

Chapter 6
POLICE REGULATIONS
Article 1. Dogs and Cats

§6-101 **DOGS AND CATS; DEFINITIONS.** For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

ABANDON. Means to leave any ANIMAL in one's care, whether as OWNER or CUSTODIAN, 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.

AT LARGE. "At Large" shall be intended to mean off the property of his owner, keeper, or harbinger, and not under control of a competent person. A dog shall be deemed to be under control and in restraint within the meaning of this ordinance when it is controlled by leash, at "heel" beside a competent person and obedient to that person's commands, on or within a vehicle being driven or parked on the streets or within the property lines of its owner, keeper or harbinger.

ANIMAL. Any live, vertebrate creature other than human beings. The term shall not include an uncaptured wild creature.

ANIMAL CONTROL OFFICER. Means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, HEALTH DEPARTMENT employee, employee of the ANIMAL CONTROL AUTHORITY, or any other public official authorized by the City to enforce state or local ANIMAL control laws, rules, regulations, or ordinances.

ANIMAL CONTROL AUTHORITY. Shall mean an entity authorized to enforce the ANIMAL control laws of the City designated by the City Council.

ANIMAL SHELTER. Any facility operated by or contracted with the City or the ANIMAL CONTROL AUTHORITY for the purpose of IMPOUNDING or caring for ANIMALS held under the authority of this chapter.

AUCTIONS. Any place or facility where ANIMALS are regularly bought, sold, or traded, except for those facilities otherwise defined in this ordinance. This section does not apply to individual sales of ANIMALS by OWNERS.

BIRDS. Any feathered vertebrate, including pigeons, but excluding poultry and raptors.

BITE. Any seizure with the teeth by an ANIMAL.

CIRCUS. A commercial variety show featuring ANIMAL acts for public entertainment.

COMMERCIAL ANIMAL ESTABLISHMENT. Any PET shop, GROOMING SHOP, AUCTION, riding school or stable, CIRCUS, performing ANIMAL exhibition, or KENNEL (this term shall not include a VETERINARY HOSPITAL or VETERINARY CLINIC).

CRUELLY MISTREAT. Means to knowingly and intentionally kill, maim, disfigure, TORTURE, beat, mutilate, burn, scald, or otherwise inflict harm or cause pain upon any ANIMAL.

CRUELLY NEGLECT. Means to fail to provide any ANIMAL in one's care, whether as OWNER or CUSTODIAN, with food, water, SHELTER or other care as is reasonably necessary for the ANIMAL'S health.

DANGEROUS ANIMAL. Means an ANIMAL that (i) has killed a human being; (ii) has inflicted injury on a human being that requires MEDICAL TREATMENT; (iii) has killed a DOMESTIC ANIMAL without provocation; or (iv) has been previously determined to be a POTENTIALLY DANGEROUS ANIMAL by an ANIMAL CONTROL AUTHORITY or ANIMAL CONTROL OFFICER, the OWNER has received notice of such determination, and the ANIMAL 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, or any specific ANIMAL declared to be a DANGEROUS ANIMAL by the City Council, Chief of Police or the ANIMAL CONTROL OFFICER. An ANIMAL shall not be defined as a DANGEROUS ANIMAL hereunder if the individual was antagonizing, tormenting, abusing, or assaulting the ANIMAL at the time of the injury or has, in the past, been observed or reported to have antagonized, tormented, abused, or assaulted the ANIMAL. An ANIMAL shall not be defined as a DANGEROUS ANIMAL if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass, was committing any other tort upon the property of the OWNER of the ANIMAL, was tormenting, abusing, or assaulting the ANIMAL, or has, in the past, been observed or reported to have tormented, abused, or assaulted the ANIMAL, or was committing or attempting to commit a crime.

DOMESTIC ANIMAL. Any of various ANIMALS domesticated by people so as to live and breed in a tame condition and shall include, but not be limited to cats or dogs.

DOMESTICATED. Shall mean a tame ANIMAL that is subject to the dominion and control of an OWNER and accustomed to living in or near habitation without requiring extraordinary restraint or unreasonably disturbing such human habitation.

ENCLOSURE. Any tract of land intended to restrain or contain an ANIMAL by means of a building, fence, or any other means.

FERAL ANIMAL: Any dog or cat found AT LARGE within the Municipality without a collar, license tag, or identification tag that appears to be living as a wild ANIMAL or is not a

domesticated ANIMAL.

FERAL CAT COLONY: Any number of unowned, free-roaming cats that frequent an area seeking food or shelter.

FERAL CAT COLONY CARETAKER: A person who provides care for, but does not own, cats who are part of a FERAL CAT COLONY and holds a FERAL CAT COLONY CARETAKER permit from the ANIMAL CONTROL AUTHORITY.

FOWL. Any poultry, other than pigeons.

GROOMING SHOP. A commercial establishment where ANIMALS are bathed, clipped, plucked, or otherwise groomed.

HEALTH DEPARTMENT. Means the Central District Health Department or any agency with which the City contracts to enforce the provisions of Chapter 6 - ANIMALS of the Fremont City Code related to public health and welfare.

HYBRID ANIMAL. Means any ANIMAL which is the product of the breeding of a domestic ANIMAL with a nondomestic ANIMAL species.

HUMANE KILLING. Means the destruction of an ANIMAL by a method which causes the ANIMAL a minimum of pain and suffering.

IMPOUND. The act of capturing and arranging the temporary confinement of any ANIMAL by any ANIMAL CONTROL OFFICER.

KENNEL. Any premises or cattery, wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats.

LIVESTOCK. Any hooved ANIMAL commonly associated with domestic agricultural purposes, including but not limited to: pot-bellied pigs, horses, mules, donkeys, cows, sheep, goats, llamas, hogs.

MEDICAL TREATMENT. Means treatment administered by a veterinarian, physician or other licensed health care professional.

MUTILATION. Means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an ANIMAL. MUTILATION does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

NEUTERED MALE. "NEUTERED MALE" shall be intended to mean any male ANIMAL which has been operated on to prevent conception.

OWNER OR CUSTODIAN. Any person, partnership, or corporation owning, keeping, possessing, harboring, or knowingly permitting one or more ANIMALS to remain on or about any premises owned or occupied by such person, excluding a FERAL CAT COLONY CARETAKER. An ANIMAL shall be deemed to be harbored if it is fed or SHELTERED for three consecutive days or more or has exercised control or custody of the ANIMAL. In the event that the owner or keeper of any ANIMAL is a minor, the parent or guardian of such minor shall be responsible to ensure that all provisions of these ordinances are complied with.

PERFORMING ANIMAL EXHIBITION. Any spectacle, display, act, or event other than CIRCUSES in which performing ANIMALS are used.

PET. Any ANIMAL kept for pleasure rather than utility.

PET SHOP. Any person, partnership, or corporation, whether operated separately or in connection with another business except for a licensed KENNEL, that buys, sells, or boards any species of ANIMAL.

POLICE ANIMAL means a horse or dog owned or controlled by the State of Nebraska or any county, city or village for the purpose of assisting a law enforcement officer in the performance of his or her official duties;

POTENTIALLY DANGEROUS ANIMAL. Means (a) any ANIMAL that when unprovoked (i) inflicts an injury on a human being that does not require MEDICAL TREATMENT, (ii) injures a DOMESTIC ANIMAL, or (iii) 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 ANIMAL with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or DOMESTIC ANIMALS.

REPEATED BEATING. Means intentional successive strikes to an ANIMAL by a person resulting in serious bodily injury or death to the ANIMAL.

RESTRAINT. Any ANIMAL secured by a leash or lead, or under the immediate control of a responsible person and obedient to that person's commands, or within the real property limits of its OWNER.

RESIDENCE. The structure used as a domicile by a person or a family.

RIDING SCHOOL OR STABLE. Any place which has available for hire, boarding and/or riding instruction, any horse, pony, donkey, mule, or burro.

RUNNING AT LARGE. RUNNING AT LARGE shall mean any dog or other ANIMAL off the premises of the OWNER and not under the immediate control or restraint of a person

physically capable of controlling or restraining the ANIMAL.

SCRATCH. Any scraping with the claws by an ANIMAL which causes an abrasion, puncture or wound of the skin.

SERIOUS INJURY OR ILLNESS. Includes any injury or illness to any ANIMAL which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

SERVICE ANIMAL As defined in the Americans With Disabilities Act, 42 U.S.C. § 1201 et seq, a service ANIMAL is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

SHELTER. Any structure with a roof and walls designed and/or intended to house one or more ANIMALS.

SIGNIFICANT THREAT TO HEALTH OR SAFETY OF DOGS OR CATS MEANS; (a) Not providing SHELTER or protection from extreme weather resulting in serious health or life-threatening conditions predisposing to hyperthermia or hypothermia in dogs or cats, especially those that are not acclimated to the temperature (b) Acute injuries involving potentially life-threatening or disabling medical emergencies in which the OWNER fails or refuses to seek immediate veterinary care (c) Not providing food or water resulting in conditions of potential starvation, malnutrition or severe dehydration (d) Egregious human abuse such as trauma from beating, torturing, mutilating, burning or scalding; or (e) Failing to maintain sanitation resulting in egregious situations where a dog or cat cannot avoid walking, lying or standing in feces.

