolution shall be entered also. After each vote, the "yeas" and "nays" shall be taken, and entered in the minutes upon the request of any member of the Village Board. Before the vote is actually taken, any resolution, motion, or proposed ordinance may be withdrawn from consideration by the sponsor thereof with the consent of the member of the Village Board seconding the said resolution, motion, or ordinance.

3. When, in the consideration of an ordinance, different times or amounts are proposed, the question shall be put on the largest sum, or the longest time. A question to reconsider shall be in order when made by a member voting with the majority, but such motion to reconsider must be made before the expiration of the third (3<sup>rd</sup>) regular meeting after the initial consideration of the question.

4. When any question is under debate, no motion shall be made, entertained, or seconded except the previous question, a motion to table, and to adjourn. Each of the said motions shall be decided without debate.

5. Any of the rules of the Village Board for meetings may be suspended by a two-thirds (2/3) vote of the members present. In all cases in which provisions are not made by these rules, *Robert's Rules of Order* shall be the authority by which the Village Board shall decide all procedural disputes that may arise.

## **§1-124: MEETINGS; MINUTES**

1. The Village Board shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed. The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

2. Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the Village Board in open session, and the record shall state how each member voted

or if the member was absent or not voting. The vote to elect leadership within the Village Board may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

3. Minutes shall be written and available for inspection within ten (10) working days or prior to the next convened meeting, whichever occurs earlier, but the Village may have an additional ten (10) working days if the Village Clerk is absent due to a serious illness or emergency. (Neb. Rev. Stat. section 84-1413)

4. The minutes of the Village Clerk shall include a record of the manner by which the advance publicized notice was given, the time and specific place of each meeting and the names of each member of the Board present or absent at each convened meeting.

### **§1-125: MEETINGS; VOTES**

Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the Village Board in open session, and the record shall state how each member voted or whether the member was absent or not voting. The vote to elect leadership within the Board may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes. (Neb. Rev. Stat. section 17-616, 84-1413)

### **§1-126: MEETINGS; CLOSED SESSIONS**

1. The Board may hold a closed session by an affirmative vote of a majority of its voting members if a closed session is clearly necessary. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Investigative proceedings regarding allegations of criminal misconduct;

(c) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting;

2. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

3. Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to the Board.

4. The vote to hold a closed session shall be taken in open session. The entire motion to close, the vote of each member on the holding of a closed session and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion passes, then

the Chairperson shall, immediately prior to the closed session, restate on the record the limitation of the subject matter of the closed session. In holding such a closed session, the Board shall restrict its consideration of matters during the closed portion to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken.

5. Any member of the Board shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session. Such challenge shall be overruled only by a majority of the members of the Board. Such challenge and its disposition shall be recorded in the minutes. (Neb. Rev. Stat. section 84-1410)

### **§1-127: MEETINGS; SPECIAL**

1. Special meetings may be called by the Chairperson or by three (3) members of the Board of Trustees, the object of which shall be submitted to the Board in writing. The call and object, as well as the disposition thereof, shall be entered upon the journal by the Village Clerk. On filing the call for a special meeting, the clerk shall notify the members of the Board of Trustees of the special meeting, stating the time and its purpose. Notice of a special meeting need not be given to a member of the Board known to be out of the state or physically unable to be present. A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day to day to compel the attendance of the absent members. Whether a quorum is present or not, all absent members shall be sent for and compelled to attend.

2. At the hour appointed for the meeting, the Clerk shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present, the Board shall be called to order by the Chairperson, if present, or if absent, by the Vice-Chairperson. In the absence of both the Chairperson and the Vice-Chairperson of the Board, the members of the Board of Trustees shall elect a Chairperson pro tempore. All ordinances passed at any special meeting shall comply with procedures set forth in Chapter one (1), Article two (2) (Ordinances) herein. (Neb. Rev. Stat. section 17-204, 17-205)

### **§1-128: MEETINGS; EMERGENCY**

When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency, provided reasonable efforts are made by the village clerk to give advance notice of time and place of such meeting to news media requesting notification of meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meetings shall be made available to the public by no later than the end of the next regular business day. (Neb. Rev. Stat. section 84-1411)

## Article 2 – Ordinances

### **§1-201: GRANT OF POWER**

The Village Board shall have the responsibility of making all ordinances, by-laws, rules, regulations and resolutions not inconsistent with the laws of the State of Nebraska, as may be necessary and proper for maintaining the peace, good government and welfare of the Village and its trade, commerce and security. (Neb. Rev. Stat. section 17-505)

### **§1-202: STYLE**

The style of all Village Ordinances shall be:

"Be it ordained by the Chairperson and Board of Trustees of the Village of Herman, Nebraska:" (Neb. Rev. Stat. section 17-613)

### **§1-203: TITLE**

No ordinance shall contain a subject not clearly expressed in its title. (Neb. Rev. Stat. section 17-614)

### **§1-204: INTRODUCTION**

Ordinances shall be introduced by members of the Village Board in either of the following ways:

1. With the recognition of the Chairperson, a Board member may, in the presence and hearing of a majority of the Board, read aloud the substance of his/her proposed ordinance and file a copy of the same with the Village Clerk for future consideration; or
2. With the recognition of the Chairperson, a Board member may present his/her proposed ordinance to the Village Clerk who, in the presence and hearing of a majority of the Board, shall read aloud the substance of the same and shall file it for future consideration.

### **§1-205: RESOLUTIONS AND MOTIONS**

Resolutions and motions shall be introduced in one (1) of the methods prescribed for the introduction of ordinances. After their introduction, they shall be fully and distinctly read one (1) time in the presence and hearing of a majority of the Board. The issues raised by said resolutions or motions shall be disposed of in accordance with parliamentary law adopted for the guidance of the Board. A majority vote shall be required to pass any resolution or motion. The vote on any resolution or motion shall be by roll call vote.

### **§1-206: PASSAGE**

Ordinances, resolutions or orders for the appropriation of money shall require the concurrence of a majority of the Board for passage. Ordinances of a general or permanent nature shall be fully and distinctly read on three (3) different days. In the event that three fourths (3/4) of the members of the Board vote to dispense with the rule that ordinances of a general or permanent nature be fully read on three (3) different days, such ordinances may be passed by reading the title one (1) time when introduced, read by title a second (2<sup>nd</sup>) time after the rule has been dispensed with, read at large a third (3<sup>rd</sup>) time, and then put upon final passage. (Neb. Rev. Stat. section 17-614)

### **§1-207: PUBLICATION OR POSTING**

All ordinances of a general nature shall be published one (1) time within fifteen (15) days after passage

(1) In a newspaper published in the Village, but if no paper is published in the Village, then by posting a written or printed copy thereof in each of three (3) public places in the Village, or

(2) By publishing the same in book or pamphlet form. (Neb. Rev. Stat. section 17-613)

### **§1-208: CERTIFICATE OF PUBLICATION**

The passage, approval, and publication or posting of all ordinances shall be sufficiently proved by a certificate under seal of the Village from the clerk thereof, showing that such ordinance was passed and approved, and when and in what paper the same was published, or when and by whom and where the same was posted. When ordinances are printed in book or pamphlet form, purporting to be published by authority of the Village Board, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances as of the dates mentioned in such book or pamphlet, in all courts without further proof. (Neb. Rev. Stat. section 17-613)

### **§1-209: AMENDMENTS AND REVISIONS**

No ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended. The ordinance or section so amended shall be repealed. (Neb. Rev. Stat. section 17-614)

### **§1-210: EMERGENCY ORDINANCES**

In case of riot, infectious or contagious diseases, or other impending danger, failure of public utility, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the Chairperson of the Board of Trustees, posted in at least three (3) of the most public places in the Village. Such emergency ordinance shall recite the

emergency and be passed by three-fourths (3/4) vote of the Board and entered of record on the Clerk's minutes. (Neb. Rev. Stat. section 17-613)

## **Article 3 – Appointed Officers**

### **§1-301: APPOINTED OFFICERS**

The Village Board of Trustees may appoint a Village Clerk, Village Treasurer, Village Attorney, Village Police Officer, Water Commissioner and Street Commissioner. The Village Board may enact resolutions to require from all officers and servants, elected or appointed, bonds and security for the faithful performance of their duties. The Village may pay the premium for such bonds. The Board shall also appoint such additional officials and employees as the Trustees may determine are needed by the Village. All such appointees shall hold office for one (1) year, unless sooner removed by the Chairperson of the Board by and with the advice and consent of the Village Board. If the Village has a Water Commissioner, he/she may at any time, for sufficient cause, be removed from office by a two thirds (2/3) vote of the Board of Trustees.

### **§1-302: MERGER OF OFFICES OR POSITIONS OF EMPLOYMENT**

The Board of Trustees may, in its discretion, by ordinance, combine and merge any elected or appointed office or employment position or any combination of duties of any such offices or employment positions, except Trustee, with any other elected or appointed office or employment so that one (1) or more of such offices or employments may be held by the officer or employee at the same time; except that trustees may perform and, upon Board approval, receive compensation for seasonal or emergency work subject to Neb. Rev. Stat. section 49-14,103.01 to 49-14,103.06. The offices or employment positions so merged and combined shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined office or employment or offices and employment positions shall not be in excess of the maximum amount provided by law for the salary or compensation of each of the offices and/or employment positions so merged and combined. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers. (Neb. Rev. Stat. section 17-209.02, 49-14,103.01 through 49-14,103.06)

### **§1-303: CLERK-TREASURER POSITION CREATED**

The appointed offices of Village Clerk and Village Treasurer are hereby combined and merged in accordance with the authority granted to the Village Board by section 1-302 herein. The offices so merged and combined shall always be construed to be separate, and the effect of the combination, or merger, shall be limited to a consolidation of official duties only. The salary of the person holding the merged offices shall not be in excess of the maximum amount provided by law for the salary of the offices so combined.

### **§1-304: VILLAGE CLERK**

The Village Clerk shall:

1. Attend all meetings of the Board of Trustees and keep a correct journal of the proceedings of the Board.

2. Keep and preserve the proceedings of the Board of Trustees in two (2) separate and distinct record books. The minute records shall contain a record of all the miscellaneous and informal doings of the Board of Trustees. The minute record shall not include the passage and approval of ordinances except resolutions incorporating the ordinance record by reference into the minute record. The ordinance record shall contain the formal proceedings of the Board of Trustees in the matter of passing, approving, publishing, posting and certifying of ordinances. After the formalities for the legal enactment of an ordinance have been completed, the Village Clerk shall record and spread at large in the ordinance record his/her ordinance minutes. In all cases hereafter where single ordinances are introduced for the consideration of the Board of Trustees, the Village Clerk shall cause to be introduced an appropriate resolution incorporating the ordinance record by reference into the minute record. Minutes shall be written and available for inspection within ten (10) working days or prior to the next convened meeting, whichever occurs earlier.

3. Within thirty (30) days after any meeting of the Board of Trustees, prepare and publish the official proceedings of the Village Board in a legal newspaper of general circulation in the Village and which was duly designated as such by the Board of Trustees; provided, the charge for such publication shall not exceed the rates provided by the statutes of the State of Nebraska. Said publication costs shall be charged against the general fund. Such official proceedings shall include the amount of each claim allowed, the purpose of the claim and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one (1) item.

4. Keep a record of all outstanding bonds against the Village. When any bonds are sold, purchased, paid or canceled, said record shall show the fact; file all official bonds after the same shall have been properly executed and approved; make the proper certificate of passage which shall be attached to original copies of all bond ordinances hereafter enacted by the Board of Trustees.

5. Issue and sign all licenses, permits and occupation tax receipts authorized by law and required by the Village ordinances; keep a register of all licenses granted and the purpose for which they have been issued.

6. Collect all occupation taxes and license money except where some other Village Officer is specifically charged with that duty.

7. Include as part of the records all petitions under which the Board of Trustees shall order public work to be done at the expense of the property fronting thereon, together with references to all resolutions and ordinances relating to the same.

8. Endorse the date and hour of filing upon every paper or document so filed in his/her office. All such filings shall be properly docketed. Included in the records shall be all standard codes, amendments thereto, and other documents incorporated by reference.

9. Maintain a list of the news media requesting notification of meetings and make reasonable efforts to provide advance notice to them of time and place of each meeting and the subjects to be discussed at that meeting.

10. Keep an accurate and complete account of the appropriation of the several funds and draw, sign and attest all warrants ordered for the payment of money on the particular fund from which the same is payable. At the end of each month, he/she shall then make a report of the amounts appropriated to the various funds and the amounts of the warrants drawn thereon.

11. Obtain the signature of the Chairperson of the Board of Trustees on all warrants, ordinances and resolutions under his/her charge.

12. With the seal of the Village, duly attest the Chairperson's signature to all ordinances, deeds and papers required to be attested to when ordered to do so by the Board of Trustees.

13. Between July 15, and August 15, each year, publish the names of all employees and their current annual, monthly or hourly salaries. Any changes in salaries or the hiring of new employees during the calendar quarter preceding the months of October, January and April shall be published during the months of November, April and May.

14. At the end of the fiscal year, make a report of the Village's business transacted through his/her office for the year. Such record shall describe particularly the bonds issued and sold during the year and the terms of the sales with each and every item and expense thereof.

15. Keep, in a book with a proper index, copies of all notices required to be published or posted by order of the Board of Trustees or under the ordinances of the Village. To each of the file copies of said notices shall be attached (A) the printer's affidavit of publication, (B) whether the said notices are required to be published, or (C) the Village Clerk's certificate under seal where the same are required to be posted only.

16. Permit no records, public papers or other documents of the Village kept and preserved in his/her office to be taken therefrom except by such officers of the Village as may be entitled to the use of the same, but only upon their signing a receipt therefore. Nothing herein shall be construed to prevent any citizen, official or other person from examining any public records during normal office hours. The Village Clerk may charge a reasonable fee for certified copies of any record in his/her office as set by resolution of the Board of Trustees. He/she shall care for the Village records under the direction of the State Records Board pursuant to Neb. Rev. Stat. section 84-1201 through 84-1205.03, 84-1205.05, 84-1205.07 through 84-1220; provided, the Board of Trustees shall not have the authority to destroy the minutes of the Village Clerk, the permanent ordinances and resolution books, or any other records classified as permanent by the State Records Board. (Neb. Rev. Stat. section 17-605, 19-1102, 19-1104, 84-1201 through 84-1205.03, 84-1205.05, 84-1205.07 through 84-1220, 84-712)

**§1-305: VILLAGE TREASURER**

The Village Treasurer shall:

1. Deposit and at all times keep on deposit for safekeeping in banks, institutions of approved and responsible standing, all money collected, received or held as treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the Village for the receiving and holding thereof. A bond or pledged securities shall be required from all banks or financial institutions in which municipal funds are deposited in any amount exceeding that amount insured by the Federal Deposit Insurance Corporation.

2. Keep a separate account of each and every fund or appropriation and the debits and credits therein.

3. Give every person paying money into the treasury a receipt therefore, specifying the date of payment and on what account paid, and also file copies of said receipts with the monthly reports made to the Chairperson and Village Board.

4. At the end of each month and as often as may be required, render a report to the Chairperson and Board of Trustees showing, under oath, the condition of the various accounts of the treasury at the time of such reports and the balance of money in the treasury; accompany such accounts with a statement of all receipts and disbursements, together with all warrants paid by him/her. Such warrants with any and all vouchers held shall be filed with the accounts in the Village Office. If the Village Treasurer neglects or fails to render his/her account within ten (10) days from the end of each and every month, the office shall be declared vacant pursuant to Neb. Rev. Stat. section 17-606 and the Chairperson and Board of Trustees shall fill the vacancy by appointment until the next election of Village Officials.

5. Keep a warrant register which shall show in columns arranged for that purpose the number, date and amount of each warrant presented and registered as hereinafter provided, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the same is registered, the date of payment, the amount of interest, and the total amount paid thereon, with the date when the notice to such person in whose name such warrant is registered is mailed as hereinafter provided. Upon presentation of any warrant for payment, in the presence of the person presenting such warrant, it shall be the duty of the Village Treasurer to enter said warrant in the warrant register for payment in the order of its presentation. Upon every warrant as presented and registered, he/she shall endorse "Registered for Payment" with the date of such registration and register number and shall sign such endorsement, whereupon such warrant shall draw interest at the legal rate from the date of registration until notice of payment shall be given to the holder as provided by law.

6. Publish or cause to be published in a legal weekly newspaper published in or of general circulation in said Village within sixty (60) days following the end of the fiscal year a report of the activities of his/her office, showing in detail all receipts, disbursements, warrants outstanding, and the debit or credit balance of the Village.(Neb. Rev. Stat. section 17-606 through 17-609, 19-1101, and 84-712)

### **§1-306: TREASURER'S MONTHLY REPORT**

The Village Treasurer shall, at the end of each and every month and such other times as the Village Board may deem necessary, render an account to the Board under oath showing the financial state of the Village at that date, the amount of money remaining in each fund, the amount paid there from and the balance of money remaining in the treasury. The said account shall be accompanied with a statement of all receipts and disbursements, together with all warrants redeemed and paid. The Treasurer shall also produce depository evidence that all municipal money is in a solvent and bank in the name of the Village. If the Treasurer shall neglect or fail for the space of ten (10) days from the end of each and every month to render his/her accounts as aforesaid, the Village Board shall, by resolution, declare the office vacant and appoint another person to fill the vacancy. The Village Treasurer shall be present at each regular meeting of the Village Board, at which time he/she shall read and file a monthly report. (Neb. Rev. Stat. section 17-606)

### **§1-307: TREASURER'S ANNUAL REPORT**

The Village Treasurer shall publish in a legal newspaper having general circulation within the Village, within sixty (60) days following the first (1<sup>st</sup>) day of August, of each year, a report of the activities of his/her office, which said report shall show in detail. Said report shall include all receipts, disbursements, warrants outstanding and the debit or credit balance of the Village. (Neb. Rev. Stat. section 19-1101)

### **§1-308: VILLAGE ATTORNEY**

The Village Attorney is the Village's legal advisor, and the Board of Trustees shall have the right to compensate him/her for legal services on such terms as he/she and the Board may agree upon, and to employ any additional legal assistance as may be necessary. The Village Attorney shall:

1. Commence, prosecute and defend all suits on behalf of the Village.
2. When requested by the Board of Trustees, attend meetings of the Board and advise any Village Official in all matters of law in which the interests of the Village may be involved.
3. Draft such ordinances, bonds, contracts and other writings as may be required in the administration of the affairs of the Village.
4. Examine all bonds, contracts and documents on which the Board of Trustees will be required to act.
5. Prepare complaints, attend and prosecute violations of the Village ordinances and appear and prosecute all cases for violation of the Village ordinances that have been appealed to and are pending in any higher court.

6. Examine the ordinance records when requested to do so by the Board; advise and assist the Village Clerk as much as may be necessary to the end that each procedural step will be taken in the passage of each ordinance to insure that each will be valid insofar as its passage and approval are concerned. (Neb. Rev. Stat. section 17-610)

**§1-309: VILLAGE POLICE CHIEF**

The Chief of Police, who may be the County Sheriff if so designated by the Village Board, shall direct the police work of the Village and shall be responsible for the maintenance of law and order. He/she shall act as Health Inspector and Building Inspector except in the event that the Village appoints another person for either of those positions. He/she shall file the necessary complaints in cases arising out of violations of Village ordinances or state laws. (Neb. Rev. Stat. section 17-213)

**§1-310: VILLAGE POLICE OFFICER; SPECIAL OFFICER**

In the event the Village maintains a police department, the following shall apply:

1. Every Village Police Officer shall be expected to be conversant and knowledgeable with the Village and State Laws. Village Police Officers shall have the duty to file such complaints and reports as may be required by the Village ordinances and state laws. Any Village Police Officer who shall willfully fail, neglect, or refuse to make an arrest or who purposely and willfully fails to make a complaint after an arrest is made shall be deemed guilty of a misdemeanor and upon conviction shall be fined. It shall be unlawful for the Village Board to retain any Village Police Officer in that position after he shall have been duly convicted of the willful violation of any Federal or State law or any ordinance of the Village, except minor traffic violations. No law enforcement official shall have any interest in any establishment having a liquor license.

2. Village Police Officers, whether regular or special, shall have the power to arrest all offenders against the laws of the State or the Village, by day or by night, and keep the said offenders in the Village jail or some other place to prevent their escape until trial can be held before the proper official of the State or the Village. They shall have full power and authority to call on any person whenever necessary to assist them in performing public duties, and failure, neglect, or refusal to render such assistance shall be deemed a misdemeanor punishable upon conviction by a fine.

3. It shall be the duty of every Village Police Officer making a lawful arrest to search all persons in the presence of some other person, whenever possible, and shall carefully keep and produce to the proper judicial official upon the trial everything found upon the person of such prisoners. All personal effects so taken from prisoners aforesaid shall be restored to them upon their release.

4. Suitable uniforms and badges shall be furnished to the Village Police Officers by the Village. Any member who shall lose or destroy the same shall be required to pay the replacement costs, and in the event that any member shall leave the force, he shall immediately deliver his

badge to the Police Chief. The Village Board may from time to time provide the Village Police with such equipment and transportation as may be essential in the performance of their official duties.

(Ref. 17-213, RS Neb.)

5. Village Police Officers shall have general control over motor vehicle traffic. Said officer, together with such special officers detailed to assist as traffic officers by the Chairperson and Board of Trustees, shall direct the movement of traffic at intersections and elsewhere; and it shall be unlawful for any person to violate any order or signal of the Village Police or of any special traffic officer.

6. Village Police Officers shall perform such other duties as may be required by resolution or by order of the Chairperson and/or Board of Trustees. (Neb. Rev. Stat. section 17-213)

### **§1-311: FIRE CHIEF**

The Fire Chief shall be elected by the members of the Fire Department. The Fire Chief or his/her assistant in charge of operations at a fire may command the services of any person present at any fire in extinguishing the same or in the removal and protection of property. Failure to obey such an order shall be a misdemeanor punishable by a fine.

The Chief shall:

1. Enforce all applicable laws and ordinances covering the prevention of fires, the storage and use of explosives and flammable substances, the installation of fire alarm systems, the maintenance of fire extinguishing equipment, the regulation of fire escapes and the inspection of all premises requiring adequate fire escapes.

2. Within two (2) days investigate the cause, origin, and circumstances of fires arising within his/her jurisdiction.

3. Have the power during the time of a fire and for a period of thirty six (36) hours thereafter to arrest any suspected arsonist or any person for hindering the Department's efforts, conducting himself/herself in a noisy and disorderly manner, or who shall refuse to obey any lawful order by the Fire Chief or Assistant Chief.

4. Have the right to enter at all reasonable hours into buildings and upon all premises within his/her jurisdiction for the purpose of examining the same for fire hazards and related dangers.(Neb. Rev. Stat. section 17-505, 35-102, 35-108, 81-506, 81-512)

### **§1-312: SPECIAL ENGINEER**

The Board of Trustees may employ a Special Engineer to make or assist the Village Engineer in making any estimate, survey or other work. All records of the Engineer shall be public records which shall belong to the Village and shall be turned over to his/her successor.

The Engineer shall:

1. Make a record of the minutes of his/her surveys and all other work done for the Village.
2. When directed by the Board of Trustees, accurately make all plats, sections, profiles and maps as may be necessary in the judgment of the Board.
3. Upon request of the Board of Trustees, make estimates of the costs of labor and material which may be done or furnished by contract with the Village, and make all surveys, estimates and calculations necessary for the establishment of grades, bridges or culverts and for the building, constructing or repairing of any public improvement of the Village.
4. When directed by the Board of Trustees, inspect all works of public improvement, and if found to be properly done, accept the same and report his/her acceptance to the Board.
5. Estimate the cost of all proposed Village utilities and public improvements, together with any extensions thereof which the Board of Trustees may propose to construct or improve. (Neb. Rev. Stat. section 17-405, 17-568, 17-568.01, 17-919)

**§1-313: UTILITIES SUPERINTENDENT**

A Utilities Superintendent shall be appointed in the event that there is more than one (1) municipal utility and the Village Board determines that it is in the best interest of the Village to appoint one (1) official to have the immediate control over all utilities of the Village. The Utilities Superintendent may be removed at any time by a two-thirds (2/3) vote of the Village Board. Any vacancy occurring in the said office by death, resignation or removal may be filled in the manner provided for the appointment of all Village Officials. The Utilities Superintendent's duties over the following departments shall be as stated herein.

The Utilities Superintendent's duties over the water department shall include;

1. Have general supervision and control over the Village water system and shall be primarily responsible for its economic operation and prudent management. Included in the said water system shall be the water plant, the pump house, all machinery and appliances used in connection with producing and distributing water to inhabitants of the Village. All actions, decisions, and procedures of the said Superintendent shall be subject to the general directives and control of the Village Board.
2. Have the general control and supervisory authority over all employees of the Water System.
3. Make a detailed report to the Village Board at least once every six (6) months of the condition of the said water system, including all mains, pipes, hydrants, reservoirs, and machinery and such improvements, repairs, and extensions thereof as he/she may think proper.

The report shall show the amount of receipts and expenditures on account thereof for the preceding six (6) months. No money shall be expended for improvements, repairs, or extensions of the said waterworks system except upon the recommendation of the Superintendent.

4. Provide a bond conditioned upon the faithful discharge of his/her duties which shall amount to not less than the amount set by resolution of the Village Board and on file in the office of the Village Clerk.

5. Perform such additional duties as may be prescribed by the Village Board. (Neb. Rev. Stat. section 17-541)

The Utilities Superintendent's duties over the sewer department shall include;

1. Have the immediate control and supervision over all the employees and property that make up the Village sewer system, subject to the general control and directives of the Village Board.

2. At least every six (6) months, make a detailed report to the Village Board on the condition of the sewer system and direct their attention to such improvements, repairs, extensions, additions, and additional employees as he/she may believe are needed, along with an estimate of the cost thereof.

3. Issue permits for all connections to the Village sewer system and inspect and supervise all repairs made to the said system.

4. Have such other duties as the Village Board may delegate. (Neb. Rev. Stat. section 17-505, 17-541, 17-543)

### **§1-314: STREET COMMISSIONER**

The Village Street Commissioner shall:

1. Have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the Village, subject to the orders and directives of the Village Board,

2. See that gutters and drains therein function properly and that the same are kept in good repair.

3. At the request of the Village Board, make a detailed report on the condition of the streets, sidewalks, culverts, alleys, and bridges of the Village, and direct the Board's attention to such improvements, repairs, extensions, additions, and additional employees as he/she may believe are needed to maintain a satisfactory street system in the Village along with an estimate of the cost thereof.

4. Issue such permits as the Village Board may direct.

5. Perform such other duties as the Village Board may require. (Neb. Rev. Stat. section 17-214)

**§1-315: BUILDING INSPECTOR**

1. The Village Building Inspector shall conduct surveys and make inspections in any area of the Village to determine whether all buildings and structures are in compliance with Village ordinances. He/she shall be empowered to investigate all complaints, whether verbal, written or in the form of a petition alleging and charging that a violation of the Village ordinances exists and that a building or structure is unfit or unsafe for human habitation. The Building Inspector is authorized, upon display of proper identification, to enter, inspect, survey and investigate any building between the hours of 8:00 A.M. and 5:00 P.M., or at any time if an emergency exists or if requested by the owner or occupant thereof. He/she shall keep records of all complaints received, inspection reports, orders and complaints issued. The records shall be available for public inspection, and the Building Inspector shall prepare an annual report including statistics based on the records kept.

2. The Building Inspector shall have no financial interest in the furnishing of labor, materials, or appliances for the construction, alteration, or maintenance of a building, except where he/she is the owner of a building, and he/she shall not act as an agent for any said dealer or as an agent for the sale, lease or rental of any real estate. The Building Inspector shall report to the Village Board as often as may be deemed necessary. He/she shall have such other duties and issue such permits as the Board may direct. The Building Inspector may be removed at any time for good and sufficient cause by the Village Board.

**§1-316: CHIEF OF RESCUE SQUAD**

The Chief of the Rescue Squad shall:

1. Be elected by the members of the Rescue Squad. He/she shall enforce all laws and ordinances concerning the Village Ambulance and the Rescue Squad. (Neb. Rev. Stat. section 35-514.02)

## **Article 4 – Fiscal Management**

### **§1-401: FISCAL YEAR**

The fiscal year of the Village shall commence on October 1, and extend through the following September 30. (Neb. Rev. Stat. section 17-701)

### **§1-402: PUBLIC FUNDS DEFINED**

“Public Funds” shall mean all money, including non-tax money used in the operation and functions of governing bodies. For purposes of a Village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the Village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes. (Ref. 13-503 RS Neb.)

### **§1-403: DEPOSIT OF FUNDS**

The Village Board, at its first (1<sup>st</sup>) meeting in each fiscal year, shall designate one (1) or more banks of approved and responsible standing in which the Village Treasurer shall at all times keep all money held by him/her; provided, if more than one (1) bank in the Village meets the requirements for approved banks as herein defined, the said funds shall be deposited in each of them and the Village Treasurer shall not give a preference to any one (1) or more of them in the money he/she shall deposit. A bond shall be required from all banks so selected in a penal sum which equals the maximum amount on deposit at any time less the amount insured by the Federal Deposit Insurance Corporation or a pledge of sufficient assets of the bank to secure the payment of all such deposits. (Neb. Rev. Stat. section 17-607, 77-2362 through 77-2364)

### **§1-404: INVESTMENT OF FUNDS**

The Village Board may, by resolution, direct and authorize the Village Treasurer to invest surplus funds in the outstanding bonds or registered warrants of the Village and other approved bonds and obligations as provided by law. The interest on such bonds or warrants shall be credited to the fund out of which the said bonds or warrants were purchased. (Neb. Rev. Stat. section 17-608, 17-609, 72-1259, 77-2341)

### **§1-405: AUTHORITY TO CONTRACT WITH COLLECTION AGENCY**

1. The Village may contract to retain a collection agency licensed pursuant to Neb. Rev. Stat. sections 45-601 to 45-622, within or without this state, for the purpose of collecting public debts owed by any person to the Village.

2. No debt owed pursuant to subsection (1) of this section may be assigned to a collection agency unless:

a. There has been an attempt to advise the debtor by first (1<sup>st</sup>) class mail, postage prepaid, at the last-known address of the debtor:

b. Of the existence of the debt and

c. That the debt may be assigned to a collection agency for collection if the debt is not paid and

d. At least thirty (30) days have elapsed from the time the notice was sent.

3. A collection agency which is assigned a debt under this section shall have only those remedies and powers which would be available to it as an assignee of a private creditor.

4. For purposes of this section, debt shall include all delinquent fees or payments except delinquent property taxes or real estate. In the case of debt arising as a result of an order or judgment of a court in a criminal or traffic matter, a collection fee may be added to the debt. The collection fee shall be twenty five dollars (\$25.00) or four and one half percent (4 1/2%) of the debt, whichever is greater. The collection fee shall be paid by the person who owes the debt directly to the person or agency providing the collection service. (Ref 45-623 RS Neb.)

#### **§1-406: CLAIMS**

All claims against the Village shall be presented to the Village Board in writing, and no claim or demand shall be audited or allowed unless presented as provided for in this section. No costs shall be recovered against the Village in any action brought against it for an unliquidated claim which has not been presented to the Village Board to be audited, nor upon claims allowed in part unless the recovery shall be for a greater sum than the amount allowed, with the interest due. No order or warrant shall be drawn in excess of eighty five percent (85%) of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the Village Treasury for the appropriate fund against which it is to be drawn; provided that in the event there exist obligated funds from the Federal and/or State Government for the general purpose of such warrant, then such warrant may be drawn in excess of eighty five percent (85%) but not more than one hundred percent (100%) of the current levy for the purpose for which said warrant is drawn. (Neb. Rev. Stat. section 17-714, 17-715)

#### **§1-407: WARRANTS**

All warrants drawn upon the Village Treasury must be signed by the Chairperson of the Board and countersigned by the Village Clerk, stating the particular fund to which the warrant is chargeable, the person to whom it is payable, and the purpose of the expenditure. No money shall be otherwise paid than upon warrants so drawn. Each warrant shall specify the amount included of such fund. (Neb. Rev. Stat. section 17-711)

#### **§1-408: EXPENDITURES**

No Village Official shall have the power to appropriate, issue or draw any order or warrant on the Village Treasury for money unless the same has been appropriated or ordered by ordinance, or the claim for the payment of such order or warrant has been allowed according to

Nebraska law and funds for the claim or out of which said claim is payable had been included in the adopted budget statement according to law. (Neb. Rev. Stat. section 17-708)

### **§1-409: BOND ISSUES**

After meeting all the requirements of State Law, the Village Board may issue bonds, fund bonds, and retire bonds for such purposes as may be permitted by State Law. The Village Board shall have the authority to levy special assessments for the payment of interest and principal on such bonds and may spread the payments up to the maximum number of years permitted by State Law. (Neb. Rev. Stat. section 10-201 thru 10-411, 10-601 thru 10-614, 12-1001, 17-529.01, 17-529.08, 17-534, 17-905, 17-908, 17-911, 17-939, 17-958, 17-968, 18-1801 thru 18-1805, 23-343.13, 39-836)

### **§1-410: SINKING FUNDS**

1. The Village Board, subject to the limitations set forth herein, shall have the power to levy a tax not to exceed that prescribed by State Law in addition to the amount of taxes which may be annually levied for the purposes of the adopted budget statement of the Village for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension or repair of approved projects as authorized by State Law. To initiate the said sinking fund, the Village Board shall declare its purpose by resolution to submit to the qualified electors of the Village the proposition to provide the improvement at the next general Village election. The resolution shall set forth the improvement, the estimated cost, the amount of the annual levy, the number of years required to provide the required revenue, the name of the sinking fund proposed and the proposition as it will appear on the ballot. Notice of the said proposition shall be published in its entirety three (3) times on successive weeks before the day of the election in a legal newspaper of general circulation in the Village.

2. The sinking fund may be established after the election if a majority or more of the legal votes were in favor of the establishment of the fund. The Village Board may then proceed to establish the said fund in conformity with the provisions of the proposition and applicable State Law. The funds received by the Village Treasurer shall, as they accumulate, be immediately invested with the written approval of the Village Board in the manner provided by State Law. No sinking fund so established shall be used for any purpose contrary to the purpose as it appeared on the ballot unless the Village Board is authorized to do so by sixty percent (60%) of the qualified electors of the Village voting at a general election favoring such a change in the use of the sinking fund. (Neb. Rev. Stat. section 19-1301 through 19-1304, 77-2337, 77-2339)

### **§1-411: TRANSFER OF FUNDS**

1. Whenever during the current fiscal year it becomes apparent due to unforeseen emergencies that there is temporarily insufficient money in a particular fund to meet the requirements of the adopted budget of expenditures for that fund, the Village Board may, by a majority vote, transfer money from other funds to such fund. No expenditure during any fiscal year shall be made in excess of the amounts indicated in the adopted budget statement except as

authorized herein. If, as the result of unforeseen circumstances, the revenue of the current fiscal year shall be insufficient, the Village Board may propose to supplement the previously adopted budget statement and shall conduct a public hearing, at which time any taxpayer may appear or file a written statement protesting the application for additional money. A written record shall be kept of any such hearing.

2. Notice of the place and time for the said hearing shall be published at least five (5) days prior to the date set for the hearing in a newspaper of general circulation in the Village. The published notice shall set forth the time and place of the proposed hearing, the amount of additional money required, the purpose of the required money, a statement stating the reasons why the adopted budget of expenditures cannot be reduced to meet the need for additional money, and a copy of the summary of the originally adopted budget previously published.

3. Upon the conclusion of the public hearing on the proposed supplemental budget and approval by the Village Board, said board shall file with the County Clerk and the State Auditor a copy of the supplemental budget and shall certify the amount of additional tax to be levied. The Village Board may then issue warrants in payment for expenditures authorized by the adopted supplemental budget. The said warrants shall be referred to as "registered warrants" and shall be repaid during the next fiscal year from funds derived from taxes levied therefore. (Neb. Rev. Stat. section 13-510, 13-511)

#### **§1-412: SPECIAL ASSESSMENT FUND**

All money received on special tax assessments shall be held by the Village Treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made. (Neb. Rev. Stat. section 17-710)

#### **§1-413: COLLECTION OF SPECIAL ASSESSMENTS; PROCEDURE**

1. The Village shall have the authority to collect the special assessments which it levies and perform all other necessary functions related thereto including foreclosure.