SPAYED FEMALE. "SPAYED FEMALE" shall be intended to mean any female ANIMAL which has been operated on to prevent conception.

TORTURE. Means intentionally subjecting an ANIMAL to extreme pain, suffering, or agony. TORTURE does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

VETERINARY HOSPITAL OR VETERINARY CLINIC. Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseased and injured ANIMALS.

WILD ANIMAL. Any live ANIMAL normally found living in a state of nature and not normally subjected to domestication, including but not limited to: monkeys, raccoons, skunks, snakes, and lions, but excluding BIRDS.
(Amended by Ord. No. 5387, 11/8/16)

§6-102 PET LICENSE TAG, REGISTRATION FEE: AMOUNTS: DELINQUENT. The OWNER of any dog or cat over the age of four months in the City of Fremont shall pay an annual pet license tag fee for said dog or cat.

The annual pet license tag as provided in this section shall be issued annually by the City Clerk upon payment of a pet license tag fee per City Fee Schedule for each NEUTERED MALE or SPAYED FEMALE and per City Fee Schedule for each unneutered male or unspayed female. The annual pet license tag as provided in this section shall be for the period of January 1 through December 31 of the licensing year. The pet license tag provided for by this section shall be secured by each new OWNER or new resident within thirty days of establishing residency in the City or after acquiring said ANIMAL, notwithstanding the fact that the dog or cat may have been registered within the annual period by a previous OWNER or that the dog or cat had been registered with another authority other than the City of Fremont.

The fee required in above shall become due on January 1 of the licensing year and shall become delinquent on February 1 of each year. The OWNER of any dog or cat in the City of Fremont registering the same after said fee has become delinquent shall pay a surcharge in accordance with the fees adopted by the governing body identified in the City of Fremont.

Pet license tags shall be issued by the City Clerk on and after the second (2nd) day of January of each year. Veterinarians issuing pet license tags for the City shall retain a fee per City Fee Schedule for each pet tag to cover the cost of issuing said pet license tags. Said fee shall be deducted from the pet license tag payable to the City. On and after March first (1st) of each year all dogs and cats without pet license tags shall be subject to apprehension and may be IMPOUNDED by the Police Department or the ANIMAL CONTROL OFFICER.

No pet license tag shall be issued by the City Clerk unless and until the dog or cat shall have been vaccinated as prescribed by this Article and a certificate of vaccination be presented and delivered to the City for the dog or cat license. Such certificate of vaccination shall be executed by a registered veterinarian who shall certify as to the time, place and date of vaccination for rabies that he administered to the dog or cat, and describe the dog or cat and OWNER of the dog or cat in sufficient particulars for identification purposes. Said pet license tag shall not be transferable, and no refund will be allowed in case of death, sale, or other disposition of the licensed dog or cat.

Upon the payment of the license fee, the City Clerk shall issue to the OWNER of a dog or cat a metallic tag for each dog or cat so licensed. The metallic tags shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the OWNER to keep or harbor the said dog or cat until the thirty-first (31st) day of December following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag was issued in accordance with the provisions herein, the City Fremont Code Clerk shall issue a duplicate or new tag for the balance of the year for which the license tax has been paid and shall charge and collect a fee per City Fee Schedule for each duplicate or new tag so issued. All pet license tag fees and collections shall be immediately credited to the General Fund. It shall be the duty of the City Clerk to issue tags of a suitable design that are different in appearance every year.

(Amended by Ord. No. 5387, 11/8/16)

§6-102.01 DOG GUIDES, HEARING AID DOGS, AND SERVICE DOGS; EXEMPT FROM PET LICENSE TAG FEES. With the exception of rabies inoculations, the provisions of this section and section 6-102 shall not be intended to apply to dogs whose OWNERS are nonresidents temporarily within the City, nor to dogs or cats brought into the City for the purpose of participating in any dog or cat show.

Every SERVICE ANIMAL shall be issued a pet license tag as required by local ordinances or resolutions, but no pet license tag fee shall be charged. Upon the retirement or discontinuance of the ANIMAL as a SERVICE ANIMAL, the OWNER of the ANIMAL shall be liable for the payment of a pet license tag fees as prescribed by local ordinances and resolutions.

(Ref. 54-603 RS Neb.)(Ord. No. 3875, 2/23/99; 5387, 11/8/16)

§6-103 NUMBER RESTRICTED

(A) It shall be unlawful to own, keep or harbor at any time more than three dogs and/or five cats over the age of four months per residential or dwelling unit in the city; provided, however, this section shall not apply to kennels and catteries, or holders of pet ANIMAL AVOCATION PERMIT.

(B) The number of ANIMALS authorized in §6-103.01 shall not be in addition to the total number of ANIMALS specified under this section.

(Amended by Ord. No. 5387, 11/8/16)

§6-103.01 PET ANIMAL AVOCATION PERMIT

(A) *Permit required.* A permit is required for any person who shall own, keep, harbor or maintain four or more dogs but no more than five dogs total and/or six or more cats but no more than eight total dogs and cats four months of age or older on the lot on which he or she resides or on a contiguous lot, which lot or lots are not zoned for business.

(B) *Application for permit; issuance; fee'* Any person desiring a pet ANIMAL AVOCATION PERMIT shall file an application with the CITY or ANIMAL CONTROL AUTHORITY for issuance of the permit. The CITY or ANIMAL CONTROL AUTHORITY shall inspect for and consider the applicant's compliance with this chapter in determining whether to issue the permit. An initial inspection fee as prescribed by City Fee Schedule shall be paid at the time of application. In addition, a permit fee as prescribed by City Fee Schedule shall be paid by the applicant annually on the anniversary of the issuance date of the permit.

The initial inspection fee required under this subparagraph (2) is waived for ANIMAL rescues, provided such are otherwise in compliance with this chapter.

(C) *License required.* All ANIMALS owned, kept, possessed or harbored under a pet ANIMAL AVOCATION PERMIT must be licensed as required by §6-103, except as provided in §6-102. Proof of individual license on each pet ANIMAL must be provided at the time of inspection.

(D) *Duration; renewal of permit; revocation.* Such permit shall allow the applicant to pursue the avocation for a period of one year unless said permit is revoked. Being found guilty, in a court of law, of any violation of this chapter, may constitute sufficient cause for revocation of such permit. Failure to permit inspection pursuant to subsection (6) of this section shall be grounds for immediate revocation of this permit. Such permit shall be renewed annually.

(E) *Maintenance and inspection of premises and ANIMALS.* A vocational premises shall be maintained in a clean and safe condition at all times. Sanitary methods shall be used to prevent or abate any offensive odors. The CITY or ANIMAL CONTROL AUTHORITY shall have the right to inspect such premises and the ANIMALS therein at reasonable hours to ascertain that the premises are kept in the aforementioned conditions and meet the following operational standards and such other standards as promulgated by the CITY.

(1) Each ANIMAL shall at suitable intervals and at least once every 24 hours, receive a quantity of wholesome foodstuff suitable for the species' physical condition and age, sufficient to maintain an adequate level of nutrition for the ANIMAL;

(2) Each ANIMAL shall have available at all times an adequate supply of clean, fresh, potable water. If water pans or dishes are used, such pans or dishes shall have weighted bottoms or be mounted or secured in a manner that prevents tipping;

(3) Indoor housing shall provide for adequate ventilation, lighting, temperature control, and construction so as to provide for the safety and comfort of the ANIMALS;

(4) Each ANIMAL shall receive care and medical treatment for debilitating injuries, parasites, and disease, sufficient to maintain the ANIMAL in good health and to minimize suffering;

(5) ANIMALS maintained pursuant to a vocational permit shall be predominantly maintained indoors. Premises where a vocational permit includes dogs shall provide a fenced enclosure sufficient to contain any dogs while outside.

(6) All areas of the premises inspected for a vocational permit shall be made open and available for inspection by the authority.

(F) *Non-commercial catteries.* Any person possessing a valid non-commercial cattery permit at the time of enactment of this section, without lapse in such cattery permit, must

reduce the total number of cats owned, kept, possessed or harbored on or before December 31, 2017 so as to meet the eight ANIMAL limit.

(Amended by Ord. No. 5387, 11/8/16)

§6-103.02 FERAL CAT COLONY CARETAKER PERMIT

(A) Purpose of Permit. The purpose of providing for the permitting of FERAL CAT COLONY CARETAKERS is to decrease the number of FERAL CATS and FERAL CAT COLONIES through the humane methods of trap, neuter and release (TNR), attrition, and relocation.

(B) *Permit required.* A permit is required for any person who cares for, but does not own FERAL CATS that are part of a FERAL CAT COLONY.

(C) *Application for permit; issuance; fee:* Any person over the age of 18 desiring a FERAL CAT COLONY CARETAKER permit shall file an application with the CITY or ANIMAL CONTROL AUTHORITY for issuance of the permit. The CITY or ANIMAL CONTROL AUTHORITY shall inspect for and consider the applicant's compliance with this chapter in determining whether to issue the permit. Conviction of a violation of this Chapter within the past ten years shall be grounds for denial of a permit. The applicant must present (a) a detailed description of each FERAL CAT in the COLONY; (b) proof that such FERAL CATS in the COLONY have been sterilized, ear-tipped, and vaccinated against rabies, or are being actively trapped to perform sterilization, ear-tipping and vaccination; (c) the address of the private property at which the COLONY is maintained; (d) written proof of permission from the private property owner to maintain the COLONY at such address; (e) contact information for the applicant; and (f) such other information as may be required by the ANIMAL CONTROL AUTHORITY. An initial inspection fee as prescribed by City Fee Schedule shall be paid at the time of the application. In addition, a permit fee as prescribed by the City Fee Schedule shall be paid by the applicant biennially on the anniversary of the issuance date of the permit. The Initial inspection fee required under this subparagraph (C) is waived for animal rescues provided such are otherwise in compliance with this chapter. The CITY or ANIMAL CONTROL AUTHORITY shall have the right to inspect the address of the private property at which the COLONY is maintained at reasonable hours from time to time to ascertain that the premises are suitable for FERAL CAT COLONY CARETAKING. No FERAL CAT COLONY CARETAKER permit shall be issued for an address located on public property.

(D) *Duration; renewal of permit; revocation.* Such FERAL CAT COLONY CARETAKER permit shall allow the applicant to maintain the FERAL CAT COLONY for a period of up to two years unless said permit is revoked. Such permit shall be renewed biennially. The following shall constitute cause for revocation of such permit: (a) conviction, in a court of law, of any violation of this chapter, (b) failure to permit biennial or other inspections of the address at which the FERAL CAT COLONY is maintained, (c) inability of the caretaker to provide care for the FERAL CAT COLONY, (d) failure of the caretaker to actively work toward decreasing the number of FERAL CATS within the COLONY through

the humane method of trap, neuter and release (TNR), the continual presence of kittens in the FERAL CAT COLONY and/or failure to sterilize and relocate adult cats who become members of the COLONY, or (e) failure of the caretaker to actively work toward the relocation of the FERAL CAT COLONY. Within 60 days of revocation, the holder of the revoked caretaker permit must relocate the FERAL CATS within the COLONY to the care of one or more other FERAL CAT COLONY CARETAKER permit holders.

(E) *Reclamation from ANIMAL CONTROL AUTHORITY.* The holder of FERAL CAT COLONY CARETAKER permit may reclaim from the ANIMAL CONTROL AUTHORITY a FERAL CAT, belonging to the COLONY for which the permit is issued and which has been described on the permit application, without proof of ownership. The fees specified in City Fee Schedule for redemption, impoundment, board fees and other service/medical fees shall not be required for the return of FERAL CATS from a registered COLONY.

(F) *COLONY size.* The holder of a FERAL CAT COLONY CARETAKER permit may maintain a FERAL CAT COLONY of:

(a) no more than 20 adult FERAL CATS at an address in areas zoned residential, provided, that if such COLONY is composed of more than ten adult FERAL CATS, the permit holder must reduce the number of such cats to ten prior to renewal of the permit; or

(b) no more than 30 adult FERAL CATS at an address in areas zoned commercial, provided, that if such COLONY is composed of more than 15 adult FERAL CATS, the permit holder must reduce the number of such cats to 15 prior to renewal of the permit.

(Amended by Ord. No. 5387, 11/8/16)

§6-104 **AREA WIDE QUARANTINE – IMPOSITION: VACCINATION REQUIRED.** It shall be the duty of the Mayor whenever in his or her opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation announcing the presence of rabies and ordering and requiring all persons owning, possessing, harboring or having the care or control of any ANIMAL to be vaccinated by this chapter within the city to have said ANIMAL required to be vaccinated with anti-rabies vaccine, save those individually excepted by the city physician. It shall be the duty of each and every POLICE OFFICER and ANIMAL CONTROL OFFICER in the city to notify the authority of any such ANIMAL found running at large within the city.

(Amended by Ord. No. 5387, 11/8/16)

§6-105 **RUNNING AT LARGE.** It shall be unlawful for any OWNER to suffer or permit any dog or other ANIMAL to run AT LARGE within the corporate limits of the City of Fremont. It shall be the duty of the city ANIMAL CONTROL OFFICER or other appropriate city law enforcement officer to IMPOUND any ANIMAL found RUNNING AT LARGE within the City of Fremont. Every ANIMAL found RUNNING AT LARGE in violation of this or any other section of the Fremont City Code is declared to be a public nuisance and may be

IMPOUNDED. All ANIMALS not under the immediate control of a person capable of controlling or restraining the ANIMAL may be taken into custody by any ANIMAL CONTROL OFFICER and IMPOUNDED in the ANIMAL SHELTER and there confined in a humane manner. The ANIMAL shall not be released until the shelter fees are paid. After three violations, said ANIMAL will be forfeited by OWNER and be available for adoption. The City of Fremont may also impose a fine against the OWNER(S) per City Fee Schedule.
(Amended by Ord. No. 5387, 11/8/16)

§6-106 DOGS; CAPTURE IMPOSSIBLE. The Municipal Police and the Animal Control Officer shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies which make capture impossible because of the danger involved. (Ref. 54-605 RS Neb).

§6-107 DANGEROUS ANIMALS, OR POTENTIALLY DANGEROUS ANIMALS.

(A) On OWNER'S Property

(1) While unattended on the OWNER'S property, a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL shall be securely confined, in a humane manner, indoors or outdoors in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the ANIMAL from escaping. The pen or structure 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 at a depth of at least one foot. The pen or structure shall also protect the ANIMAL from the elements. The OWNER of a DANGEROUS ANIMAL shall post warning signs on the property where the ANIMAL is kept that are clearly visible from all areas of public access and that inform persons that a DANGEROUS ANIMAL is on the property. Each warning sign shall be no less than ten inches by twelve inches and shall contain the words warning and DANGEROUS ANIMAL in high-contrast lettering at least three inches high on a black background.

(2) All pens or structures for confining DANGEROUS ANIMALS or POTENTIALLY DANGEROUS ANIMALS constructed after November 22, 2016 shall be at least ten (10.0) feet from any privately-owned property abutting the ANIMAL OWNERS' property.

(B) DANGEROUS ANIMALS and POTENTIALLY DANGEROUS ANIMALS
Restraint; IMPOUNDMENT; Confiscation

(1) No OWNER of a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL shall fail to keep such ANIMAL securely muzzled and restrained by a leash or chain whenever off the OWNER'S property.

(2) Any DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL found

in violation of Fremont City Code may be immediately IMPOUNDED by ANIMAL CONTROL OFFICERS. The OWNER shall be responsible for the costs incurred by the ANIMAL CONTROL AUTHORITY for the care of the DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL confiscated by the ANIMAL CONTROL AUTHORITY or for the destruction of any DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL if the action by the ANIMAL CONTROL AUTHORITY is pursuant to law.
(Amended by Ord. No. 5387, 11/8/16)

§6-108 INTERFERENCE WITH POLICE, ANIMAL CONTROL; ENFORCEMENT, JURISDICTION; DUTIES. It shall be unlawful for any person to hinder, delay, or interfere with any Law Enforcement Officer or ANIMAL CONTROL OFFICER who is performing any duty enjoined upon him 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, any ambulance wagon, or other vehicle used for the collecting or conveying of ANIMALS to the shelter.

(A) This chapter shall be enforced only within the corporate limits of the City of Fremont.

(B) The Code provisions of this chapter shall be enforced by the City or agency with which the City contracts to enforce said provisions and the Police Department.

(C) This Chapter shall not apply to:

(1) Care or treatment of an ANIMAL by a veterinarian licensed under the Nebraska Veterinary Medicine and Surgery Practice Act;

(2) Commonly accepted care or treatment of a POLICE ANIMAL by a law enforcement officer in the normal course of his or her duties;

(3) Research activity carried on by any research facility currently meeting the standards of the Federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2003;

(4) Commonly accepted practices of hunting, fishing, or trapping;

(5) Commonly accepted practices occurring in conjunction with rodeos, ANIMAL racing, or pulling contests;

(6) HUMANE KILLING of an ANIMAL by the OWNER or by his or her agent or a veterinarian upon the OWNER'S request;

(7) Commonly accepted practices of ANIMAL husbandry with respect to farm ANIMALS and commercial LIVESTOCK operations, including their transport from one location to another and non-negligent actions taken by personnel or agents of the Nebraska Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;

(8) Use of reasonable force against an ANIMAL, other than a POLICE ANIMAL, which is working, including killing, capture, or restraint, if the ANIMAL is outside the owned or rented property of its OWNER or CUSTODIAN and is injuring or posing an immediate threat to any person or other ANIMAL;

(9) Killing of house or garden pests;

(10) Commonly followed humane practices occurring in conjunction with the slaughter of ANIMALS for food or byproducts; and

(11) Commonly accepted ANIMAL training practices.
(Amended by Ord. No. 5387, 11/8/16)

§6-109 **KILLING AND EXPOSING POISON PROHIBITED.** No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any ANIMAL; provided, that it shall not be unlawful for a person to expose common rat poison mixed only with vegetable substances on his or her own property.
(Amended by Ord. No. 5387, 11/8/16)