2. If the Village elects to collect its special assessments, notice that special assessments are due shall be mailed or otherwise delivered to the last-known address of the person against whom such special assessments are assessed or to the lending institution or other party responsible for paying such special assessments. Failure to receive such notice shall not relieve the taxpayer from any liability to pay such special assessments and any interest or penalties accrued thereon.

3. A Village that elects to collect its special assessments shall:

A. File notice of the assessments and the amount of assessment being levied for each lot or tract of land to the register of deeds; and

B. File a release of assessment upon final payment of each assessment with the register of deeds. (Ref. 18-1216 RS Neb.)

## **§1-414: CONTRACTS AND PURCHASES; BIDDING AND OTHER REQUIREMENTS**

1. Except as provided in section 18-412.01 for a contract with a public power district to operate, renew, replace, or add to the electric distribution, transmission, or generation system of the Village, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, costing over thirty thousand dollars (\$30,000.00) shall be made unless it is first (1<sup>st</sup>) approved by the Village Board.

2. Except as provided in section 18-412.01 RS Neb., before the Village Board makes any contract in excess of thirty thousand dollars (\$30,000.00) for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the Village Engineer and submitted to the Village Board. In advertising for bids as provided in subsections three (3) and five (5) of this section, the Village Board may publish the amount of the estimate.

3. Advertisements for bids shall be required for any contract costing over thirty thousand dollars (\$30,000.00) entered into:

A. For enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or

B. For the purchase of equipment used in the construction of such enlargement or general improvements.

4. A Village electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is:

A. Thirty thousand dollars (\$30,000.00) or less;

B. Sixty thousand dollars (\$60,000.00) or less and the Village electric utility has gross annual revenue from retail sales in excess of one million dollars (\$1,000,000.00);

C. Ninety thousand dollars (\$90,000.00) or less and the Village electric utility has gross annual revenue from retail sales in excess of five million dollars (\$5,000,000.00); or

D. One hundred thousand dollars (\$100,000.00) or less and the Village electric utility has gross annual revenue from retail sales in excess of ten million dollars (\$10,000,000.00).

5. The advertisement provided for in subsection (3) of this section shall be published at least seven (7) days prior to the bid closing in a legal newspaper published in or of general circulation in the Village and, if there is no legal newspaper published in or of general circulation in the Village, then in some newspaper of general circulation published in the county in which the Village is located, and if there is no legal newspaper of general circulation published in the county in which the Village is located, then in a newspaper, designated by the County Board, having a general circulation within the county where bids are required, and if no newspaper is published in the Village or county, or if no newspaper has general circulation in the county, then by posting a written or printed copy thereof in each of three (3) public places in the Village at least seven (7) days prior to the bid closing. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 17-613 RS Neb. when adopted by a three-fourths (3/4) vote of the Village Board and entered of record.

6. If, after advertising for bids as provided in this section, the Village Board receives fewer than two (2) bids on a contract or if the bids received by the Board contain a price which exceeds the estimated cost, the Board may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

7. If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the Village Board, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing Village, the Board may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

8. Any Village bidding procedure may be waived by the Village Board:

A. When materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in sections 81-145 to 81-162 RS Neb. or

B. When the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503 RS Neb.

9. Notwithstanding any other provisions of law or a home rule charter, a Village which has established, by an inter-local agreement with any county, a joint purchasing division or agency may purchase personal property without competitive bidding if the price for the property has been established by the Federal General Services Administration or the material division of the Department of Administrative Services. For purposes of this subsection:

A. **“PERSONAL PROPERTY”** includes, but is not limited to, supplies, materials, and equipment used by or furnished to any officer, office, department, institution, board, or other agency; and

B. “PURCHASING” OR “PURCHASE” means the obtaining of personal property by sale, lease, or other contractual means. (Ref. 17-568.01, 17-568.02, 18-1756 RS Neb.)

### **§1-415: ANNUAL AUDIT**

1. The Village Board shall cause an audit of the Village accounts to be made by a qualified accountant, or shall prepare an unaudited statement of cash receipts and disbursements in lieu of an audit, as expeditiously as possible following the close of the fiscal year. If an audit is authorized by the Village Board, it shall be made on a cash or accrual method at the discretion of the Board and shall be completed within six (6) months of the close of the fiscal year. In the event the Village elects not to have an audit performed, the Village Treasurer shall prepare an unaudited statement of cash receipts and disbursements in a form prescribed by the State Auditor and shall submit not less than three (3) copies of the unaudited report to the Village Board.

2. All public utilities shall be audited separately, and the results of such audits shall appear separately in the annual audit report. The audit shall be a form that is in general conformity with accepted accounting principles and shall set forth the financial position for each fund of the Village as well as an opinion by the accountant with respect to the financial statements. Two (2) copies of the annual report shall be filed with the Village Clerk, becoming a part of the public records of the Village Clerk's Office, and will at all times thereafter be open for public inspection. One (1) copy shall be filed with the State Auditor.

3. The State Auditor may require an audit of any Village account based upon information contained in its unaudited statement and may specify the period within which such audit must be performed. (Neb. Rev. Stat. section 19-2901 through 19-2909)

### **§1-416: APPROPRIATIONS**

The Village Board shall, on or before August 15th, pass an ordinance to be termed “The Annual Appropriation Bill,” in which are appropriated such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the Village, not exceeding in the aggregate the amount of tax authorized to be levied. The said ordinance shall specify the objects and purposes for which such appropriations are to be made, and the amount appropriated for each purpose. Any balance unexpended and unobligated at the end of the fiscal year shall, unless reappropriated, lapse into the General Fund. (Neb. Rev. Stat. section 17-706)

### **§1-417: BUDGET PROCEDURE**

The Budget Form Instruction Manual, as amended from time to time, prepared by the Auditor of Public Accounts, State Capitol, Lincoln, Nebraska 68509 is incorporated herein by reference for the purpose of proper budget preparation.

## **§1-418: BUDGET STATEMENT**

1. The Village Board shall, not later than the first (1<sup>st</sup>) day of August, of each year, on forms prescribed and furnished by the Nebraska State Auditor, prepare in writing and file with the Village Clerk a proposed budget statement containing the following:

A. For the immediate two (2) prior fiscal years, the revenue from all sources, other than revenue received from taxation, allocated to each of the several funds and separately stated as to each such source and for each fund: The unencumbered cash balance of such fund at the beginning and end of the year; the amount received by taxation allocated to each fund; and the amount of actual expenditure for each fund;

B. For the current fiscal year, actual and estimated revenue from all sources, allocated to each of the several funds and separately stated as to each such source and for each fund: The actual unencumbered cash balance available for such fund at the beginning of the year; the amount received from taxation allocated to each fund; and the amount of actual and estimated expenditure, whichever is applicable.

C. For the immediately ensuing fiscal year, an estimate of revenue from all sources, other than revenue to be received from taxation, separately stated as to each such source to be allocated to each of the several funds, and for each fund: The actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year; the amounts proposed to be expended during the year; and the amount of cash reserve, based on actual experience of prior years, which cash reserve shall not exceed fifty percent (50%) of the total budget adopted exclusive of capital outlay items.

2. The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated and actual unencumbered balances at the beginning of the year and less the estimated income from all sources other than taxation shall equal the amount to be received from taxes, and such amount shall be shown on the proposed budget statement filed pursuant to this section. The amount to be raised from taxation, as determined herein, plus the estimated revenue from sources other than taxation, and the unencumbered balances shall equal the estimated expenditures plus the required cash reserve for the ensuing year. (Ref. 13-504, 13-505 RS Neb.)

## **§1-419: BUDGET HEARING**

Following the filing of the proposed budget statement, the Village Board shall publish a proposed budget and conduct a public hearing on the said proposed budget statement. Notice of the place and time of the hearing, as well as a copy of the proposed budget, shall be published at least five (5) days prior to the hearing date in a newspaper of general circulation in the Village. After such hearing, the statement shall be adopted, or amended and adopted as amended, and a written record shall be made of such hearing. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall

be published within twenty (20) days after its adoption. (Neb. Rev. Stat. section 13-506)

**§1-420: BUDGET FILING**

The Village Board shall file with and certify to the levying board and file with the State Auditor a copy of the adopted budget statement, together with the amount of the tax to be levied and proof of publication. Such filing shall be made on or before September 20. The Village Board shall not certify any tax that exceeds the maximum levy prescribed by State Law; provided, in certifying the amount to be so levied, allowance may be made for delinquent taxes not exceeding five percent (5%) of the amount to be levied plus the actual percentage of delinquent taxes for the preceding tax year. (Neb. Rev. Stat. section 13-508)

**§1-421: ALL-PURPOSE LEVY**

The Village Board has determined that the amount of money to be raised by taxation shall be certified to the County Clerk in the form of one (1) all-purpose levy instead of certifying a schedule of levies for specific purposes added together. Said all-purpose levy shall not exceed an annual levy in excess of the legal maximum as prescribed by State Law upon the assessed valuation of all taxable property in the Village, except intangible property. (Neb. Rev. Stat. section 17-702)

**§1-422: INADEQUATE VALUATION**

If the valuation of the Village has been reduced so that the maximum levy permitted by section 1-421 is inadequate to produce the necessary revenue, said maximum levy may be exceeded upon presentation to the Village Board of petitions signed by a majority of the registered voters of the Village requesting such action and specifying the extent to, and the period of time, not to exceed five (5) years, in which such maximum may be exceeded. No signature may be withdrawn after the petitions have been filed with the Village Board. The Board shall cause such petitions to be filed with the County Board in which the Village is located. Said petitions shall be accompanied by the certificate of the County Clerk that he/she has examined the petitions and that they have been signed by a majority of the registered voters of the Village. After such filing, the Village Board may exceed the maximum mill levy to the extent and for the period of time specified in the petitions. (Neb. Rev. Stat. section 19-1309)

**§1-423: ALL-PURPOSE LEVY, ALLOCATION**

The Village Board shall allocate the amount raised by the all-purpose levy to the several departments of the Village in its annual budget and appropriation ordinance or in other legal manner as the Village Board shall deem best. (Neb. Rev. Stat. section 19-1310)

**§1-424: ALL-PURPOSE LEVY, ABANDONMENT OF**

The Village shall be bound by its election of the all-purpose levy during the ensuing fiscal year, but may abandon such method in succeeding fiscal years. (Neb. Rev. Stat. section 19-1311)

**§1-425: EXTRAORDINARY LEVY**

Otherwise authorized extraordinary levies to service and pay bonded indebtedness of the Village and to pay judgments obtained against the Village may be made in addition to the all-purpose levy. (Neb. Rev. Stat. section 19-1309)

**§1-426: GENERAL PROPERTY TAX**

The Village Board shall cause to be certified to the county clerk the amount of tax to be levied upon the assessed value of all the taxable property of the Village for the requirements of the adopted budget for the ensuing year.

## **Article 5 - Elections**

### **§1-501: ELECTIONS GENERALLY**

1. The Village election shall be held in accordance with the provisions of Chapter thirty two (32), Revised Statutes of Nebraska as amended from time to time. Said elections shall be held in conjunction with the State primary election. Prior to February 1, of the year in which the first (1<sup>st</sup>) such joint election takes place, the Village Board shall receive the consent in writing of the County Board to so hold the election and such authorization shall be prescribed according to State Law. The County Clerk shall have charge of the election and shall have the authority to deputize the Village Clerk for Village election purposes. Charges shall be paid to the County Clerk as set forth in Chapter thirty two (32), Revised Statutes of Nebraska.

2. Commencing with the statewide primary election in 1976 and every two (2) years thereafter, those candidates for positions on the Board of Trustees whose terms will be expiring shall be elected at the statewide primary election.

### **§1-502: JOINT ELECTION, GENERAL**

The general Village election shall be held in accordance with the provisions of Chapter 32, Revised Statutes of Nebraska. The Village Board has determined, by ordinance duly adopted, to hold the Village election in conjunction with the statewide primary election, held on the first (1<sup>st</sup>) Tuesday after the second (2<sup>nd</sup>) Monday in May of each even-numbered year. Prior to February 1, of the year in which the first (1<sup>st</sup>) such joint election takes place, the Village Board shall receive the consent in writing of the County Board to so hold the election, and such authorization shall be prescribed according to State Law. The County Clerk shall have charge of the election and shall have the authority to deputize the Village Clerk for Village election purposes.

### **§1-503: JOINT ELECTION, GENERAL; NOTICE**

The County Clerk shall publish notice of the election in a newspaper designated by the County Board no less than forty (40) days prior to the primary or general election. This notice will serve the notice requirement for all Village elections which are held in conjunction with the County.

### **§1-504: CERTIFICATION TO COUNTY CLERK**

All general and special elections shall be held in conjunction with the statewide primary or general election and shall be governed by the provisions of the Nebraska Election Act. No later than July 1, of each even-numbered year, the Village Board shall certify to the Election Commissioner/County Clerk, on forms provided by the Nebraska Secretary of State, the name of the Village, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining terms, and the number of votes to be cast by a registered voter for each office. (Neb. Rev. Stat. section 17-202, 32-401, 32-404, 32-532, 32-556)

### **§1-505: TERM OF OFFICE**

All elected officers of the Village shall serve a term of four (4) years and until their successors are elected and have qualified. (Neb. Rev. Stat. section 17-203)

### **§1-506: (Reserved for Future Use)**

### **§1-507: OATH OF ELECTION OFFICIALS**

Prior to any votes being received, the judges and clerks of election shall severally take an oath or affirmation according to the form authorized by State Law. If there is no judge present at the opening of the polls, it shall be unlawful for the judges of election to administer the oath to each other and the clerks of election. The person administering such oath shall cause an entry to be made thereof and affixed to each poll book. (Neb. Rev. Stat. section 11-101.01)

### **§1-508: CANDIDATE QUALIFICATIONS**

Any person seeking elected office in the Village shall be a registered voter prior to holding such office and, in addition, shall have reached the age of majority as defined by Nebraska State Statute.

### **§1-509: BOARD OF TRUSTEES**

Board of Trustee members shall be elected from the Village at large unless the residents of the Village have voted to elect its board members by wards. Board members shall serve for a term of four (4) years and shall be residents and qualified electors. If the election of Board members takes place by wards, each nominee for the Board shall be a resident and qualified elector of the ward for which he/she is a candidate, and only residents of that ward may sign the candidates' nomination petitions. (Neb. Rev. Stat. section 32-1057)

### **§1-510: BALLOTS**

The County Clerk shall provide printed ballots for every general municipal election, and the expense of printing and delivering the ballots and cards of instruction shall be charged to the Village. (Neb. Rev. Stat. section 32-1202)

### **§1-511: FILING FEE**

Prior to the filing of any nomination papers, there shall be paid to the Village Treasurer a filing fee which shall amount to one percent (1%) of the annual salary for the office for which the candidate will file; provided, there shall be no filing fee for any candidate filing for an office in which a per diem is paid rather than a salary or an office for which there is a salary of less than five hundred dollars (\$500.00) per year. No nominating papers shall be filed until the proper Village Treasurer's receipt, showing payment of the filing fee, shall be presented to the Election Officer with whom the nomination papers are to be filed. (Neb. Rev. Stat. section 32-608)

## **§1-512: VOTER QUALIFICATIONS**

"Elector" shall mean a person of the constitutionally prescribed age or upwards who shall have the right to vote for all officers to be elected to public office and upon all questions and proposals lawfully submitted to the voters at any and all elections authorized or provided for by the Constitution or the laws of the State of Nebraska, except school elections; provided, no person shall be qualified to vote at any election unless such person shall be a resident of the State and shall have been properly registered with the Election Official of the County. (Neb. Rev. Stat. section 17-602, 32-110)

## **§1-513: EXIT POLLS**

No person shall conduct any exit poll, public opinion poll or any other interview with voters seeking to determine voter preference on Election Day within twenty (20) feet of the entrance to any polling place or, if inside the polling place or building, within one hundred (100) feet of any voting booth. (Neb. Rev. Stat. section 32-1525)

## **§1-514: CAUCUS CANDIDATES**

1. The Village Board may, by ordinance, call a caucus for the purpose of nomination of candidates for offices to be filled in the Village election. Such caucus shall be held at least ten (10) days before the filing deadline for such election, and the Village Board shall publish notice of such caucus in at least one (1) newspaper of general circulation in the County at least once each week for two (2) consecutive weeks before such caucus.

2. The Village Clerk shall notify the persons so nominated of their nomination not later than five (5) days after such caucus. A candidate so nominated shall not have his/her name placed upon the ballot unless, not more than ten (10) days after the holding of such caucus, he/she files with the Village Clerk a written statement accepting the nomination of the caucus and pays the filing fee, if any, for the office for which he/she was nominated. (Neb. Rev. Stat. section 17-601.01, 17-601.02)

## **§1-515: PETITION CANDIDATES**

1. Any registered voter who was not a candidate in the primary election may have his/her name placed on the general election ballot for a partisan office by filing petitions as prescribed in this section and Neb. Rev. Stat. section 32-621, or by nomination by political party convention or committee.

2. Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his/her name placed on the general election ballot if a vacancy exists on the ballot and the candidate files for the office by petition as prescribed in this section.

3. The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be at least ten percent (10%) of the total

number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the Village.

4. The number of signatures of registered voters needed to place the name of a candidate upon the partisan ballot for the general election shall be at least twenty percent (20%) of the total vote for Governor or President of the United States at the immediately preceding general election within the Village, not to exceed two thousand (2000).

5. Petitions for nomination shall conform to the requirements of Neb. Rev. Stat. section 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. Petitions shall be signed by registered voters residing in the Village and shall be filed with the filing officer in the same manner as provided for candidate filing forms in Neb. Rev. Stat. section 32-607. Petition signers and circulators shall conform to the requirements of Neb. Rev. Stat. section 32-629 and 32-630. No petition for nomination shall be filed unless there is attached thereto a receipt showing payment of the required filing fee. The petitions shall be filed by September 1, in the year of the general election. (Neb. Rev. Stat. section 32-616 through 32-618)

#### **§1-516: SPECIAL JOINT ELECTIONS**

1. Any issue to be submitted to the registered voters at a special election by the Village shall be certified by the Village Clerk to the Election Commissioner or County Clerk at least fifty (50) days prior to the election. A special election may be held by mail as provided in Neb. Rev. Stat. section 32-952 through 32-959. No special election to be conducted by the Election Commissioner or County Clerk shall be held within thirty (30) days prior to or sixty (60) days after the statewide primary election, and no special election to be conducted by the Election Commissioner or County Clerk shall be held within thirty (30) days prior to or sixty (60) days after the statewide general election.

2. In lieu of submitting the issue at a special election, the Village may submit the issue at a statewide primary or general election or at any scheduled County election, except that no such issue shall be submitted at a statewide election or scheduled County election unless the issue to be submitted has been certified by the Village Clerk to the Election Commissioner or County Clerk by March 1, for the primary election and by September 1, for the general election.

3. After the Election Commissioner or County Clerk has received the certification of the issue to be submitted, he/she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the Village Clerk shall be responsible for the publication or posting of any required special notice of the submission of such issue other than the notice required to be given of the statewide election issues. The Election Commissioner or County Clerk shall prepare the ballots, issue absentee ballots and conduct the submission of the issue, including the receiving and counting of the ballots. The election returns shall be made to the Election Commissioner or County Clerk. The ballots, including absentee ballots, shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the County Canvassing Board, the Election Commissioner or County Clerk shall certify the election results to the Village Board. The

canvass by the County Canvassing Board shall have the same force and effect as if made by the Village Board. (Neb. Rev. Stat. section 32-559)

### **§1-517: TIE VOTES**

In the case of a tie vote of any of the candidates in either the primary or general election, the County Clerk shall notify such candidates to appear at his/her office on a given day and hour to determine the same by lot before the canvassing board, and the certificate of nomination or election shall be given accordingly. Notice to appear shall be given by certified mail. (Neb. Rev. Stat. section 32-1122)

### **§1-518: CERTIFICATE OF NOMINATION OR ELECTION**

1. The County Clerk shall, within forty (40) days after the election, prepare, sign and deliver a certificate of nomination or certificate of election to each person whom the Canvassing Board has declared to have received the highest vote for each municipal office. No person shall be issued a certificate of nomination as a candidate of a political party unless such person has received a number of votes at least equal to five percent (5%) of the total ballots cast at the primary election by registered voters affiliated with that political party in the district which the office for which he/she is a candidate serves.

2. A Certificate of Election prepared by the County Clerk shall be in the form as nearly as possible to that prescribed in Neb. Rev. Stat. section 32-1033 and shall be signed by the Chairperson of the Board of Trustees, under the seal of the Village, and countersigned by the Village Clerk. (Neb. Rev. Stat sections 32-558 and 32-1033)

### **§1-519: INABILITY TO ASSUME OFFICE**

In any general election, where the person who received the highest number of votes is ineligible, disqualified, deceased, or for any other reason is unable to assume the office for which he/she was a candidate, and the electorate had reasonable notice of such disability at the time of election, the candidate in such election who received the highest number of votes shall be declared elected and shall be entitled to the Certificate of Election; provided that any candidate so declared elected received not less than thirty five percent (35%) of the total number of votes cast for such office in the election. If any of the qualifications of this section are not met by the candidate to be declared elected or reasonable notice of the winner's ineligibility is not available to the voters, a vacancy in such office shall be declared to exist at the time of commencement of the term and shall be filled as prescribed by law.

### **§1-520: RECALL PROCEDURE**

1. Any or all of the elected officials of the Village may be removed from office by recall pursuant to Neb. Rev. Stat. section 32-1301 to 32-1309.

2. Petition circulators shall conform to the requirements of the Nebraska Election Act. The petition papers shall be procured from the Village Clerk. Each petition paper shall conform

to the requirements of State Law. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the Village Clerk by at least one (1) registered voter. Such voter or voters shall be deemed to be the principal circulator(s) of the recall petition. The affidavit shall state the name and office of the official sought to be removed and shall request that the Village Clerk issue initial petition papers to the principal circulator for circulation. The Village Clerk shall notify the principal circulator that the necessary signatures must be gathered within thirty (30) days from the date of issuing petitions.

3. The Village Clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his/her office, the name of the principal circulator to whom the papers were issued, the date of issuance, and the number of papers issued. The Village Clerk shall certify on the papers the name of the principal circulator to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator who checks out petitions from the Village Clerk may distribute such petitions to registered voters residing in the Village who may act as circulators of such petitions.

4. Petition signers shall conform to the requirements of the Nebraska Election Act. Each signer of a recall petition shall be a registered voter and qualified by his/her place of residence to vote for the office in question on the date of the issuance of the initial petition papers.

5. A petition demanding that the question of removing a member of the Village Board be submitted to the registered voters shall be signed by registered voters equal in number to at least forty five percent (45%) of the total vote cast for the person receiving the most votes for that office in the last general election.

6. The principal circulator shall file, as one (1) instrument, all petition papers comprising a recall petition for signature verification with the Village Clerk within thirty (30) days after the Village Clerk issues the initial petition papers to the principal circulator. Within fifteen (15) days after the filing of the petition, the Village Clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signature may be removed unless the Village Clerk receives an affidavit signed by the person requesting his/her signature be removed before the petitions are filed with the Village Clerk for signature verification. If the petition is found to be sufficient, the Village Clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the Village Clerk shall file the petition in his/her office without prejudice to the filing of a new petition for the same purpose.

7. If the recall petition is found to be sufficient, the Village Clerk shall notify the official whose removal is sought and the Village Board that sufficient signatures have been gathered. If the official does not resign within five (5) days after receiving the notice, the Village Board shall order an election to be held not less than thirty (30) nor more than forty five (45) days after the expiration of the five (5)day period, except that if any other election is to be held in the Village within ninety (90) days of the expiration of the five (5)day period, the Village Board shall provide for the holding of the removal election on the same day. After the Village Board sets the

date for the recall election, the recall election shall be held regardless of whether the official whose removal is sought resigns before the recall election is held.

8. If a majority of the votes cast at a recall election are against the removal of the official named on the ballot or if the election results in a tie, the official shall continue in office for the remainder of his/her term but may be subject to further recall attempts as provided in subsection ten (10) of this section. If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he/she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office which shall be filled as otherwise provided in this code and State Law. If the election results show a margin of votes equal to one percent (1%) or less between the removal or retention of the official in question, the Secretary of State, Election Commissioner or County Clerk shall order a recount of the votes cast unless the official named on the ballot files a written statement with the Village Clerk that he/she does not want a recount. If there are vacancies in the offices of a majority or more of the members of the Village Board at one (1) time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the Secretary of State, Election Commissioner or County Clerk.

9. No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his/her removal or the removal of another member of the Village Board during the remainder of his/her term of office.

10. No recall petition shall be filed against an elected official within twelve (12) months after a recall election has failed to remove him/her from office or within six (6) months after the beginning of his/her term of office or within six (6) months prior to the incumbent filing deadline for the office. (Neb. Rev. Stat. section 32-1301 through 32-1309)

## **Article 6 – Penal Provision**

### **§1-601: VIOLATION; PENALTY**

Any and all persons violating any of the provisions of the several articles of this chapter for which a penalty is not therein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not more than five hundred dollars (\$500.00). Each day that maintenance of the same violation continues shall constitute a separate offense.

## **CHAPTER 2 – BOARDS AND COMMISSIONS**

### **Article 1 – Standing Committees**

#### **§2-101: MEMBERS**

The Village Board shall appoint the Board of Health, which shall be funded by the Village Board from time to time from the General Fund. The Board of Health shall consist of three (3) members who are residents of the Village. The Board members shall include the village Chairperson, who shall serve as Chairperson; the Village Marshal, who shall be the Secretary and Quarantine Officer; and one (1) other member. The third (3<sup>rd</sup>) member shall be a physician when a physician is residing permanently in the Village. The members of the Board shall serve a one (1) year term of office, unless reappointed, and shall reorganize at the first (1<sup>st</sup>) meeting in June of each year. No member of the Board of Health shall hold more than one (1) Board of Health position.

#### **§2-102: MEETINGS**

The Board shall meet at such times as the Village Board may designate. Special meetings may be held upon the call of the Chairperson or any two (2) members of the Board. A majority of the Board shall constitute a quorum for the purpose of doing business. It shall be the duty of the Secretary to keep the full and correct minutes and records of all meetings and to file the same with the Village Clerk, where they shall be available for public inspection at any reasonable time.

#### **§2-103: DUTIES**

All actions of the Board shall be subject to the review and supervision of the Village Board. It shall be the duty of the Board to enact rules and regulations which shall have the full force and effect of the law, to safeguard the health of the residents of the Village. The Board shall actively enforce all laws of the State of Nebraska and ordinances of the Village relating to matters of sanitation affecting the health and safety of the people, providing fines and punishments for any violations thereof. It may regulate, suppress and prevent the occurrence of nuisances. The Board shall regularly inspect such premises and businesses as the Village Board may direct. The Board shall be responsible for making such reports and performing such other duties as the Village Board may designate. (Neb. Rev. Stat. section 17-208)

## **Article 2 – Commissions and Boards**

### **§2-201: PARKS; OPERATION AND FUNDING**

The Village owns and operates the municipal parks and other recreational areas through the Board of Park Commissioners. The Village Board, 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 Village Treasurer. The Village Board shall not enter into a contract of any nature which involves an expenditure of funds, except for ordinary operating expenses, unless the contract has been approved by resolution prior to the contractual agreement. The Park Board shall have the authority to adopt rules and regulations for the efficient management of the municipal parks and other recreational areas of the Village. (Neb. Rev. Stat. section 17-948 thru section 17-952) (Ord. No. 1986-4, 12/2/86)

### **§2-202: APPOINTMENT OF MEMBERS**

The Village Board shall appoint a Board of Park Commissioners, which shall consist of five (5) members who shall be resident free-holders in the Village and who shall serve as follows: one (1) member to serve a one (1) year term, two (2) members to serve two (2) year terms and three (3) members to serve three (3) year terms on the Park Board, provided, however, at the expiration of the terms of each Board member described above, all successive appointments shall be for a term of three (3) years. All actions of the Park Board shall be subject to review and control of the Village Board. No person serving a term on the Village Board shall also serve as a member of the Park Commission at the same time. (Ord. No. 1986-4, 12/2/86)

### **§2-203: MEETINGS**

The Board shall hold its annual meeting in May of each year and shall hold at least six (6) meetings at places and times agreed upon by members of the Board, after compliance with the open meetings law. A majority of the board members shall constitute a quorum for the transaction of business. Special meetings may be held upon the call of the Chairperson or any three (3) members of the Board. (Ord. No. 1986-4, 12/2/86)

### **§2-204: OFFICERS**

The Board shall have a Chairperson and Secretary selected from their number by majority vote. No member of the Park Commission shall serve in the capacity of both Chairperson and Secretary of the Board. It shall be the duty of the Secretary to keep full and complete minutes and records of all meetings and file the same with the Village Clerk, where they shall be available for public inspection during office hours. (Ord. No. 1986-4, 12/2/86)

**§2-205: DUTIES**

The Park Board shall have the following duties:

1. Work on grant applications, gifts and donations to the park;
2. Be responsible for scheduling all events in the park;
3. Work with the Village Board on the annual budget for the park;
4. Make recommendations to the Village Board concerning improvements, repairs, and the purchase of equipment for the park;
5. Recommend to the Village Board any rules and regulations governing the use of the park; and
6. Be responsible for making such reports and performing such other duties as the Village Board may, from time to time, designate. (Ord. No. 1986-4, 12/2/86)

## **Article 3 – Planning Commission**

### **§2-301: MEMBERS**

The Planning Commission shall be funded by the Village Board from time to time out of the General Fund. The Village Board shall appoint the members of the Planning Commission, which shall consist of nine (9) Village residents representing, insofar as is possible, the different professions or occupations in the Village. However, two (2) of such members may be residents of the area over which the Village is authorized to exercise extraterritorial zoning and subdivision regulations. No member of the Village Board or other Village Official, except where otherwise specifically provided, shall serve as a member of the Planning Commission while serving any other term of office.

### **§2-302: TERMS; COMPENSATION; BOND**

Each member of the Commission shall serve a three (3) year term of office unless reappointed. Members shall serve without compensation and may be required, in the discretion of the Village Board, to give a bond in a sum set by resolution of said Board and conditioned upon the faithful performance of their duties.

### **§2-303: MEETINGS**

At the time of the Commission's first (1<sup>st</sup>) meeting in June, of each year, the members shall organize by selecting from their membership a Chairperson and Secretary. No member of the Planning Commission shall serve as both Chairperson and Secretary. It shall be the duty of the Secretary to keep the full and correct minutes and records of all meetings and to file the same with the Village Clerk, where they shall be available for public inspection at any reasonable time. A majority of the Commission shall constitute a quorum for the purpose of doing business. Special meetings may be held upon the call of the Chairperson, or any three (3) members of the Commission.

### **§2-304: DUTIES**

It shall be the duty of the Commission to make and adopt plans for the physical development of the Village, including any areas outside its boundaries which, in the Commission's judgment, bear relation to the planning of the Village. All actions by the Commission shall be subject to the review and supervision of the Village Board. The Commission shall be responsible for making such reports and performing such other duties as the Village Board may, from time to time, designate. Neb. Rev. Stat. section 19-925 thru 19-929

## **Article 4 – Rescue Squad**

### **§2-401: OPERATION AND FUNDING**

1. The Village owns and operates the Ambulance and Rescue Squad through the Chief of the Rescue Squad. The Village Board, for the purpose of defraying the cost of the management and maintenance of and improvements to the Ambulance and Rescue Squad 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 Village that is subject to taxation. The revenue from the said tax shall be known as the Ambulance 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 Ambulance and Rescue Squad. The Ambulance Fund shall at all times be in the custody of the Village Treasurer.

2. The Chief of the Rescue Squad shall manage the Ambulance and Rescue Squad and its members shall have the power to pass such rules and regulations as needed in order to facilitate efficient operation of the Ambulance and other equipment of the Rescue Squad. All actions by the Rescue Squad and the Chief shall be under the control and supervision of the Village Board. Neb. Rev. Stat. section 13-303)

## **Article 5 – Auditorium**

### **§2-501: OWNERSHIP**

The Village owns the municipal auditorium, commonly known as Jackson-Peck American Legion Post 274. The Village Board, for the purpose of defraying the cost of the management, maintenance, and improvements on the auditorium, 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 Village that is subject to taxation. The revenue from the said tax shall be known as the Auditorium 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 auditorium. The Auditorium Fund shall at all times be in the custody of the Village Treasurer. The Village Board shall have the power to hire and supervise such employees as it may deem necessary and shall pass such rules and regulations for the operation of the auditorium as may be proper for its efficient management. The Village Board shall have the power to lease the premises with such proceeds to be deposited into the Auditorium Fund. (Neb. Rev. Stat. section 17-953 thru 17-955)

### **§2-501: RENTALS**

The Village Board may, for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the auditorium, make a reasonable rental charge for its use by any person or organization, lease the entire facility or enter into a cooperative agreement of the use of the facility for maintenance costs. The Village Board shall prescribe rules and regulations for such rentals or cooperative agreements. Rental rates may be structured for classes of persons and organizations in a reasonable manner, provided that nothing herein shall be construed to permit or allow discrimination on the basis of sex, race, creed, color, or national origin in the classification of persons and organizations for rental purposes. (Neb. Rev. Stat. section 17-953)

## **Article 6 – Village Cemetery**

### **§2-601: OPERATION AND FUNDING**

The Village owns and manages the Village Cemetery through the Village Board. The Board, for the purpose of defraying the cost of the care, management, maintenance and beautification of the Cemetery, 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 Village that is subject to taxation. The revenue from the said tax shall be known as the Cemetery Fund and shall include all gifts, grants, deeds of conveyance, bequests, money, stocks, bonds or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Cemetery. The Cemetery Fund shall at all times be in the custody of the Village Treasurer. The Village Board shall have the power and authority to hire and supervise such employees as it may deem necessary and to pass such rules and regulations for the operation of the Cemetery as may be proper for its efficient operation. (Neb. Rev. Stat. section 12-301 thru 12-403)

### **§2-602: CONVEYANCE OF CEMETARY LOTS**

The Village Board may convey cemetery lots by certificate signed by the Chairperson and countersigned by the Village Clerk under the Village Seal, specifying that the person to whom the same is issued is the owner of the lot described therein by number for the purpose of interment. The said certificate shall give a right in fee simple to the proprietor, his/her heirs and assigns. The certificate shall then be recorded in the office of the County Clerk. (Neb. Rev. Stat. section 17-941)

### **§2-603: FORFEITURE OF CEMETARY LOTS**

If for three (3) consecutive years all charges and liens are not paid by the holders of the lot certificates, the said certificates shall be declared forfeited and subject to resale. All certificates sold shall contain a forfeiture clause to the effect that if no interment is made on the said lot and all liens are not paid, the certificate and the rights under the same may, at the option of the Village Board, be declared null and void and the lot shall be subject to resale. (Neb. Rev. Stat. section 17-938)

### **§2-604: CEMETARY LOT TRANSFERS**

Any person who wishes to transfer a lot certificate may do so by surrendering the original certificate to the Village Clerk, who shall issue a new certificate upon receipt of the recording fee set by resolution of the Village Board.

### **§2-605: BURIAL OF INDIGENTS**

Within the Village Cemetery there shall be included a plot of ground which shall be available for the free burial of indigents and unknown travelers who may die while they are within the Village.

**§2-606: BURIAL OF CREMATED REMAINS**

The spreading of cremated remains in the cemetery or on other public property is strictly prohibited. All cremated remains must be contained in the cremation urn provided by a licensed and insured cremation facility and be buried in a cemetery plot. The cremated remains of more than one (1) person may be buried in one (1) cemetery plot upon the approval of the Village Board on the record of a public hearing or in writing.

## **Article 7 – Penal Provision**

### **§2-701: VIOLATION; PENALTY**

Any person, firm, association or corporation violating any of the provisions of this Chapter for which no other penalty is imposed shall, upon conviction, be deemed guilty of a misdemeanor and fined in an amount of not more than five hundred dollars (\$500.00). Each day's maintenance of a misdemeanor under this Chapter shall constitute a separate offense.

## **Chapter 3 - DEPARTMENTS**

### **Article 1 - Water Department**

#### **§3-101: MUNICIPAL WATER DEPARTMENT; OPERATION AND FUNDING**

The Municipality owns and operates the Municipal Water Department through the Utilities Superintendent. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Water Department 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 Water Fund and shall remain in the custody of the Municipal Treasurer. The Utilities Superintendent shall have the direct management and control of the Municipal Water Department and shall faithfully carry out the duties of his/her office. The Utilities Superintendent shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Water Department subject to the supervision and review of the Governing Body. The Governing Body shall set the rates to be charged for services rendered by enacting an ordinance and shall file a copy of the rates in the office of the Village Clerk for public inspection. (Ref. 17-531, 17-534, 19-1305 RS Neb.)

#### **§3-102: MUNICIPAL WATER DEPARTMENT; DEFINITIONS**

The following definitions shall be applied throughout this Article. Where no definition is specified, the normal dictionary usage of the word shall apply.

**MAIN** The tenor "main" is hereby defined to be any pipe other than a supply or service pipe that is used for the purpose of carrying water to, and dispersing the same in the Municipality.

**SUPPLY PIPE** The term "supply pipe" is hereby defined to be any pipe tapped into a main and extending from there to a point at or near the lot line of the consumer's premise where the shut-off, stop box, or curb cock is located.

**SERVICE PIPE** The term "service pipe" is hereby defined to be any pipe extending from the shut-off, stop box, or curb cock at or near the lot line to and beyond the property line of the consumer to the location on the premise where the water is to be dispersed.

**SEPARATE PREMISE** The term "separate premise" is hereby defined to be more than one (1) consumer procuring water from the same service or supply pipe. The second (2nd) premise may be a separate dwelling, apartment, building, or structure used for a separate business.

#### **§3-103: MUNICIPAL WATER DEPARTMENT; CONSUMER'S APPLICATION**

Every person or persons desiring a supply of water must make application therefore to the Utilities Superintendent. The Superintendent may require any applicant to make a service deposit in such amount as has been set by the Governing Body and placed on file at the office of the Village Clerk. Water may not be supplied to any house or private service pipe except upon the

order of the Superintendent. There shall be a connection fee of sixty dollars (\$60.00) per building for each new consumer desiring to be connected to the water system. (Ref. 17-537, 19-2701 RS Neb.)

### **§3-104: MUNICIPAL WATER DEPARTMENT; SERVICE TO NON-RESIDENTS**

The Department shall not supply water service to any person outside the corporate limits without special permission from the Planning Commission; provided, the entire cost of laying mains, service pipe, and supply pipe shall be paid by the consumer. Nothing herein shall be construed to obligate the Municipality to provide water service to non-residents. (Ref.19-2701 RS Neb.)

### **§3-105: MUNICIPAL WATER DEPARTMENT; WATER CONTRACT**

The Municipality through its Water Department shall furnish water to persons within its corporate limits whose premises abut a street or alley in which a commercial main now is or may hereafter be laid. The Municipality may furnish water to persons within its corporate limits whose premises do not abut a street or alley in which a Municipal commercial main is now or may hereafter be laid and may also furnish water to persons whose premises are situated outside the corporate limits of the Municipality, as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and water rates hereinafter named in this Article, shall be considered a part of every application hereafter made for water service and shall be considered a part of the contract between every consumer now or hereafter served. Without further formality, the making of application on the part of any applicant or the use or consumption of water service by present consumers thereof and the furnishing of water service to said consumer shall constitute a contract between the consumer and the Municipality, to which said contract both parties are bound. If the consumer shall violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Utilities Superintendent or his/her agent, may cut off or disconnect the water service from the building or premise or place of such violation. No further connection for water service to said building, premise, or place shall again be made except by order of said Superintendent or his/her agent.

### **§3-106: MUNICIPAL WATER DEPARTMENT; INSTALLATION PROCEDURE**

In making excavations in streets, alleys, or sidewalks for the purpose of installing pipe, or making repairs, the paving, stones, and earth must be removed and deposited in a manner that will occasion the least inconvenience to the public and provide for adequate drainage. No person shall leave an excavation made in the street, alley, or sidewalk open or unattended at any time without a barricade sufficient to assure safety of the public, and such barricade shall include warning lights if left unattended at night or during weather conditions that may impair the visibility of the public. After service pipes are laid, the streets, alleys, and sidewalks shall be restored to good condition. If the excavation in any street, alley, or sidewalk is left open or unfinished for a period of twenty-four (24) hours or more, the Utilities Superintendent shall have the duty to finish or correct the work, and all expenses so incurred shall be charged to the consumer. All installations or repairs of pipes require two (2) inspections by the Building Inspector. The first (1st) inspection shall be made when connections or repairs are completed and

before the pipes are covered. The second (2nd) inspection shall be made after the dirt work is completed and the service is restored. It is the customer's responsibility to notify the Inspector at the time the work is ready for each inspection. All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications prescribed for such Installation by the Utilities Superintendent; Provided that the said rules, regulations, and specifications have been reviewed and approved by the Governing Body. (Ref. 17-537 RS Neb.)

**§3-107: MUNICIPAL WATER DEPARTMENT; INSTALLATION EXPENSE; TIMING OF INSTALLATION; REQUIRED EQUIPMENT PENALTY**

- (1) The consumer shall pay:
  - (a) A fee for providing water service to the Lot line;
  - (b) Cost of service pipe from the Lot line to the place of disbursement;
  - (c) The cost of a stop box to be provided to the consumer by the Village;
  - (d) The cost of a meter to be provided to the consumer by the Village;
  - (e) The cost of a back flow prevention device to be provided to the consumer by the Village; and
  - (f) All installation costs of any nature whatsoever relating to installation of service pipe from the Lot line to the place of disbursement, the stop box, the meter, and the back flow prevention device.
- (2) All residents of the Village currently receiving water service from the Village shall have installed a meter, remote meter and back flow device meeting the requirements of this Chapter.
- (3) It shall be unlawful to install or use any meters, remote meters, stop boxes or service lines which have not been previously approved by the Village.
- (4) Failure to meet the requirements of this Article shall constitute a Class V Misdemeanor punishable by a fine of up to five hundred dollars (\$500.00) per violation. Each twenty four (24) hour period in violation of the requirements of this section shall constitute a separate offense."(Ref. 17-542 RS Neb.)

**§3-108: MUNICIPAL WATER DEPARTMENT; REPAIRS AND MAINTENANCE**

The Municipality shall repair or replace all supply pipes between the commercial main and the stop box. The customer at his/her own expense shall replace and keep in repair all service pipes from the stop box to the place of disbursement. When leaks occur in service pipes, the Utilities Superintendent shall shut off water service until the leak is repaired at the expense of the customer to the satisfaction of the Utilities Superintendent.

### **§3-109: MUNICIPAL WATER/SEWER DEPARTMENT; FEES AND COLLECTIONS**

The Governing Body of the Village of Herman using the power and authority granted by law to fix rates to be paid by the water/sewer consumers for the use of water/sewer from the Water/Sewer Department. All such fees shall be on file for public inspection at the office of the Municipal Clerk.

The Village Board shall have the authority, beginning thirty (30) days after the overdue date, to shut off the water supply to the consumer after written notification to the consumer, dated ten (10) days prior to the actual shut off date. A fee for disconnecting the water supply shall be assessed to the property in the amount of twenty dollars (\$20.00). A re-connection fee in the amount of twenty dollars (\$20.00) will be assessed to the property for reconnecting the water after the bill, along with all penalties and fees, is paid in full.

No unauthorized person shall be permitted to turn on, or off, the water supply to a consumer without first (1<sup>st</sup>) obtaining written permission from the Village Board of Trustees or the Village Water Systems Operator. Noncompliance or failure to return the equipment borrowed from the Village Water Department shall be considered a violation equal to a penalty of fifty dollars (\$50.00).

In the event of an emergency such as a broken water line in a residence, water heater malfunction or fire, the water can be disconnected as needed by a licensed plumber or the fire department.

The Village shall be notified immediately upon the vacation of a property in order to disconnect the water supply. The Village shall again be notified upon re-occupancy of the property and a hook-up fee will be assessed in the amount of sixty dollars (\$60.00) for Water service and twenty dollars (\$20.00) for Sewer service to cover clerical and all other associated costs incurred by the Village.(Ref. 17-540 RS Neb.)

### **§3-110: MUNICIPAL WATER DEPARTMENT; MINIMUM RATES**

All water consumers shall be liable for the minimum rate provided by ordinance unless and until the consumer shall, by written order, direct the Utilities Superintendent to shut off the water at the stop box, in which case he shall not be liable thereafter for water rental until the water is turned on again. (Ref.17-542 RS Neb.)

### **§3-111: MUNICIPAL WATER DEPARTMENT; BILLS**

Water bills shall be due on the tenth (10th) day of each month and shall be payable by the twenty fourth (24<sup>th</sup>) day of each month. Bills not paid by the twenty fourth (24<sup>th</sup>) day of each month shall be deemed delinquent. Upon being deemed delinquent, as herein defined, the disconnection procedure set out in the Municipal Code, as amended from time to time, shall be commenced.

### **§3-112: MUNICIPAL WATER DEPARTMENT; LIEN**

In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for water service furnished, such amount due, together with any rents and charges in arrears, shall be considered a delinquent water rent which is hereby declared to be a lien upon the real estate for which the same was used. The Municipal Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are sixty (60) days or more delinquent in the payment of water rent. It shall be the duty of the Municipal Clerk on the first (1st) day of June, of each year to report to the Governing Body a list of all unpaid accounts due for water together with a description of the premise upon which the same was used. The report shall be examined, and if approved by the Governing Body, shall be certified by the Municipal Clerk to the County Clerk to be collected as a special tax in the manner provided by law. (Ref.17-538 RS Neb.)

### **§3-113: MUNICIPAL WATER DEPARTMENT; SINGLE PREMISE**

No consumer shall supply water to other properties or allow residents of other properties to take water from his/her premise, nor after water is supplied into a building shall any person make or employ a plumber or other person to make a tap or connection with the pipe upon the premise for alteration, extension, or attachment without the written permission of the Utilities Superintendent. It shall further be unlawful for any person to tamper with any water meter or by means of any contrivance or device to divert the water from the service pipe so that the water will not pass through the meter or while passing through said meter to cause the meter to register inaccurately. (Ref. 17-537 RS Neb.)

### **§3-114: MUNICIPAL WATER DEPARTMENT; RESTRICTED USE**

The Governing Body or the Utilities Superintendent may order a reduction in the use of water or shut off the water on any premise in the event of a water shortage due to fire or other good and sufficient cause. The Municipality shall not be liable for any damages caused by shutting off the supply of water of any consumer while the system or any part thereof is undergoing repairs or when there is a shortage of water due to circumstances over which the Municipality has no control. (Ref. 17-537 RS Neb.)

### **§3-115: MUNICIPAL WATER DEPARTMENT; FIRE HYDRANTS**

All hydrants for the purpose of extinguishing fires are hereby declared to be public hydrants, and it shall be unlawful for any person other than members of the Municipal Fire Department under the orders of the Fire Chief, or the Assistant Fire Chief; or members of the Water Department to open or attempt to open any of the hydrants and draw water from the same, or in any manner to interfere with the hydrants.

### **§3-116: MUNICIPAL WATER DEPARTMENT; POLLUTION**

It shall be unlawful for any person to pollute or attempt to pollute any stream or source of water for the supply of the Municipal Water Department. (Ref. 17-536 RS Neb.)

### **§3-117: MUNICIPAL WATER DEPARTMENT; MANDATORY HOOK-UP**

All persons within three hundred (300) feet of a water main shall be required, upon notice by the Governing Body, to hook-up with the Municipal Water System. (Ref. 17-539 RS Neb.)

### **§3-118: MUNICIPAL WATER DEPARTMENT; WATER SERVICE CONTRACTS**

Contracts for water service are not transferable. Any person wishing to change from one (1) location to another shall make a new application and sign a new contract. If any consumer shall move from the premise where service is furnished, or if the said premise is destroyed by fire or other casualty, he/she shall at once inform the Utilities Superintendent who shall cause the water service to be shut off at the said premise. If the consumer should fail to give such notice, he/she shall be charged for all water used on the said premise until the Utilities Superintendent is otherwise advised of such circumstances. (Ref. 17-537 RS Neb.)

### **§3-119: MUNICIPAL WATER DEPARTMENT: INSPECTION**

The Utilities Superintendent or his/her duly authorized agents, shall have free access, at any reasonable time, to all parts of each premise and building to, or in which, water is delivered for the purpose of examining the pipes, fixtures, and other portions of the system to ascertain whether there is any disrepair or unnecessary waste of water. (Ref. 17-537 RS Neb.)

### **§3-120: MUNICIPAL WATER DEPARTMENT; DESTRUCTION OF PROPERTY**

It shall be unlawful for any person willfully or carelessly to break, injure, alter, tamper with or deface any building, machinery, apparatus, fixture, water meter, remote water meter, stop box, attachment, or appurtenance of the Municipal Water Department. No person may deposit anything in a stop box or commit any act tending to obstruct or impair the intended use of any of the above mentioned property without the written permission of the Utilities Superintendent.

### **§3-121: MUNICIPAL WATER DEPARTMENT; LICENSED PLUMBER**

It shall be unlawful for any plumber or pipe fitter to do any work upon any of the pipes or appurtenances of the system of waterworks, or to make any connection with or extension of the supply pipes of any consumer taking water from the said system until such plumber or pipe fitter shall have first procured a license or permit from the Municipality. All plumbing shall be done in the manner required by the Governing Body. The said Licensed Plumber shall be at all times subject to the inspection and approval of the Building Inspector and it shall be further unlawful to cover or conceal willfully any defective or unsatisfactory plumbing work. (Ref. 17-537 RS Neb.)

### **§3-122: MUNICIPAL WATER DEPARTMENT; TIME**

All taps or plumbing work on the Municipal water system shall occur between the hours of eight (8:00) o'clock A.M. and six (6:00) o'clock P.M. (Ref. 17-537 RS Neb.)

### **§3-123: MUNICIPAL WATER DEPARTMENT; SWING VALVE REQUIRED**

To prevent the siphoning of water from the Municipal Water System all customers applying for new water service and all customers presently serviced may be required by the Utilities Superintendent to have placed on the water line a swing valve (back flow prevention device) of such size and at such location as is approved by the Utilities Superintendent. Such measure may be implemented at the discretion of the Utilities Superintendent when it becomes necessary to disrupt water service and/or to prevent damage to property caused by such siphoning. In the event that a swing valve on the line of a property owner, the Municipal Clerk or Utilities Superintendent shall give the property owner written notice by personally serving such written notice to the property owner or by serving such notice by registered letter, certified mail or process server. Such notice shall be directed to the last-known address of such property owner or the agent of such owner, directing the placement of such swing valve. If within thirty (30) days of mailing or giving such notice, the property owner fails or neglects to cause such placements to be made, the Utilities Superintendent may cause such work to be completed and may assess the cost upon the property served by such water line. Reasons for requiring swing valves includes, but is not limited to, installation of an underground sprinkler system, installations or replacement of a water heater, and installation or replacement of a water softener. (Ref. 17-537 RS Neb.)

### **§3-124: MUNICIPAL WATER DEPARTMENT- RATES**

The rates charged to all water customers of the Municipal Water System to provide for the operation and maintenance of such System shall include a monthly flat rate in the amount of thirty two dollars (\$32.00) per month, plus tax, shall be assessed per customer. In addition thereto, a fee in the amount of two dollars and ten cents (\$2.10) per one thousand (1,000) gallons of water flowing through the customer's meter, plus tax shall be assessed. A late payment penalty of five dollars (\$5.00) will be added to a domestic customer's water service bill if such bill becomes delinquent. (Ord. 2003-1)

### **§3-125: MUNICIPAL WATER DEPARTMENT; FLUORIDE PROHIBITED**

Fluoride shall not be added to the water supply of Herman, Nebraska.

### **§3-126: VIOLATION: NOTICE AND LIABILITY**

Any person found to be violating any provision of this Chapter shall be served by the Village with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall within the period of time stated in such notice not less than seven (7) days permanently cease all violations.

Any person who shall continue any violation beyond the time limit provided for this Section shall be guilty of a misdemeanor and a conviction thereof shall be fined in the amount not exceeding five hundred dollars (\$500.00) for each violation. Each twenty-four (24) hour period in which any such violation shall continue shall be deemed a separate offense. Any person

violating any of the provisions of this Section shall become liable to the Village for any expense loss or damage occasioned by the Village by reason of such violation. (Ord. No. 2001-2)

## Article 2 - Sewer Department

### **§3-201: MUNICIPAL SEWER DEPARTMENT; OPERATION AND FUNDING**

The Municipality owns and operates the Municipal Sewer System through the Utilities Superintendent. The Governing Body, for the purpose of defraying the cost of the management and maintenance of the Municipal Sewer System 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 Sewer Maintenance Fund. The Utilities Superintendent shall have the direct management and control of the Sewer Department and shall faithfully carry out the duties of his/her office. He/she shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Department subject to the supervision and review of the Governing Body. (Ref. 17-149 RS Neb.)

### **§3-202: MUNICIPAL SEWER DEPARTMENT; DEFINITION OF TERMS**

Unless the context specifically indicates otherwise, the meaning of terms used in this Article shall be as follows:

**BIOCHEMICAL OXYGEN DEMAND** The term "**Biochemical Oxygen Demand**" (BOD) shall mean and include the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees C., expressed in parts (per million by weight).

**BUILDING OR HOUSE DRAIN** The terms "**Building Drain**" and "**House Drain**" shall mean and include that part of the lowest horizontal piping of a house or building drainage system which receives the discharge from soil, waste, or other drainage pipes inside the walls of any building or house.

**BUILDING OR HOUSE SEWER** The terms "**Building Sewer**" and "**House Sewer**" shall mean and include that part of a house or building drainage system

**PROPERLY SHREDDED GARBAGE** The term "Properly Shredded Garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one half (1/2) inch (1.27 centimeters) in any dimension.

**PUBLIC SEWER** The term "**Public Sewer**" shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

**SANITARY SEWER** The term "**Sanitary Sewer**" shall mean and include a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

**SEWAGE** The term "**Sewage**" shall mean and include a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments together with such ground, surface, and storm waters as may be present.

**SEWAGE TREATMENT PLANT** The term "**Sewage Treatment Plant**" shall mean any arrangement of devices and structures used for treating sewage.

**SEWAGE WORKS** The term "**Sewage Works**" shall mean all facilities for collecting, pumping, treating and disposing of sewage.

**SEWER** The term "**Sewer**" shall mean a pipe or conduit for carrying sewage.

**SHALL** The term "**Shall**" is mandatory; the term "**May**" is permissive.

**SLUG** The term "**Slug**" shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.

**STORM SEWER** The term "**Storm Sewer**" shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

**SUPERINTENDENT** The term "**Superintendent**" shall mean the Utilities Superintendent of the Village of Herman, or his/her authorized deputy, agent, or representative.

**SUSPENDED SOLIDS** The term "**Suspended Solids**" shall mean and include solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and are removable by filtering.

**TRAP** The term "**Trap**" shall mean and include a fitting or device so constructed as to prevent the passage of air or gas through a pipe without materially affecting the flow of sewage or waste through it.

**TRAP SEAL** The term "**Trap Seal**" shall mean and include the vertical distance between the crown weir and the dip of the trap.

**UNPOLLUTED WATERS** The term "**Unpolluted Waters**" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities provided.

**VENT PIPE** The term "**Vent Pipe**" shall mean and include any pipe provided to ventilate a house or building drainage system and to prevent trap siphonage and back pressure.

**WASTE PIPE** The term "**Waste Pipe**" shall mean and include any pipe which receives the discharge of any fixture, except water closets, and conveys the same to the house drain, soil pipe, or waste stack.

**WASTEWATER** The term "**Wastewater**" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water that may be present.

**WATERCOURSE** The term "**Watercourse**" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

### **§3-203: MUNICIPAL SEWER DEPARTMENT; APPLICATION FOR PERMIT**

Any person wishing to connect with the Sewer System shall make an application therefore to the Utilities Superintendent. The Superintendent may require any applicant to make a service deposit in such amount as has been set by the Governing Body and placed on file at the office of the Municipal Clerk. Sewer service may not be supplied to any house or building except upon the order of the Superintendent. The Department shall not supply sewer service to any person outside the corporate limits without special permission from the Governing Body; provided that the entire cost of pipe and other installation charges shall be paid by such consumers. Nothing herein shall be construed to obligate the Municipality to provide sewer service to non-residents. (Ref. 17-902 RS Neb.)

### **§3-204: MUNICIPAL SEWER DEPARTMENT; SEWER CONTRACT**

The Municipality through the Municipal Sewer Department shall furnish sewer services to persons within its corporate limits whose premises abut a street or alley in which a commercial main is now or may hereafter be laid. The Municipality may also furnish sewer service to persons whose premises are situated outside the corporate limits of the Municipality, as and when, according to law, the Governing Body may see fit to do so. The rules and regulations shall be considered a part of every application hereafter made for sewer service and shall be considered a part of the contract between every customer now or hereafter served. Without further formality, the making of the application on the part of any applicant or the use of sewer service by present customers thereof shall constitute a contract between the customer and the Municipality to which said contract both parties are bound. If the customer shall violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Utilities Superintendent, or his/her agent, may cut off or disconnect the sewer service from the building or premise of such violation. No further connection for sewer service to said building or premise shall again be made except by written order of the Utilities Superintendent or his/her agent. (Ref. 17-901, 17-902 RS Neb.)

### **§3-205: MUNICIPAL SEWER DEPARTMENT; SERVICE CONTRACTS**

Contracts for sewer service are not transferable. Any person wishing to change from one (1) location to another shall make a new application and sign a new contract. If any customer

shall move from the premise where service is furnished, or if the said premise is destroyed by fire or other casualty, he shall at once inform the Utilities Superintendent who shall cause the sewer service to be shut off from the said premise. If the customer should fail to give notice, he shall be charged for that period of time until the official in charge of sewers is otherwise advised of such circumstances. (Ref. 18-503 RS Neb.)

### **§3-206: MUNICIPAL SEWER DEPARTMENT; RATE SETTING**

Customers of the Municipal Sewer Department shall be charged a flat rate based on water usage for the use of sewer service. Rates shall be set by the Governing Body and shall be on file at the office of the Municipal Clerk available for public inspection at any reasonable time. (Ref. 18-509 RS Neb.)

### **§3-207: MUNICIPAL SEWER DEPARTMENT; CLASSIFICATION**

The Governing Body may classify for the purpose of rental fees the customers of the Municipal Sewer Department; Provided, that such classifications are reasonable and do not discriminate unlawfully against any consumer or group of consumers. The classification must be approved by the Environmental Protection Agency, relative to the user charge grant condition. (Ref. 17-925.02 RS Neb.)

### **§3-208: MUNICIPAL SEWER DEPARTMENT; COLLECTION OF SEWER USER FEES**

Sewer rental bills shall be due and payable at the same time and in the same manner as water bills are due and payable. All penalties and procedures concerning delinquent accounts with the Municipal Water Department shall also be applicable to delinquent accounts with the Municipal Sewer Department.

### **§3-209: MUNICIPAL SEWER DEPARTMENT; LIEN**

In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for sewer service furnished, such amount due, together with any rents and charges in arrears shall be considered a delinquent sewer rent which is hereby declared to be a lien upon the real estate for which the same was furnished, The Municipal Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are sixty (60) days or more delinquent in the payment of sewer rent. It shall be the duty of the Utilities Superintendent on the first (1st) day of June, of each year to report to the Governing Body a list of all unpaid accounts due for sewer service together with a description of the premise served. The report shall be examined, and if approved by the Governing Body, shall be certified by the Municipal Clerk to the County Clerk to be collected as a special tax in the manner provided by law. (Ref. 17-925.01 RS Neb.)

### **§3-210: MUNICIPAL SEWER DEPARTMENT; USER CHARGE REVIEW**

The Governing Body shall review, at least annually, the user charge system and revise the charges, if necessary, to accomplish the following:

1. Maintain the proportional distribution of operation, maintenance and replacement (O. M. & R) costs among users and user classes;
2. Generate adequate revenues to pay the costs of O. M. & R;
3. Apply excess revenues collected from a class of users to the costs of O. M. & R attributable to that class for the next year and adjust the rates accordingly.

### **§3-211: MUNICIPAL SEWER DEPARTMENT; USER NOTIFICATION**

Each user will be notified, at least annually, with a regular bill, of the rate and that portion of the user charges ad valorem taxes which are attributable to wastewater treatment.

### **§3-212: MUNICIPAL SEWER DEPARTMENT; SEWER MAINTENANCE FUND**

The operation, maintenance and replacement (O. M. & R) portion of the total sewer user charges shall be deposited in a non-lapsing Sewer Maintenance Fund, or set of funds, and the revenues so deposited will be used only for the purposes of defraying the O. M. & R costs of the treatment works. Funds transferred from other revenue sources to meet temporary shortages in the O. M. & R accounts shall be refunded following an appropriate adjustment in the user charges for O. M. & R the Sewer Maintenance Fund will have a minimum of two (2) primary accounts:

1. An O & M account with provision for carry-over of the fiscal yearend balance to meet the overall O & M costs in the subsequent fiscal year;
2. A non-lapsing sinking fund for replacement costs which accrues funds through deposits made at least annually from O. M. & R use charge revenues. The deposits shall provide adequate revenues to meet the "replacement" needs of the treatment works over its service life and shall be used for no other purpose. For purposes of maintaining said fund on a perpetual basis, the Municipality shall budget a sum of money not less than twenty percent (20%) of its annual projected operation and maintenance budget for the sewer treatment works. Fiscal year-end balances in the non-lapsing sinking fund will be carried over to the same fund in the subsequent year.

### **§3-213: PUBLIC SEWERS REQUIRED; UNLAWFUL DEPOSIT OF WASTES**

It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the Municipality or within one (1) mile of the corporate limits thereof, or in any area under the jurisdiction of said Municipality, any human or animal excrement, garbage, or other objectionable waste.

**§3-214: PUBLIC SEWERS REQUIRED; UNLAWFUL DISCHARGE OF UNTREATED SEWAGE**

It shall be unlawful to discharge to any natural outlet within the Municipality, or within one (1) mile of the corporate limits thereof, or in any area under the jurisdiction of said Municipality, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Article.

**§3-215: PUBLIC SEWERS REQUIRED; CESSPOOLS, PRIVIES AND SEPTIC TANKS PROHIBITED**

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

**§3-216: PUBLIC SEWERS REQUIRED; MANDATORY HOOK-UP**

The owner of all houses, buildings, or properties used for human employment, recreation, or other purposes, situated within the Municipality and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the Municipality, is hereby required at his/her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Article within ninety (90) days after date of official notice to do so; Provided, that said public sewer is within one hundred (100) feet and thirty point five (30.5) meters of the property line.

**§3-217: PRIVATE SEWAGE DISPOSAL; WHEN APPLICABLE**

Where a public sanitary or combined sewer is not available under the provisions of Section 3-216, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Article. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 3-216, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this Article, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

**§3-218: PRIVATE SEWAGE DISPOSAL SYSTEM; PERMIT REQUIRED, FEE**

Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the Municipality, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Superintendent. A permit and inspection fee of five dollars (\$5.00) shall be paid to the Municipality at the time the application is filed.

**§3-219: PRIVATE SEWAGE DISPOSAL SYSTEM; PERMIT, WHEN EFFECTIVE: INSPECTIONS**

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Building Inspector. He/she shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Building Inspector when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within twenty-four (24) hours of the receipt of notice by the Building Inspector.

**§3-220: PRIVATE SEWAGE DISPOSAL SYSTEM; SPECIFICATIONS**

The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Public Health of the State of Nebraska. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities when the area of the lot is less than ten thousand (10,000) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

**§3-221: PRIVATE SEWAGE DISPOSAL SYSTEM; MAINTENANCE**

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the Municipality.

**§3-222: PRIVATE SEWAGE DISPOSAL SYSTEM; ADDITIONAL REQUIREMENTS**

No statement contained in Sections 3-217 thru 3-221 shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.

**§3-223: BUILDING SEWER INSTALLATION; PERMIT REQUIRED**

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

**§3-224: BUILDING SEWER INSTALLATION; CLASSIFICATION; PERMIT APPLICATION, FEE**

There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In case, the owner or his/her agent shall make application on a special form furnished by the Municipality. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee of five dollars (\$5.00) for a residential or commercial building sewer permit and five dollars (\$5.00) for an industrial building sewer permit shall be paid to the Municipality at the time the application is filed.

**§3-225: BUILDING SEWER INSTALLATION; EXPENSE**

All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Municipality from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

**§3-226: MUNICIPAL SEWER DEPARTMENT; INSTALLATION EXPENSE**

The customer, upon approval of his/her application for sewer service, shall pay to the Municipal Clerk a tap fee which shall compensate the Municipality for the expense of processing his/her application and tapping the sewer main. The Sewer Commissioner, in his/her discretion, may direct the customer to hire a licensed plumber to tap the main. The customer shall then be required to pay the expense of procuring the materials required as well as the services of a licensed plumber and shall pay all other costs of installation.

**§3-227: BUILDING SEWER INSTALLATION; SINGLE PREMISE**

A separate and independent building sewer shall be provided for every building; except where one (1) building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one (1) building sewer, but the Municipality does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

**§3-228: BUILDING SEWER INSTALLATION; USE OF EXISTING SEWERS**

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Building Inspector, to meet all requirements of this Article.

**§3-229: BUILDING SEWER INSTALLATION; CONSTRUCTION CODES.**

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Municipality. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the municipality or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gas tight and watertight, and verified by

proper testing. Any deviation from the prescribed procedures and materials must be approved by the Building Inspector before installation.

### **§3-230: BUILDING SEWER INSTALLATION; UNLAWFUL CONNECTION**

No person shall make connection of roof down spouts, interior and exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the Superintendent for purposes of disposal of polluted surface drainage; Provided, that if responsibility can be determined, the party responsible for disposal of polluted surface drainage into the public sanitary sewer shall pay a user charge equivalent to the cost of treating the polluted drainage.

### **§3-231: BUILDING SEWER INSTALLATION; INSPECTIONS**

The applicant for the building sewer permit shall notify the Building Inspector when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Inspector or his/her representative.

### **§3-232: BUILDING SEWER INSTALLATION; EXCAVATIONS**

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Municipality.

### **§3-233: MUNICIPAL SEWER DEPARTMENT; INSTALLATION PROCEDURE**

In making excavations in streets, alleys, or sidewalks for the purpose of installing pipe, or making repairs, the paving, stones, and earth must be removed and deposited in a manner that will occasion the least inconvenience to the public and provide for adequate drainage. No person shall leave an excavation made in the street, alley, or sidewalk open at any time without a barricade, and during the night, warning lights. After the house sewer is laid, the public ways and property shall be restored to good condition. If the excavation in the public ways and property is left open or unfinished (or a period of twenty-four (24) hours or more, the Utilities Superintendent shall have the duty to finish or correct the work, and all expenses so incurred shall be charged to the owner, occupant, or lessee of the property. All installations or repairs of pipes require two (2) inspections by the Building Inspector. The first (1st) inspection shall be made when connections or repairs are complete and before the pipe is covered. The second (2nd) inspection shall be made after the dirt work is completed and the service restored. It is the customer's responsibility to notify the Building Inspector at the time the work is ready for each inspection. All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications for such installation prescribed by the Utilities Superintendent; provided, that the said rules, regulations, and specifications have been reviewed and approved by the Governing Body.

**§3-234: PROHIBITED DISCHARGES; STORM WATER, SURFACE WATER, GROUNDWATER, COOLING WATER AND PROCESS WATER**

No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, contaminated cooling water, or polluted industrial waters to any sanitary sewer. Storm water and all other polluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or polluted process water may be discharged, on approval of the Superintendent, to a storm sewer, combined sewer, or natural outlet. The contributor of any identifiable discharge of polluted water to the sanitary sewer system shall be held responsible for reimbursing the Municipality for such costs. The costs shall be determined by the Superintendent with the approval of the Governing Body.

**§3-235: HAZARDOUS AND PROHIBITED DISCHARGES; FLAMMABLE, TOXIC, CORROSIVE AND OBSTRUCTIVE SUBSTANCES; PRELIMINARY TREATMENT**

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

1. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
2. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
3. Any waters or wastes having a pH lower than five point five (5.5), or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage facilities such as, but not limited to, ashes, finders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, un-ground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
5. Any waters or wastes having;
  - a) a five (5) day BOD greater than three hundred (300) parts (per million by weight) or,
  - b) containing more than three hundred fifty (350) parts (per million by weight) of suspended solids, or

c) having an average daily flow greater than two percent (2%) of the average sewage flow of the Municipality, or

d) a chlorine requirement greater than demanded by normal sewage as evaluated by the Municipality's consulting engineer shall be subject to the review of the Superintendent.

Where necessary in the opinion of the Superintendent, the owner shall provide, at his/her expense, such preliminary treatment as may be necessary to:

a) reduce the biochemical oxygen demand to three hundred (300) parts (per million by weight), or

b) reduce the suspended solids to three hundred fifty (350) parts (per million by weight), or

c) control the quantities and rates of discharge of such waters or wastes, or

d) reduce the chlorine requirement to conform with normal sewage.

Plans, specifications, and other pertinent information relating to, proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent and no construction of such facilities shall be commenced until said approvals are obtained in writing.

**§3-236: HAZARDOUS AND PROHIBITED DISCHARGES, SPECIFIC PROHIBITIONS AS DETERMINED BY SUPERINTENDENT**

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his/her opinion as to the acceptability of these wastes, the Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, and other pertinent factors.. The substances prohibited are:

1. Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65° degrees C).

2. Any water or waste containing fats, wax, grease, or oils, whether *emulsified* or not, in excess of one hundred (100) mg/1 or containing substances which may solidify or become viscous at temperatures between thirty-two (32°) degrees and one hundred fifty (150 ) degrees F (0 and 65° C).

3. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor three fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent.

4. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.

5. Any water or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Superintendent for such materials.

6. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.

7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable State or Federal regulations.

8. Any waters of wastes having a pH in excess of nine point five (9.5).

9. Materials which exert or cause:

a. Unusual concentrations of inert suspended solids (such as, but not limited to, Fuller's earth, lime slurries, and lime residues) or of dissolved solids, (such as but not limited to, sodium chloride or sodium sulfate).

b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

c. Unusual ROD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.

d. Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

10. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

**§3-237: DISCHARGE OF HAZARDOUS AND PROHIBITED SUBSTANCES; REJECTION, PRETREATMENT, CONTROL OF DISCHARGE RATE OR USE FEE SURCHARGE**

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 3-236, and which in the judgment of the Superintendent, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life to constitute a public nuisance, the Superintendent may:

1. Reject the wastes,
2. Require pretreatment to an acceptable condition for discharge to the public sewers,
3. Require control over the quantities and rates of discharge, and/or
4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 3-243.

If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent, and subject to the requirements of all applicable codes, ordinances and laws.

**§3-238: GREASE, OIL AND SAND INTERCEPTORS; WHEN REQUIRED**

Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the Superintendent. Any removal and hauling of the collected materials not performed by owner(s) personnel must be performed by currently licensed waste disposal firms.

**§3-239: PRELIMINARY TREATMENT OR FLOW EQUALIZING FACILITIES; MAINTENANCE BY OWNER**

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his/her expense.

**§3-240: CONTROL MANHOLES/SAMPLING STATIONS; WHEN REQUIRED; INSTALLATION AND MAINTENANCE**

When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at his/her expense, and shall be maintained by him/her so as to be safe and accessible at all times.

**§3-241: CONTROL MANHOLES/SAMPLING STATIONS; METHOD**

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Article, shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite of all out falls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, ROD and suspended solids analyses are obtained from twenty-four (24) hour composites of all out falls whereas pH's are determined from periodic grab samples.)

**§3-242: SANITARY SUPPLY SYSTEM; DESTRUCTION OF PROPERTY**

No person or persons shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the wastewater facilities. Any person or persons violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

**§3-243: HAZARDOUS AND PROHIBITED SUBSTANCES; SPECIAL EXCEPTIONS PERMITTED; USE FEE SURCHARGE**

No statement contained in this Article shall be construed as preventing any special agreement or arrangement between the Municipality and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Municipality for treatment, subject to payment therefore, by the industrial concern.