§6-110 **ANIMAL NOISE; BARKING AND OFFENSIVE.** It shall be unlawful for any person to own, keep, or harbor any ANIMAL which by loud, continued, or frequent barking, howling, or yelping shall annoy or disturb any neighborhood, or person, or which habitually barks at or chases pedestrians, drivers, or OWNERS of horses or vehicles while they are on any public sidewalks, streets, or alleys in the Municipality. Upon the written complaint of any person, filed with the City Clerk, that any ANIMAL owned by the person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this section, or if a Law Enforcement Officer or ANIMAL CONTROL OFFICER, or his agents hear or see an ANIMAL which by its actions is in violation of this section, the Police or the ANIMAL CONTROL OFFICER shall notify the OWNER to silence and restrain the ANIMAL. If such violations occur again, the Police or the ANIMAL CONTROL OFFICER shall issue a citation and the OWNER shall be fined in accordance to the applicable City Fee Schedule. The provisions of this section shall not be construed to apply to the City ANIMAL SHELTER.
(Amended by Ord. No. 5387, 11/8/16)

§6-111 **RABIES CONTROL, REPORTING AND IMPOUNDMENT.**

(A) Any ANIMAL which is owned by a person and has bitten any person or caused an abrasion of the skin of any person shall be seized by the ANIMAL CONTROL AUTHORITY for a period of not less than ten (10) days if:

(1) The ANIMAL is suspected of having rabies, regardless of the species and whether or not the ANIMAL has been vaccinated;

(2) The ANIMAL is not vaccinated and is of a species determined by the State of Nebraska to be a rabid species; or

(3) The ANIMAL is of a species which has been determined by the State of Nebraska to be a rabid species not amenable to rabies protection by immunization, whether or not such ANIMAL has been vaccinated. If, after observation and examination by a veterinarian, at the end of the (10) ten-day period the ANIMAL shows no clinical signs of rabies, the ANIMAL may be released to its OWNER unless otherwise prohibited by law.

(B)(1) Except as provided in subdivision (b) of this subsection, whenever any person has been bitten or has an abrasion of the skin caused by an ANIMAL owned by another person, which ANIMAL has been vaccinated in accordance with State law or regulation or if such injury to a person is caused by an owned ANIMAL determined by the State of Nebraska to be a rabid species amenable to rabies protection by immunization which has been vaccinated, such ANIMAL shall be confined by the OWNER or other responsible person as required by the ANIMAL CONTROL AUTHORITY for a period of at least ten days and shall be observed and examined by a veterinarian at the end of such (10) ten-day period. If no clinical signs of rabies are found by the veterinarian, such ANIMAL may be released from confinement unless OWNERSHIP of the ANIMAL is otherwise prohibited by law.

(2) A vaccinated ANIMAL owned by a law enforcement or governmental military agency which BITES or causes an abrasion of the skin of any person during training or the performance of the ANIMAL'S duties may be confined as provided in subdivision (a) of this subsection. Such agency shall maintain OWNERSHIP of and shall control and supervise the actions of such ANIMAL for a period of ten (10) days following such injury. If during such period the death of the ANIMAL occurs for any reason, a veterinarian shall within twenty-four (24) hours of the death examine the tissues of the ANIMAL for clinical signs of rabies.

(C) Any ANIMAL of a rabid species which has bitten a person or caused an abrasion of the skin of a person and which is unowned or the OWNERSHIP of which cannot be determined within seventy-two hours of the time of the BITE or abrasion shall be immediately subject to any tests which the ANIMAL CONTROL AUTHORITY believes are necessary to determine whether the ANIMAL is afflicted with rabies. The (72) seventy-two-hour period shall include holidays and weekends and shall not be extended for any reason. The tests required by this subsection may include tests which require the ANIMAL to be destroyed.

(D) All incidents of biting or scratching causing bruising, a break in the skin or any other injury shall be reported in writing to the ANIMAL CONTROL AUTHORITY by the medical

professional treating the injury, the injured party, or in the case of a minor child, the parent or guardian.

(E) In the case of domestic or HYBRID ANIMALS known to have been bitten by a rabid ANIMAL, the following rules shall apply:

(1) If the bitten or exposed domestic or HYBRID ANIMAL has not been vaccinated in accordance with State statute, such bitten or exposed domestic or HYBRID ANIMAL shall be immediately destroyed unless the OWNER is willing to place such domestic or HYBRID ANIMAL in strict isolation in a KENNEL under veterinary supervision for a period of not less than (6) six months; and

(2) If the bitten or exposed domestic or HYBRID ANIMAL has been vaccinated in accordance with State statutes, such domestic or HYBRID ANIMAL shall be subject to the following procedure: (1) Such domestic or HYBRID ANIMAL shall be immediately revaccinated and confined for a period of not less than (30) thirty days following vaccination; (2) if such domestic or HYBRID ANIMAL is not immediately revaccinated, such domestic or A HYBRID ANIMAL shall be confined in strict isolation in a KENNEL for a period of not less than (6) six months under the supervision of a veterinarian; or (3) such domestic or HYBRID ANIMAL shall be destroyed if the OWNER does not comply with either subdivision (1) or (2) of this subdivision.

(Amended by Ord. No. 5387, 11/8/16)

(Repealed by Ord No 3807, 6/10/97)

§6-112 IMPOUNDED ANIMALS, DISPOSITION:

(A) All ANIMALS that are not DOMESTIC ANIMALS, may be humanely euthanized as soon as they are captured or otherwise taken into custody.

(B) All ANIMALS IMPOUNDED pursuant to §6-111 and not euthanized shall be retained until completion of the observation period and the determination by a licensed veterinarian that said ANIMAL is not infected with rabies, and then may be redeemed by its OWNER upon payment of the fees for IMPOUNDMENT and cost of care as adopted by the ANIMAL CONTROL AUTHORITY and identified in the City of Fremont Fee Schedule. Any DOMESTIC ANIMAL not claimed within three (3) clear working days after being IMPOUNDED or such extended period as is granted in writing by the ANIMAL CONTROL AUTHORITY to allow the ANIMAL'S OWNER to construct a pen or structure in conformance with §6- 107 shall become the property of the ANIMAL CONTROL AUTHORITY and may be placed for adoption or humanely euthanized by said agency at its discretion.

(C) Any ANIMALS determined to have rabies by a licensed veterinarian shall be destroyed as soon as possible after that determination is made.

(D) All DOMESTIC ANIMALS IMPOUNDED pursuant to other sections of this

Chapter shall be retained until redeemed by their OWNER upon payment of fees for IMPOUNDMENT and cost of care in an amount adopted by the ANIMAL CONTROL AUTHORITY and identified in the Fremont Fee Schedule. Any DOMESTIC ANIMAL not claimed within three (3) clear working days after being IMPOUNDED or such extended period as is granted in writing by the ANIMAL CONTROL AUTHORITY to allow the ANIMAL'S OWNER to construct a pen or structure in conformance with §6-107 shall become the property of the ANIMAL CONTROL AUTHORITY and may be placed for adoption or humanely euthanized by said agency at its discretion. The foregoing time period shall not include the day of IMPOUNDMENT.

(E) No dog or cat IMPOUNDED under this Chapter shall be released until said ANIMAL is vaccinated and issued a pet license tag as required by the provisions of this ordinance.
(Amended by Ord. No. 5387, 11/8/16)

(Repealed by Ord No 3490, 2/14/89)

§6-113 DOGS AND CATS; DUTIES OF OWNER. If a dog is believed to have rabies or has been bitten by a dog suspected of having rabies, such dog shall be confined by a leash or chain on the OWNER'S premises and shall be placed under the observation of a veterinarian at the expense of the OWNER for a period of ten (10) days. The OWNER shall notify the ANIMAL CONTROL OFFICER of the fact that his dog has been exposed to rabies and at his discretion, the ANIMAL CONTROL OFFICER is empowered to have such dog removed from the OWNER'S premises to a VETERINARY HOSPITAL and there placed under observation for a period of ten (10) days at the expense of the OWNER.

It shall be unlawful for any person knowing or suspecting a dog has rabies to allow such dog to be taken off his premises or beyond the limits of the City without the written permission of the ANIMAL CONTROL OFFICER. Every OWNER or other person, upon ascertaining a dog is rabid shall immediately notify the ANIMAL CONTROL OFFICER or a Law Enforcement Officer who shall either remove the dog to the pound or summarily destroy it. The provisions of this section shall also apply to cats.
(Amended by Ord. No. 5387, 11/8/16)

§6-114 RABIES CONTROL; VACCINATION REQUIRED.

(A) Rabies Vaccination

(1) No OWNER of a dog, cat or ferret over the age of three (3) months shall fail to cause the same to be vaccinated against rabies by a duly licensed veterinarian.

(2) No OWNER of a dog, cat, or ferret vaccinated as required by subsection (A) shall fail to have such dog, cat, or ferret revaccinated within ten days of the expiration date set forth for

the original or any subsequent vaccination of said dog, cat, or ferret.

(B) Vaccination Certificate

Every veterinarian who vaccinates a dog, cat, or ferret for rabies shall provide the OWNER thereof with a certificate showing the date of such vaccination. A copy of each such certificate or a compilation thereof providing notification that a vaccination certificate has been issued shall be provided by each VETERINARY CLINIC or VETERINARY HOSPITAL to the City of Fremont by the 10th of each month following the date of issuance.