**§3-244: COMPLIANCE WITH ARTICLE; INSPECTIONS GENERALLY**

The Building Inspector and other duly authorized employees of the Municipality hearing proper credentials and identification shall be permitted to enter all properties for the purposes of

Inspection, observation, measurement, sampling, and testing system in accordance *with* the provisions of this Article. The Inspector or his/her representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

**§3-245: ALL BASEMENT AND FLOOR DRAINS; CHECK VALVE OR BACK FLOW PREVENTION DEVICE**

All basement and floor drains which connect to the Municipal sewer system shall be equipped with a check valve or back flow prevention device. If property is not equipped with check valve or back flow prevention device the Village of Herman will not be held responsible for sewer back up or liable for costs associated with such sewer back up. (Ordinance No. 2005-1)

**§3-246: COMPLIANCE WITH ARTICLE; INSPECTIONS; INJURY LIABILITY**

While performing the necessary work on private properties referred to in Section 3-244 above, the Inspector or duly authorized employees of the Municipality shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the Municipal Employees and the Municipality shall indemnify the company against loss or damage to its property by Municipal employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Section 3-240.

**§3-247: COMPLIANCE WITH ARTICLE; INSPECTIONS; EASEMENTS**

The Inspector and other duly authorized employees of the Municipality bearing proper credentials and identification shall be permitted to enter all private properties through which the Municipality holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

**§3-248: VIOLATION; NOTICE AND LIABILITY**

Any person found to be violating any provision of this Article, except Section 3-242, shall be served by the Municipality with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. Any person violating any of the provisions of this Article shall become liable to the Municipality for any expense, loss, or damage suffered by the Municipality by reason of such violation.

**§3-249: MUNICIPAL SEWER DEPARTMENT; MUNICIPAL POWERS**

The Municipality has the legal authority to enforce its system of user charges, industrial cost recovery charge, and sewer use regulations on all existing or future users of the system whether located inside or outside the Municipal limits.

**§3-250: SEVERABILITY CLAUSE**

The invalidity of any Section, clause, sentence, or provision of this Article shall not affect the validity of any other part of this Article which can be given effect without such invalid part or parts.

**§3-251: PENAL PROVISION; VIOLATION.**

Any person who shall continue any violation beyond the time limit provided in Section 3-247, shall be guilty of a misdemeanor, and a conviction thereof shall be fined in the amount not exceeding five hundred (\$500.00) dollars for each violation. Each twenty-four (24) hour period in which any such violation shall continue shall be deemed a separate offense.

## **Article 3 - Utilities Generally**

### **§3-301: UTILITIES GENERALLY; BILLING**

Utility bills shall be a joint bill for all utilities. Utility bills shall be due on the tenth (10<sup>th</sup>) day of each month and shall be payable by the twenty fourth (24<sup>th</sup>) day of each month. It shall be the duty of the Village Clerk to compute or cause to be computed a joint utility bill for each billing period as provided herein. It shall be the duty of all utility customers to cause to be mailed or to present themselves at the office of the Village Clerk and pay their bill for all utility charges. Bills shall be deemed delinquent if not paid by the dates provided herein. All bills deemed delinquent shall be assessed a delinquent penalty of five dollars (\$5.00). (Ref. 17-537, 18-503, 19-1404 RS Neb.)

### **§3-302: UTILITIES GENERALLY; LIEN**

In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for utility service furnished, such amount due, together with any rents and charges in arrears shall be considered a delinquent utility rent which is hereby declared to be a lien upon the real estate for which the same was furnished. The Village Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are sixty (60) days or more delinquent in the payment of the utility rent. It shall be the duty of the Village Clerk to report to the Governing Body a list of all unpaid accounts due for utility service together with a description of the premises served. The report shall be examined, and if approved by the Governing Body, shall be certified by the Municipal Clerk to the County Clerk to be collected as a special tax in the manner provided by law. (Ref. 17-538, 17-925.01, 18-503 RS Neb.)

### **§3-303: UTILITIES GENERALLY; RE-CONNECTION**

If utility service is disconnected, a re-connection fee of twenty dollars (\$20.00) shall be paid before service is reconnected. The Village may also take any action authorized by law to effect collection of delinquent charges.

### **§3-304: UTILITIES GENERALLY; DISCONTINUANCE OF SERVICE, NOTICE PROCEDURE**

No Municipal utility shall discontinue service to any domestic subscriber for non-payment of any due account unless such utility shall first (1<sup>st</sup>) give written notice by mail to any subscriber whose service is proposed to be terminated at least seven (7) days prior to termination, weekends and holidays excluded. As to any subscriber who has previously been identified as a welfare recipient to the utility by the Department of Social Services, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department of Social Services.

Prior to the discontinuance of service to any domestic subscriber by a Municipal Utility, the domestic subscriber, upon request, shall be provided a conference with the Board of Trustees.

The Board of Trustees has established procedures to resolve utility bills when a conference is requested by a domestic subscriber. These procedures, three (3) copies of which are on file in the office of the Village Clerk, are hereby incorporated by reference in addition to any amendments thereto and are made a part hereof as though set out in full. A copy of such procedures shall be furnished upon the request of any domestic subscriber. The Board of Trustees shall notify the domestic subscriber of the time, place, and date scheduled for such conference. (Ref. 70-1603, 70-1604 RS Neb.)

## **Article 4 - Penal Provision**

### **§3-401: 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 five hundred dollars (\$500.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

## **Chapter 4 - HEALTH AND SANITATION**

### **Article 1 – General Provisions**

#### **§4-101: HEALTH; REGULATION**

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 rules and regulations relative thereto, and shall make such inspections, prescribe such penalties, and make such reports as necessary toward that purpose. (Ref. 17-208 RS Neb.)

#### **§4-102: HEALTH; ENFORCEMENT OFFICIAL**

The County Sheriff, as the Quarantine Officer, shall be the Chief Health Officer of the Municipality. It shall be his/her duty to notify the Governing Body and the Board of Health of health nuisances within the Municipality and its zoning jurisdiction. (Ref. 17-208, RS Neb.)

#### **§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. One (1) copy of each of the said pamphlets is filed at the office of the Municipal Clerk and shall be available for public inspection at any reasonable time. (Ref. 18-132, 19-902 RS Neb.)

#### **§4-104: HEALTH; COUNTY HEALTH BOARD**

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.

## Article 2 – Garbage Disposal

### **§4-201: 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.

### **§4-202: 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, paper, rags, or any other litter or debris that is not an immediate hazard to the health of the residents of the Municipality.

### **§4-203: WASTE; DEFINED**

The term "waste" as herein defined shall mean finders, ashes, plaster, brick, stone, sawdust, or sand.

### **§4-204: 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 residents of the Municipality unless the same is kept in receptacles as nearly airtight as may be practical. It shall be unlawful to, mow, throw, sweep, or blow into the streets, alleys, parks, or other public grounds any grass, dirt, paper, nails, 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 Clerk 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. All persons shall have the contents of their garbage cans removed at least once a week. (Ref. 19-2106 RS Neb.) Revised 7/3/07.

### **§4-204.01: SOLID WASTE HAULER FRANCHISE**

Upon approval of any application for a non-exclusive franchise to haul solid waste as set forth herein, the franchisee shall pay to the Village a franchise fee of five hundred dollars (\$500.00) for the first two (2) years of the initial franchise and an additional fee of five hundred dollars (\$500.00) for each year of any extension or continuation thereof; said fees to be payable in advance of the execution and delivery of the franchise agreement or any extension thereof. Revised 4/2/13.

**§4-205: DEAD ANIMALS**

All dead animals shall be immediately removed and buried by the owner of such animals; and if the owner of such animal cannot be found within two (2) hours after discovering the same, then such animal may be removed by the Municipality. Dead animals shall not be buried within the corporate limits of the Municipality, nor within one (1) mile thereof, nor in or above the course of ground water that is used for drinking purposes by the Municipality or its inhabitants. (Ref. 17-207 RS Neb.)

## Article 3 - Nuisances

### **§4-301: NUISANCES; GENERALLY DEFINED**

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 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. (Ref. 18-1720 R5 Neb.)

### **§4-302: NUISANCES; SPECIFICALLY DEFINED**

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

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, pit 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, 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/or the elements, or which is kept or handled in violation of any ordinance of the Municipality.
5. Liquid household waste, human excreta, garbage, butcher trimmings and offal, parts of fish or any waste vegetable or animal matter in any quantity; Provided, nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the Health Officer of the Municipality, nor the dumping of non-putrefying waste in a place and manner approved by the Health Officer be prevented.

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, unlicensed automobiles or parts thereof, or any other waste materials when any of said articles or materials create a condition in which flies or rats may breed or multiply, or which may be a fire danger or which are so unsightly as to depreciate property values in the vicinity thereof.

8. Any unsightly building, billboard, or other structure, or any abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which said 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 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 said 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 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 said places in which said animals are confined, or said premises on which said vegetable or animal matter is located, are maintained and kept in such a manner that foul and noxious odors are permitted to emanate there from, 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. The presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas or other gaseous fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

13. The presence in the outdoor atmosphere of one (1) or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant, or animal life, or property, or the conduct of business.

14. That the practice of Engine Braking within the limits of the Village of Herman, Nebraska or within one (1) mile thereof, is hereby prohibited unless the motor vehicle upon which said Jake Braking is being performed has an adequate muffler system to muffle the noise emitted from the motor vehicle when Engine Braking.(1998-2)

15. All other things specifically designated as nuisances elsewhere in this Code. (Ref. 18-1720 RS Neb.)

#### **§4-303: NUISANCES; 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 Board of Health 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 Board of Health and state that said condition has been declared a public nuisance and such notice shall demand that the condition must be remedied immediately.

If the person receiving the notice has not complied therewith or taken an appeal from the determination of the Board of Health within five (5) days after receipt of certified mail or within five (5) days after date of publication whichever is later, the Board of Health shall notify the Governing Body of such noncompliance 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 Board of Health. 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. 17-207, 18-1720 RS Neb.)

**§4-304: NUISANCES; JURISDICTION**

The Chairperson and County Sheriff shall have the authority to enforce this Municipal Code against all nuisances. The jurisdiction of the Chairperson, County Sheriff, 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.)

**§4-305: NUISANCES; ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL**

In cases of appeal from an action of the Governing Body 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. (Ref. 19-710 RS Neb)

## **Article 4 - Penal Provisions**

### **§4-401: 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 five hundred dollars (\$500.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

### **§4-402: 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 part of the judgment in the case. (Ref. 18-1720, 18-1722 RS Neb.)

## **CHAPTER 5 –TRAFFIC REGULATIONS**

### **Article 1 – Traffic Regulations**

#### **§5-101: DEFINITIONS**

The words and phrases used in this Chapter pertaining to motor vehicles and traffic regulations shall be construed as defined in Neb. Rev. Stat. Chapter 60, Article 6, as now existing or as hereafter amended or transferred, unless the context otherwise requires; and, if not so defined, the common meaning of such words and phrases shall prevail.

#### **§5-102: POLICE; ENFORCEMENT**

The Village Police or County Sheriff's Department is hereby authorized, empowered and ordered to exercise all powers and duties with relation to the management of street traffic and, in the interest of public safety, health and convenience, to direct, control, stop, restrict, regulate, temporarily divert, or exclude the movement of pedestrian, animal and vehicular traffic of every kind in streets and parks and on bridges within the Municipality. The driver of any vehicle shall stop upon the signal of any Police Officer. (Neb. Rev. Stat. §60-683)

#### **§5-103: POLICE; EMERGENCY REGULATIONS**

All Village Law Enforcement Officers are hereby empowered to make and enforce temporary regulations to cover emergencies. (Neb. Rev. Stat. §81-2005)

#### **§5-104: POLICE; REFUSAL TO OBEY**

It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal or direction of a Law Enforcement Officer.

#### **§5-105: POLICE; TRAFFIC OFFICERS**

The Village Board, Village Police or County Sheriff's Department may at any time detail officers, to be known as "Traffic Officers," at street intersections. All Traffic Officers shall be vested with the authority to regulate and control traffic at the intersections to which they are assigned. It shall be their duty to direct the movement of traffic and prevent congestion and accidents. It shall be unlawful for any person to violate any order or signal of any such Traffic Officer, notwithstanding the directive of a stop sign or signal device which may have been placed at any such intersection. (Neb. Rev Stat. §60-680, 60-683)

#### **§5-106: TRUCK ROUTES**

The Village Board may, by resolution, designate certain streets in the Village as truck routes, restricting traffic for vehicles weighing in excess of ten (10) tons. It shall be unlawful for persons operating such vehicles to travel on streets other than those designated for such vehicles unless to pick up or deliver goods, wares or merchandise, and in that event, the operator of such

vehicle shall return to said truck routes as soon as possible in traveling through or about the Village. The Village Board shall cause notices to be posted or shall erect signs indicating the streets so designated as truck routes. (Neb. Rev. Stat. §60-681)

#### **§5-107: ENGINE BRAKING**

It shall be and hereby is determined unlawful for any person in any part of the Village to make or cause to be made loud or disturbing noises with any mechanical device operated by compressed air and used for the purposes of assisting braking on any semi-tractor. Proper notices shall be posted by the Village notifying the public of such prohibition.

#### **§5-108: SIGNS, SIGNALS**

The Village Board may, by resolution, provide for the placing of stop signs or other signs, signals, standards or mechanical devices in any street or alley for the purpose of regulating or prohibiting traffic and parking. Such resolution shall describe the portion of the street or alley wherein traffic is to be regulated or prohibited; details of the regulation or prohibition; the location where such sign, signal, standard or mechanical device shall be placed; and the hours when such regulation or prohibition shall be effective. It shall be unlawful for any person to fail, neglect or refuse to comply with such regulation or prohibition. (Neb. Rev. Stat. §60-6,119)

#### **§5-109: STOP SIGNS**

Every person operating any vehicle, upon approaching any stop sign erected in accordance with ordinances prescribed herein, shall cause such vehicle to come to a complete stop with the front wheels of said vehicle even with said stop sign. (Neb. Rev. Stat. §60-6,123)

#### **§5-110: SIGNS; DEFACING OR INTERFERING WITH**

It shall be unlawful for any person to willfully deface, injure, remove, obstruct or interfere with any official traffic sign or signal. (Neb. Rev. Stat. §60-6,129 to 60-6,139)

#### **§5-111: STOPS; MANDATORY**

All vehicles, before crossing a sidewalk or emerging from a garage, alley or other place, shall come to a complete stop and, after giving sufficient warning, shall proceed slowly and with extreme caution while crossing such sidewalk or leaving such garage, alley or other place. The term "slowly" shall be construed to mean such rate of speed as is reasonable and proper under the circumstances and the condition of the street and amount of traffic thereon.

#### **§5-112: SPEED LIMITS**

No person shall operate a motor vehicle on any Village streets, alleys or other places within the Village limits at a speed greater than twenty five (25) miles per hour within the Village limits, except that no person shall operate a motor vehicle on US Highway Seventy Five (75) (Main Street) at a speed greater than: (1) forty (40) miles per hour from the north corporate

limits to Seventh (7<sup>th</sup>) Street, and (2) thirty (30) miles per hour from Seventh (7<sup>th</sup>) Street to the south corporate limits. In no instance shall a person drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions. (Neb. Rev. Stat. §60-6,185, §60-6,186)

#### **§5-113: TURNING; GENERALLY**

Vehicles turning to the right into an intersecting street shall approach such intersection in the lane of traffic nearest to the right-hand side of the street and must turn the corner as near the right-hand curb as possible to keep between the curb to the right and the center of the intersection of the two (2) streets. The driver of a vehicle intending to turn to the left shall approach such center line of the street, and in turning shall pass as near as possible to the center of the intersection, passing as closely as practicable to the right thereof before turning to the left. For the purposes of this section, the center of the intersection shall mean the meeting point of the medial lines of the streets intersecting one another. (Neb. Rev. Stat. §60-6,159)

#### **§5-114: TURNING; CAUTION**

Before stopping, turning or changing the course of a vehicle, the operator of such vehicle shall see that there is sufficient space to make such movement in safety. If any pedestrian might be affected by such movement, the operator shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, he/she shall give some other unmistakable signal to the drivers of all other vehicles of his/her intention to make such movement.

#### **§5-115: TURNING; "U" TURNS**

No vehicle shall be turned so as to proceed in the opposite direction except at a street intersection. No vehicle shall be turned so as to proceed in the opposite direction at any intersection where an automatic signal is in operation, or where a sign is posted indicating that U turns are prohibited.

#### **§5-116: RIGHT OF WAY; GENERALLY**

1. When two (2) vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right when the paths of such vehicles intersect and there is danger of a collision, unless otherwise directed by a law enforcement officer stationed at the intersection. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. The driver of a vehicle entering a Village street from a private road or drive shall yield the right of way to all vehicles approaching on such streets.

2. The driver of a vehicle on any street shall yield the right of way to a pedestrian crossing such street within any clearly marked crosswalk or at any regular pedestrian crossing at

the end of a block where the movement of traffic is being regulated by traffic officers or traffic direction devices. Every pedestrian crossing a street at any point other than a pedestrian crossing, crosswalk or intersection shall yield the right of way to vehicles upon the street. (Neb. Rev. Stat. §60-6,146 through 60-6,154)

#### **§5-117: RIGHT OF WAY; EMERGENCY VEHICLES**

Upon the approach of any authorized emergency vehicle which is operated on official business and the driver thereof sounds the siren or activates the vehicle's flashing emergency lights, every vehicle within one (1) block of the route of such emergency vehicle shall immediately stop except at the time it is on or crossing a street intersection, in which event such vehicle shall clear the street intersection and then stop. Every vehicle along the route of such emergency vehicle shall immediately move to a position as near the right-hand curb as possible and remain there until such emergency vehicle has passed.

#### **§5-118: POSITION OF VEHICLE ON ROADWAY; GENERALLY**

Upon all streets and highways of sufficient width, the driver of a vehicle shall drive on the right half of the roadway. In passing or meeting other vehicles, drivers shall give each other at least one-half (1/2) of the main traveled portions of the roadway. (Neb. Rev. Stat. §60-6,131)

#### **§5-119: BACKING**

The driver of a parked vehicle about to back up shall give moving vehicles the right of way. While backing, the driver shall exercise unceasing vigilance so as not to injure those behind. (Neb. Rev. Stat. §60-6,169)

#### **§5-120: DRIVING IN SIDEWALK SPACE**

No motor vehicle, including motorcycles or scooters, shall be driven on any sidewalk or within any sidewalk space except on a driveway. (Neb. Rev. Stat. §60-6,178)

#### **§5-121: CARELESS DRIVING**

Any person who drives a motor vehicle in the Village carelessly or without due caution so as to endanger any person or property shall be guilty of careless driving. (Neb. Rev. Stat. §60-6,212)

#### **§5-122: FUNERAL PROCESSIONS**

No vehicle, except police or fire department vehicles when responding to emergency calls or orders, ambulances responding to emergency calls or vehicles carrying United States mail, shall be driven through a funeral procession or cortege except with the permission of a Law Enforcement Officer.

**§5-123: GLASS, POINTED OBJECTS**

No person shall throw, cast, lay or place upon any street any thorns, nails, tacks, glass, bottles, window glass or other articles made of or containing glass, and in case of an accident causing the breaking of any glass upon any street, the owner or person in charge of such glass or the person responsible for such breakage shall at once remove or cause the same to be removed from the street.

**§5-124: OVERLOADING FRONT SEAT OR OBSTRUCTING DRIVER'S VIEW OR DRIVING MECHANISM; PROHIBITED**

No person shall drive a motor vehicle when it is so loaded, or when there is in the front such a number of persons, exceeding three (3), as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over such vehicle. No passenger in a vehicle shall ride in such a position as to interfere with the driver's control over such vehicle.

**§5-125: RIDING OUTSIDE VEHICLE**

No person shall permit any other person to ride on the running board, hood, top, fenders, bumpers or outside step of any motor vehicle; nor shall any person ride on the running board, hood, top, fenders, and bumpers or outside of any motor vehicle.

**§5-126: DRIVING ABREAST**

Two (2) or more vehicles shall not be driven abreast except when passing.

**§5-127: FOLLOWING; DISTANCE**

The operator of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles, traffic conditions and the condition of the street.

**§5-128: MUFFLER**

Every motor vehicle operated within this Village shall be provided with a muffler in good working order to prevent excessive or unusual noise. It shall be unlawful to use a "muffler cut-out" on any motor vehicle upon any street; provided, the provisions of this section shall not apply to authorized emergency vehicles.

**§5-129: LOADS; PROJECTING**

When any vehicle shall be loaded in such a manner that any portion of the load extends more than four (4) feet beyond the rear of the bed or the body of such vehicle, a red flag by day and a red light after sunset shall be affixed at the furthest projection of such load.

**§5-130: LOADS; SPILLING**

All vehicles used for carrying coal, earth, sand, gravel, rock, asphalt, tar or any similar substance shall be so constructed as to prevent the sifting or spilling of any of the contents.

## **Article 2 – Parking**

### **§5-201: DESIGNATION**

The Village Board may by resolution designate any street or portion thereof where vehicles shall be parked parallel with and adjacent to the curb or at an angle so as to have the right front wheel at the curb. (Neb. Rev. Stat. §60-680, 60-6,167)

### **§5-202: AREAS**

The Village Board may, by resolution, set aside and post any street, alley, public way or portion thereof for the parking of any particular kind or class of vehicle. Where the parking of vehicles has been prohibited by resolution, no vehicle prohibited from parking thereon shall stand or be parked adjacent to the curb of said street, alley, public way or portion thereof longer than a period of time necessary to load and unload freight or passengers. (Neb. Rev. Stat. §60-680)

### **§5-203: ALLEYS**

No vehicle shall be parked in any alley except for the purpose of loading or unloading during the time necessary to load or unload, which shall not exceed the maximum limit of one-half (1/2) hour. Every vehicle, while loading or unloading in any alley, shall be parked in such manner as to cause the least obstruction possible to traffic in such alley. (Neb. Rev. Stat. §60-680)

### **§5-204: OBSTRUCTING PUBLIC SIDEWALK**

It shall be unlawful for any person to park a motor vehicle, cause a motor vehicle to be parked or allow a motor vehicle to remain parked in such a position as to block or obstruct all or any portion of a public sidewalk.

### **§5-205: TIME LIMIT**

1. The Village Board may by resolution entirely prohibit or fix a time limit for the parking and stopping of vehicles on any street, public area or district designated by such resolution, and the parking or stopping of any vehicle in any such street, public area or district for a period of time longer than fixed in such resolution shall constitute a violation of this Article. (Neb. Rev. Stat. §60-680)

2. It is unlawful for any person to park or leave unattended any motor vehicle, equipment or trailer upon a public street of the Village for more than forty eight (48) consecutive hours, except where a different maximum time limit is posted. (Res. 2006-3, 6/6/06)

### **§5-206: REMOVAL OF ILLEGALLY PARKED VEHICLES**

Whenever any law enforcement officer shall find a vehicle standing upon a street or alley in violation of any of the provisions of this Article, such individual may remove or have such vehicle removed, or require the driver or other person in charge of the vehicle to move such vehicle to a position off the roadway of such street or alley or from such street or alley. The owner or other person lawfully entitled to the possession of such vehicle may be charged with the reasonable cost for such removal and storage, payable before such vehicle is released. Any such towing or storage fee shall become a security interest in the vehicle prior to all other claims. This fee shall be in addition to any other fees or penalties owed the Village for such vehicle. (Neb. Rev. Stat. §60-6,165, §60-680)

### **§5-207: EMERGENCY VEHICLES**

The provisions of this Article regulating the parking and standing of vehicles shall not apply to authorized emergency vehicles while the driver of such vehicle is operating the same in an emergency in the necessary performance of public duties.

### **§5-208: FIRE STATION AND HYDRANTS**

No vehicle shall be parked within fifteen (15) feet in either direction of any fire hydrant or within twenty (20) feet of the driveway entrance to any fire station. The curb space within such area of fifteen (15) feet in either direction of such fire hydrant shall be painted red to indicate such prohibition. (Neb. Rev. Stat. §60-6,166)

### **§5-209: SCHOOLS, THEATERS**

The Village Board may, by resolution, prohibit the parking or stopping of vehicles at the curb on streets directly in front of any entrance to a school building, fire station, theater or other public building, and if such parking shall be prohibited by resolution, such curbs adjacent to the entrance of said building shall be painted red to indicate such prohibition.

### **§5-210: OBSTRUCTING TRAFFIC**

Except in case of an accident or emergency, no vehicle shall stop within any street intersection or alley entrance, or any location where it obstructs any street, crosswalk or alley entrance. (Neb. Rev. Stat. §60-680)

### **§5-211: SNOW REMOVAL AND MAINTENANCE**

The Village Board, Village Police or County Sheriff shall have the power to order any street or alley, or portion thereof, vacated for weather emergencies or street maintenance. Notice shall be given by personally notifying the owner or operator of a vehicle parked on such street or alley or by posting appropriate signs along such streets or alleys. Any person parking a vehicle in violation of this section shall be subject to the penalties provided in this Chapter, and such vehicle may be removed and parked under the supervision of the Village Board, Village Police

or County Sheriff to a suitable nearby location without further notice to the owner or operator of such vehicle.

## Article 3 – Abandoned Vehicles

(This article adopted in its entirety by Ord. 2006-1, 4/5/06)

### **§5-301: DEFINITIONS**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**“ABANDONED VEHICLE”** means any motor vehicle left unattended:

1. With no number plates affixed thereto, if so required by law, for more than eight (8) hours on any public property.
2. For more than forty eight (48) hours, after the parking of such vehicle shall become illegal, if left on a portion of a public property on which parking is legally permitted.
3. For more than seven (7) days on private property if left initially without permission of the owner, or after the permission of the owner has been terminated.

**“HOBBYIST PERMIT”** means a permit issued by the Municipality to allow the storage or parking of an unlicensed or inoperable motor vehicle for a period not to exceed six (6) months on private property for restoration purposes.

**“INOPERABLE MOTOR VEHICLE”** means any motor vehicle on which the engine, wheels or tires or other parts have been removed, altered damaged or otherwise so treated or allowed to deteriorate that the motor vehicle is incapable of being driven under its own motor power. Such presumption may be rebutted only by showing that the motor vehicle is capable of being driven under its own power.

**“PUBLIC PROPERTY”** means any public right of way, street, highway, alley, park or other State, County, or municipally owned property.

**“UNLICENSED MOTOR VEHICLE”** means any motor vehicle required to be licensed that does not have lawfully affixed thereto an unexpired license plate. Failure to keep a motor vehicle licensed or appropriately stored may result in a thirty (30) day notice being sent to the owner or occupant of the property. The owner or occupant of the property shall provide proof of insurance and registration to the Village Office within the thirty (30) days. Failure to correct the violation may result in the citation being issued by the Village.

**“PRIVATE PROPERTY”** means any which is not included in public property as defined in this section.

### **§5-302: (Repealed 2013)**

**§5-303: VALUE ONE HUNDRED DOLLARS (\$100.00) OR LESS; TITLE VESTS IN VILLAGE**

If an abandoned vehicle, at the time of abandonment, has no license plates of the current license year affixed or valid registration and is of a wholesale value of one hundred dollars (\$100.00) or less, taking into consideration condition of the vehicle, title shall immediately vest in the Village of Herman.

**§5-304: LAW ENFORCEMENT; DUTIES**

1. Except for vehicles governed by Section three (3) below, the Washington County Sheriff shall make an inquiry concerning the last registered owner of each abandoned vehicle in its custody as follows:

- A. An abandoned vehicle, with number plates affixed, to the jurisdiction which issued such license plates; or
- B. An abandoned vehicle with no license plates affixed, to the Department of Motor Vehicles.

2. The Sheriff's Office shall give notice to the last registered owner, if any, that the vehicle in question has been recovered as an abandoned vehicle and that, if unclaimed, it will be sold at public auction after five (5) days from the date such notice was mailed. If the agency described in subsection one (1) of this section also notifies the department that a lien or mortgage exists, such notice shall also be sent to the lien holder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle. Notice required by this subsection shall be either by personal service or by registered mail.

3. Title to such abandoned vehicle, if claimed, shall vest in the Village of Herman five (5) days from the date such notice is mailed, or if the last registered owner cannot be ascertained, when notice of such fact is received.

**§5-305: SALE BY SHERIFF**

The Sheriff shall have the authority to sell at public sale all vehicles after title vests in the Village.

**§5-306: PROCEEDS OF SALES; DISPOSITION**

Any proceeds from the sale of an abandoned vehicle less any expenses incurred by the Village shall be held by the Village without interest, for the benefit of the owner of such vehicle for a period of two (2) years. If not claimed within such two (2) year period, such proceeds shall be paid into the General Fund of the Village.

**§5-307: LAST REGISTERED OWNER LIABLE FOR REMOVAL AND STORAGE COSTS**

The last registered owner of an abandoned vehicle shall be liable to the Village for the cost of removal and storage of such vehicle.

**§5-308: LIABILITY FOR REMOVAL**

Neither the owner, lessee, nor occupant of the premises from which any abandoned vehicle shall be removed, nor the State of Nebraska nor the Village of Herman shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the Village or as a result of any subsequent disposition.

**§5-309: DESTROY, DEFACE OR REMOVE PARTS, UNLAWFUL; EXCEPTIONS**

No person, other than a person authorized by the appropriate Village Officials, shall destroy, deface or remove any part of a vehicle which is left unattended on a street or other public place without license plates affixed or which is abandoned.

**§5-310: UNLAWFUL TO ABANDON A VEHICLE**

It shall be unlawful for any person to abandon a vehicle or cause a vehicle to become an abandoned vehicle.

**§5-311: KEEPING OF UNREGISTERED, WRECKED OR JUNKED VEHICLES UNLAWFUL; EXCEPTIONS**

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 inoperable, wrecked, junked, or partially dismantled vehicle, boat, farm machinery, tractor to remain on such property longer than thirty (30) 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 motor vehicle or trailer which has been unregistered for more than thirty (30) days to remain on such property. A business enterprise operated in a lawful place and manner, shall be allowed three (3) vehicles up to ninety (90) days, when necessary to the lawful operation of such business enterprise. This section shall not apply to a vehicle in an enclosed building, a vehicle on the premises of a farmstead as defined in Neb. Rev. Stat. §15-905 when necessary for the operation of the farmstead, or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner, or a vehicle on the premises of a person who has obtained a hobbyist permit for the restoration of said vehicle.

**§5-312: HOBBYIST PERMIT**

A hobbyist permit for the restoration or repair of up to two (2) non-operating, wrecked, junked, or partially dismantled vehicles on any premises used for residential purposes may be granted to the resident of such premises as follows:

1. Application for the hobbyist permit shall be filed in writing with the Village Clerk on a form provided by the Village and shall contain the name and address of the applicant and the make, model, year, and vehicle identification number of each vehicle to be restored or repaired.
2. The vehicle(s) to be restored or repaired shall be owned by the applicant.
3. The permit shall cover the vehicle(s) only and does not authorize the storage of miscellaneous vehicle parts or junk contained in, on or near the vehicle(s).
4. The fee for such hobbyist permit shall be fifty dollars (\$50.00) per vehicle.
5. All such permits shall expire on the one hundred eightieth (180<sup>th</sup>) day following the date of issuance thereof. The hobbyist permit for the vehicle(s) shall be renewable one (1) time only upon payment of the fifty dollars (\$50.00) per vehicle fee.

**§5-313: VIOLATIONS; PENALTY**

Any person violating any of the provisions of Sections 5-301 through 5-312, except for Section 5-309, shall be guilty of a misdemeanor, except that each person so convicted shall be fined in a sum of not less than one hundred dollars (\$100.00) for the first (1<sup>st</sup>) offense, not less than two hundred dollars (\$200.00) for the second (2<sup>nd</sup>) offense, and not less than three hundred dollars (\$300.00) for the third (3<sup>rd</sup>) offense and each offense thereafter. Upon conviction thereof, no person shall be fined in a sum not to exceed five hundred dollars (\$500.00) or be imprisoned in the County Jail for a period of not exceeding six (6) months, or both said fine and imprisonment. Each day that a violation of any of the provisions of this section continues shall constitute a distinct offense and shall be punishable as such.

**Article 4 – Bicycles, Motorcycles, Mini-Bikes,  
Mopeds and Other Conveyances**

**§5-401: BICYCLES**

1. No person shall ride or propel a bicycle on a street or other public highway with another person on the handlebars or in any position in front of the operator.

2. No bicycle shall be ridden faster than is reasonable and proper, but every bicycle shall be operated with reasonable regard to the safety of the operator and any other persons upon the streets and public highways.

3. Bicycle riders shall observe all traffic signs and stop at all stop signs.

4. No bicycle shall be permitted on any street or other public highway from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise without a firmly attached headlight which is visible under normal atmospheric conditions from the front thereof for not less than five hundred (500 feet). The said headlight shall emit a clear, white light and shall be turned on when such bicycle is ridden during the hours stated above. Such bicycle shall also be equipped with a yellow or red light reflector attached to and visible five hundred (500 feet) feet from the rear thereof.

5. No person shall ride or propel a bicycle upon any street or other public highway abreast of more than one (1) other person riding or propelling a bicycle.

6. Every person riding or propelling a bicycle upon any street or other public highway shall observe all traffic rules and regulations applicable thereto, turning only at intersections, signaling for all turns, riding at the right-hand side of the street or highway and passing to the left when overtaking vehicles and individuals that are slower moving.

7. No person shall park a bicycle on any sidewalk unless a bicycle stand is located on said sidewalk. (Neb. Rev. Stat. §60-6,315, 60-6,317, 60-6,318)

**§ 5-402: CONVEYANCES; CLINGING TO MOTOR VEHICLE**

No person riding upon any bicycle, roller skates, mini-bike, skateboard, scooter, motorcycle, coaster, sled, skis or toy vehicle shall attach the same or himself/herself to any moving vehicle upon any roadway, and it shall be unlawful for the driver of any vehicle to suffer or permit any person traveling upon any bicycle, roller skates, mini-bike, motorcycle, coaster, sled, skis or toy vehicle to cling to or attach himself/herself or his/her bicycle, roller skates, mini-bike, motorcycle, coaster, sled, skis or toy vehicle to such vehicle so driven and operated by him/her. (Neb. Rev. Stat. §60-6,316)

### **§5-403: MOTORCYCLES; OPERATION**

1. Any person who operates a motorcycle shall have all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this Chapter.

2. Any person who operates a motorcycle shall ride only upon a permanent and regular seat attached thereto and shall not carry any other person, nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the motorcycle to the rear or side of the operator.

3. Any person shall ride upon a motorcycle only while sitting astride the seat, facing forward.

4. No person shall operate a motorcycle while carrying any package or other article which prevents him/her from keeping both hands on the handlebars.

5. No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

6. A motorcycle shall be entitled to full use of a traffic lane of any highway, and no vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of such lane. This subsection shall not apply to motorcycles operated two (2) abreast in a single lane.

7. The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

8. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

9. Motorcycles shall not be operated more than two (2) abreast in a single lane.

10. This section shall not apply to law enforcement officers in the performance of their official duties. (Neb. Rev. Stat. §60-6,307, 60-6,308)

### **§5-404: MOTORCYCLES; LIGHTS**

No person shall ride a motorcycle upon the streets, alleys or highways from one half (1/2) hour after sunset to one half (1/2) hour before sunrise unless the same shall be equipped with: (A) at least one (1) and not more than two (2) headlights, plainly visible from the front; and (B) a light on the rear exhibiting a red light visible under normal atmospheric conditions from a distance of at least five hundred (500) feet to the rear thereof; provided, said lamps shall comply with the requirements and limitations of State statutes.

**§5-405: MINI-BIKES; UNLAWFUL OPERATION**

It shall be unlawful for any person to operate a mini-bike upon any street or highway within the corporate limits of the Village. For purposes of this article, "mini-bike" shall mean a two (2)wheeled motor vehicle which has a total wheel and tire diameter of less than fourteen (14) inches or an engine rated capacity of less than forty five (45) cubic centimeters displacement, or any other two (2)wheeled motor vehicle primarily designed by the manufacturer for off-road use only. (Neb. Rev. Stat. §60-6,353)

**§5-406: MINI-BIKES; EMERGENCIES AND PARADES**

Mini-bikes shall be exempt from the provisions of this article during any public emergency or while being used in parades by regularly organized units of any recognized charitable, social, educational or community service organization. (Neb. Rev. Stat. §60-6,348)

**§5-407: MINI-BIKES; PUBLIC LANDS**

Mini-bikes shall be prohibited upon the public lands owned by the Village, except where allowed by resolution of the Village Board. (Neb. Rev. Stat. §60-6,352)

**§5-408: MINI-BIKES; TRAFFIC LAWS INAPPLICABLE**

The provisions of Chapter 60, Articles 1, 3, 4, and 5 of the Nebraska Revised Statutes shall not be applicable to the owners and operators of any mini-bike. (Neb. Rev. Stat. §60-6,347)

**§5-409: MOPEDS; DEFINED**

For the purposes of this article, "moped" shall mean a bicycle with fully operative pedals for propulsion by human power, an automatic transmission and a motor with a cylinder capacity not exceeding fifty (50) cubic centimeters, which produces no more than two (2) brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty (30) miles per hour on level ground. mopeds, their owners and their operators shall be subject to Chapter 60, Article 4, Nebraska Revised Statutes and amendments thereto, but shall be exempt from the requirements of Chapter 60, Articles 1, 3, and 5, Nebraska Revised Statutes and amendments thereto. (Neb. Rev. Stat. §60-6,309)

**§5-410: MOPEDS; OPERATOR'S LICENSE REQUIRED**

No person shall operate a moped upon the streets, alleys or public highways of the Village unless such person has a valid motor vehicle operator's license or a valid school or learner's permit. (Neb. Rev. Stat. §60-6,310)

**§5-411: MOPEDS; TRAFFIC REGULATIONS APPLICABLE**

Any person who rides a moped upon a roadway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle under Chapter 5 of this code

and Neb. Rev. Stat. § 39-601 to 39-6,122, except for those provisions of such sections which by their nature can have no application. Such regulations applicable to mopeds shall apply whenever a moped shall be operated upon any street, alley or public highway within the Village or upon any path set aside by the Department of Roads or local authority for the use of mopeds. Notwithstanding any established maximum speed limits in excess of twenty five (25) miles per hour, no person shall operate any moped at a speed in excess of thirty (30) miles per hour. (Neb. Rev. Stat. §60-6,311)

#### **§5-412: MOPEDS; OPERATION**

1. Any person who operates a moped shall ride only upon a permanent and regular seat attached thereto and shall not carry any other person, nor shall any other person ride on a moped unless such moped is designed by the manufacturer to carry more than one (1) person.

2. Any person shall ride a moped only while sitting astride the seat, facing forward. Further, no person shall operate a moped while carrying any package, bundle or other article which prevents him/her from keeping both hands on the handlebars. No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the moped or the view of the operator. No person who rides upon a moped shall attach himself/herself or the moped to any other vehicle on a roadway. (Neb. Rev. Stat. §60-6,312)

#### **§5-413: MOPEDS; USE OF TRAFFIC LANES**

A moped shall be entitled to full use of a traffic lane of any street or highway with an authorized speed limit of forty five (45) miles per hour or less and no vehicle shall be operated in such a manner as to deprive any moped of the full use of such lane. This section shall not apply to mopeds or motorcycles operated two (2) abreast in a single lane. No person shall operate a moped between lanes of traffic or between adjacent lines or rows of vehicles. Mopeds shall not be operated more than two (2) abreast in a single lane. Any person who operates a moped on a roadway with an authorized speed limit of more than forty five (45) miles per hour shall ride as near to the right side of the roadway as practicable and shall not ride more than single file. (Neb. Rev. Stat. §60-6,313)

#### **§5-414: MOPEDS; EQUIPMENT**

Any moped which carries a passenger shall be equipped with footrests for such passenger. No person shall operate any moped with handlebars more than fifteen (15) inches above the mounting point of the handlebars. (Neb. Rev. Stat. §60-6,312)

## **Article 5 – Snowmobiles and All-Terrain Vehicles**

### **§5-501: SNOWMOBILES; EQUIPMENT**

Every snowmobile operated within the Village shall be registered with the State of Nebraska as required by law and shall be equipped as required by State Statutes.

### **§5-502: SNOWMOBILES; UNLAWFUL ACTS**

It shall be deemed a misdemeanor for any person to allow a snowmobile, either owned or operated by him/her, to be operated:

1. Within the Village unless weather conditions are such that it provides the only practicable method of safe vehicular travel, or said snowmobile is engaged in responding to an emergency.

2. At a rate of speed greater than reasonable or proper under the surrounding circumstances.

3. In a careless, reckless or negligent manner so as to endanger person or property.

4. Without a lighted headlight and taillight when such would be required by conditions.

5. In any tree nursery or planting in a manner which damages or destroys rowing stock.

6. Upon any private lands without first having obtained permission of the owner, lessee or operator of such lands. (Neb. Rev. Stat. §60-6,337)

### **§5-503: SNOWMOBILES; STREETS**

The operation of snowmobiles on any Village street or other public property owned by the Village, except in times of a snow emergency as defined herein is prohibited.

“SNOW EMERGENCY” is defined to be that time during and immediately following snowfall within the Village when two (2) wheel drive vehicular travel is not possible and the Village snow removal crew has not commenced removal of snow from Village streets and alleys.

### **§5-504: SNOWMOBILES; REGISTRATION**

All snowmobiles used for transportation purposes during times of snow emergency shall be registered with the State of Nebraska as required by law and shall be equipped with at least one (1) headlight, one (1) taillight, reflective material of a minimum area of sixteen (16) square inches mounted on each side forward of the handlebars, and with brakes as prescribed by the Department of Motor Vehicles. In addition, all laws applicable to the operation of other motor vehicles shall apply to snowmobiles except those relating to required equipment and those which, by their nature, have no application.

**§5-505: ALL-TERRAIN VEHICLES**

A. For purposes of this section:

“**ALL-TERRAIN VEHICLE**” means any motorized off-highway vehicle which (a) is fifty (50) inches or less in width, (b) has a dry weight of nine hundred pounds (900 lbs) or less, (c) travels on three (3) or more low-pressure tires, (d) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one (1) passenger, (e) has a seat or saddle designed to be straddled by the operator, and (f) has handlebars or any other steering assembly for steering control. (Neb. Rev. Stat. 60-6,355)

“**STREET**” OR “**HIGHWAY**” means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. (Neb. Rev. Stat. 60-624)

B. An all-terrain vehicle may be operated on streets and highways within the corporate limits of the Village only if the operator and the vehicle comply with the provisions of this section.

C. An all-terrain vehicle may be operated only between the hours of sunrise and sunset and shall not be operated at a speed in excess of twenty five (25) miles per hour. When operating an all-terrain vehicle as authorized in subsection (B) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five (5) feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty (30) square inches and shall be day-glow in color.

D. Any person operating an all-terrain vehicle as authorized in subsection (B) of this section shall have:

1. A valid Class O operator’s license or a farm permit as provided in Neb. Rev. Stat. 60-4,126; and

2. Liability insurance coverage for the all-terrain vehicle while operating the all- terrain vehicle on a street or highway. The person operating the all-terrain vehicle shall provide proof of such insurance coverage to any Peace Officer requesting such proof within five (5) days of such a request.

E. All-terrain vehicles may be operated without complying with subsections (C) and (D) of this section on streets and highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the State.

F. An all-terrain vehicle shall not be operated on any controlled-access highway with more than two (2) marked traffic lanes, and the crossing of any controlled-

access highway with more than two (2) marked traffic lanes shall not be permitted. Subsections (B) through (D) and (G) of this section authorize and apply to operation of an all-terrain vehicle only on a street or highway other than a controlled-access highway with more than two (2) marked traffic lanes.

G. Subject to subsection (F) of this section, the crossing of a street or highway shall be permitted by an all-terrain vehicle without complying with subsections (C) and (D) of this section only if:

1. The crossing is made at an angle of approximately ninety (90) degrees to the direction of the street or highway and at a place where no obstruction prevents a quick and safe crossing;
2. The vehicle is brought to a complete stop before crossing the shoulder or roadway of the street or highway;
3. The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;
4. In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and
5. Both the headlight and taillight of the vehicle are on when the crossing is made.

H. Noise:

1. Every all-terrain vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise.
2. The use of a cutout, bypass, or similar muffler elimination device, is prohibited on any all-terrain vehicle. (Neb. Rev. Stat. 60-6,356) (Ord. No. 2008-1, 5/6/08)

### **§ 5-506: GOLF CARTS**

A. For purposes of this section:

**“GOLF CART”** means any motorized, gas or electric vehicle which (a) is sixty (60) inches or less in width, (b) has a dry weight of nine hundred (900) pounds or less, (c) travels on three (3) or more low-pressure tires, (d) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one (1) passenger, no more than two (2) passengers (e) bench seat .

**“STREET” OR “HIGHWAY”** means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. (Neb. Rev. Stat. 60-624)

B. A Golf Cart may be operated on streets and highways within the corporate limits of the Village only if the operator and the vehicle comply with the provisions of this section.

C. A Golf Cart may be operated only between the hours of sunrise and sunset and shall not be operated at a speed in excess of twenty five (25) miles per hour. When operating a Golf Cart as authorized in subsection (B) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five (5) feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty (30) square inches and shall be Day-Glow in color.

D. Any person operating a Golf Cart as authorized in this section shall have:

1. A valid Class O operator's license or a farm permit as provided in Neb. Rev. Stat. 60-4,126; and
2. Liability insurance coverage for the Golf Cart while operating the Golf Cart on a street or highway. The person operating the Golf Cart shall provide proof of such insurance coverage to any Peace Officer requesting such proof within five (5) days of such a request.

E. Golf Carts may be operated without complying with subsections (C) and (D) of this section on streets and highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the State.

F. A Golf Cart shall not be operated on any controlled-access highway with more than two (2) marked traffic lanes, and the crossing of any controlled-access highway with more than two (2) marked traffic lanes shall not be permitted. Subsections (B) through (D) and (G) of this section authorize and apply to operation of a Golf Cart only on a street or highway other than a controlled-access highway with more than two (2) marked traffic lanes.

G. Subject to subsection (F) of this section, the crossing of a street or highway shall be permitted by a Golf Cart without complying with subsections (C) and (D) of this section only if:

1. The crossing is made at an angle of approximately ninety (90) degrees to the direction of the street or highway and at a place where no obstruction prevents a quick and safe crossing;
2. The vehicle is brought to a complete stop before crossing the shoulder or roadway of the street or highway;
3. The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;

4. In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

5. Both the headlight and taillight, if so equipped, of the vehicle are on when the crossing is made.

**§5-507: ELECTRIC WHEELCHAIRS/ MOBILITY SCOOTERS**

A. For purposes of this section:

“**MOTORIZED INDIVIDUAL TRANSPORTATION DEVICES**” shall mean those special vehicles limited to persons who require assistance because of physical infirmity in their personal transportation with such devices being limited to the capacity of carrying or transporting a single individual.

B. Operations and limitations:

Motorized carts may be operated within the corporate limits of the village by:

(1) Those persons who are sixteen (16) years of age or older and have a valid motor vehicle driver's license.

(2) All operators of motorized carts shall abide by all traffic regulations applicable to vehicular traffic.

(3) Motorized carts shall be operated during daylight hours only.

(4) Motorized carts may not traverse streets and highways under the jurisdiction of the state department of transportation. Motorized carts may cross these streets to access other streets at street intersections only.

(5) Motorized carts shall not be operated on any street on which the speed limit exceeds thirty five (35) mph.

(6) The bicycle safety flag shall be triangular in shape with an area of not less than thirty (30) square inches and shall be day-glow in color.

## **Article 6 – Penal Provision**

### **§5-601: VIOLATION; PENALTY**

Any person, firm, association or corporation violating any of the provisions of Chapter 5 hereof for which no other penalty is imposed shall, upon conviction, be deemed guilty of a misdemeanor and fined in an amount not more than five hundred dollars (\$500.00). Each day's maintenance of the same shall constitute a separate offense and may be prosecuted as such.

## CHAPTER 6 - MISDEMEANORS

### Article 1 - General Offenses

#### **§6-101: PROHIBITED FENCES**

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

#### **§6-102: RAISING OR PRODUCING STAGNANT WATER**

It shall be unlawful for any person to build, erect, continue or keep up any dam or other obstruction in any river or stream of water and thereby raise an artificial pond, or produce stagnant waters, which shall be manifestly injurious to the public health and safety. (Neb. Rev. Stat. §28-1303)

#### **§6-103: OBSTRUCTION OF WATER FLOW**

It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe or hydrant. (Neb. Rev. Stat. §17-555, §17-970)

#### **§6-104: OBSTRUCTION OF PUBLIC WAYS**

It shall be unlawful for any person to erect, maintain or suffer to remain on any street or public sidewalk a stand, wagon or other obstruction inconvenient to or inconsistent with public use of the same. (Neb. Rev. Stat. §17-555, §17-557, §39-703, §39-704)

#### **§6-105: DISCHARGE OF FIREARMS**

It shall be unlawful for any person, except an officer of the law in the discharge of his/her official duty, to fire or discharge any gun, pistol, or other fowling piece within the Village; provided, nothing herein shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have written permission from the Village Board. (Ref. 17-556 RS Neb.)

#### **§6-106: DISCHARGE OF SLINGSHOTS, AIR GUNS, BB GUNS**

It shall be unlawful for any person to discharge a slingshot, air gun, BB gun, bow and arrow, or the like loaded with rock or other dangerous missiles at any time or under any circumstances within the Village. (Ref. 17-556 RS Neb.)

#### **§6-107: LITTERING**

1. Any person who deposits, throws, discards, or otherwise disposes of any litter on any public or private property, or in any waters, commits the offense of littering unless:

A. Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or

B. The litter is placed in a receptacle or container installed on such property for such purpose.

“LITTER” as used in this section means all rubbish, refuse, waste material garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind and description, but does not include the waste or primary process of farming or manufacturing.

“WASTE MATERIAL” as used in this section shall mean any material appearing in a place or in a context not associated with that material's function or origin.

2. Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle or watercraft in violation of this section, the operator of such motor vehicle or watercraft commits the offense of littering. (Ref. 17-123.01, 28/-523 RS Neb.)

#### **§6-107.01: INJURY TO PARK PROPERTY**

It shall be unlawful for any person to maliciously or willfully cut down, injure or destroy any tree, plant or shrub within any municipal park in the Village. It shall be unlawful for any person to injure or destroy any sodded or planted area, any building, structure, equipment, fence, bench, table or any other property of the Village parks and recreational areas. It shall be unlawful for any person to drive any motor vehicle upon the grassed areas of any municipal park. No person shall deposit any waste or litter in the Village parks or upon other public grounds, which includes dumping of trash, garbage, paper, cans, bottles or any other type of litter. No person shall break any glass bottles or glass objects within the municipal parks or on public grounds.

#### **§6-108: SHOOTING HIGHWAY SIGNS, MARKERS OR NOTICES**

It shall be unlawful for any person to willfully or maliciously shoot upon the public highway and injure, deface, damage or destroy any signs, monuments, road markers, traffic control or surveillance devices or other public notices lawfully placed upon said highways. (Ref. 60-6,130 RS Neb.)

#### **§6-109: REMOVAL AND POSSESSION OF HIGHWAY SIGNS, MARKERS OR NOTICES**

It shall be unlawful for any person, other than those authorized to do so, to remove any sign, traffic control or traffic surveillance device placed along a public street, road or highway for traffic control, warning or informational purposes. Moreover, it shall be unlawful for any person to possess such a sign or device which has been removed in violation of this Section. (Ref. 60-6,130 RS Neb.)

**§6-110: OBSTRUCTING ENTRANCE OF FIRE STATION**

It shall be unlawful for any person, firm or corporation to place or allow to be placed any item whatsoever that may obstruct the entrance to any fire station, provided, signs shall be placed conspicuously to indicate the location of any fire station.

**§6-111: TRESPASSING; INJURY TO PLANTS; LOITERING**

It shall be unlawful for any person to trespass upon any private grounds within the Village, or to break, cut, or injure any tree, shrub, plant, flower, or grass growing thereon, or without the consent of the owner or occupant to enter upon an improved lot or grounds occupied for business or residence purposes and to loiter about the same. (Am. Ord. No. 692, 11/16/99)

**§6-112: APPLIANCES IN YARD**

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

**§6-113: DISORDERLY CONDUCT**

It shall be unlawful for any person to engage in conduct or behavior which disturb the peace and good order of the Village by clamor or noise, intoxication, drunkenness, fighting, using of obscene or profane language in the streets or other public places, or is otherwise indecent or disorderly conduct or lewd or lascivious behavior. (Ref. 17-129, 17-556 RS Neb.)

**§6-114: REFUSING TO ASSIST OFFICER**

It shall be unlawful for any person to refuse to assist any Law Enforcement Officer when lawfully requested to do so. (Ref. 28-728 RS Neb.)

**§6-115: RESISTING OFFICER**

It shall be unlawful for any person to resist any who is in the lawful performance of duties. (Ref. 28-729 RS Neb.)

**§ 6-116: CURFEW**

1. It shall be unlawful for any minor under the age of sixteen (16) years to ride in or operate any vehicle in or upon any street, alley or other public place or to loiter, wander, stroll, loaf, play or be in or upon any of the streets, alleys or other public places, places of amusement and entertainment, vacant buildings or vacant lots of the Village between the hours of 8:00 P.M and 5:00 A.M. of the following day, Sunday through Thursday, and between 9:00 P.M. and 5:00 A.M. of the following day, Friday and Saturday, unless such person is accompanied by a parent, guardian or other adult person having the legal care and custody of said minor person or unless

the minor person is engaged in lawful employment or is upon an emergency errand or legitimate business directed by his/her parents, guardian or legal custodian, except as hereinafter provided.

2. When an activity of the kind normally attended by minors under sixteen (16) years of age terminates after or less than one (1) hour prior to 10:00 P.M., the curfew shall commence one (1) hour after the termination of such activity.(Neb. Rev. Stat. §17-207, 17-505) (Am. Ord. 2004-3, 6/1/04)

#### **§6-117: WINDOW PEEPING**

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

#### **§6-118: MALICIOUS DESTRUCTION OF PROPERTY**

It shall be unlawful for any person within the corporate limits to purposely, willfully, or maliciously injure in any manner, or destroy any real or personal property of any description belonging to another.

#### **§6-119: DISTURBING THE PEACE**

It shall be unlawful for any person to intentionally disturb the peace and quiet of any person, family or neighborhood. (Ref. 28-1322 RS Neb.)

#### **§6-120: INJURY TO TREES**

It shall be unlawful for any person to purposely or carelessly, and without lawful authority, cut down, carry away, injure, break down, or destroy any fruit, ornamental, shade or other tree or trees standing or growing on any land belonging to another person or persons or on any public land in the corporate limits. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by it, shall make an application to the Village Board to do so, and the written permit of the Village Board in accordance with its decision to allow such an action shall constitute the only lawful authority on the part of the company to do so. (Ref. 17-555, 28-519 RS Neb.)

#### **§6-121: DISEASED, DYING OR DEAD TREES; ELM VARIETIES**

1. 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 Village, including trees of the species and varieties of elm, Zelkova, and Planera that are in a diseased, dying, or dead condition or that may serve as a breeding place for the European elm bark beetle, Scolytus multistriatus, or other disease-carrying insects. Such dead and diseased trees shall be removed from the private property on which they are located upon notice by the

Village. For the purpose of carrying out the provisions of this section, any person designated by the Village Board shall have the authority to enter on private property to inspect the trees thereon.

2. In the event that the trees are diseased or dead, notice shall be given to the owner of the property by mail or personal service and such notice shall allow the said owner ten (10) days to remove and burn the said tree or trees. In the event that the owner is a nonresident, notice shall be made by publication in a newspaper of general circulation, or by mail if the name and address is known. The person charged with the removal and burning may enter into an agreement with the Village that such work be accomplished by Village personnel and the expense and interest shall be declared to be a lien upon such property from the time the same becomes due until paid.

3. If the owner fails, neglects, or refuses to enter into such an agreement, or to remove the trees, any person designated by the Village Board may enter upon the property and proceed to direct the removal and burning of the trees and the cost thereof shall be chargeable to the property owner. If the owner fails to reimburse the Village after being properly billed, the costs shall be assessed against the property and certified by the Village Clerk to the County Treasurer to be collected in the manner prescribed by law. In the event the property owner is a nonresident of the County in which the property lies, the Village 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 nonresident 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. Failure to remove and burn the said trees shall be deemed to be a misdemeanor. (Ref. 18-1720, 28-1321 RS Neb)

## Article 2 - Dogs

### **§6-201: OWNER DEFINED**

Any person who shall harbor or permit any dog to be present for ten (10) days or more in or about his/her house, store or enclosure, or allow to remain to be fed, shall be deemed liable for all penalties herein described. (Ref. Neb. Rev. Stat. '54-606, 71-4401 (Ord. No. 2007-1))

### **§6-202: LICENSING OF DOGS**

A. Any person who shall own, keep or harbor a dog over the age of six (6) months within the Village shall, within thirty (30) days after acquisition of the said dog, acquire a license for each such dog annually by or before the first (1<sup>st</sup>) day of April, of each year. The said tax shall be delinquent from and after April tenth (10<sup>th</sup>); provided, the possessor of any dog brought into or harbored within the corporate limits subsequent to April first (1<sup>st</sup>) 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 ten (10) days thereafter. After the ten (10)day grace period allowed herein, there shall be a penalty of five dollars (\$5.00) on the licenses subsequently obtained. Licenses shall be issued by the Village Clerk upon the payment of a license fee in an amount set by resolution of the Village Board. Such resolution shall be on file at the office of the Clerk. When issued, 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 the application is made and upon printed forms provided for such purpose, his/her name and address and the name, breed, color and sex of each dog owned and kept by him/her. A certificate that the dog has had a rabies shot, effective for the ensuing year of the license, shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown.

B. Upon payment of the license fee, the Village Clerk shall issue to the owner of a dog a license certificate and a metallic tag for each dog so licensed. The metallic tag shall be properly attached to the collar or harness of any dog so licensed and shall entitle the owner to keep or harbor the said dog until April tenth (10<sup>th</sup>) following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag issued in accordance with the provisions herein, the Clerk shall issue a duplicate or new tag for the balance of the year and may charge and collect a fee set by resolution of the Village Board for each such duplicate or new tag so issued. All license fees and collections shall be immediately credited to the General Fund. It shall be the duty of the Clerk to issue tags of a suitable design that are different in appearance each year. (Ref. Neb. Rev. Stat. '17-526, 54-603, 71-4412)

### **§6-203: REMOVAL OF TAGS**

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

#### **§6-204: UNLICENSED DOGS**

All dogs found running at large upon the streets and public grounds of the Village without a license tag affixed as required in this article is hereby declared a public nuisance and shall be impounded by the Animal Control Officer or Sheriff as provided herein.

#### **§6-205: WRONGFUL LICENSING**

It shall be unlawful for the owner, keeper or harbinger of any dog to permit or allow such dog to wear any license, metallic tag or other Village identification than that issued by the Village Clerk for dogs, nor shall the owner, keeper or harbinger wrongfully and knowingly license an unspayed female dog with a license prescribed for a male or spayed female dog.

#### **§6-206: BARKING AND OFFENSIVE DOGS PROHIBITED**

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 or chases pedestrians, bicycles, motor vehicles, or riders of horses while they are on any public sidewalks, streets or alleys in the Village; provided, the provisions of this section shall not be constructed to apply to any Village dog shelter. Upon the written complaint of one (1) or more affected persons filed with the Village 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 Animal Control Officer or Sheriff shall investigate the complaints and, if in his/her opinion the situation warrants, shall notify the owner to silence and restrain such dog.

#### **§6-207: DOGS RUNNING AT LARGE; DESTRUCTION; PENALTY**

"**RUNNING AT LARGE**" shall mean any dog found off the premises of the owner and not under the control of the owner or a responsible person, either by leash, cord, chain, wire, rope, cage or other suitable means of physical restraint. It shall be unlawful for the owner of any dog to suffer or permit such dog to run at large within said Village, and every dog found running at large in violation hereof is declared to be a public nuisance and may be picked up and disposed of by the Animal Control Officer or Sheriff. Any person who permits his/her dog to run at large within the confines of the Village is hereby deemed to be guilty of a misdemeanor and, upon conviction thereof, shall be fined no more than five hundred dollars (\$500.00) and shall pay the costs of prosecution. This penalty shall be in addition to any other penalties prescribed by this article, either against the owner or the particular dog.

#### **§6-208: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; DEFINITIONS**

(1) No person shall own, keep, harbor or allow to be in or upon any premises occupied by him or under his charge or control any dangerous or potentially dangerous dog without said dog being confined so as to protect the public from injury. Any law enforcement officer, animal control officer or other authority designated by the Village Board is authorized to kill such dog if found running at large. The prudent use of firearms by any such officer for this purposes or for

any purpose required by this section shall not be considered a violation of this code or other ordinances of the Village.

(2) “Dangerous dog” shall be defined as one who meets one or more of the following conditions:

- (a) Has killed a human being;
- (b) Has inflicted injury on a human being that requires medical treatment;
- (c) Has killed a domestic animal without provocation; or
- (d) Has been previously determined to be a potentially dangerous dog by an animal control authority, the owner has received notice from an animal control authority or an animal control officer of such determination, and the dog inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals.

(3) “Potentially dangerous dog” shall be defined as one who meets one or more of the following conditions:

(a) Any dog that, when unprovoked:

(1) Inflicts an injury on a human that does not require medical treatment, or injures a domestic animal(s) either on public or private property, or

(2) Chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or

(b) Any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animal(s).

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

(5) Definitions for the purpose of this section:

“**LAW ENFORCEMENT OFFICER**” or “**ANIMAL CONTROL OFFICER**” shall mean a person authorized to enforce the animal control laws of the Village including any active police officer or animal control officer and the duties of said law enforcement officer shall include the

control of animal(s), or seizure and impoundment of animal(s) and shall include any state or local law enforcement or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal(s).

“DOMESTIC ANIMAL” shall mean a cat, a dog, or livestock.

“MEDICAL TREATMENT” shall mean treatment administered by a physician or other licensed health care professional that results in sutures or surgery or treatment for one or more broken bones.

#### **§6-209: JUDICIALLY OR ADMINISTRATIVELY EXCLUDED DOGS**

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

#### **§6-210: IMPOUNDMENT OF DOGS DURING ENFORCEMENT PROCEEDINGS**

(1) If there is reasonable cause shown that the offending dog under Section 6-208 and/or 6-209 may constitute a hazard to the safety of the public at large during the pendency of any action commenced thereunder, the court may order such dog impounded pending the outcome of such proceedings. Any person who owns, keeps, harbors, maintains, or controls any dog involved in such impoundment shall pay all expenses to the Village, including shelter, food, veterinary expenses, boarding, or other expenses necessitated by the impoundment of the dog for the protection of the public and other expenses as may be required. The Village may require such person, prior to expiration of ten (10) days after the date of impoundment, to pay an amount sufficient to pay all reasonable expenses incurred in caring and providing for the dog, including estimated medical care, for thirty (30) days, inclusive of the date on which the dog was impounded. If such payment is not made prior to expiration of such ten (10) day period, the dog shall become the property of the Village to be disposed of as the Village deems appropriate. Such payment shall be required for each succeeding thirty (30) day period. If any such payment is not made prior to the end of each succeeding thirty (30) day period, the dog shall become the property of the Village to be disposed of as the Village deems appropriate.

(2) The amount of the payment shall be determined by the Village based on the current rate for board at the animal shelter and the condition of the dog after its examination by a veterinarian acting for the Village. Any such payment received by the Village in excess of the amount determined by the Village to be due for the board and care of the dog shall be refunded by the Village upon expiration of the order of impoundment. Notwithstanding the foregoing, if the owner or custodian is found not guilty in any legal proceeding brought under this Section, the owner or custodian shall only be required to pay the veterinary expenses and one-half (1/2) of the board and care fees determined by the Village to be due, unless waived.

(3) Notwithstanding the foregoing, if it is determined by a veterinarian acting for the Village that such dog is diseased or disabled beyond any useful purpose, the dog shall immediately become the property of the Village to be humanely disposed of as the Village

deems appropriate.

**§6-211: POTENTIALLY DANGEROUS DOG; DECLARATION**

(1) The Village shall initiate administrative proceedings to declare a dog to be potentially dangerous if it meets the definition of “potentially dangerous dog” under Section 6-208. The Village shall provide written notice of such declaration to the dog’s owner either by regular mail to the owner’s last known address or to the owner personally. The notice shall contain:

- (a) The name and address of the owner whose dog is subject to such declaration;
- (b) The name, description and license number of the dog that is subject to such declaration;
- (c) A description of the facts which form the basis of such declaration;
- (d) A copy of all applicable code sections herein and state that noncompliance will result in an owner being declared a reckless owner by the Village;
- (e) Effective date of the declaration, which shall be not less than ten (10) days after the date of mailing or personal service of the notice; and
- (f) Notification that an appeal may be filed within ten (10) days of the date of mailing or personal service of the notice, if the owner objects to such declaration,

(2) An owner whose dog is declared to be a potentially dangerous dog shall be required to comply with Section 6-214 immediately; Sections 6-212 and 6-215 within thirty (30) days of the date of declaration; and Section 6-213 within ninety (90) days of the effective date of the declaration, unless a written appeal is filed with the Village; provided, noncompliance with any of the sections set forth above in this paragraph shall result in the owner being declared a reckless owner by the Village under Section 6-221.

(3) An appeal of such a declaration shall be heard at a hearing by the Village Police Committee within ten (10) days of the date of the filing of a written appeal and shall provide an opportunity for the owner to appear and offer evidence to dispute the declaration. The filing fee for each appeal shall be two hundred dollars (\$200.00) paid to the Village at the time of filing the appeal. A decision to affirm or reverse such decision shall be entered within ten (10) days of the date of the hearing.

(4) An owner may request termination of the declaration if there are no additional incidents of the type specified in Section 6-208(3) for at least forty eight (48) months following the date of the declaration. Such request for termination shall be made in writing and shall be heard by the Village Police Committee within thirty (30) days of the date of the filing of the written request for termination. Said hearing shall provide an opportunity for the owner to appear and offer evidence to support termination of the declaration. The owner must provide written documented evidence that the dog’s behavior has changed due to environment, health, age,

training, neutering or other relevant factors. The filing fee for each request for termination shall be two hundred dollars (\$200.00) and shall be paid to the Village at the time of the filing of the written request for termination. A decision to continue or terminate such declaration shall be entered within ten (10) days of the date of the hearing.

(5) An owner whose dog has been declared potentially dangerous can elect to euthanize the dog or permanently remove the dog from the village's jurisdiction as opposed to complying with Sections 6-212 through 6-216. If the owner elects to remove the dog from the village's jurisdiction, the owner will be required to sign a separate written agreement prepared by the village confirming the dog will never be brought back inside the village's jurisdiction. Should the owner fail to comply with said agreement any time in the future, the village would enforce Section 6-220.

**§6-212: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; SPAYING OR NEUTERING; MICROCHIP IDENTIFICATION AND LICENSE REQUIRED**

Any dog declared dangerous or potentially dangerous shall be spayed or neutered, implanted with microchip identification by a licensed veterinarian at the owner's expense and written proof of spaying or neutering and the microchip identification number being provided to the Village within thirty (30) days after such declaration is entered.

**§6-213: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; CLASSES REQUIRED**

The owner of any dog declared dangerous or potentially dangerous shall be required to attend, at the owner's expense; a responsible pet ownership class approved by the Village within ninety (90) days after such declaration is entered.

**§6-214: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; RESTRAINED**

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

**§6-215: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; PROOF OF INSURANCE**

The owner of any dog declared dangerous or potentially dangerous shall be required to present written proof of public liability insurance of not less than one hundred thousand dollars (\$100,000.00) to the Village within thirty (30) days after such declaration. Such insurance shall be required to remain in effect as long as such dog is declared dangerous or potentially dangerous and shall be verified annually at the time of licensing.

**§6-216: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; IMPOUNDMENT**

Any dog declared dangerous or potentially dangerous that bites a human being without provocation shall be immediately impounded by any Village law enforcement officer or animal control officer. The owner shall be responsible for the reasonable costs incurred for the care of such impounded dangerous dog and the dog may be destroyed upon determination by the court.

**§6-217: DANGEROUS AND POTENTIALLY DANGEROUS DOGS AT LARGE; DESTRUCTION**

Any dog declared dangerous dog or potentially dangerous as defined in Section 6-208 and/or 6-209 and is found at large and unattended upon public property, park property, or a public right-of-way, or upon the property of someone other than its owner, thereby creating a hazard to person or property, may, in the discretion of any law enforcement officer or animal control officer, be destroyed if it cannot be confined or captured. The Village shall be under no duty to confine or capture a dangerous dog found at large nor shall it have a duty to notify the owner of such dog prior to its destruction.

**§6-218: DANGEROUS DOG; DETERMINATION**

(1) The Village shall initiate administrative proceedings to declare a dog to be dangerous if it meets the definition of “dangerous dog” under Section 6-208. The Village shall provide written notice of such declaration to the dog’s owner either by regular mail to the owner’s last known address or to the owner personally. The notice shall contain:

- (a) The name and address of the owner whose dog is subject to such declaration;
- (b) The name, description and license number of the dog that is subject to such declaration;
- (c) A description of the facts which form the basis of such declaration;
- (d) A copy of all applicable code sections herein and state that noncompliance will result in an owner being declared a reckless owner by the Village;
- (e) Effective date of the declaration, which shall be not less than ten (10) days after the date of mailing or personal service of the notice; and
- (f) Notification that an appeal may be filed within ten (10) days of the date of mailing or personal service of the notice, if the owner objects to such declaration,

(2) An owner whose dog is declared to be a dangerous dog shall be required to comply with Section 6-214 immediately; Sections 6-212 and 6-215 within thirty (30) days of the date of declaration; and Section 6-213 within ninety (90) days of the effective date of the declaration, unless a written appeal is filed with the Village; provided, noncompliance with any of the sections set forth above in this paragraph shall result in the owner being declared a reckless

owner by the Village under Section 6-221.

(3) An appeal of such a declaration shall be heard at a hearing by the Village Police Committee within ten (10) days of the date of the filing of a written appeal and shall provide an opportunity for the owner to appear and offer evidence to dispute the declaration. The filing fee for each appeal shall be two hundred dollars (\$200.00) paid to the Village at the time of filing the appeal. A decision to affirm or reverse such decision shall be entered within ten (10) days of the date of the hearing.

(4) An owner may request termination of the declaration if there are no additional incidents of the type specified in Section 6-208(3) for at least forty eight (48) months following the date of the declaration. Such request for termination shall be made in writing and shall be heard by the Village Police Committee within thirty (30) days of the date of the filing of the written request for termination. Said hearing shall provide an opportunity for the owner to appear and offer evidence to support termination of the declaration. The owner must provide written documented evidence that the dog's behavior has changed due to environment, health, age, training, neutering or other relevant factors. The filing fee for each request for termination shall be two hundred dollars (\$200.00) and shall be paid to the Village at the time of the filing of the written request for termination. A decision to continue or terminate such declaration shall be entered within ten (10) days of the date of the hearing.

(5) An owner whose dog has been declared dangerous can elect to euthanize the dog or permanently remove the dog from the village's jurisdiction as opposed to complying with Sections 6-212 through 6-216. If the owner elects to remove the dog from the village's jurisdiction, the owner will be required to sign a separate written agreement prepared by the village confirming the dog will never be brought back inside the village's jurisdiction. Should the owner fail to comply with said agreement any time in the future, the village would enforce Section 6-220.

**§6-219: DANGEROUS DOGS; CONFINED**

No person owning, harboring, or having the care of a dangerous dog shall permit such dog to go unconfined while unattended on the premises of such person. A dangerous dog shall be securely confined, 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. The pen or structure, if allowed by zoning regulations, shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground no less than one foot or have a concrete pad with sides secured to the concrete pad. The pen or structure shall also protect the dog from the elements. The owner of a dangerous dog shall post a Village approved warning sign on the property where the dog is kept so that the sign is clearly visible at all times and inform the public that a dangerous dog is on the property.