(C) Vaccination Certificate; Duty to Exhibit

The OWNER of a vaccinated dog, cat, or ferret shall exhibit the certificate of vaccination to any ANIMAL CONTROL OFFICER upon demand.

(Amended by Ord. No. 5387, 11/8/16)

§6-115 DOGS, LIABILITY OF OWNER. It shall be unlawful for any person to allow a dog OWNED kept, or harbored by him, or under his 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, 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, except those damages induced or provoked by the person claiming to suffer such damages.

(A) Dogs are hereby declared to be personal property for all intents and purposes, and, except as provided in subsection (2) of this section, the OWNER or OWNERS of any dog or dogs shall be liable for any and all damages that may accrue (a) to any person, other than a trespasser, by reason of having been bitten by any such dog or dogs and (b) to any person, firm, or corporation by reason of such dog or dogs killing, wounding, injuring, worrying, or chasing any person or persons or any sheep or other DOMESTIC ANIMALS belonging to such person, firm, or corporation. Such damage may be recovered in any court having jurisdiction of the amount claimed.

(B) (1) A governmental agency or its employees using a dog in military or police work shall not be liable under subsection (1) of this section to a party to, participant in, or person reasonably suspected to be a party to or participant in the act that prompted the use of the dog in the military or police work if the officers of the governmental agency were complying with a written policy on the necessary and appropriate use of a dog for military or police work adopted by the governmental agency and if the damage occurred while the dog was responding to a harassing or provoking act or the damage was the result of a reasonable use of force while the dog or dogs were assisting an employee of the agency in any of the following:

(a) The apprehension or holding of a suspect if the employee has a reasonable suspicion of the suspect's involvement in criminal activity;

- (b) The investigation of a crime or possible crime;
- (c) The execution of a warrant; or
- (d) The defense of a peace officer or another person other than the suspect.

(2) For purposes of this subsection, harassing or provoking act means knowingly and intentionally attempting to interfere with, interfering with, teasing or harassing such dog in order to distract, or agitating or harming such dog.

(Amended by Ord. No. 5387, 11/8/16)

Article 2. Animals Generally

§6-201 ANIMALS; RUNNING AT LARGE. (Repealed by Ord No 5387, 11/8/16)

§6-202 ANIMALS; BANNED FROM MUNICIPALITY. It shall be unlawful for any person to keep or maintain any horse, mule, sheep, cow, goat, swine, potbellied pigs, poultry, including chickens, roosters, ducks, or geese, or other LIVESTOCK; in a residentially zoned area within the corporate limits, provided, that any such ANIMALS kept within the corporate limits by virtue of a grandfather clause shall not be kept or maintained within fifty (50') feet of any dwelling. This distance shall be measured from any outside edge of the ENCLOSURE or place wherein such ANIMALS are kept, maintained, or held to the occupied residence affected.

(Ref. 16-235 RS Neb.; 4-3, Code 1972; Ord 5152 12/10/09; 5387, 11/8/2017)

§6-203 ANIMALS; CRUELTY. AND ABANDONMENT

(A) Cruelty to ANIMALS Prohibited

(1) No person shall beat, CRUELLY MISTREAT, torment, tease, TORTURE, CRUELLY NEGLECT, or otherwise abuse any ANIMAL.

(2) No person shall cause, instigate, or permit any fight or other combat between ANIMALS, or between ANIMALS and humans.

(B) Abandonment of ANIMALS Prohibited

No OWNER of an ANIMAL shall ABANDON such ANIMAL.

(Amended by Ord. No. 5387, 11/8/16)

§6-204 **ANIMALS; WILD AND DANGEROUS.** No person shall keep, or permit to be kept on their residential premises any WILD ANIMAL as a PET, for display, or for exhibition purposes.

No wild and DANGEROUS ANIMALS may be kept within the corporate limits except such ANIMALS may be kept for exhibition purposes by CIRCUSES and educational institutions.

(Amended by Ord. No. 3774, 6/25/96; 5387, 11/8/16)

§6-205; **ANIMAL CARE: SHELTERS; ENCLOSURES**

(A) SHELTER Required

No OWNER shall fail to provide his or her PETS with SHELTER of sufficient size to allow each PET to lie down, and of sufficient construction to shield the PETS from the wind, sun, temperature extremes and from precipitation.

(B) ENCLOSURE Required

No OWNER shall fail to confine his or her ANIMALS within an ENCLOSURE of sufficient size and design to prevent the ANIMAL from escaping or to restrain said ANIMAL by a securely fastened rope, chain, or cord in such a manner as to prevent such ANIMAL from going onto any public property or onto the property of another.

(C) SHELTERS and ENCLOSURES; Sanitation

No OWNER shall fail to keep the SHELTERS and ENCLOSURES on his or her property in a sanitary condition. As a minimum, OWNERS shall not fail to:

(1) Remove or dispose of in a sanitary manner, the bedding, offal manure, and waste materials accumulating from all ANIMALS at least once every seven (7) days.

(2) Clean and disinfect said SHELTERS and ENCLOSURES so as to prevent the breeding of flies and insects and the emission of deleterious and offensive odors therefrom.

(Amended by Ord. No. 5387, 11/8/16)

§6-206 **FOWLS; RUNNING AT LARGE.** It shall be unlawful for any person to allow poultry, chickens, turkeys, geese, or any other fowls to run at large within the corporate limits.
(Ref 16-235 RS Neb.; 4-2, Code 1972)

§6-207 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; DEFINITIONS. (Repealed by Ord No 5387, 11/8/16)

§6-208 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; LAW ENFORCEMENT OFFICER; POWERS; IMMUNITY. 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 the ANIMAL.

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.

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 28-1012 RS Neb.) (Ord. No. 3545, 1/8/91; 5387, 11/8/16)

§6-209 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; PENALTY. A person who intentionally, knowingly or recklessly abandons, cruelly mistreats, or cruelly neglects an animal is guilty of an offense. (Ref. 28-1009 RS Neb)(Ord. No. 3545, 1/8/91; Ord 5132, 7/28/2009).

§6-210 ANIMALS; PITTING; DEFINITIONS. Bearbaiting shall mean the pitting of any animal against a bear. Cockfighting shall mean the pitting of a fowl against another fowl. Dogfighting shall mean the pitting of a dog against another dog. Pitting shall mean bringing animals together in combat. (Ref 28-1004 RS Neb.) (Ord. No. 3548, 1/8/91)

§6-211 ANIMALS; PITTING; PROHIBITED. No person shall knowingly promote, engage in, or be employed at dogfighting, cockfighting, bearbaiting, 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 28-1005 RS Neb.) (Ord. No. 3548,1/8/91)

§6-212 ANIMALS; PITTING; SPECTATORS PROHIBITED. (Repealed by Ord No 5387, 11/8/16)

§6-213 ANIMALS; ANIMAL WASTES.

The OWNER of every ANIMAL other than a SERVICE ANIMAL as defined in the Americans With Disabilities Act, 42 U.S.C. § 1201 et seq., shall be responsible for the immediate removal and proper disposal of any excreta deposited by his/her ANIMAL(S) on public walks, recreation areas or private property. It shall be a violation of this section for the OWNER to fail to immediately remove such excreta when notified of its existence and location, either by the City, by ANIMAL CONTROL AUTHORITY, or by the OWNER of the property on which the excreta was deposited.

(Ord. No. 3931, 6/13/00) (Amended by Ord. No. 3975, 10/30/01; 5387, 11/8/16)

§6-214. EARCROPPING, DEWCLAW REMOVAL AND TAILDOCKING; PROHIBITION. No person, other than a licensed veterinarian, shall crop the ears, remove the dewclaws, or dock the tail of an ANIMAL.

(Amended by Ord. No. 5387, 11/8/16)

§6-215. ISOLATION OF FEMALE ANIMALS IN HEAT. No OWNER of a female cat or dog in heat shall fail to take reasonable measures to isolate said female from male cats and dogs to prevent contact with such male ANIMALS except for planned breeding.

(Amended by Ord. No. 5387, 11/8/16)

§6-216 ANIMAL TRAINING: PERFORMING: PRIZES:

(A) ANIMAL Training and Shows

ANIMALS may be off a leash when they are being trained for hunting or an animal show at a facility that is owned, leased or operated by a nationally recognized organization or a local affiliate sanctioned by such organization for the training, showing and betterment of ANIMALS such as the American Kennel Club or the United Kennel Club. ANIMALS may be off of a leash at an ANIMAL show that is sanctioned by a nationally recognized ANIMAL organization if such show obtains a permit from the City of Fremont. The application for said permit shall set forth the date and place of the show or event, and list the types of activities that will be taking place at the event. If the activities at such ANIMAL show do not violate any of the provisions of the Fremont City Code other than the RUNNING AT LARGE ordinance, or involve inhumane treatment of the ANIMALS at such event then a permit shall be issued by the City of Fremont, and a copy is sent the Fremont Police Department.

(B) ANIMALS as Prizes Prohibited

No person shall give away any live ANIMAL, fish, reptile, or BIRD as a prize for, or as an inducement to enter, any contest, game, or other competition, or as an inducement to enter a place of amusement; or offer such ANIMAL as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

(C) Performing ANIMAL Exhibitions

(1) No performing ANIMAL exhibition or CIRCUS shall be permitted in which ANIMALS are induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner which will cause, or is likely to cause, physical injury or suffering.

(2) All equipment used on a performing ANIMAL shall fit properly and be in good working condition.

(D) ANIMALS Used and Trained for Law Enforcement; Exemption

Any ANIMAL used by law enforcement agencies including but not limited to the City of Fremont Police Department, the Dodge County Sheriff's Department or the Nebraska State Patrol shall be exempted from the provisions of the Fremont City Ordinances including the AT LARGE and DANGEROUS ANIMAL Ordinances while such ANIMAL is being trained or used for law enforcement purposes.

(Amended by Ord. No. 5387, 11/8/16)

§6-217 PENALTIES

(A) General Penalty

Any person violating any provision of this chapter shall be fined pursuant to this code. If a violation is of a continuing nature, each day of the violation shall constitute a separate violation.

(B) Nuisance

Any OWNER or any person in possession of any ANIMAL regulated by this chapter who fails to care for and control said ANIMAL shall be deemed to be maintaining a nuisance subject to abatement pursuant to the Fremont City Code upon written request by the Director of the Department of Health, City Physician, the City of Fremont Code Enforcement, the Fremont Police Department, or an ANIMAL CONTROL OFFICER, the abatement of which shall be the forfeiture of the ANIMAL or ANIMALS in violation. The procedure for abatement of nuisances set forth in the Fremont City Code shall be followed in all cases not involving an imminent threat to public health, safety or welfare or the health, safety or welfare of the ANIMAL or ANIMALS in violation.

In the event continuation of a public nuisance might cause irreparable harm or poses a serious threat to public health, safety or welfare or the health, safety or welfare of residents of the property in violation, the written notice to abate pursuant to the Fremont Code shall not be required as a condition precedent to commencing a legal action to obtain abatement of the nuisance and the City of Fremont, with the consent of the Mayor, may immediately file an action requesting such temporary or permanent order as is appropriate to expeditiously and permanently

abate said nuisance and protect the public health, safety or welfare or the health safety or welfare of the residents of the property in violation.
(Amended by Ord. No. 5387, 11/8/16)

§6-218 APPEAL PROCEDURE

(A). DANGEROUS ANIMAL and POTENTIALLY DANGEROUS ANIMAL;
Declaration; Appeal; Disposition

If it shall appear to a Fremont Police Officer or an ANIMAL CONTROL OFFICER that any ANIMAL conforms to the definition of a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL, written notice declaring the ANIMAL a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL shall be delivered to the ANIMAL'S OWNER either by personal service or by mail addressed to the last known address of said OWNER. An Officer has the authority and may seize an ANIMAL immediately if it is deemed necessary.

In the case of a DANGEROUS ANIMAL, within five (5) days of personal service or mailing of a notice of declaration to the ANIMAL'S OWNER said OWNER shall deliver said animal to the ANIMAL CONTROL AUTHORITY for IMPOUNDMENT and disposition pursuant to Chapter 6. In the case of a POTENTIALLY DANGEROUS ANIMAL, within five (5) days of personal service or mailing of a notice of declaration to the ANIMAL'S OWNER said OWNER shall either provide reasonable proof of compliance with Chapter 6 of the Fremont City Code or shall deliver said ANIMAL to the ANIMAL CONTROL AUTHORITY for IMPOUNDMENT and disposition. Refusal or failure by the OWNER of any ANIMAL declared a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL to comply with this subsection shall be a violation of the Fremont City Code and shall be subject to abatement as a public nuisance pursuant to Fremont Municipal Code

The OWNER of any ANIMAL declared a POTENTIALLY DANGEROUS ANIMAL or DANGEROUS ANIMAL by a Fremont Police Officer or an ANIMAL CONTROL OFFICER may appeal the decision to the Fremont City Council by submitting a letter of appeal to the Fremont City Council within 72 hours of either receiving personal service or mailing of the written notice of declaration. The Fremont City Council shall hold a hearing within fourteen (14) days of delivery of the letter of appeal to the Authority. The hearing shall be conducted informally. The ANIMAL'S OWNER and ANIMAL CONTROL AUTHORITY shall present oral or written statements or reasons supporting or opposing the declaration to the Fremont City Council. Statements by each participant shall be limited to a total time of one hour or less. Upon conclusion of the hearing the Fremont City Council may reverse, modify or affirm the declaration of the Fremont Police Officer or ANIMAL CONTROL OFFICER. Notice of the determination of the Fremont City Council shall be given to the ANIMAL'S OWNER and the ANIMAL CONTROL AUTHORITY, either personally or by United States Mail.

(Amended by Ord. No. 5387, 11/8/16)

Article 3. Bees

§6-301 **BEES; WHERE PROHIBITED.** The keeping of bees within the City, two hundred (200') feet from any dwelling other than that of the owner of such bees, is hereby declared to be a nuisance and menace to the health and well being of citizens of the City. Therefore, it shall be unlawful for any person to keep a hive of bees within the zoning jurisdiction of City within two hundred (200') feet of any dwelling other than that of the owner of such bees. (*Ref. 17-3, Code 1972*)

§6-302 **BEES; FAILURE TO REMOVE.** Anyone having custody of a hive or swarm of bees within two hundred (200') feet of any dwelling other than that of the owner of such bees after receiving notice from the Chief of Police, and failing to remove such hive of bees from within such distance of such dwelling or failing to remove the same from within the zoning jurisdiction of the City within twenty- four (24) hours after receiving notice, shall be deemed guilty of a misdemeanor. (*17-4, Code 1972*)

§6-303 **BEES; AUTHORITY OF POLICE.** After twenty-four (24) hours has elapsed from the time notice has been given to the person in whose custody any bees may be found, the Chief of Police is empowered and authorized at his option either to destroy or remove such bees from the prohibited zone. (*17-5, Code 1972*)

Article 4. Miscellaneous Misdemeanors

§6-401 **MISDEMEANORS; CRIMINAL MISCHIEF.** It shall be unlawful for any person to damage property of another intentionally or recklessly; or intentionally or recklessly tamper with property of another so as to endanger person or property; or intentionally or maliciously cause another to suffer pecuniary loss by deception or threat; provided, that the value of the property involved is under three hundred dollars (\$300.00). (*Ref 28-519 RS Neb.*)

§6-402 **MISDEMEANORS; 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 them, shall make an application to the Director of Parks and Recreation to do so, and the written permit of the Director of Parks and Recreation in accordance with their decision to allow such an action shall constitute the only lawful authority on the part of the company to do so. (*Ref 16-248, 18-806,28-519 RS Neb.*)

§6-403 **MISDEMEANORS; FIRE EQUIPMENT.** It shall be unlawful for any person who is not an active member of the Fire Department or qualified City employees to deface, destroy, handle, or loiter about the equipment and property of the Fire Department. (*Ref 28-519 RS Neb.*)

§6-404 **MISDEMEANORS; FIRE HOSE.** It shall be unlawful for any person, without the consent of the Fire Chief, or the Assistant Fire Chief to drive any vehicle over the unprotected hose of the Fire Department at any time. *(Ref 60-6,184 RS Neb.)*

§6-405 **MISDEMEANORS; DRINKING, DRINKING ON PUBLIC PROPERTY; POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINER.** (1) Except when the Nebraska Liquor Control Commission has issued a license as provided in section 53-186(2) RS Neb., it is unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property. *(Ref 53-186 RS Neb.)*

(2) (a) It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this Municipality.

(b) Except as provided in section 53-186 RS Neb., it is unlawful for any person to consume an alcoholic beverage

1. In a public parking area or on any highway in this Municipality, or
2. Inside a motor vehicle while in a public parking area or on any highway in this

Municipality.

(c) For purposes of this division:

1. **ALCOHOLIC BEVERAGE** means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. **ALCOHOLIC BEVERAGE** does not include trace amounts not readily consumable as a beverage;

2. **HIGHWAY** means a road or street including the entire area within the right-of-way;

3. **OPEN ALCOHOLIC BEVERAGE CONTAINER** means any bottle, can, or other receptacle:

- (i) That contains any amount of alcoholic beverage; and
- (ii) A. That is open or has a broken seal; or
B. The contents of which are partially removed; and

4. **PASSENGER AREA** means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. **PASSENGER AREA** does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk. *(Ref. 60-6,211.08 RS Neb.) (Amended by Ord. No. 3948, 1/30/01)*

§6-406 **MISDEMEANORS; CRIMINAL TRESPASS.** It shall be unlawful for any person, knowing that he is not licensed or privileged to do so, to:

A. Enter or secretly remain in any building or occupied structure, or any separately secured or occupied portion thereof; or

B. Enter or remain in any place as to which notice against trespass is given by:

1. Actual communication to the actor; or
2. Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
3. Fencing or other enclosure manifestly designed to exclude intruders.

C. This section shall be in full force and effect for private parking lots regarding violations of fire codes, traffic regulations, offenses against public morals, unlawful assembly and trespass and with the same authority as public thoroughfares, public parking lots and other public areas, provided:

1. The owners, or their lessees of such private parking lots, shall make a written request of the City to apply this section to their lots, describing them, and in addition shall post their lots with appropriate signs stating: "No Trespassing, Parking for Customers Only." Said request shall be accompanied by a fifty-five dollar (\$55.00) application fee to cover publication costs and administrative expenses.