**§6-220: DANGEROUS AND POTENTIALLY DANGEROUS DOGS; FAILURE TO COMPLY**

Any dangerous or potentially dangerous dog may be immediately confiscated by any law

enforcement officer or animal control officer if the owner is in violation of this Section. The owner shall be responsible for the reasonable costs incurred by the Village for the care of such confiscated dangerous dog or potentially dangerous, or for the destruction of any dangerous or potentially dangerous dog. In addition to any other penalty, a court may order the Village to dispose of a dangerous or potentially dangerous dog in an expeditious and humane manner.

**§6-221: RECKLESS OWNER**

(1) The Village shall initiate administrative proceedings to declare an owner a reckless owner, and to revoke all pet license(s) issued to such person, if such owner has been convicted of one (1) or more violations of this chapter on two (2) separate occasions in a twenty four (24) month period or whose dog(s) has been determined to be dangerous or potentially dangerous and who has not complied with the requirements of this chapter pertaining to dangerous or potentially dangerous dog(s), the village shall provide written notice of such declaration to the owner either by regular mail to the owner's last known address or to the owner personally. The notice shall contain:

- (a) The name and address of the owner who is subject to such declaration and revocation;
- (b) The name(s), description(s) and license number(s) of any animal(s) associated with such violations licensed to the owner;
- (c) A description of the violations or requirements which form the basis of such declaration and revocation, including the case numbers, if any;
- (d) A summary of the effects of such declaration, including the revocation of said pet license(s) and surrender of said animal(s);
- (e) Effective date of the declaration and revocation which shall be not less than ten days after the date of mailing or personal service of the notice; and
- (f) Notification that an appeal may be filed within ten (10) days of the date of mailing or personal service of the notice, if the owner objects to such declaration and revocation.

(2) Upon effect of such declaration and revocation, unless an appeal of such is filed with the Village in accordance with this section, such reckless owner shall be required to surrender said animal(s) to any Village law enforcement officer or animal control officer within twenty four (24) hours. Failure to surrender such animal(s) shall result in immediate impoundment by the Village. Such surrendered or impounded animal(s) shall immediately become the property of the Village and may be disposed of by the Village as they deem appropriate.

(3) An owner who is declared a reckless owner shall be prohibited from licensing, residing with, or owning any additional animal(s) in the Village for a period of forty eight (48) months from the effective date of the declaration and revocation.

(4) An appeal of such declaration and revocation shall be heard by the Village Council Police Committee which shall provide an opportunity for the owner to appear and offer evidence to dispute the declaration and revocation. The filing fee for each appeal shall be two hundred dollars (\$200.00) payable to the Village at the time of the filing of said appeal. A determination to affirm or reverse such declaration and revocation shall be entered within ten (10) days of the date of the hearing by the Village Police Committee.

**§6-222: RABIES VACCINATION**

Every dog three (3) months of age and older shall be vaccinated against rabies pursuant to Nebraska law. Puppies shall be vaccinated within thirty (30) days after having reached three (3) months of age. Unvaccinated dogs acquired or moved into the Village must be vaccinated within thirty (30) days after purchase or arrival, unless under three (3) months of age as specified above. The provisions of this Article with respect to vaccination shall not apply to any dogs owned by a person temporarily residing within the Village for less than thirty (30) days, any dog brought into the Village for show purposes, or any dog brought into the Village for hunting purposes for a period of less than thirty (30) days; such dogs shall be kept under the strict supervision of the owner.

**§6-223: RABIES SUSPECTED; IMPOUNDMENT**

Any dog or other animal suspected of being afflicted with rabies or any dog not vaccinated in accordance with the provisions set forth above which has bitten any person or has caused an abrasion of the skin of any person shall be seized by a Police Officer or Animal Control Officer of the Village and shall be impounded under the supervision of a Licensed Veterinarian or Public Health Authority for not less than ten (10) days. If, upon examination by a Veterinarian, the dog or other animal has no clinical signs of rabies at the end of such impoundment, it shall be released to the owner upon said owner paying the costs of said impoundment, or, in the case of a stray, shall be disposed of in whatever manner deemed best by the Animal Control Office or Sheriff. If the owner of the dog has proof of vaccination, it shall be confined by the owner or some other responsible person for a period of at least ten (10) days, at which time the dog shall be examined by a Licensed Veterinarian. If no signs of rabies are observed, the dog may be released from confinement. (Ref. Neb. Rev. Stat. 71-4406)

**§6-224: RABID DOGS; CAPTURE IMPOSSIBLE**

The Animal Control Officer shall have the authority to kill any domestic animals with the characteristics of rabies which make capture impossible because of the danger involved.

**§6-225: RABID DOGS; PROCLAMATION**

It shall be the duty of the Village Board or Chairperson whenever, in their 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 it 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 past. The said dog may be harbored by any good and sufficient means in a house, garage or yard on the premises wherein the said owner may reside. Upon issuance of the proclamation it shall be the duty of all persons owning, keeping or harboring any dog to confine the same as herein provided.

#### **§6-226: FIGHTING DOGS**

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. (Ref. Neb. Rev. Stat. 17-526)

#### **§6-227: KILLING AND POISONING**

It shall be unlawful to kill, administer or cause to be administered poison of any sort to any domestic animal within the Village, or in any manner to injure, maim, destroy, or in any manner attempt to injure, maim or destroy any domestic animal within the Village, or to place any poison or poisoned food where the same is accessible to any domesticated animal; provided, this section shall not apply to the Animal Control Officer or Sheriff acting within his/her power and duty.

#### **§6-228: INTERFERENCE WITH POLICE**

It shall be unlawful for any person to hinder, delay or interfere with any Animal Control Officer who is performing any duty enjoined upon him/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 the Animal Shelter or any vehicle used for the collecting or conveying of dogs to the Shelter.

#### **§6-229: DAMAGE BY DOG; LIABILITY OF OWNER**

It shall be unlawful for any person to allow a dog or cat owned, kept, or harbored by him/her or under his/her charge or control to injure or destroy any real or personal property of any description belonging to another person. The owner or possessor of any such dog or cat, in addition to the usual judgment upon conviction, may be made to be liable to the persons so injured in an amount equal to the value of the damage so sustained. (Neb. Rev. Stat. §17-526, 54-601, 54-602)

#### **§6-230: IMPOUNDING**

A. It shall be the duty of the Animal Control Officer to capture, secure and remove in a humane manner to the designated Village Animal Shelter any dog violating any of the provisions of this Article. Every dog so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day. Each impounded dog shall be kept and maintained at the pound for a period of not less than five (5) days, unless reclaimed earlier by the owner. No later than twenty (24) hours after the impoundment of any animal, notice of impoundment of all animals, including any significant marks or identification, shall be posted at the office of the Village Clerk as public notification of such impoundment. Any dog may be reclaimed by its owner during the period of impoundment by payment of a general

impoundment fee and daily board fee as set by resolution of the Village Board and on file at the office of the Village Clerk. The owner shall then be required to comply with the rabies vaccination requirements within seventy two (72) hours after release.

B. If the animal is not claimed at the end of the required waiting period after public notice has been given, the Animal Control Officer may dispose of the animal in accordance with the applicable rules and regulations pertaining to the same; provided, if the Animal Control Officer can find a suitable home for the impounded animal, he/she may turn the it over to any person willing to provide the dog with a home. In this event the new owner shall be required to pay all fees and meet all licensing and vaccinating requirements provided in this article.

C. The Village shall acquire legal title to any unlicensed animal impounded in the Animal Shelter for a period longer than the required waiting period after giving notice. All animals not placed for adoption shall be destroyed and buried in a humane manner as prescribed by the Board of Health. (Ref. Neb. Rev. Stat. 17-548, 71-4408)

#### **§6-231: ANIMAL SHELTER**

The Animal Shelter shall be safe, suitable and conveniently located for the impounding, keeping and destruction of animals. The said Shelter shall be sanitary, ventilated and lighted.

## Article 3 - Animals Generally

### **§6-301: BANNED ANIMALS**

It shall be unlawful for any person to keep or maintain within the corporate limits any horse, mule, sheep, cow, goat, swine or other livestock or poultry. (Ref. Neb. Rev. Stat. §17-207)

### **§6-302: (Reserved for Future Use)**

### **§6-303: ABANDONMENT, NEGLECT, AND CRUELTY; DEFINITIONS**

“ABANDON” shall mean to leave any animal for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

“ANIMAL” shall mean any vertebrate member of the animal kingdom except man. The term shall not include an uncaptured wild creature;

“CRUELLY MISTREAT” shall mean to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise set upon any animal;

“CRUELLY NEGLECT” shall mean to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

“HUMANE KILLING” shall mean the destruction of an animal by a method which causes the animal a minimum of pain and suffering; and

“LAW ENFORCEMENT OFFICER” shall mean any member of the Nebraska State Patrol, any County or Deputy Sheriff, any member of the Police Force of any City or Village, or any other Public Official authorized by a City or Village to enforce State or local Animal Control laws, rules, regulations, or ordinances. (Ref. Neb. Rev. Stat. §28-1008)

### **§6-304: ABANDONMENT, NEGLECT AND CRUELTY**

It shall be unlawful for any person intentionally, knowingly, or recklessly to abandon or cruelly neglect an animal. A person who cruelly mistreats an animal shall be guilty of a felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of such animal. (Ref. Neb. Rev. Stat. §28-1009)

### **§6-305: ABANDONMENT, NEGLECT, AND CRUELTY; LAW ENFORCEMENT OFFICER; POWERS; IMMUNITY**

A. Any Law Enforcement Officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound it.

B. Any Law Enforcement Officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner as prescribed by law.

C. Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.(Ref. Neb. Rev. Stat. §28-1012)

#### **§6-306: PITTING; DEFINITIONS**

“BEARBAITING” shall mean the pitting of any animal against a bear.

“COCKFIGHTING” shall mean the pitting of a fowl against another fowl.

“DOG FIGHTING” shall mean the pitting of a dog against another dog.

“PITTING” shall mean bringing animals together in combat. (Ref. Neb. Rev. Stat. §28-1005)

#### **§6-307: PITTING; PROHIBITED**

No person shall knowingly promote, engage in, or be employed at dog fighting, cockfighting, bear baiting, or pitting an animal against another; nor shall any person knowingly receive money for the admission of another person to a place kept for such purpose; nor shall any person knowingly own, use, train, sell, or possess an animal for the purpose of animal pitting; nor shall any person knowingly permit any act as described in this section to occur on any premises owned or controlled by him or her. (Ref. Neb. Rev. Stat. §28-1005)

#### **§6-308: PITTING; SPECTATORS PROHIBITED**

No person shall knowingly and willingly be present at and witness as a spectator, dog fighting, cockfighting, bear baiting, or the pitting of an animal against another as prohibited in Section 6-307. (Ref. Neb. Rev. Stat. §28-1005)

## Article 4 - Nuisances

### §6-401: DEFINITIONS

It shall be unlawful for any person to erect, keep up or continue and maintain any nuisance to the injury of any part of the citizens of the Village. (Neb. Rev. Stat. §18-1720, §28-1321)

1. The terms "weeds, grasses or worthless vegetation" shall mean any weed or grass growth of more than twelve (12) inches in height. Weeds shall include, but not be limited to, bindweed, puncture vine, leafy spurge, Canada thistle, perennial pepper grass, Russian knapweed, Johnson grass, nodding or musk thistle, quack grass, perennial sow thistle, horse nettle, bull thistle, buckthorn, hemp plant and ragweed.

2. The term "litter" shall include, but not be 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;

E. Any machine, vehicle, or parts of a machine or vehicle which have lost their identity, character, utility or serviceability as such through deterioration, dismantling or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded or thrown away or left as waste, wreckage or junk;

F. Any motor vehicle without a current license and not housed in storage or other building.

G. Any wood or tree limbs not cut and stacked in neat rows on an area not exceeding ten (10) feet by sixteen (16) feet.

3. The term "dangerous building" as used in this Article is hereby defined to mean and include:

A. Any building, shed, fence or other man-made structure which is dangerous to the public health because of its condition, and which may cause or aid in the spread of disease or injury to the health of its occupants or those of neighboring structures;

B. Any building, shed, fence or other man-made structure which, because of faulty construction, age, lack of proper repair or any other cause, is especially liable to fire and constitutes or creates a fire hazard;

C. Any building, shed, fence or other man-made structure which, by reason of faulty construction or any other cause, is liable to cause injury or damage by collapsing or by a collapse or fall of any part of such structure;

D. Any building, shed, fence or other man-made structure which, because of its condition or because of lack of doors or windows, readily admits birds and animals or is an attraction for children or other persons to enter.

**§6-402: PUBLIC NUISANCE; GRASSES OR WEEDS**

It is hereby declared to be a public nuisance to permit grasses to grow in excess of twelve (12) inches or to permit weeds of any height to be grown on any property within the corporate limits of the Village.

**§6-403: PUBLIC NUISANCE; LITTER OR DANGEROUS BUILDING**

It is hereby declared to be a public nuisance to permit the accumulation of litter or to maintain a dangerous building on any property within the corporate limits of the Village.

**§6-404: NOTICE OF NONCOMPLIANCE**

Whenever the Village Board determines that any grass in excess of twelve (12) inches or weeds of any height are growing on property within the Village, or litter is found on any property, or that any building or structure in the Village is a dangerous building, the Village Clerk shall cause written notice to be served upon the owner of the property on which grass, weeds, litter or such dangerous building is located, and further upon the occupant thereof, by registered mail or by personal service. Such notice shall state that the premises have thereon grass in excess of twelve (12) inches, weeds or litter or that the building situated thereon has been declared to be in a dangerous condition, and that the grass in excess of twelve (12) inches, weeds, litter or dangerous building must be removed or remedied within ten (10) business days of receipt of notice. *In addition, a sign entitled "Notice" may be conspicuously posted on the property where the nuisance exists notifying the owner/occupant that a nuisance exists and the nuisance must be corrected within a period of time as stated on the sign.* (Ord. 2011-1, 10/4/11)

**§6-405: ACCUMULATION AND BURNING OF BRUSH PILES**

The Village of Herman shall allow the accumulation and burning of brush piles including weeds, grasses and leaves within the Village jurisdictional limits as follows:

1. The resident of the Village of Herman must obtain a permit from the Herman Volunteer Fire Department.
2. The resident must contact the Washington County Sheriff Dispatch prior to beginning to burn pursuant to the permit issued by the Herman Volunteer Fire Department.
3. That the burning may only occur between the hours of dawn to dusk.

4. The brush pile may not contain any debris or other foreign object or material that is not allowed by the State Fire Marshall

5. The burning must occur within fourteen (14) days of the accumulation of the brush pile or said brush pile will be considered a nuisance and prosecuted.

**§6-406: FAILURE TO CORRECT; FINE**

In the event that the owner or occupant of said premises fails to correct and eliminate said nuisance pursuant to the notice to correct, he/she shall be guilty of a misdemeanor and fined in a sum of not more than five hundred dollars (\$500.00). Each day's violation after the expiration of the five (5) business days' notice shall be a separate offense.

**§6-407: FAILURE TO CORRECT; NOTICE AND HEARING**

If the owner or occupant of the lot or piece of ground fails to comply with the order to abate and remove the nuisance within ten (10) business days from receipt of the notice to abate, the Village Clerk shall, prior to action to abate other than the filing of a complain, notify the owner and occupant of the property that unless he/she request a hearing before the Village Board within ten (10) days of the service of notice that the Village will have such work done and the cost and expense of such work shall be charged to the owner of the property. Such request for a hearing must be in writing and delivered to the Village Clerk within ten (10) days of service of the notice to abate. Upon receiving the request for hearing, the Village Clerk shall notify the village Chairperson of such request and the Chairperson shall set a date for hearing within two (2) weeks from receipt of such request for hearing. Either party may be represented by counsel and the hearing may be recorded. Upon conclusion of the hearing, the Chairperson of the Board shall issue a formal order setting forth the decision of the Board. Such order may be appealed from to the District Court of Washington County, Nebraska.

**§6-408: ABATEMENT OF NUISANCE**

If no request for hearing is received as set forth above, the Village may have such work done to abate the nuisance. The cost of such abatement shall be billed to the property owner and if the cost of such work is unpaid for two (2) months after such work is done, the Village may either levy and assess the costs and expenses of the work upon the lot or piece of ground so benefitted in the same manner as other special taxes for improvements are levied and assessed, or recover in a civil action the costs and expenses of the work.

## Article 5 – Sex Offenders

### **§6-501: FINDINGS AND INTENT** (Ord. 2013-\_\_\_\_, 5/7/13)

A. The Nebraska Legislature, pursuant to Neb. Rev. Stat. § 29-4002, has found that certain sex offenders present a high risk to commit repeat offenses.

B. Repeat sex offenders who use physical violence and prey on children are sexual perpetrators who present an extreme threat to public safety. Certain sex offenders are extremely likely to use physical violence or to repeat their offenses. These offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society at large, while incalculable, extremely exorbitant.

C. It is the intent of this Article to serve the Village’s compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the Village by creating certain areas around locations where children regularly congregate in concentrated numbers where certain sexual offenders cannot reside.

### **§6-502: DEFINITIONS**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

“**SEX OFFENDER**” shall be anyone defined in the Sex Offender Registration Act (Sections 29-4001 to 29-4009 and 29-4011 to 29-4013, inclusive, Neb. Rev. Stat.) or any amendments thereto, or any person convicted under the law of another State if, at the time of the conviction under the law of such other State, the offense for which the person was convicted would have required registration under the Nebraska Sex Offender Registration Act if the conviction occurred in Nebraska.

“**SEXUAL PREDATOR**” shall be defined as an individual who is required to register under the Nebraska Sex Offender Registration Act, or any person required to register under a similar law of another State, who has a high risk of recidivism as determined by the Nebraska State Patrol under Neb. Rev. Stat. § 29-4013, and who has victimized a person eighteen (18) years of age or younger.

“**RESIDENCE**” shall be defined as a place where a person regularly sleeps, where a person has established his or her home, and where he or she is habitually present, and to which, when he or she departs, he or she intends to return. A residence may include more than one location and may be mobile or transitory.

“**TEMPORARILY DOMICILED**” means a place at which a person actually lives or stays on a temporary basis, even though he or she may plan to return to his or her permanent address or to

another temporary address. For purposes of this Chapter, a temporary domicile means any place at which the person actually lives or stays for a period of at least five (5) working days. Residency may be shown by, among other evidence, receipt of mail at the premises or identification of the premises as a residence on a driver's license, vehicle registration or other document.

“**CHILD CARE FACILITY**” is defined as a place with a license issued under the Nebraska Child-Care Licensing Act, Sections 71-1908 to 71-1923, as currently existing or hereafter amended. It shall include licensed places both inside and outside of the corporate limits of the Village.

“**SCHOOL**” shall be defined as a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Neb. Rev. Stat. § 79 et seq.

### **§6-503: RESIDENCE PROHIBITIONS; PENALTIES; EXCEPTIONS**

**PROHIBITED LOCATION OF RESIDENCE.** It is unlawful for any person who is subject to the Nebraska Sex Offender Registration Act, classified as a sexual predator as herein defined, or similar requirement or law of any other State, to reside within five hundred (500) feet of any child-care facility or school as defined herein.

**MEASUREMENT OF DISTANCE.** For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer boundary line of a public or nonpublic elementary or secondary school or a child-care facility.

**PENALTIES.** A person who violates this Section shall be punished to a fine not exceeding five hundred dollars (\$500) or six (6) months in jail, or both.

**EXCEPTIONS.** A person residing within five hundred (500) feet of any child-care facility or school does not commit a violation of this section if any of the following apply:

(1) Resides within a prison or a correctional or treatment facility operated by the State or a political subdivision;

(2) Established a residence before July 1, 2006, and has not moved from that residence;

(3) Established a residence after July 1, 2006, and the school or child-care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location; or

(4) The person who becomes in violation of this Chapter because of annexation into the Village.

**§6-503: ORDINANCE COPIES PROVIDED**

Any person subject to the Nebraska Sex Offender Registration Act shall, upon making request to the Washington County Sheriff, be provided a copy of this ordinance and any current amendments.

**§6-504: SEVERABILITY**

If any provision of this ordinance or its application to any person or circumstances shall be held invalid, the remainder of the ordinance, or the application of the provisions to other persons or circumstances, shall not be affected.

## **Article 6 - Penal Provisions**

### **§6-601: VIOLATION; PENALTY**

A. Any person, or any person's agent or servant, who violates any of the provisions of this Chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500.00). A new violation shall be deemed to have been committed every twenty four (24) hours of failure to comply with the provisions of this Chapter.

B. Whenever a nuisance exists as defined in this Chapter, the Village may proceed by a suit in equity to enjoin, abate, and remove 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. Neb. Rev. Stat. §17-505, 18-1720, 18-1722)

## **CHAPTER 7 – FIRE REGULATIONS**

### **Article 1 – Fire Department**

#### **§7-101: OPERATION AND FUNDING**

The Village operates the Fire Department through the Fire Chief and Firemen. The Village Board, for the purpose of defraying the cost of the management, maintenance, and improvement of the Fire Department may each year levy a tax not exceeding the maximum limits prescribed by State Law on the actual valuation of all real estate and personal property within the Village that is subject to taxation. The revenue from the said tax shall be known as the Fire Department Fund, which shall be at all times in the possession of the Village Treasurer. (Ref. §17-718, 17-953, 35-530 RS Neb.)

#### **§7-102: FIRE CHIEF**

The Fire Chief shall manage the Fire Department and it shall be his duty to inform the Village Board when any of the fire engines, hose, ladders, or other apparatus needs repair. Upon the written consent and directive of the Village Board, the Fire Chief shall cause the repair, improvement, or maintenance of the said equipment and shall personally supervise and approve of the same. It shall be the duty of the Fire Chief to come before the Village Board at the regular meeting in January of each year to give an annual report to the Board of the general condition and the proposed additions or improvements recommended by him.

#### **§7-103: MEMBERSHIP**

1. The Fire Chief shall appoint no more than twenty five (25) members for each Fire Department company subject to the review and approval of the Village Board. All vacancies shall be filled in this manner. The Fire Department shall consist of so many members as may be decided by the Village Board.
2. The members may organize themselves in any way they may decide, subject to the review of the Village Board. They may hold meetings and engage in social activities with the approval of the Board. The Secretary shall upon request keep a record of all meetings and shall make a report to the Village Board of all meetings and activities of the Fire Department.
3. The members of the Fire Department shall, during the time of a fire or great public danger, have and exercise the powers and duties of Police Officers and shall have full power and authority to arrest all persons guilty of any violation of the Municipal Code or the laws of the State of Nebraska.
4. The Village Board may, for services rendered, compensate or reward any member or members of the Fire Department in an amount set by resolution. All members of the Fire Department shall be subject to such rules and regulations and shall perform such duties as may be prescribed or required of them by the Fire Chief or the Village Board. Said members shall be considered to be employees of the Village for the purpose of providing

them with workmen's compensation and other benefits. Each member shall be entitled to a term life insurance policy in the amount of at least five thousand dollars (\$5,000.00) for death from any cause to age sixty five (65) and such policy shall, at the option of the individual Fireman, be convertible to a permanent form of life insurance at age sixty five (65), provided that the Firemen covered are actively and faithfully performing the duties of their position. However, any Volunteer Firefighter or Rescue Squad Member testifying as a witness in connection with his or her officially assigned duties in that capacity alone shall not be deemed an employee of the State or of the Village. (Ref. §33-139.01, 35-101 thru 35-103, 35-108 RS Neb.)

#### **§7-104: RECORDS**

The Fire Chief shall keep or cause to be kept a record of all meetings of the Fire Department, the attendance record of all members and a record of all fires, and shall make a full report of such records to the Village Clerk during the last week in April each year. The record of any fire shall include the cause, origin, circumstances, property involved, and whether criminal conduct may have been involved. In the event of sizable property damage, he/she shall include the information of whether such losses were covered by insurance, and if so, in what amount. All records shall be available to the public at any reasonable time.

#### **§7-105: DUTIES**

It shall be the duty of the Fire Department to use all proper means for the extinguishment of fires; to protect property within the Village; and to secure the observance of all ordinances, laws, and other rules and regulations with respect to fires and fire prevention.

#### **§7-106: DISTANT FIRES**

Upon the permission of the Village Chairperson or Fire Chief, or pursuant to any agreement with a Rural Fire District for mutual aid and protection, such fire equipment of the Village as may be designated by the Village Board as rural equipment may be used beyond the corporate limits to extinguish a reported fire.

#### **§7-107: FIGHTING DISTANT FIRES; EQUIPMENT**

The Firefighters of the Village shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside the corporate limits of the Village when directed to do so by the Chairperson or Chief of the Fire Department or some person authorized to act for such Chief, and in so doing, may take such fire equipment of the Village as may be designated by the Village Board.

#### **§7-108: HOSE TESTING**

All fire hoses shall be pressure tested at least two (2) times each year.

**§7-109: DRILLS**

The Fire Department shall hold departmental fire drills at least ten (10) times per year at such times as the members of the Department shall decide.

## Article 2 – Fires

### **§7-201: FIRE INVESTIGATION**

It shall be the duty of the Fire Department to investigate or cause to be investigated, the cause, origin, and circumstances of every fire occurring in the Village in which property has been destroyed or damaged in excess of fifty dollars (\$50.00). All fires of unknown origin shall be reported, and such officers shall especially make an investigation and report as to whether such fire was the result of carelessness, accident, or design. Such investigation shall be begun within two (2) days of the occurrence of such fire and the State Fire Marshal shall have the right to supervise and direct the investigation whenever he deems it expedient or necessary. The Officer making the investigation of fires occurring within the Village shall immediately notify the Fire Marshal and shall, within one (1) week of the occurrence of the fire, furnish him/her with a written statement of all the facts relating to the cause and origin of the fire and such further information as he/she may call for. (Ref. 81-506 RS Neb.)

### **§7-202: PRESERVATION OF PROPERTY**

During the time of a fire, any Police Officer or official of the Fire Department shall have the power to cause the removal of any private or public property whenever it shall become necessary to do so for the preservation of such property from fire, to prevent the spreading of fire, or to protect adjoining property. The said officials may direct the removal of any building, erection, fence or any part thereof for the purpose of checking the progress of any fire. The Official in charge of the firefighting effort shall have the power to blow up, or cause to be blown up, with powder or otherwise, any building or erection during the progress of a fire for the purpose of extinguishing or halting the same.

### **§7-203: POWER OF ARREST**

The Fire Chief or the Assistant Chief shall have the power during the time of a fire and for a period of thirty six (36) hours after its extinguishment, to arrest any suspected arsonist, or other person hindering or resisting the firefighting effort, or any person who conducts himself in a noisy or disorderly manner. The said officials shall be severally vested with the usual powers and authority of Municipal Police Officers to command all persons to assist them in the performance of their duties.

### **§7-204: TRAFFIC**

Every vehicle within five hundred (500) feet of the Fire Station which is already stationary when the fire alarm has been sounded must remain so for a period of five (5) minutes after the sounding of such alarm. No vehicle shall follow approach or park closer than five hundred (500) feet to any fire vehicle or to any fire hydrant to which a hose is connected. Nothing herein shall be construed to apply to vehicles carrying members of the Fire Department, doctors or emergency personnel. (Neb. Rev. Stat. 60-6,183)

**§7-205: PEDESTRIANS**

It shall be unlawful for any pedestrian to enter or remain in any street after a fire alarm has been sounded until the fire trucks shall have completely passed. (Neb. Rev. Stat. 28-908)

**§ 7-206: FIRE EQUIPMENT**

It shall be unlawful for any person except the Fire Chief and the members of the Fire Department to molest, destroy, handle or in any other way to interfere with the use and storage of any of the fire trucks and fire equipment or apparatus belonging to the Fire Department. (Neb. Rev. Stat. §28-519)

**§7-207: INTERFERENCE**

It shall be unlawful for any person or persons to hinder or obstruct the Fire Chief or other members of the Fire Department in the performance of their duty. (Ref. Neb. Rev. Stat. 28-908)

**§7-208: DISORDERLY SPECTATOR**

It shall be unlawful for any person during the time of a fire and for a period of thirty six (36) hours after its extinguishment to hinder, resist or refuse to obey the Fire Chief or to act in a noisy or disorderly manner. The Fire Chief and Assistant Fire Chief shall have the power and authority during such time to arrest or command any such person to assist them in the performance of their official duties. (Neb. Rev. Stat. §28-908)

**§7-209: ASSISTANCE**

It shall be unlawful for any person to refuse to aid in extinguishing a fire or to assist in the removal and protection of property after the command of the Fire Chief or Assistant Fire Chief. (Neb. Rev. Stat. 28-908)

**§7-210: DRIVING OVER HOSE**

It shall be unlawful for any person to drive a vehicle over any unprotected hose of the Fire Department unless authorized to do so. (Neb. Rev. Stat. 60-6,184)

**§7-211: OBSTRUCTION OF HYDRANT**

It shall be unlawful for any person to obstruct the use of any fire hydrant or have or place any material within fifteen (15) feet of said hydrant. Any vehicle or material found as an obstruction may be immediately removed by the Fire Chief or any member of the Fire Department at the risk, cost and expense of the owner or claimant. (Ref. Neb. Rev. Stat. 60-6,166)

**§7-212: FALSE ALARM**

It shall be unlawful for any person intentionally to raise any false alarm of fire. (Neb. Rev. Stat. 28-907, 35-520)

## **Article 3 – Fire Prevention**

### **§7-301: LIFE SAFETY CODE**

Incorporated by reference into this Municipal Code are the standards recommended by the National Fire Protection Association, known as the Life Safety Code, most recent edition, and all subsequent amendments. This Code shall have the same force and effect as if set out verbatim herein. One (1) copy of the Life Safety Code is on file with the Village Clerk and shall be available for public inspection during office hours. (Ref. Neb. Rev. Stat. 19-902, 19-922, 81-502)

### **§7-302: FIRE PREVENTION CODE**

The rules and regulations promulgated by the office of the Nebraska State Fire Marshal 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.

### **§7-303: FIRE CODE ENFORCEMENT**

It shall be the duty of all Village Officials to enforce the incorporated Fire Code provisions, and all infractions shall be immediately brought to the attention of the Village Board.

### **§7-304: LAWFUL ENTRY**

It shall be the duty of the owner, lessee or occupant of any building or structure, except the interiors of private dwellings, to allow the Fire Inspector, as designated by the Village Board, to inspect the structure for purposes of ascertaining and enumerating all conditions therein that are likely to cause fire, or any other violations of the provisions of the Village Ordinances affecting the hazard of fire.

### **§ 7-305: FIRES ON STREET**

It shall be unlawful for any person to set out a fire on the street or near any curb now built or hereafter to be built within the Village. (Ref. Neb. Rev. Stat. 17-556)

### **§7-306: SMOKING IN PUBLIC PLACES**

It shall be unlawful for any person to ignite a lighter, strike a match, or indulge in the smoking of tobacco (1) on or in the Village office located at Hwy seventy five (75) and Main Street; or (2) in any building or structure where public gatherings take place within the corporate limits while any entertainment, program, show, amusement, game, exhibition or other spectacle to which the general public is invited is in progress or while patrons thereof are finding or leaving seats and standing room; provided, the foregoing shall not be construed to apply to banquets, dinners or entertainments held in any of the aforesaid buildings or structures where food is served and the entertainment takes place incidental thereto or in connection therewith. (Res. 2004-3, 10/5/04)

### **§7-307: OPEN BURNING BAN; WAIVER**

1. There shall be a Statewide open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land. The Fire Marshal or his/her designee may waive an open burning ban issued under this Section for an area under his/her jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. Said permit shall be in writing on a form issued and signed by the Fire Marshal.

2. The Fire Marshal or designee may waive the open burning ban in his/her district when conditions are acceptable to him/her. Anyone burning in such district when the open burning ban has been waived must notify the Marshal of his/her intention to burn. (Neb. Rev. Stat. §81-520.01)

3. In the event that an open burning permit is issued. The permit holder shall remain within sight of the burning throughout the duration of the burn. The permit shall be invalidated if winds exceed fifteen miles per hour (15mph). The permitted burn shall not take place within the immediate vicinity of structures or flammable vegetation and items that may not be burned by the permit holder include, but are not limited to, tires, waste petroleum products, furniture, construction waste material, wire insulation and any other items prohibited by NDEQ Title 129 Chapter 30.

4. Burning with a permit shall only be permitted between the hours of eight (8:00) a.m. and eight (8:00) p.m.

5. The permit holder shall be responsible for insuring that the permitted fire is completely out and has a duty to call 9-1-1 if the fire becomes uncontrollable.

### **§7-308: STOVES, FURNACES AND CHIMNEYS**

All furnaces, stoves and other heating devices shall be installed at a proper distance from any materials and portions of the building which are combustible. Any combustible materials or portions of the building that are dangerously close to such heating devices shall be protected by non-combustible material. This section shall apply both to existing structures and those which may hereafter be erected.

### **§ 7-309: INSPECTIONS**

It shall be the duty of the Fire Chief, in cooperation with the State Fire Marshal when directed to do so by the Village Board, to inspect or cause to be inspected by Fire Department officers, members or some other official as often as may be necessary, all buildings, premises and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to create a fire hazard. The inspection shall be of the storage, sale and use of flammable liquids, combustibles, and explosives; electric wiring and heating; and the means and adequacy of exits, in case of fire in schools, churches, hotels, halls, theatres, factories, hospitals, and all other buildings in which numbers of persons congregate from time to time for any purpose, whether publicly or privately

owned; the design, construction, location, installation, and operation of equipment for storing, handling, and utilizing of liquefied petroleum gases, specifying the odorization of said gases and the degree thereof; and chemicals, prozylin plastics, nitrocellulose films, or any other hazardous material that may now or hereafter exist. (Neb. Rev. Stat. §81-512)

#### **§7-310: VIOLATION; NOTICE**

Upon a finding that the Municipal Code has been violated, the Fire Chief shall notify or cause to be notified the owner, occupant, or manager of the premises where a violation has occurred. Notice may be made personally or by delivering a copy to the premises and affixing it to the door of the main entrance of the said premises. Whenever it may be necessary to serve such an order upon the owner, it may be served personally or by mailing a copy to the owner's last known post office address if the said owner is absent from the jurisdiction. Any such order shall be immediately complied with by the owner, occupant, or manager of the premises or building. The owner, occupant, or manager may, within five (5) days after such order, appeal the order with the Village Board requesting a review and it shall be the duty of the Board to hear the same within not less than five (5) days nor more than ten (10) days from the time when the request was filed in writing with the Village Clerk. The Village Board shall then affirm, modify or rescind the said order as safety and justice may require and the decision shall then be final, subject only to any remedy which the aggrieved person may have at law or equity. The said order shall be modified or rescinded only where it is evident that reasonable safety exists and that conditions necessitate a variance due to the probable hardship in complying literally with the order of the Fire Chief. A copy of any decision so made shall be sent to the Fire Chief and the owner, occupant, or manager making the appeal.

#### **§7-310: VIOLATION; CORRECTION OF CONDITION**

It shall be the duty of the owner, lessee or occupant of any building or structure that was lawfully inspected as herein prescribed, and who receives written or verbal notice of a violation of any of the provisions of the Village ordinances, to correct the condition within five (5) days of the date of receipt of such notice.

#### **§7-311: ANHYDROUS AMMONIA**

Any person, firm or corporation desiring to store or keep within the jurisdictional boundaries of the Village for any period of time any form of anhydrous ammonia, in any amount; or add to, enlarge, or replace any facility used for the storage of such, must first (1<sup>st</sup>) get permission from the Village Board. The Board shall require information on the place of storage and the amount of ammonia to be stored. If permission is granted, the Village Board shall prescribe such rules, regulations and precautionary actions as it may deem necessary. In no instance will permission be granted to any person, firm, association or corporation requesting to build, erect, or maintain above ground or underground any storage tank or container in which is stored or kept anhydrous ammonia at any place within the corporate limits of the Village. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence prior to June 13, 1975; provided, any such present use that is discontinued for a period of sixty (60) days shall not be revived without a permit.

## **Article 4 – Explosive Material**

### **§7-401: STORAGE**

Dynamite and other explosives shall be stored in a proper receptacle made of concrete, metal or stone, which shall be closed at all times except when actually in use. Such receptacle shall not be located in any room where there is a flame or flammable materials.