2. To remove a private parking lot from the application of this section, the owners, or their lessees of such private parking lots, shall make a written request of the City to remove the parking lot from this section, describing them, and remove signs restricting or limiting parking. Said request shall be accompanied by a fifty-five dollar (\$55.00) application fee to cover publication costs and administrative expenses.

The section shall apply on all of the following areas:

Animal Medical Clinic, 1935 North Bell

Arby's Restaurant, 2040 North Bell

Big Lots, 1700 East 23rd

Blackie's, 746 North Broad

Bomgaars, 1830 East 23rd

Boschult Engineering, 1145 West Military

Boschult Engineering, 340 West 22nd

Brokenicky Jewelers, 321 North Main

China Moon, 610 East 23rd

Cigarette & Snack Outlet, 521 North Broad

City of Fremont -

400 East Military and adjacent parking lot

Christensen Field, 1710 West 16th

Keene Memorial Library, 1030 N. Broad

Parking lot at Military and Park

Parking lot on southwest corner of Eighth and C

Parking lot on southwest corner of Eighth and Union

Parking lot across from Auditorium (Lots 2 tr 8, Blok. 84, O.T.)

Parking lot north of the Auditorium

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Police Department, Eighth and Park
Utility Plant #1, Eighth and Main
Columbus Federal Parking Lot, 2300 Laverna
Dairy Queen, 2222 North Broad
Denny's Liquor, 16th and Bell Center Complex Parking Lot
Dodge County -
 Courthouse, 435 North Park
 Extension Service, 1206 West 23rd
 Judicial Center, 428 North Broad
Dodge County Project Head Start, 1024 West 23rd
Don Peterson and Associates, 620 East 23rd
Eastridge Animal Clinic, 2345 North Laverna
Essex Square Apartments, 825 N. Lincoln
FBC Complex, 301 East Sixth
Falcone Medical Center, 1935 East Military
First State Bank, 1005 East 23rd Street
Fontanelle Hybrids, 2230 North Bell
Food 4 Less, 1531 North Bell
Fremont Area Chamber, 605 North Broad
Fremont Cablevision, 1780 East 23rd Street
Fremont First Central Federal Credit Union, 1715 North Bell
Fremont First Central Federal Credit Union, 2100 North Bell
Fremont Mall Parking Lot, 860 East 23rd Street
Fremont Medical Clinic, 2350 N. Clarkson
Fremont National Bank and Trust Company, 801 East 23rd
Fremont Rental Inc., 2347 North Laverna
Gas N Shop, 1533 North Bell
Gateway Plaza, 19th and Bell Streets
General Store, 333 West 23rd
Glass House, 517 East 23rd
Goodwill Industries Inc., 2415 E. 23rd
Green Key II, 1440 North Bell
Green's Greenhouse and Treasure House, Green Key Plaza, Bell Street at 14th
Gringo's, 1950 N. Bell
H & R Block, 1728-1740 North Bell
Jacobs Center Complex, 1915 & 1925 East 8th
Jensen Tire #10, 245 E. Military
Krafka Law Offices, 1010 N. Bell
Kwik Shop, 710 North Broad
Longacres, Inc., 150 E. Military
Low Income Ministry, 549 North H
May, Dr. Gary, 1689 East 23rd Avenue South
May Museum, 1643 North Nye
McDonalds, 435 East 23rd
Miller Pharmacy, 322 East 22nd
Nebraska Softball Association, 620 E. 23rd

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Oriental Trading Company, 2407 Colorado Avenue
Overland Products, 1687 Airport Road
P & H Electric, 1210 East 17th Street
Parkview Center Parking Lot, 1900 East Military
Parkview Professional Center, 1835 East Military
Pay Day USA, 1023 East 23rd
Prairie Fields, 350 West 23rd
Plum Grove Professional Building, 415 E. 23rd Street
Property at 410 North Bell
Property at 1640 North Bell
Property at 1670 North Bell
Property at 2100 North Bell
Property at 1755 North Bell
Property at 723 North Broad
Property at 1604 North Clarkson
Health Care Professionals, Inc. -
 2360 North Clarkson
 2340 North Clarkson
 2350 North Clarkson
 710 Reynolds Road
 Vacant lot north of 710 Reynolds Road
 730 Reynolds Road
Property at 3210 North Clarkson
Property at 2442 North Colorado
Property at 3350 East Elk Lane
Property at 204 North H
Property at 205 North H
Property at 220 North H
Property at 225 North H
Property at 224 North I
Property at 2600 North Laverna
Property at 2700 North Laverna
Property at 2511 Rademakers Way
Property at 2779 Rademakers Way
Property at 520 West Linden
Property at 601 West Linden
Property at 626 North Main
Property at 1605 East Military
Property at 1640 West Military
Property at 1955, 1957 & 1959 East Military
Property at 734 North Park
Property at 317 S William
Property at 2438 and 2454 North Yager Road
Property at 303 West 3rd
Property at 152 East 6th
Property at 1152 East 16th

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Property at 1135 East 19th
Property at 650 West 21st
Property at 652 West 21st
Property at 510 East 22nd
Property at 520 West 23rd
Property at 655 West 23rd
Property at 845 West 23rd
Property at 633 East 23rd
Property at 700 East 23rd
Property at 707 East 23rd
Property at 847-849 East 23rd
Property at 1220 East 23rd
Property at 1249 East 23rd
Property at 1550 East 23rd Avenue North
Property at 1682 East 23rd Avenue North
Property at 1684 East 23rd Avenue North
Property at 1688 East 23rd Avenue North
Property at 1690 East 23rd Avenue North
Property at 1700 East 23rd Avenue North
Property at 1710 East 23rd Avenue North
Property at 1720 East 23rd Avenue North
Property at 1730 East 23rd Avenue North
Property on Southeast corner of 23rd & Clarkson
Property at 544 East 30th
Property at 506 East 30th
Property at 454 East 30th
Property at 404 East 30th
Property at 1437 East 23rd
Runza Restaurant, 640 North Park
Runza Restaurant, 1201 East 23rd
Salem Lutheran Church, 401 East Military
Sawyer Gas N Wash, 1915 North Bell
Shaw, Hull & Navarrette, 637 North Park Avenue
Sid Dillon Used Cars, 1665 North Bell
Siebler & Schmeichel, 1910 North Bell
Sounds, Priority Signs & Payless Shoe Store, 845 East 23rd
Staples Plaza, 23rd and Bell
Subway Inc., 549 East 23rd
Sun-Kist Cleaners, 18th and Bell Streets
Taco John's, 1704 North Bell
Taylor & Martin, Inc., 1865 Airport Road
Taylor Quik-Pik, Inc., 2010 Bell Street
Thrifty Lube, 2210 North Bell
T.O. Haas Tire, 505 East 23rd
US Bank Drive-In Bank, 240 E. Military
US Bank Main Bank, 210 E. Military

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US Bank Suburban Bank, 1615 E. 23rd Street

Whitmer Welding, 555 West 23rd

Wisner Sports Supply Inc., 1830 N. Bell

(Ref. 28-520, 28-521 RS Neb.) (Amended by Ords. Nos. 3175, 9/14/82; 3183, 11/30/82; 3192, 1/25/83; 3199, 4/12/83; 3206, 7/26/83; 3221, 10/11/83; 3260, 5/28/84; 3270, 9/25/84; 3300, 5/14/85; 3310, 7/30/85; 3381, 9/2/86; 3389, 10/28/86; 3400, 1/27/87; 3457, 5/10/88; 3474, 9/27/88; 3496, 4/25/89; 3536, 10/9/90; 3563, 9/10/91; 3593, 4/14/92; 3611, 7/28/92; 3621, 10/27/92; 3628, 2/23/93; 3702, 8/30/94; 3714, 11/29/94; 3737, 8/8/95; 3776, 7/9/96; 3823, 9/30/97; 3857, 8/11/98; 3875, 2/23/99; 3902, 7/27/99; 3910, 10/12/99; 3923, 3/28/00; 3935, 8/8/00; 3943, 10/31/00; 3959, 6/26/01; 3977, 12/11/01; 3895, 2/26/02; 4007, 9/10/02; 4026, 2/11/03; 4037, 5/13/03; 4056, 9/30/03; 4077, 5/11/04; 4086, 9/14/04; 5008, 2/22/05; 5026, 8/9/05; 5037, 11/8/05; 5060, 8/8/2006; 5086, 7/10/2007; 5117, 9/30/2008; 5129, 5/12/2009; 5134, 8/11/2009; 5184, 11/30/2010; 5244, 6/26/2012; 5304, 4/8/2014; 5323, 11/25/2014)

§6-407 **MISDEMEANORS; POSTED ADVERTISEMENTS.** It shall be unlawful for any person to wrongfully and maliciously tear, deface, remove, or cover up the posted advertisement or bill of any person, firm, or corporation when said bill or advertisement is rightfully and lawfully posted, and the same remains of value.