### **§7-402: BULLETS**

Cartridges, shells and percussion caps shall be kept in their original containers away from flame, flammable materials and high explosives.

### **§7-403: BLASTING PERMITS**

Any person wishing to discharge high explosives within the Village must secure a permit from the Village Board, twenty four (24) hours prior to such discharge and shall discharge such explosives in conformance with such conditions specified in the permit. In no case shall any person perform blasting operations unless operating under the direct supervision of a person in possession of a valid user's permit issued by the Nebraska State Patrol.

### **§7-404: REGISTRATION**

Any person keeping or storing dynamite, nitroglycerin, gun powder or other high explosives in any quantity shall register with the Village Clerk such information as the Village Board may require. Such information shall be forwarded to the Fire Chief.

## Article 5 – Fireworks

### **§7-501: REGULATION OF USE, SALE, POSSESSION**

The use, sale, offer for sale, and possession of permissible fireworks in the Village as shall be governed and regulated any rules and regulations adopted by the State Fire Marshal for enforcement.

### **§7-502: SALES; LICENSE REQUIRED; LICENSE FEE**

It shall be unlawful for any person to sell, hold for sale or offer for sale any fireworks in the Village unless such person has first (1<sup>st</sup>) obtained a fireworks sale license. Application for such license shall be made to the Village Board and shall be accompanied by a license fee of one thousand dollars (\$1,000.00). The license shall be good only for the calendar year in which issued. Such license shall be issued annually and shall entitle the holder to sell fireworks only between 12:01 A.M. June twenty fourth (24<sup>th</sup>) and 12:00 P.M. July fourth (4<sup>th</sup>) of each year. Such license shall be displayed at all times at the place of business of the holder thereof. (Am. Ord. 1999-1, 4/7/98)

### **§7-503: PERMITTED FIREWORKS**

1. It shall be unlawful for any person to ignite or cause to be exploded fireworks or firecrackers of any description whatsoever, except sparklers, Vesuvius fountains, spray fountains, torches, color fire cones, star- and comet-type color aerial shells without explosive charges for the purpose of making a noise, color wheels, lady fingers, not exceeding seven-eighths (7/8) inch in length or one-eighth (1/8) inch in diameter, and which do not contain more than one-half (1/2) grain each in weight of explosive material.

2. The provisions of this Section shall not apply to any fireworks to be used for purpose of public exhibitions or display under authorization of the Village Board or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal.

### **§7-504: THROWING FIRECRACKERS**

It shall be unlawful for any person to throw any firecracker, or any object which explodes upon contact with another object, from or into a motor vehicle; onto any street, highway, or sidewalk; at or near any person; into any building; or into or at any group of persons. (Neb. Rev. Stat. §17-556,

### **§7-505: FIREWORKS; SALE**

It shall be unlawful for any person to sell, hold for sale, or offer for sale as distributor, jobber, or retailer any fireworks without first obtaining a license from the State Fire Marshal for that calendar year. Licensed vendors shall only sell fireworks which have been approved by the State Fire Marshal and such permissible fireworks may be sold at retail only between June twenty fourth (24<sup>th</sup>) and July fifth (5<sup>th</sup>) of each year.

## **Article 6 – Penal Provision**

### **§7-601: VIOLATION; PENALTY**

Any person, who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, whether set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and fined in a sum of not more than five hundred dollars (\$500.00). Each day's maintenance of the same shall constitute a separate offense.

## **CHAPTER 8 – PUBLIC WAYS AND PROPERTY**

### **Article 1 – Public Property Regulations**

#### **§8-101: MAINTENANCE AND CONTROL**

The Village Board shall have the care, supervision and control of all public roads, highways, bridges, streets, alleys, public squares and commons within the Village and shall cause the same to be kept open, in good repair and free from nuisances. (Neb. Rev. Stat. §17-567)

#### **§8-102: OBSTRUCTIONS**

Trees and shrubs growing upon or near lot lines or upon public ground and interfering with the use or construction of any public improvements shall be deemed obstructions under this Article. The roots of said trees and shrubs may be removed by the Village at the expense of the owner of the property upon which the trees and shrubs are located, should the owner fail or neglect to do so after notice. It shall be unlawful for any person, persons, firm or corporation to obstruct or encumber any of the streets, alleys or sidewalks by fences, gates, buildings, structures or otherwise. (Neb. Rev. Stat. §17-557.01)

#### **§8-103: PERMITTED OBSTRUCTIONS**

Persons engaged in the erection, construction, reconstruction, wrecking or repairing of any building or the construction or repair of a sidewalk along any street may occupy the public street space with such building material and equipment as long as is necessary if such person shall make written application to do so; provided, no permit shall be granted for the occupancy of the sidewalk space or more than one-third (1/3) of the roadway of the public space adjacent to the real estate on which said work is being done. A suitable passageway for pedestrians, protected and lighted in the manner required by the Village Board, shall be maintained within the public space included in the permit.

#### **§8-104: OVERHANGING BRANCHES**

1. The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which tree branches extend shall at all times keep such branches or limbs trimmed to the height of at least twelve (12) feet above the surface of said street or eight (8) feet above walk.

2. Whenever the limbs or branches of any tree(s) extend over streets or sidewalks contrary to the provisions herein, the Village Board at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five (5) days after having received a copy thereof from the Village Clerk stating that the Village will remove them and charge the costs thereof to the owner or occupant as a special assessment for improvements, as herein provided, if said resolution is not complied with.

3. In the event the property owner is a non-resident of the County in which the property lies, before levying any special assessment against that property the Village shall 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. (Neb. Rev. Stat. §17-557.01)

### **§8-105: SIGNS**

No person, firm or corporation shall erect or cause to be erected or placed any sign, advertising or otherwise, abutting or within fifty (50) feet of any roadway, State or otherwise, within the Village without obtaining prior consent of the Village Board. When any firm, person or corporation proposes to erect or cause to be erected or placed a sign adjacent to or within fifty (50) feet of the right of way of any Federal or State highway, then and in that event said sign shall not be erected or placed until prior approval is obtained from the Chairperson and Village Board and the Nebraska Department of Roads. Application for approval of the Village Board shall be made by submitting a proposal to the Village Clerk, who shall in turn transmit it to the Chairperson and Board for consideration.

### **§8-106: BARRICADES AND LIGHTS**

Whenever any excavation on any public property, including without limitation, parking, sidewalks, curbs and streets, occurs within the zoning jurisdiction of the Village, the party responsible for the excavation shall provide adequate barricades around the excavation and shall install sufficient warning lights and signs around the excavation to protect the public.

### **§8-107: CUTTING CURB**

1. 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 without first having obtained a written permit from the Village Board therefore. Before any permit is issued by the Board, the applicant for such permit shall deposit with the Village Treasurer a sum set by resolution of the Village Board for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the Village for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the Village. In the event the Village elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the Village until the work is completed to the satisfaction of the Chief Street Official or of the Committee of the Village Board 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 Village with a good and sufficient surety or sureties to be approved by the Village Board in a sum set by resolution.

2. Before any person shall obtain a permit, he/she shall inform the Village 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. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as

may be prescribed by the Village Board or the Village Engineer. 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 opening. It shall be discretionary with the Village Board to order the Chief Street Official, under the supervision and inspection of the Village Engineer or the Committee of the Village Board on the streets and alleys, to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Board may consent to the work of cutting and closing the paving to be done by the party holding such permit. (Neb. Rev. Stat. §17-567)

#### **§8-108: EAVE AND GUTTER SPOUTS**

It is hereby declared unlawful for any person to erect or maintain any dwelling or business building within the limits of the Village 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 sidewalk or street. Any eave spout erected on any dwelling or business building shall be constructed to drain into the alley or, where it is found to be impossible to drain into an alley, shall be buried beneath the sidewalk and drain into the street.

#### **§8-109: HEAVY EQUIPMENT**

1. 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 on any unpaved street without first having protected such structure with heavy plank sufficient in strength to warrant against the breakage or damage of the same. Hereafter, it shall be unlawful to 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, 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.

2. Where heavy vehicles, structures, and machines move along paved or unpaved streets, the Village Board is hereby authorized and empowered to choose the route over which the moving of such vehicles, structures or machines will be permitted and allowed.

3. It shall be permissible (A) for school buses and emergency vehicles to use metal or metal-type studs any time of the year; (B) to use farm machinery with tires having protuberances which will not damage the streets; and (C) to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to slide or skid. (Neb. Rev. Stat. §60-6,250)

#### **§ 8-110: REAL PROPERTY; ACQUISITION, CONSTRUCTION; ELECTIONS, WHEN REQUIRED**

1. The Village is authorized and empowered to (A) purchase, (B) accept by gift or devise, (C) purchase real estate upon which to erect and (D) erect a building or buildings for an auditorium, fire station, Village building or community house and maintain, manage and operate

the same for the benefit of the inhabitants of the Village.

2. Except as provided below, before any such purchase can be made or any building erected, the question shall be submitted to the electors of the Village at a general municipal election or at an election duly called for that purpose or as set forth in Neb. Rev. Stat. §17-954 and be adopted by a majority of the electors voting on such question.

3. If the funds to be used to finance the purchase or construction of a building pursuant to this section are available other than through a bond issue, then either:

A. Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the Village and no election shall be required to approve the purchase or construction unless within thirty (30) days after the publication of the notice, a remonstrance against the purchase or construction is signed by registered voters of the Village equal in number to fifteen percent (15%) of the registered voters of the Village voting at the last regular municipal election held therein and is filed with the Village Board. If the date for filing the remonstrance falls upon a Saturday, Sunday or legal holiday, the signatures shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the Village at a general municipal election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one (1) year following the election, be purchased or constructed; or

B. The Village Board may proceed without providing the notice and right of remonstrance required in subdivision (A) of this subsection if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than twenty five thousand dollars (\$25,000.00). The purchase shall be approved by the Village Board after notice and public hearing as provided in Neb. Rev. Stat. §18-1755. (Neb. Rev. Stat. §17-953, 17-953.01)

### **§8-111: REAL PROPERTY; ACQUISITION; AUTHORIZATION**

When acquiring an interest in real property by purchase or eminent domain, the Village shall do so only after the Village Board has authorized the acquisition by action taken in a public meeting after notice and public hearing. (Neb. Rev. Stat. §18-1755)

### **§8-112: REAL PROPERTY; ACQUISITION; APPRAISAL**

The Village shall not purchase, lease-purchase or acquire for consideration real property having an estimated value of one hundred thousand dollars (\$100,000.00) or more unless an appraisal of such property has been performed by a certified real estate appraiser. (Neb. Rev. Stat. §13-403)

## **§ 8-113: REAL PROPERTY; SALE AND CONVEYANCE**

1. Except as provided in this Section, the power of the Village to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of such real property and the manner and terms thereof, except that such real property shall not be sold at public auction or by sealed bid when:

A. Such property is being sold in compliance with the requirements of Federal or State grants or programs;

B. Such property is being conveyed to another public agency; or

C. Such property consists of streets and alleys.

2. The Village Board may establish a minimum price for such real property at which bidding shall begin or shall serve as a minimum for a sealed bid.

3. After the passage of the resolution directing the sale, notice of all proposed sales of real property described above and the terms thereof shall be published once each week for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the Village. However, if a remonstrance against such sale, signed by legal electors thereof equal in number to thirty percent (30%) of the electors of the Village voting at the last regular municipal election held therein be filed with the Village Board within thirty (30) days after the third (3<sup>rd</sup>) publication of the notice, such property shall not then nor within one (1) year thereafter be sold; and real estate now owned or hereafter owned by the Village may be conveyed without consideration to the State of Nebraska or to the Nebraska Armory Board for State armory sites or, if acquired for State armory sites, such property shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §18-1001 to 18-1006.

4. Following passage of the resolution directing a sale, publication of the notice of the proposed sale and passage of the thirty (30) day right of remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. The Village Clerk shall, upon passage of such ordinance, certify the name of the purchaser to the Register of Deeds of the County in which the property is located. (Neb. Rev. Stat. §17-503, 17-503.01)

## **§8-114: PERSONAL PROPERTY; SALE AND CONVEYANCE**

1. The Village may convey any personal property owned by it. Such sale shall be exercised by resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three (3) prominent places within the Village for a period of not less than seven (7) days prior to the sale of the property. If the fair market value of the property is greater than five thousand dollars (\$5,000.00), notice of the sale shall also be published once in a legal newspaper published in or of general circulation in such Village at least seven (7) days prior to the sale of the property.

The notice shall give a general description of the property offered for sale and state the terms and conditions of sale.

2. Personal property may be conveyed notwithstanding the procedure in Section (1) of this section when:

A. Such property is being sold in compliance with the requirements of Federal or State grants or programs or

B. Such property is being conveyed to another public agency. (Neb. Rev Stat. Sec. 17-503.02)

## Article 2 – Streets

### **§8-201: NAMES AND NUMBERS**

The Village Board may at any time, by ordinance, rename any street or provide a name for a new street. Buildings used for residence or business purposes located along such a street shall retain their previously assigned numbers and the Street Commissioner shall give notice to the owners or occupants of any buildings located along such named or renamed streets. It shall be the duty of the Street Commissioner, upon the erection of any new building, to assign the proper number to said building and to give notice to the owner or occupant that such new building has had a number assigned to it.

### **§8-202: WIDENING OR OPENING**

The Village Board shall have the power to open, widen or vacate any street, alley or lane within the limits of the Village and to create, open and improve any new street, alley or lane. In the event of such action, the damages sustained by the affected property owner shall be determined in such manner as provided by ordinance. (Neb. Rev. Stat. §17-558, 17-559, 76-704 through 76-717, 76-718 to 76-721 and 76-723 through 76-724)

### **§8-203: EXCAVATION**

It shall be unlawful for any person to make an excavation in any street for any purpose unless a written permit is issued by the Chief Street Official.

### **§8-204: 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 Street Official.

### **§8-205: 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.

### **§8-206: HARMFUL LIQUIDS**

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

### **§8-207: PETITION FOR IMPROVEMENTS**

1. 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(s), alley(s),

public ways or the public grounds proposed to be improved shall be presented and filed with the Village Clerk, petitioning therefore, the Village Board shall by ordinance create a paving, graveling or other improvement district, causing such work to be done or such improvement to be made and contracting therefore.

2. To pay the cost of such improvement, the Board shall levy assessments on the lots and parcels of land abutting on or adjacent to such street(s) or alley(s) especially benefited thereby in such district in proportion to such benefits. The Board 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 Village Board should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (Neb. Rev. Stat. §17-510)

### **§8-208: CONSTRUCTION ASSESSMENT**

1. To defray the costs and expenses of street improvements as may be authorized by law, the Village Board 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 Village Board, sitting as the Board of Equalization, shall review all such improvements in accordance with the procedure provided by law.

2. All special assessments shall be made by the Village Board 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 a legal newspaper published in or of general circulation in the Village 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.

3. 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 village taxes. Such assessments shall be certified to the County Clerk by the Village Clerk forthwith after the date of levy for collection by the county treasurer, unless otherwise specified. After said assessment shall become delinquent, it shall draw interest at the legal interest rate per annum.

4. In the event the property owner is a non-resident of the County in which the property lies, the Village 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. (Neb.

**§8-209: CONSTRUCTION NOTICE**

The Chief Street Official shall notify the owners in fee simple of real estate abutting a street, alley, or a part thereof which is to be put under contract for paving or repaving. Notice shall also be given to all gas, electric service and telephone companies. Notice shall also be given to all consumers of gas, water, and sewer services which will be discontinued during such construction. Said notice shall be published one (1) time in a legal newspaper at least twenty (20) days prior to the beginning of such construction by the party undertaking such construction, and said notice shall state at what date connections must be made and excavation completed. All gas, water, sewer, and underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued, nor will excavation be allowed, until after the completion of the pavement in said street or alley and the formal final acceptance thereof by the proper officials of the Village.

**§8-210: DRIVEWAY APPROACHES**

The Street Commissioner may require the owner of property served by a driveway approach constructed or maintained upon the street right of way to repair or replace any such driveway approach which is cracked, broken or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure, including pavement or sidewalks. The Village Clerk shall give the property owner notice by registered letter or certified mail, directed to the last known address of such owner or his/her agent, directing the repair or replacement of such driveway approach. If the property owner fails or neglects to cause such repairs or replacements to be made within thirty (30) days of the mailing of such notice, the Street Commissioner may cause such work to be done and assess the cost upon the property served by such approach. (Neb. Rev. Stat. §18-1748)

**§8-211: UTILITY LINES, WIRES, ETC**

1. Poles, wires, gas mains, pipe lines and other appurtenances of public service companies shall be located or erected over, upon or under the streets, alleys and common grounds after a proper written application shall have been made to the Village Clerk and permission in writing shall have been given by the Village Board. When requested by the Village Board, public service companies heretofore or hereafter granted right of way for the erection and maintenance of poles, conduits, gas mains, pipe lines and wires for the purpose of transacting their business upon, under or over the streets, alleys and public grounds shall at all times erect, locate or relocate their poles, wires, gas mains, pipe lines and other appurtenances to such places and in such manner as shall be designated by said Board.

2. Such poles, wires, gas mains, pipe lines and other appurtenances shall be removed or relocated by said companies at their own expense when requested to do so by the Village Board. Whenever it becomes necessary for the Board to request such relocation for public safety and convenience, it shall order said relocation by resolution and the Village Clerk shall notify any company or companies affected. Said companies shall, within twenty four (24) hours after

receiving notice, at their own expense, cause the said appurtenances to be removed or relocated. The Village Board shall designate another location where said appurtenances may be reset or placed. All appurtenances shall be reset, placed or erected in such manner that they will not interfere with the water system, sewer system or poles, wires or mains of any public utility located on the same street or alley or with travel or buildings constructed or hereafter to be constructed. Whenever possible, all said appurtenances shall be confined to the alleys of the Village.

**§8-212: VACATING PUBLIC WAYS; DEFINITIONS; ASCERTAINING DAMAGES**

1. In reference to vacating of public ways, “special damages” shall mean only those losses, damages or injuries which a property owner suffers that are peculiar, special or unique to his/her property and which result from the vacating of such street, avenue, alley, lane or similar public way by the Village Board.

2. “Special damages” shall not mean those losses, damages or injuries that a property owner suffers that are in common with the rest of the Village or public at large, even though those losses, damages or injuries suffered by the property owner are greater in degree than the rest of the Village or public at large.

3. The Board Chairperson, with approval of the Village Board, shall appoint three (3), five (5) or seven (7) disinterested residents of the Village to a Special Commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the vacating of such street, avenue, alley, lane or similar public way. Only special damages, as herein defined, shall be awarded to the abutting property owners.

4. In determining the amount of compensation to award the abutting property owners as special damages, the aforementioned Commission shall use the following rule:

*The abutting property owner is entitled to recover as compensation the difference between the value of such property immediately before and immediately after the vacating of such street, avenue, alley, lane or similar public way. However, if no difference in value exists the abutting property owner is entitled to no compensation.*

(Neb. Rev. Stat. §17-558, 17-559)

**§8-213: VACATING PUBLIC WAYS; PROCEDURE**

Whenever the Village Board decides that it would be in the best interests of the Village to vacate a street, avenue, alley, lane or similar public way, the Village Board shall comply with the following procedure:

1. *Notice.* Notice shall be given to all abutting property owners either by first (1<sup>st</sup>) class mail to their last known address or, if there is no known address, then by publishing the notice in a newspaper that is of general circulation in the Village. The content of the notice will advise the

abutting property owners that the Village Board will consider vacating such street, avenue, alley, lane or similar public way at its next regular meeting or if a special meeting is scheduled for such discussion, then the date, time and place of such meeting.

2. *Consent/Waiver.* The Village Board may have all the abutting property owners sign a form stating that they consent to the action being taken by the Board and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in Section 8-212 by the abutting property owners, but does create the presumption that the Village Board's action was proper. However, if all the abutting property owners do not sign the consent/waiver form, the Village Board may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by Neb. Rev. Stat. Sections 17-558 and 17-559.

3. *Ordinance.* The Village Board shall pass an ordinance that shall state essentially the following:

A. A declaration that the action is expedient for the public good or in the best interests of the Village.

B. A statement that the Village shall have an easement for maintaining all utilities.

C. A method or procedure for ascertaining special damages to abutting property owners.

4. *Filing.* The Clerk shall file a copy of the ordinance with the County Register of Deeds to ensure that abutting property owners can gain title to their share of the vacated street, avenue, alley, lane or similar public way and so that such land will be drawn to the attention of the County Assessor. (Ref. 17-558, 17-559 RS Neb.)

#### **§8-214: STREET OR ALLEY VACATIONS; TITLE**

1. Upon the vacation of any street or alley or any part thereof by the Village, the title of such property shall vest in the owner of the abutting property and become part of such property, one-half (1/2) on each side thereof, except that the Village may reserve title to such property in the ordinance vacating such street or alley. If title is retained by the Village, such property may be sold, conveyed, exchanged or leased upon such terms and conditions as shall be deemed in the best interest of the Village.

2. In the event the Village does not elect to reserve title in the vacated portion of such street or alley, the title to said property nonetheless shall be subject to the following:

A. There is reserved to the Village the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

B. There is reserved to the Village, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times. (Neb. Rev. Stat. §17-558)

## Article 3 – Sidewalks

### **§8-301: DEFINITION**

The following definition shall be applied throughout this Article. When no definition is specified, the normal dictionary usage of the word shall apply.

“SIDEWALK SPACE” shall mean that portion of the street between curb lines and adjacent property lines.

### **§8-302: DUTY TO KEEP SIDEWALKS CLEAR**

1. It shall be the duty of the owner of any lot, land or real estate in the Village to clear all ice and snow from the sidewalks adjoining the said property within twelve (12) hours after the cessation of any snow storm. Said snow and ice may not be placed in the street. It shall be unlawful to place snow and ice on any alley or street right of way from private sidewalks, driveways, parking lots, roofs or other private property.

2. It shall be the duty of the occupant as well as the owner of any lot, land or real estate in the Village to clear all obstructions and accumulations from the sidewalks adjoining said property. Such obstructions or accumulations shall include, but not be limited to, glass and other sharp objects; grease, mud or other slick material; loose gravel, leaves, tree limbs, animal waste material, and other hazardous material.(Ord. 2004-6, 6/1/04)

### **§8-303: DUTY TO REMOVE BRANCHES AND SHRUBBERY, PENALTY**

It shall be the duty of the occupant of each lot or parcel of ground in said Village to keep the sidewalks adjacent thereto free from overhanging branches and limbs to a height of eight (8) feet and to keep such sidewalks free from encroaching hedges or shrubbery. No tree, shrubbery or hedge shall be permitted closer than eighteen (18) inches to the sidewalk. It shall be the duty of the occupant of each lot or parcel of ground abutting on any intersection to trim and or remove any shrubbery or other obstacle which obstructs the view for a distance of twenty five (25) feet from such intersection. Any such occupant or owner who fails to remove the overhanging branches and limbs or other encroachments within five (5) days after receiving written notice to do so, upon conviction shall be fined not more than ten dollars (\$10.00) and shall pay the costs of prosecution and the costs of the removal of such encroachments. (Neb. Rev. Stat. §17-557.01)

### **§8-304: TREES IN SIDEWALK SPACE**

No person, or persons, shall plant, or allow to grow, any tree within the sidewalk space without first making a written or verbal application to the Village Board and receiving a written permit therefore. Any tree planted within the sidewalk space after the adoption date of this Section shall be deemed to be unlawfully planting and growing and shall, at the discretion of the Village Board, be deemed to be a nuisance. When any such tree is declared to be a nuisance, the Board shall order, with proper notice, the tree removed at the expense of the owner of the property adjacent to the sidewalk space upon which the tree has been unlawfully planted. If the

property owner fails or neglects to remove, or cause to be removed, the said tree, the Village Board shall order the same removed and assess the expense of such removal against the property adjacent to the sidewalk space wherein the tree is planted and growing. In the event the property owner is a non-resident of the County in which the property lies, the Village 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 (1<sup>st</sup>) published. No fee shall be charged for said permit, and nothing in this Section shall be construed to apply to any existing trees now growing within the sidewalk space. (Neb. Rev. Stat. §17-557.01, 18-1720)

### **§8-305: DUTY TO REPAIR; LIABILITY**

Every owner of any lot or piece of land within the limits of this Village shall at all times keep and maintain the sidewalks along and contiguous to said lots or pieces of land in good and proper repair and in a condition reasonably safe for all travelers thereon. In case the owner or owners of any lot or land abutting on any street or avenue or part thereof shall fail to repair any sidewalk in front of his/her/ lots or land within the time and in the manner as directed and required by this Article after having received due notice to do so, they shall be liable for all damages and injury occasioned by reason of the defective or dangerous condition of any sidewalk. The Chairperson and Board of Trustees shall have power to cause such sidewalks to be repaired and assess the costs thereof against such property. (Neb. Rev. Stat. §17-557, 17-557.01)

### **§8-306: REPAIRING SIDEWALK; NOTICE**

Whenever the Village Board, Committee on Streets and Walks or the Street Commissioner shall deem it necessary that a sidewalk is in need of repair, the owner of the lot or piece of land along and contiguous to which such sidewalk is situated shall be notified to make arrangements within forty eight (48) hours to repair the same. Said repairs shall be completed within twenty one (21) days after issuance of said notice. Oral notice to the owner shall be deemed sufficient. If the owner is not found by the Street Commissioner, then a written notice left in the house situated on such lot or piece of ground or posted upon said premises shall be sufficient, and the forty eight (48) hours shall begin to run from the leaving or posting of such notice, as the case may be.

### **§8-307: RECONSTRUCTING SIDEWALK; NOTICE**

Whenever the Board shall deem it necessary that an old sidewalk be replaced or reconstructed, it shall order the same to be done and the Street Commissioner shall give notice, in the manner and form provided in Section 8-306 of this Article, to replace or reconstruct the same within twenty one (21) days from and after such notice.

### **§8-308: FAILURE TO CONSTRUCT, RECONSTRUCT OR REPAIR**

If any such owner, after notice has been given as provided in this Article, shall neglect or refuse or shall have failed to construct, repair, replace or reconstruct any sidewalk within the

time limit in the notice given in such case, and whose duty it is made by this article to construct, repair or rebuild such sidewalk, the Street Commissioner or other officer empowered herein to act shall proceed at once without further notice to such owner or person to have such sidewalk constructed, repaired, rebuilt or reconstructed, as the case may be, and the expense of such work shall be assessed to such lot or piece of land and collected as provided by law.

**§8-309: NEW SIDEWALK; NOTICE**

Whenever the Village Board shall deem it necessary that a new sidewalk should be constructed in front of any lot or piece of ground in the Village in a place where there is no sidewalk, it shall so order. The Street Commissioner shall thereupon notify the owner of such lot or piece of ground or his/her agent of the work or improvement to be done and such owner or person so notified shall be allowed thirty (30) days from the date of said notice in which to construct the same. All sidewalk construction shall be done strictly in accordance with and pursuant to the instruction and direction of the Street Superintendent for the Village.

**§8-310: CONSTRUCTION BY PETITION OR AGREEMENT**

1. If sixty percent (60%) of the record resident front footage owners of property subject to assessment for sidewalk improvements petition the Board of Trustees to construct the same, the Board of Trustees shall proceed in all things as though such construction had been ordered by it.

2. Upon the petition of an abutting owner in fee simple of property subject to assessment for sidewalk improvements, the Board of Trustees may order permanent sidewalks built in accordance with this article upon the making, executing and delivering to the Village an agreement by the owner that he/she (A) will pay the engineering service fees and the cost of the construction of the sidewalk; (B) grants the Village the right to assess and levy the costs of such construction against his/her real estate abutting the sidewalk improvement; and (C) promises to pay such costs with interest; and (D) agrees that such costs of construction, until paid, shall be a perpetual lien upon the real estate abutting the sidewalk to be constructed. The total cost of such improvement shall be levied, allocated, financed and specially assessed as provided by law. (Neb. Rev. Stat. §17-510)

## Article 4 – Construction of Private Drives

### **§8-401: APPLICATION**

Before any person, firm or corporation constructs a private drive onto any public street or alley, an application shall first (1<sup>st</sup>) be made to the Village Board for a permit for such construction. Such application shall be acted upon by the Board at a special or regular meeting.

### **§8-402: PRIVATE DRIVE SPECIFICATIONS**

Private drives shall not exceed twenty four (24) feet in width and shall not be constructed within ten (10) feet of adjacent lot lines unless such adjacent lots are owned by the applicant.

### **§8-403: APPLICATION REQUIREMENTS**

All driveway applications shall contain the following information: (1) the addition, block and lot which the driveway is to serve; (2) the location of the proposed driveway with reference to adjacent lot lines; (3) the width of the driveway and type of street surface to which the driveway will connect.

### **§8-404: APPROVAL OF BOARD**

In the event that the Village Board determines that such application is in due and proper form and that the same complies with this article, it shall approve construction of such requested driveway and note such approval in its official minutes.

## Article 5 – Snow Emergency

(This Article adopted by Ords. 2004-4, 2004-5, 6/1/04)

### **§8-501: SNOW EMERGENCY, GENERALLY**

1. The Village Clerk, or his/her designee, is hereby authorized to designate a snow emergency on all public streets in the Village.
2. When a snow emergency is designated under this section, the same shall be posted by signage at the Village Office. Such signage shall be posted indicating the snow emergency and shall inform the public when parking is prohibited.
3. After a snow emergency has been declared, it shall be unlawful for any person to park or cause to be parked any vehicle of any kind or description during the time designated on such sign on either side of any street, highway, avenue, boulevard or other public way within the Village.
4. The Village shall provide and supervise the placement of such snow emergency signage. The posting of such signs as provided in this Section shall constitute due and sufficient notice to the public.
5. Said snow emergency shall remain in existence until the snow emergency operation has been declared complete by the Village and the snow emergency signage is removed.

### **§8-502: REMOVAL OF VEHICLES**

1. The Village Clerk or his/her designee and every Law Enforcement Officer are authorized to remove and impound any automobiles or vehicles illegally parked or stalled on any street twelve (12) hours after a snow emergency has been declared. The Village Clerk or his/her designee shall notify the owner of any such vehicle that the vehicle has been removed and impounded. Notification shall be made by hand delivery or by mailing written notice to the owner at the address shown on registration records of the County Treasurer.
2. No person shall recover any vehicle removed in accordance with this Section except as provided in this section. Before the owner of such vehicle shall be allowed to recover it from the place where it has been placed or impounded, he/she shall present evidence of his/her identity and right to possession of the vehicle, shall sign a receipt of its return, shall pay the cost of towing, and shall pay any cost of storage accrued. Until paid, these charges constitute a lien on the vehicle, which may be enforced in the same manner as a storage lien. The Village Clerk or his/her designee and every Law Enforcement Officer are authorized to issue a citation for owners of automobiles or vehicles illegally parked or stalled on any street twelve (12) hours after a snow emergency has been declared which shall be unlawful.

## **Article 6 – Fences, Walls and Hedges**

**(This Article adopted by Ord. 1999-1)**

### **§8-601: CONDITIONS; AGREEMENT OF NEIGHBORS**

Fences, walls and hedges may be permitted in any yard, provided that the fence, wall or hedge is set back at least one (1) foot from the lot line, and provided further, that both adjoining landowners agree in writing and file such agreement with the County Clerk of Washington County, Nebraska, and provide a copy of the agreement to the Village.

### **§8-602: PRIVACY FENCE REGULATION**

If the fence, wall or hedge is of the "privacy" type, it must be constructed with the finished side facing outward. In any front yard, no fence, wall or hedge shall be over two and one-half (2 & 1/2) feet in height when closer than twenty five (25) feet to a public right of way; provided, however, that fences of a decorative, woven, or wire type or fences at least eighty percent (80%) open, may be erected up to four (4) feet in height in any front yard and placed closer than twenty five (25) feet from a public right of way. Fences, walls and hedges not covered by the aforementioned limitations shall not exceed eight (8) feet in height in residential districts. In the event that an underground electric fence is installed, the setback requirement shall be three (3) feet from the lot line.

## **Article 7 – Penal Provision**

### **§8-701: VIOLATION; PENALTY**

Any and all persons violating any of the provisions of the several articles of this Chapter for which a penalty is not therein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not more than five hundred dollars (\$500.00). Each day that maintenance of the same continues shall constitute a separate offense.

## **Chapter 9 - BUILDING REGULATIONS**

### **Article 1 – Building Inspector**

#### **§9-102: BUILDING INSPECTOR; RIGHT OF ENTRY**

It shall be unlawful for any person to refuse to allow the Building Inspector entry into any building or structure where the work of construction, alteration, repair, or relocation is taking place for the purpose of making official inspections at any reasonable hour.

#### **§9-103: BUILDING INSPECTOR; APPEAL FROM DECISION**

In the event it is claimed that the true intent and meaning of this Chapter has been wrongly interpreted by the Building Inspector; that the time allowed for compliance with any order of the Building Inspector is too short; or that conditions peculiar to a particular building make it unreasonably difficult to meet the literal requirements prescribed by this Chapter and the Building Inspector, the owner, his/her agent, or the occupant may file a notice of appeal within ten (10) days after the decision or order of the Building Inspector has been made. The Governing Body shall hear all appeals and shall have the power and authority, when appealed to, to modify the decision or order of the Building Inspector. Such a decision shall be final, subject only to any remedy which the aggrieved person may have at law or equity. Applications for review shall be in writing and shall state the reasons why the variance should be made. A variance shall be granted only where it is evident that reasonable safety and sanitation is assured and may include conditions not generally specified by this Code to achieve that end. A copy of any variance so granted shall be sent to both the Building Inspector and the applicant.

## **Article 2 - Building Permits**

### **§9-201: BUILDING PERMITS**

It shall be unlawful for any person, firm or corporation to commence or to proceed with the erection, construction, reconstruction, repair, conversion alteration, enlargement of, extension of any building, or any part of said building, to include fences, roofing, siding and soffits, swimming pools, decks, window and door replacement, sidewalks, without first (1st) having applied to the Village of Herman for the application for the building permit to do so.

Application for a building permit shall be in writing and shall be delivered to the Village Clerk, who shall refer all such applications to the Building Inspector or the Chairperson of the Village Board for authorization for issuance of a permit. Such applications shall be accompanied by plans and specifications showing the size of the proposed building or structure and its location on the lot, and in all cases the proposed construction materials and type of construction to be used and any pertinent details including the estimated cost thereof. Permits involving routine building repair or maintenance such as roofing, siding, window replacement etc. and not involving house perimeter changes, structural modifications, property line issues, and zoning variances, will apply directly to the Village Board and shall not be required to go through the Planning Board first (1<sup>st</sup>). Those permits issued by the Village Clerk and approved by the Village Building Inspector, will be reviewed by the Village Board at each meeting. Application forms and information packets shall be provided by the Planning Board and the Village Office for the use of those applying for permits as provided for in the ordinance. If an application for a building permit shall be disapproved by the Building Inspector, or if any citizen of the village shall file objections in writing to the issuance of such permit before such permit is issued, the Planning Board review such application, together with all plans and specifications and findings, and report to the governing body at their next regular meeting; and the governing body then shall determine whether the permit shall be issued. Any application authorized by the Planning Board and the Village of Herman Board of Trustees shall be issued by the Village Clerk and shall be on standard Building Permit forms and furnished by the Village. A careful and complete record of all such applications, plans and permits shall be kept in the office of the Village Clerk.

The building permit fee schedule for the Village, also referred to in the International Building Code revised by Ordinance 2009 – 2, shall be set by the council; and a schedule of such fees is on file and available in the Village Clerk's Office.

### **§9-202: BUILDING PERMIT; LIMITATION**

If the work for which a permit has been issued shall not have been commenced within one (1) year of the date thereof, or if the construction shall be discontinued for a period of one (1) year, the permit shall be void. Before work can be resumed, a new permit shall be obtained in the same manner and form as an original permit.

### **§9-203: BUILDING PERMITS; DUPLICATE TO COUNTY ASSESSOR**

Whenever a building permit is issued for the erection, alteration or repair, of any

building within the Municipality's jurisdiction, and the improvement is one thousand dollars (\$1,000.00) or more, a duplicate of such permit shall be issued to the County Assessor. (Ref. 18-1743 RS Neb.)

## **Article 3 - Permit Fee Schedule**

### **§9-301: BUILDING MOVING; REGULATIONS**

It shall be unlawful for any person, firm, or corporation to move any building or structure within the Municipality without a written permit to do so. Application may be made to the Municipal Clerk, and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the Governing Body may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the said building is presently located. The Municipal Clerk shall refer the said application to the Building Inspector for approval of the proposed route over which the said building is to be moved. Upon approval of the Governing Body, the Municipal Clerk shall then issue the said permit; Provided, that a good and sufficient corporate surety bond, check, or cash in an amount set by motion of the Governing Body and conditioned upon moving said building without doing damage to any private or Municipal property is filed with the Municipal Clerk prior to the granting of any permit. No moving permit shall be required to move a building that is ten (10') feet wide, or less, and twenty (20') feet long, or less, and when in a position to move, fifteen (15') feet high, or less. In the event it will be necessary for any licensed building mover to interfere with the telephone or telegraph poles and wires, or a gas line, the company or companies owning, using, or operating the said poles, wires or line shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the said poles, wires, or line relative to the building moving operation. All expense of the said disconnection, removal, or related work shall be paid in advance by the licensee unless such disconnection or work is furnished on different terms as provided in the said company's franchise. Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the Municipality, notice in writing of the time and route of the said building moving operation shall be given to the various Municipal Officials in charge of the Municipal utility departments who shall proceed in behalf of the Municipality and at the expense of the mover to make such disconnections and do such work as is necessary.

### **§9-302: BUILDING MOVING; DEPOSIT**

At such time as the building moving has been completed, the Building Inspector shall inspect the premises and report to the Municipal Clerk in writing as to the extent of damages, if any, resulting from the said relocation and whether any Municipal laws have been violated during the said operation. Upon a satisfactory written report from the Building Inspector, the Municipal Clerk shall return the corporate surety bond, cash, or check deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the Governing Body may apply the money deposited for the purpose of defraying the expense of correcting the said conditions. If the expense of correcting the hazardous condition is greater than the amount of the deposit set by resolution of the Governing Body, as required herein, the Governing Body may recover such excess expense by civil suit or otherwise as prescribed by law.

## **Article 4 - Unsafe Buildings**

### **§9-401: UNSAFE BUILDINGS; DEFINITION**

The term "unsafe building" as used in this Article is hereby defined to mean and include any building, shed, fence, or other man-made structure (a) which is dangerous to the public health because of its condition, and which may cause or aid in the spread of disease or injury to the health of the occupants of it or neighboring structures; (b) which because of faulty construction, age, lack of proper repair, or any other cause is especially liable to fire and constitutes or creates a fire hazard; (c) which by reason of faulty construction or any other cause is liable to cause injury or damage by the collapse or fall of all or any part of such structure. Any such unsafe building in the Municipality is hereby declared to be a nuisance.

### **§9-402: UNSAFE BUILDINGS; PROHIBITION**

It shall be unlawful to maintain or permit the existence of any unsafe building in the Municipality and it shall be unlawful for the owner, occupant, or person in custody of any dangerous building to permit the same to remain in an unsafe condition or to occupy such building or permit it to be occupied while it is in an unsafe condition.

### **§9-403: UNSAFE BUILDINGS; DETERMINATION AND NOTICE**

Whenever the Building Inspector, the Fire Official, the Health Official, or the Governing Body shall be of the opinion that any building or structure in the Municipality is an unsafe building, he/she shall file a written statement to this effect with the Municipal Clerk. The Clerk shall thereupon cause the property to be posted accordingly, and shall file a copy of such determination in the office of the County Register of Deeds, and shall serve written notice upon the owner thereof, and upon the occupant thereof, if any, by certified mail or by personal service. Such notice shall state that the building has been declared to be in an unsafe condition; and that such dangerous condition must be removed or remedied by repairing or altering the building or by demolishing it; and that the condition must be remedied within sixty (60) days from the date of receipt. Such notice may be in the following terms:

"To (owner-occupant of premises) of the premise known and described as \_\_\_\_\_.

"You are hereby notified that (describe building) on the premises above mentioned has been determined to be an unsafe building and a nuisance after inspection by \_\_\_\_\_. The causes for this decision are (here insert the facts as to the dangerous condition).

"You must remedy this condition or demolish the building within sixty (60) days from the date of receipt of this notice or the Municipality will proceed to do so. Appeal of this determination may be made to the Governing Body, acting as the Board of Appeals, by filing with the Municipal Clerk within ten (10) days from the date of receipt of this notice a request for a hearing."

If the person receiving the notice has not complied therewith or taken an appeal from the determination of the officer or employee finding that a dangerous building exists within ten (10) days from the time when this notice is served upon such person by personal service or certified mail, the Building Inspector may, upon orders of the Governing Body, proceed to remedy the condition or demolish the unsafe building.

#### **§9-404: UNSAFE BUILDINGS; HEARING AND APPEAL**

Upon receiving the notice to repair or demolish the building, the owner of the building, within the time stipulated, may in writing to the Municipal Clerk request a hearing before the Governing Body, sitting as the Board of Appeals, to present reasons *why* the building should not be repaired or demolished. The Governing Body shall grant such hearing within ten (10) days from the date of receiving the request. A written notice of the Governing Body's decision following the hearing shall be sent to the property owner by certified mail. If the Governing Body rejects the appeal, the owner shall have five (5) days from the sending of the decision to begin repair or demolition and removal. If after the five (5) day period the owner has not begun work, the Governing Body shall proceed to cause such work to be done; Provided, the property owner may appeal such decision to the appropriate court for adjudication during which proceedings the decision of the Governing Body shall be stayed. Where the Municipality has not adopted a Building Code, the Statutes of Nebraska relating to bonded indebtedness and collection of delinquent taxes shall apply.

#### **§9-405: UNSAFE BUILDINGS; EMERGENCY**

Where any unsafe building or structure poses an immediate danger to the health, safety, or general welfare of any person or persons, and the owner fails to remedy the situation in a reasonable time after notice by the Building Inspector to do so, the Municipality may summarily repair or demolish and remove such building or structure.

#### **§9-406: UNSAFE BUILDINGS; SPECIAL ASSESSMENTS**

In case the owner of any building or structure shall fail, neglect, or refuse to comply with notice by or on behalf of the Municipality to repair, rehabilitate, or demolish and remove a building or structure which is unsafe and a public nuisance, the Municipality may proceed with the work specified in the notice to the property owner. A statement of the cost of such work shall be transmitted to the Governing Body, which is authorized 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. 18-1720, 18-1722, 18-1722.01, RS Neb.)

## **Article 5 - Penal Provisions**

### **§9-501: 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 five hundred dollars (\$ 500.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

### **§9-502: 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 a 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.)

## **Chapter 10 - BUSINESS REGULATIONS**

### **Article 1 - Alcoholic Beverages**

#### **§10-101: ALCOHOLIC BEVERAGES; DEFINITIONS**

All words and phrases herein used are to have the definitions applied thereto, as defined in the Liquor Control Act of the State of Nebraska. (Ref. 53-103 RS Neb.)

#### **§10-102: ALCOHOLIC BEVERAGES; LICENSE REQUIRED**

It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (Ref. 53-168.06 RS Neb.)

#### **§10-103: ALCOHOLIC BEVERAGES; LOCATION**

It shall be unlawful for any person or persons to own, maintain, manage, or hold open to the public any establishment for the purpose of selling at retail any alcoholic liquor within one hundred and fifty (150') feet of any church, school, hospital, or home for elderly or indigent persons or veterans, their wives or children; Provided, this prohibition shall not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two (2) years, and to hotels offering restaurant service, regularly organized clubs, or to restaurants where the selling of alcoholic liquors is not the principal business carried on, if the said hotel, club, or restaurant were licensed and in operation prior to May 24, 1935. No alcoholic liquor, other than beer, shall be sold for consumption on the premise within three hundred (300') feet from the campus of any college within the Municipality. (Ref. 53-177 RS Neb.)

#### **§10-104: ALCOHOLIC BEVERAGES; DWELLINGS**

Except in the case of hotels and clubs no alcoholic liquor shall be sold at retail upon any premise which has any access which leads from such premise to any other portion of the same building used for dwelling or lodging purposes, and which is permitted to be used by the public. Nothing herein shall prevent any connection with such premise, and such other portion of the building which is used only by the licensee, his/her family, or personal guests. (Ref. 53-178 RS Neb.)

#### **§10-105: ALCOHOLIC BEVERAGES; LICENSE DISPLAYED**

Every licensee under the Nebraska Liquor Control Act shall cause his/her license to be framed and hung in plain public view in a conspicuous place on the licensed premise. (Ref. 53-148 RS Neb.)

## **§10-106: ALCOHOLIC BEVERAGES; LICENSEE REQUIREMENTS**

No license of any kind shall be issued to:

1. A person who is not a resident of the state in which the premises covered by the license is located, except in case of railroad, airline, or boat licenses.
2. A person who is not of good character and reputation in the community in which he or she resides.
3. A person who is not a citizen of the United States.
4. A person who has been convicted of or has pleaded guilty to a felony under the laws of the State of Nebraska, any other state, or of the United States.
5. A person who has been convicted of or has pleaded guilty to any Class I misdemeanor under a criminal statute or in another state.
6. A person whose license issued under the Nebraska Liquor Control Act has been revoked for cause.
7. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.
8. A partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license.
9. A limited liability company, if any officer or director of the limited liability company or any member having an ownership interest in the aggregate of more than twenty-five percent of such company would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a limited liability company licensee would be ineligible to receive a license under this section for any reason.
10. A corporation, if any officer, manager or director thereof, or any stockholder, owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and residence within the governmental subdivision, except that the provisions of this subdivision shall not apply to railroad licenses.
11. A person whose place of business conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.
12. A person who does not own the premises for which a license is sought, or does not have a lease thereon for the full period for which the license is to be issued, but if because of a change in the renewal period provided for in Section 53-124 R.R.S. Neb., the lease is for less

than the full period for which the license is to be issued, the license shall be issued and a new lease covering the remainder of the license period must be filed with the Nebraska Liquor Control Commission prior to expiration of the original lease or the license shall be canceled or revoked by said commission on ten days written notice to licensee.

13. Except as provided in this section, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such person shall become eligible for a liquor license only if the Nebraska Liquor Control Commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if the following is shown to the satisfaction of the Nebraska Liquor Control Commission:

- (a) that the licensed business will be the sole property of the applicant, and
- (b) it appears from the evidence that such licensed premises will be properly operated.

14. A person whose premises, for which a license is sought, do not meet standards for fire safety as established by the State Fire Marshal.

15. A law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization.

16. A person less than twenty-one years of age.

17. A person having a beneficial interest in a total of two alcoholic beverage retail licenses, except as provided in sections 53-124.02 to 53-125 R.R.S. Neb.

18. Where a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent.

#### **§10-107: ALCOHOLIC BEVERAGES; MUNICIPAL EXAMINATION**

Any person or persons desiring to obtain a license to sell alcoholic liquors at retail shall file with the Liquor Control Commission. The Commission shall then notify by registered or certified mail the Municipal Clerk. The Governing Body shall then meet and determine the desirability of the application and report in writing or in person to the Commission within thirty (30) days. The Governing Body may examine, or cause to be examined, any applicant; examine, or cause to be examined, the books and records of any such applicant; to hear testimony, and to take proof for its information in the performance of its duties. For the purpose of obtaining any of the information desired, the Governing Body may authorize its agent, or the Municipal Attorney, to act on their behalf. The Governing Body may hold the said examination and hearing

upon the receipt from the Commission of the notice and copy of the application. The Governing Body shall fix a time and place at which a hearing will be held, and at which time the Governing Body may receive evidence, either orally, or by affidavit, from the applicant or any other person concerning the propriety of the issuance of such license. Notice shall be published in a legal newspaper in, or of general circulation in, the Municipality one (1) time not less than seven (7), nor more than fourteen (14), days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local Governing Body in support of or protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than twenty-one (21) days after the receipt of the Commission's letter of notice and after such hearing, the Governing Body shall cause to be spread at large in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall thereupon mail to the Commission a copy of the resolution which shall state the cost of the published notice except that failure to hold a hearing and to examine the said applicant shall not render void any license issued by the Commission. In the event the Commission refuses to issue a license, the cost of the publication of notice as herein required shall be paid by the Commission. (Ref. 53-131, 53-134 RS Neb.)

#### **§10-108: ALCOHOLIC BEVERAGES; LIQUOR LICENSE RENEWAL**

Retail or bottle club licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Governing Body to require the said licensee to issue an application for renewal. Any licensed retail or bottle club establishment located in an area which is annexed to the Municipality shall file a formal application for a license, and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this Article until the original license expires, is canceled, or revoked. If such license expires within sixty (60) days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one (1) year. The Municipal Clerk, upon notice from the Commission, between January tenth (10th) and January thirtieth (30th) of each year, shall cause to be published in a legal newspaper in, or of general circulation in the Municipality, one (1) time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the Municipality; Provided, Class C license renewal notices shall be published between the dates of July tenth (10th) and July thirtieth (30th) of each year, The Municipal Clerk shall then file with the Commission proof of publication of said notice on or before February tenth (10th) of each year or August tenth (10th) of each year for Class C licenses. Upon the conclusion of any hearing required by this Section, the Governing Body may request a licensee to submit an application. (Ref. 53-135, 53-135.01 RS Neb.)

#### **§10-109: ALCOHOLIC BEVERAGES; MUNICIPAL POWERS AND DUTIES**

The Governing Body is authorized to regulate by ordinance not inconsistent with the provisions of the Nebraska Liquor Control Act, the business of all retail and bottle club licensees carried on within the corporate limits. The Governing Body shall further have the power and duties in respect to licensed retailers of alcoholic liquors to cancel or revoke for cause retail licenses to sell or dispense alcoholic liquors issued to persons for premises within its jurisdiction

subject to the right of appeal to the Commission; to enter or to authorize any Law Enforcement Officer to enter at any time upon any premise licensed by the State of Nebraska to determine whether any of the provisions of the Municipal laws, or the laws of the State of Nebraska, are being violated; to receive signed complaints from any citizens within its jurisdiction that any of the Municipal laws, or laws of the State of Nebraska, are being violated, and to act upon such complaints in the manner herein provided; to cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in Section 10-123, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance or regulation duly enacted relating to alcoholic liquors; and to collect for the benefit of the State of Nebraska and the Municipality all license fees and occupation taxes as prescribed by law. (Ref. 53-134 RS Neb.)

#### **§10-110: ALCOHOLIC BEVERAGES; OWNER OF PREMISES**

The owner of any premise used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premise in violation of any Municipal Code Section or Nebraska Statute. (Ref. 53-1,101 RS Neb.)

#### **§10-111: ALCOHOLIC BEVERAGES; EMPLOYER**

The employer of any officer, director, manager, or employees working in a retail liquor establishment shall be held to be liable and guilty of any act or omission or violation of any law or ordinance, if such act is committed or omission made with the authorization, knowledge or approval of the employer or licensee, and each such act or omission shall be deemed and held to be the act of the employer, and will be punishable in the same manner as if the said act or omission had been committed by him/her personally. (Ref. 53-1,102 RS Neb.)

#### **§10-112: ALCOHOLIC BEVERAGES; MINORS AND INCOMPETENTS**

It shall be unlawful for any person or persons to sell, give away, dispose of, exchange, permit the sale of or make a gift of, any alcoholic liquors, or to procure any such alcoholic liquors to or for any minor, or to any person who is mentally incompetent. (Ref. 53-180 RS Neb.)

#### **§10-113: ALCOHOLIC BEVERAGES; CREDIT SALES**

No person shall sell or furnish alcoholic liquor at retail to any person or persons for credit of any kind, barter, or services rendered; Provided, nothing herein contained shall be construed to prevent any club holding a class C license from permitting checks or statements for alcoholic liquor to be signed by members, or guests of members, and charged to the accounts of the said members or guests in accordance with the by-laws of any such club; and Provided further, nothing herein shall be construed to prevent any hotel or restaurant holding a retail alcoholic beverage license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel, and charged to the accounts of such guests. (Ref. 53-183 RS Neb.)

**§10-114: (Reserved for Future Use)**

**§10-115: ALCOHOLIC BEVERAGES; ORIGINAL PACKAGE**

It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to have in their possession for sale at retail any alcoholic liquors contained in bottles, casks, or other containers except in the original package. (Ref. 53-184 RS Neb.)

**§10-116: ALCOHOLIC BEVERAGES; HOURS OF SALE**

It shall be unlawful for any person or persons to sell at retail any alcoholic beverages during the hours that the polls are open on the day in which any statewide primary or general election is conducted. It shall further be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the Municipality except during the hours provided herein:

**HOURS OF SALE**

Alcoholic Liquors (except beer and wine)

**Secular Days**

Off Sale 6:00 A.M. to 1:00 A.M.  
On Sale 6:00 A.M. to 1:00 A.M.

**Sundays**

Off Sale Prohibited  
On Sale 6:00 P.M. to 1:00 A.M. Beer and Wine

**Secular Days**

Off Sale 6:00 A.M. to 1:00 A.M.  
On Sale 6:00 A.M. to 1:00 A.M.

**Sundays**

Off Sale 6:00 A.M. to 1:00 A.M.  
On Sale 6:00 A.M. to 1:00 A.M.

Provided, that such limitations shall not apply after twelve (12:00) o'clock Noon on Sunday to a licensee which is a nonprofit corporation holding a license pursuant to Section 53-124(5) (C) & (H) Reissue Revised Statutes of Nebraska 1943.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. For the purposes of this Section, "on sale" shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; "off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

Nothing in this Section shall be construed to prohibit licensed premises from being open for other business on days and hours during *which* the sale or dispensing of alcoholic beverages is prohibited by this Section. (Ref. 53-179 RS Neb.)

**§10-117: ALCOHOLIC BEVERAGES; SANITARY CONDITIONS**

It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons and said licensed premise shall be subject to any health inspections the Governing Body or the Municipal Police may make, or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for, or renewal of, a liquor license. (Ref. 53-118 RS Neb.)

**§10-118: ALCOHOLIC BEVERAGES; HIRING MINORS**

It shall be unlawful for any person to hire a minor regardless of sex under the age of nineteen (19) years to serve or dispense alcoholic liquors, including beer, to said licensee's customers. (Ref. 53-102 RS Neb.)

**§10-119: ALCOHOLIC BEVERAGES; CONSUMPTION IN PUBLIC PLACES**

Except as specifically provided for in this Section, it shall be unlawful for any person to consume alcoholic beverages within the corporate limits upon the public ways and property, including inside vehicles while upon the public ways and property. It shall further be unlawful for any person to consume alcoholic beverages within any other public business that is not a licensed liquor establishment. Alcoholic beverages may be consumed within the confines of the Herman City Park, the Herman Fire Hall and the Herman Legion Hall, provided, however, it shall be unlawful for any person to consume alcoholic beverages within the Herman City Park and the Herman Legion Hall between the hours of one (1:00 A.M.) and seven (7:00 A.M.) (Ref. 53-186, 53-186.01 RS Neb.)

**§10-120: ALCOHOLIC BEVERAGES; ACQUISITION OF ALCOHOLIC BEVERAGES**

It shall be unlawful for any person to have possession of any alcoholic liquors which shall have been acquired otherwise than from a licensee duly licensed to sell same to such person under the provisions of the Nebraska Liquor Control Act; Providing, nothing herein shall prevent the possession of alcoholic liquor for the personal use of the possessor, his/her family and guests, as long as the quantity of alcoholic liquor transported, imported, brought, shipped or caused to be transported, imported, brought, or shipped into the State for personal use does not exceed one (1) gallon at any one (1) time or in excess of two (2) gallons in any one (1) calendar month, nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker, his/her family and his/her guests; and Provided further, that the possession and dispensation of wine by an authorized representative of any church for the

purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this Section;

**§10-121: ALCOHOLIC BEVERAGES; REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY**

Any Law Enforcement Officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to him/herself, , or others, or who is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such intoxicated person to his or her home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctor which have previously presented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances longer than twenty-four (24) hours. The placement of such person in civil protective custody shall be recorded at the facility or jail at which he/she is delivered and communicated to his/her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

The Law Enforcement Officer who acts in compliance with this Section shall be deemed to be acting in the course of his/her official duty and shall not be criminally or civilly liable for such actions. The taking of an individual into civil protective custody under this Section shall not be considered an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

**PUBLIC PROPERTY** shall mean any public right-of-way, street, highway, alley, park, or other State, County, or Municipally-owned property.

**QUASI PUBLIC PROPERTY** shall mean and include private or publicly-owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress. (Ref. 53-1,121 RS Neb.)

**§10-122: ALCOHOLIC BEVERAGES; INSPECTIONS**

It shall be the duty of the Governing Body to cause frequent inspections to be made on the premises of all retail and bottle club licensees. If it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or regulations of the Nebraska Liquor Control Commission, or is failing to observe in good faith the purposes of said Act, the license may be suspended, cancelled, or revoked after the licensee has been given an opportunity to be heard by the Governing Body. (Ref. 53-116.01 RS Neb.)

### **§10-123: ALCOHOLIC BEVERAGES; CITIZEN COMPLAINTS**

Any five (5) residents of the Municipality shall have the right to file a complaint with the Governing Body stating that any retail or bottle club licensee, subject to the jurisdiction of the Governing Body, has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant thereto. Such complaint shall be in writing in the form prescribed by the Governing Body and shall be signed and sworn by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the Governing Body is satisfied that the complaint substantially charges a violation and that from the fact alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten (10) days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint; Provided, that the complaint must in all cases be disposed of by the Governing Body within thirty (30) days from the date the complaint was filed by resolution thereof, said resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided by law. (Ref. 53-134.04 RS Neb.)

### **§10-124: LIQUOR APPLICATIONS; RETAIL LICENSING STANDARDS**

The Village Board adopts the following licensing standards and criteria for consideration by the Liquor Control Commission of any applicant for a retail alcoholic liquor license, for the upgrading of a license to sell alcoholic liquor, or for the expansion or change in location of the premises, in accordance with the Nebraska Liquor Control Act, Neb. Rev. Stat. §53-132(3) (a) and section 7 of Legislative Bill 911, Eighty Ninth Legislature, Second Session, 1986:

1. The adequacy of existing law enforcement resources and services in the area.
2. Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems, and the proximity and availability of on-street and off-street parking.
3. Zoning restrictions.
4. Sanitation or sanitary conditions on or about the proposed licensed premises.
5. The existing population, and projected growth, both Village-wide and within the area to be served.
6. The existing liquor licenses, the class of such license.
7. The nature and needs of the neighborhood or community where the proposed premises are located as well as its projected growth.
8. Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

9. Whether the applicant can insure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. Rev. Stat. §53-102 of the Nebraska Liquor Control Act.

10. Whether the applicant is fit, willing, and able to properly provide the service proposed in conformance with all provisions, requirements, needs and regulations provided for in the Nebraska Liquor Control Act.

11. The background information of the applicants established by information contained in the public records of the Nebraska Liquor Control Commission.

12. Proximity of and impact on schools, hospitals, libraries and public institutions.

13. Whether the type of entertainment to be offered, if any, will be appropriate and nondisruptive to the neighborhood where the premises are located and to the community at large.

14. Whether or not applicant has ever forfeited bond to appear in court to answer charges of having committed a felony, or charges of having violated any law or ordinance enacted in the interest of good morals and decency, or has been convicted of violating for forfeiting bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquors.

15. Other information and data that may reasonably be considered pertinent to the issuance of the license.

The preceding standards are not necessarily of equal value that can be computed in a mathematical formula. Rather, they are standards which can be weighed and cumulated positively and negatively. The burden of proof and persuasion shall be on the party filing the application. When applicable, the term "applicants" as used herein is synonymous with "licensee." (Ref. 53-134 RS Neb.)

## Article 2 - Peddlers and Hawkers

### **§10-201: HAWKERS, PEDDLERS AND SOLICITORS; DEFINITIONS**

“**CANVASSER OR SOLICITOR**” shall mean any individual who actually makes contact, directly or indirectly, by phone, by mail, in person, or otherwise with any potential donor with the intent of soliciting.

“**HAWKER OR PEDDLER**” shall mean any individual who as the primary mode of conducting business, travels either by foot, automobile, motor truck, vehicle, or other type of conveyance, from house to house, from residence to residence, or from dwelling to dwelling, taking or attempting to take orders for sale of goods, wares, and merchandise, personal property of any nature whatsoever, for future delivery; seeking donations, or taking or attempting to take orders for services to be performed in the future. It shall be immaterial whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale, or whether he/she is collecting advance payments on such sales. Such definition shall apply to such individual described herein whether or not such individual, who for him/herself or for any other individual, firm, partnership or corporation, hires, leases, uses or occupies any building, structure, tent, hotel room, motel room, lodging house, apartment, shop, piece of ground, lot or parcel thereof, or any other place within the Village for the sole purpose of exhibiting samples and taking orders for future delivery.

“**SOLICIT AND SOLICITATION**” shall mean the request directly or indirectly, for money, donations of money, property, or financial assistance of any kind and shall include the sale or offer for sale of any article, tag, service emblem, publication, ticket, advertisement, subscription, or anything of value on the direct or implied plea or representation that such sale or solicitation or the proceeds thereof is for a charitable, benevolent, civic, education, religious, patriotic, or philanthropic purpose. A solicitation shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale as referred to herein.

“**SOLICITING ORGANIZATION**” shall mean any individual person, group, corporation, association, partnership or individual engaged in a solicitation.

### **§10-202: HAWKERS, PEDDLERS, AND SOLICITORS; PERMITS REQUIRED**

It shall be unlawful for any canvasser, solicitor, peddler, or hawker, directly or indirectly, to sell, attempt to sell, solicit, or make solicitations on the streets, in any office or business building, or any piece of ground, lot or parcel thereof, by house-to-house canvass, or in any other private or public place by telephone, person solicitation, or in any other way in the Village of Herman unless such person, organization, society, association, or corporation shall have first obtained a permit as provided hereafter.

### **§10-203: HAWKERS, PEDDLERS, AND SOLICITORS; PERMIT APPLICATION**

Application for a permit as required by Section 10-202 shall be sworn to and filed with the Village Clerk. The application shall contain the following information:

1. Names of organization applying for license to solicit or sell and address of its headquarters;
2. Names and addresses of its principal officers and management;
3. The purpose for which any solicitation is to be made and the use or disposition to be made of any receipts there from;
4. The name and the person or persons by whom the receipts of any solicitation shall be disbursed;
5. The name and address of the person or persons who will be in direct charge of conducting the solicitation or sales, and the name and address of the registered agent and registered office of the soliciting or selling organization;
6. An outline of the method or methods to be used in conducting the solicitation or sale;
7. The time when such solicitations or sales shall be made, giving the performed dates for the beginning and ending of such solicitation or sale;
8. A statement to the effect that if a permit is granted, it will not be used or represented in any way as an endorsement by the Village of Herman.

Upon furnishing the information required in the permit application, the payment of the five dollar (\$5.00) permit fee, and payment of any occupation tax as required by other ordinances and the posting of anybody required by this Article, the Clerk shall then issue a permit to such applicant. A permit requiring a bond shall only be issued for the term of the bond and in any event for a term no longer than one (1) year from the date of issuance.

#### **§10-204: HAWKERS, PEDDLERS, AND SOLICITORS; BOND**

In the event that the information obtained at the time a permit pursuant to this Article is issued discloses that the applicant is merely taking orders for sale of articles within the purview of this Article which are to be delivered in interstate commerce and thereby is not subject to an occupation tax, the Village Clerk shall before issuing a permit communicate with the employer of such applicant is authorized to represent such employer and the applicant shall further give a bond with an approved surety company, guaranteeing to any citizen of the Village that all money paid as a down payment will be accounted for and applied according to the representations of the salesman and further guaranteeing to any citizen of the Village who did business with such agent that the property purchased will be delivered according to the representations of the salesman. Such bond shall be in the principal sum of five hundred dollars (\$500.00) and shall be on a form to be provided by the Village Clerk. At the time of applying for a permit, such prospective permit holder shall pay to the Village Clerk the sum of five dollars (\$5.00) to cover the cost of issuing the permit and of investigating the applicant. No permit shall be granted by the Village Clerk until investigation has been made and the bond placed as herein provided.

**§10-205: HAWKERS, PEDDLERS AND SOLICITORS; HOURS**

It shall be unlawful to make calls as a solicitor, canvasser, hawker or peddler to prospective customers before eight (8:00) o'clock AM or after sunset, any day, unless requested to do so by the prospective customer.

**§10-206: HAWKERS, PEDDLERS AND SOLICITORS; EXCEPTIONS**

This Article shall not apply to any society, labor union, church, association, or corporation that is organized and operated exclusively for religious, philanthropic, benevolent, fraternal, charitable, or reformatory purposes, not operated for pecuniary profit, when no part of the net earnings of which inures to the benefit of any person, private shareholder, or individual, and where such solicitation may be in the form of collections of contributions at the regular exercises or services of any church, religious society, lodge, benevolent order, or fraternity or similar organization, or of any branch thereof; Provided, that such organization is established in the Village. No bond or permit will be required for qualified representatives of any church, having an established congregation and conducting regular services, in the Village. It shall be the duty of the Village Clerk to verify that the congregation is actually established in the Village.

Nothing herein shall be construed to apply to any person, or persons, selling produce raised within the county, or to wholesale sales representatives soliciting merchants directly.

## Article 3 - Bingo

### **§10-301: BINGO; REGULATION**

Games of bingo shall be conducted within the Municipality in accordance with all laws of the Municipality and the State of Nebraska if the said game of bingo is played for or involves profit or gain. Any association duly licensed by the State of Nebraska to conduct the game of bingo shall obtain a written permit from the Governing Body before commencing operation of said game. Application shall be made to the Municipal Clerk for such permit. Said application form shall contain such information and documents or copies thereof as the Governing Body deems necessary to determine whether to grant or reject the application. Upon the determination that granting the application would be proper, the Governing Body shall immediately direct the Municipal Clerk to issue the said license to the applicant upon the payment *of an* annual permit fee of ten dollars (\$10.00). Said license shall be subject to revocation at any time for good cause. Any person or persons, so licensed, shall be subject to any other fees, rules, and regulations which the Governing Body may designate. All permits issued will automatically expire on September thirtieth (30th), following its issuance or renewal. The fee for each renewal unless otherwise prescribed shall be in the sum of ten dollars (\$10.00). Said fee shall be credited to the General Fund. The permit shall be on display at any place where a game of bingo is conducted. (Ref. 9-166 RS Neb.)

### **§10-302: (Repealed 2013)**

### **§10-303: (Repealed 2013)**

### **§10-304: (Repealed 2013)**

## Article 4 - Franchises

### **§10-401: FRANCHISE; ELECTRICITY**

The Governing Body has granted to the North Central Omaha Public Power District the authority to maintain and operate the light and power system in the Municipality for the purpose of furnishing electric energy to the Municipality, and fixing the charges for such services. Details of the agreement and the present electrical rates, charges, and fees are available at the Municipal Clerk's Office. (Ref. 17-528.03 RS Neb.)

## Article 5 - Occupation Taxes

### **§10-501: OCCUPATION TAX; AMOUNTS**

For the purpose of raising revenue an occupation tax is hereby levied on the following businesses:

1. An alcoholic distributor's license for the first (1<sup>st</sup>) and each additional wholesale distributing place of business operated in this Village by the same licensee and wholesaling or jobbing alcoholic liquors, except beer, five hundred dollars (\$500.00) State fee together with one thousand dollars (\$1,000.00) Village occupation tax.

2. A beer distributor's license, for the first (1<sup>st</sup>) and each additional wholesale distributing place of business operated in this Village by the same licensee and wholesaling or jobbing beer only, two hundred fifty dollars (\$250.00) State fee, together with five hundred dollars (\$500.00) Village occupation tax.

3. For a retailer's license, Class A. Beer only, within the corporate limits of the Village, for consumption on the premises, regardless of alcoholic content, sales in the original packages only, the sum of twenty five dollars (\$25.00) State tax, together with fifty dollars (\$50.00) Village occupation tax.

4. For a retailer's license, Class C. Alcoholic liquors within the corporate limits of the Village, for consumption on the premises and off the premises, sales in original packages only, and for catering and dispensing alcoholic liquor on premises away from the licensed premises, the sum of two hundred fifty dollars (\$250.00) together with five hundred dollars (\$500.00) Village occupation tax.

5. For a retailer's license, Class D. Alcoholic liquors, including beer, regardless of alcoholic content, within the corporate limits of the Village, for consumption off the premises, sales in the original packages only, and for catering and dispensing alcoholic liquor on premises away from the licensed premises, the sum of one hundred fifty dollars (\$150.00) together with three hundred dollars (\$300.00) Village occupation tax.

6. For a retailer's license, Class H. Alcoholic liquors, including beer, issued to a nonprofit corporation, for consumption on the premises, which license shall not be issued to any corporation authorized by law to receive a license under the provisions of subdivision five (5) of this Section, provided, that this provision shall not apply when the nonprofit corporation shall be open for sale of alcoholic liquors, including beer, for consumption on the premises not more than two (2) days in any week within the corporate limits of the Village for consumption on the premises, regardless of alcoholic content, the sum of twenty dollars (\$20.00) State tax, together with forty dollars (\$40.00) Village occupation tax.

7. For a retailer's license, Class II. Alcoholic liquors, including beer, issued for consumption on the premises to Municipal corporations, a fine arts museum incorporated as a nonprofit corporation, or religious or fraternal nonprofit corporation which has been exempt

from payment of federal income taxes and does not hold a retail liquor license under this ordinance. Such license shall be issued subject to the following conditions:

- a. The license authorized in this subdivision shall not be applied for and used by the same Municipal Corporation or nonprofit corporation on more than three (3) occasions in one (1) calendar year;
- b. The license shall be valid only for the occasion or the date of such occasion indicated on the license and shall only be used on three (3) calendar days in one (1) calendar year;
- c. The fee for such license shall be twenty dollars (\$20.00) for each such occasion, and shall be submitted with the application for the license, together with forty dollars (\$40.00) Village occupation tax;
- d. The Municipal corporation or nonprofit corporation seeking such license shall, at least thirty (30) days prior to the occasion for which the license is required, file an application which shall include the date, time and place of the occasion together with required fee and such other information that may be required by the commission to determine if the applicant is qualified to receive such license; and
- e. The application shall be processed by the Commission without the necessity of forwarding it to the local Governing Body or having a hearing thereon, nor shall the applicant be required to file a bond on lease. The application, if it meets the requirements of this subsection, shall be approved and permission shall be granted and a license issued for use of the described premises, but all other statutory provisions and rules and regulations of the Commission shall be applicable, except the provisions of R.R.S. Section 53-177 shall not apply to the applicant. If the applicant does not qualify for a license, it shall be denied by the Commission.

8. For retailer's license, Class J. Beer and wine only, within the corporate limits, for consumption on the premises of restaurants only, regard less of alcoholic content, the sum of fifty dollars (\$50.00) State tax, together with one hundred dollars (\$100.00) Village occupation tax. (Ref. 17-525 RS Neb.)

#### **§10-502: OCCUPATION TAX; COLLECTION DATE**

All occupation taxes shall be due, and payable on the first (1st) day of May of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person or persons to the Municipal Clerk, the said Clerk shall give a receipt, properly dated, and specifying the person paying the said tax, and the amount paid; Provided, occupation taxes collected from Class C liquor licenses shall be due and payable on the first (1st) day of November. The revenue collected shall then be immediately deposited into the General Fund by the Municipal Treasurer. The Municipal Treasurer shall keep an accurate account of all revenue

turned over to him/her. All forms and receipts herein mentioned shall be issued in duplicate. One (1) copy shall then be kept by each party in the transaction. (Ref. 17-525 RS Neb.)

**§10-503: OCCUPATION TAX; CERTIFICATES**

The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person, and business that paid the said tax. The Occupation Tax Certificate shall then be displayed in a prominent place, or carried in such a way as to be easily accessible, while business is being conducted. (Ref. 17-525 RS Neb.)

**§10-504: OCCUPATION TAX; FAILURE TO PAY**

If any person, company, or corporation fails, or neglects to pay the occupation taxes as provided herein on the day it becomes due, and payable, the Municipality shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of one percent (1%) per month until paid. (Ref. 17-525 RS Neb.)

## **Article 6 - Penal Provision**

### **§10-601: 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 five hundred dollars (\$ 500.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.