§6-408 **MISDEMEANORS; DISCHARGE OF FIREARMS.** It shall be unlawful for any person, except an officer of the in the discharge of his official duty, to fire or discharge any gun, pistol, or other fowling piece within the City; provided nothing herein shall be construed to apply to funeral services or officially sanctioned public celebrations; and, provided further, nothing herein shall be construed to prevent a firearm test range as an accessory use as a part of a business when said firearm test range is used between the hours of 7:00 o'clock a.m. to 7:00 o'clock p.m. only for test firing of firearms by a business engaged in the manufacture, service or repair of firearms and provided further that said firearms test range shall not be used for any recreational or competition purposes and provided further that noise of the discharge of the firearms cannot be heard on the exterior of the building in which said firearm test range is located and provided further that the building housing the firearm test range shall be in an area zoned commercial or heavy industrial. *(Amended by Ord. Nos. 3818, 9/9/97; 3795, 12/10/96)*

§6-409 **MISDEMEANORS; SLINGSHOTS, AIRGUNS, GUNS.** It shall be unlawful for any person, except an officer of law in the discharge of his or her official duty, to discharge slingshot, airgun, BB gun or the like loaded with pellets, "BBs", rock or other dangerous missiles, within the City or within the boundaries of any City-owned park beyond the limits of the City, provided that the provisions of this section shall not be construed to prohibit such activities at officially sanctioned competitions or educational programs which have been approved in advance by the City Council *(Ref 16-227 RS Neb.) (Amended by Ord. Nos. 3772, 6/11/96; 5016 3/29/05)*

§6-410 **MISDEMEANORS; DISCHARGING A FIREARM OR WEAPON FROM ANY PUBLIC HIGHWAY, ROAD OR BRIDGE.** It shall be unlawful for any person to discharge any firearm or weapon using any form of compressed gas as a propellant from any public highway, road or bridge in this State. *(Ref 28-1335 RS Neb.)*

§6-411 & §6-412 REPEALED APRIL 13, 2010 ORDINANCE NO. 5161

Original 7/31/2009

§6-413 **MISDEMEANORS; DISTURBING THE PEACE.** It shall be unlawful for any person to intentionally disturb the peace and quiet of any person, family or neighborhood.

§6-414 **MISDEMEANORS; DISORDERLY CONDUCT.** It shall be unlawful for any person to engage in conduct or behavior which disturbs the peace and good order of the City by clamor or noise, intoxication, drunkenness, fighting, using of obscene or profane language within the City limits of Fremont, or is otherwise indecent or disorderly conduct or lewd or lascivious behavior. (*Ref 16-227, 16-228 RS Neb.*)

§6-415 **MISDEMEANORS; WINDOW PEEPING.** It shall be unlawful for any person not engaged in a lawful business or calling or activity that requires his or her presence upon the real property and residence of another person to look, peep or try to see into or through any window, door, or other opening of the residence of any other person. (*Amended by Ord. No. 3277, 10/30/84*)

§6-416 **MISDEMEANORS; 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.

(2) The word litter as used in this section shall mean all waste material susceptible of being dropped, deposited, discarded or otherwise disposed of by any person upon any property in the state but does not include wastes of primary processes 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.

(3) 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 28-523 RS Neb.*) (*Amended by Ord. No. 3775, 6/25/96*)

§6-417 **MISDEMEANORS; 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 shall first remove all doors and make the same reasonably safe. (*Ref 18-1720, 28-1321 RS Neb.*)

§6-418 **MISDEMEANORS; 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, display, or other obstruction inconvenient to, or inconsistent with, the public use of the same. (*Ref 16-207, 16-227, 39-703, 39-704 RS Neb.*)

§6-419 **MISDEMEANORS; OBSTRUCTING 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. (*Ref 16-667, RS Neb.*)

§6-420 MISDEMEANORS; DESTRUCTION, MOVING OF BARRICADES.

Whenever the City of Fremont, its contractor, authorized representative, or permittee, has restricted the use of or closed the whole or any portion of any street, alley, or property for the protection of the public or that of that street, alley, or property from damage during construction, improvement, or maintenance operations, and the City of Fremont, its contractor, authorized representative, or permittee has erected or posted suitable barriers, obstructions, warnings, notices, signs of direction, or warning devices, or has provided a flagman to give directions, or any combination thereof, any person who willfully or intentionally enters such restricted or closed area, or any person who moves, alters, damages, or destroys the devices erected or posted thereon, without the permission of the party authorized to restrict or close such area, shall be guilty of a misdemeanor.

§6-421 MISDEMEANORS; DISEASED OR DYING TREES.

Any tree that is in a diseased, dying, or dead condition which may present a hazard to life or property is hereby declared a public nuisance and shall be removed from the private property on which they are located upon notice by the Director of Parks and Recreation or his designee. For the purpose of carrying out the provisions of this section, the Director of Parks and Recreation or his designee shall have the authority to enter on private property to inspect the trees thereon. 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 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. If the tree or trees are not removed after a period of ten (10) days, the Director of Parks and Recreation Department is authorized and directed to order the removals to be done and the cost plus an administrative fee of one hundred dollars (\$100.00) shall be chargeable to the property owner. If the owner fails to reimburse the City after being properly billed, the City Council shall order the costs be assessed against the property and certified by the City 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 City 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 the said trees shall be deemed to be a misdemeanor. (*Ref 16-230, 18-1720,28-1321 RS Neb.*) (*Amended by Ord. No. 3875, 2/23/99*)

§6-422 MISDEMEANORS; CURFEW.

It shall be unlawful for any minor under the age of fifteen (15) years to ride in or operate any vehicle in or upon any street, alley, or other public place, or to loiter, wander, stroll, loaf, or play in or upon any of the streets, alleys, or other public places between the hours of eleven o'clock (11 :00) P.M. of any day and six o'clock (6:00) A.M. of the following day unless accompanied by a parent, guardian or other adult person having the care, custody or control of said minor, or the minor is engaged in lawful employment or is on an emergency errand; provided, when an activity of the kind normally attended by minors under fifteen (15) years, such as school or church sponsored function, terminates after, or less than one (1) hour prior to eleven o'clock (11 :00) P.M., the curfew shall commence one (1) hour after the

termination of such activity. Any minor who violates this section shall be taken to the Police Station, where the Policeman shall notify the parents of the minor and said parents shall come to the Police Station to pick up the minor. (*Ref 17-10, Code 1972*)

§6-423 **MISDEMEANORS; LOTTERY; PROHIBITIONS AND PENALTIES.** It shall be unlawful for a person, firm or corporation to conduct, operate, or participate in any lottery, other than as a player, except as provided in section 9-127 R.R.S. Neb., subdivisions 9 and 10 of section 28-1101 R.R.S. Neb., section 9-1401.01 R.R.S. Nebraska or section 9-601 et. seq. of R.R.S. Neb. Moreover, a person, firm or corporation shall be deemed as committing the offense of possession of prohibited lottery devices, if other than as a player, he or she knowingly possesses any writing, paper, instrument, mechanical or electronic device which is of a kind commonly used in the operation or promotion of a lottery other than bingo as defined in section 9-127, R.R.S. Neb., gift enterprises as defined in subdivision 9 of section 28-1101, R.R.S. Neb., raffle as defined in subdivision 10 of section 28-1101, R.R.S. Neb., or lottery by sale of "pickle card" as defined in section 9-140.01, R.R.S. Neb. Any person, firm or corporation convicted of violating this ordinance shall be punished as follows:

For a first offense such person, firm or corporation shall be fined in any amount up to five hundred dollars (\$500.00) and/or imprisonment for not more than three (3) months.

For a second offense a fine of not less than two hundred fifty (\$250.00) dollars nor more than one thousand dollars (\$1,000.00) and/or imprisonment for up to three (3) months.

For a third or any subsequent offense a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) and/or not more than six (6) months incarceration. (*Ord. No. 3248, 3/27/84*) (*Amended by Ord. No. 3569, 12/10/91*)

§6-424 **TOBACCO; POSSESSION BY MINOR UNLAWFUL.** A. Except as provided herein, it shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco products.

B. Exceptions: It shall not be unlawful for any person under the age of eighteen (18) years to:

(1) Possess tobacco products under the direct supervision of the parent or guardian of such person in the privacy of the parent's or guardian's home; or,

(2) Sell or handle any unopened container of tobacco products in the course of his or her employment by a tobacco licensee; or,

(3) Possess or purchase tobacco products while under the direct supervision of a law enforcement officer for the purpose of testing or enforcing compliance with statutes, laws or ordinances governing the sale of tobacco products.

C. Tobacco Products; Defined: Tobacco products shall be defined to mean any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco.

D. Penalty: Persons convicted of unlawfully possessing tobacco products shall be punished by a monetary fine of not more than \$100.00. (*Ord. No. 3836, 1/27/98*)

§6-425 MISDEMEANORS; VIOLENCE ON A SERVICE DOG; INTERFERENCE WITH A SERVICE DOG.

(1) A person commits the offense of violence on a service dog when he or she (a) intentionally injures, harasses, or threatens to injure or harass or (b) attempts to intentionally injure, harass, or threaten a dog that he or she knows or has reason to believe is a dog guide for a blind or visually impaired person, a hearing aid dog for a deaf or hearing-impaired person, or a service dog for a physically limited person.

(2) A person commits the offense of interference with a service dog when he or she (a) intentionally impedes, interferes, or threatens to impede or interfere or (b) attempts to intentionally impede, interfere, or threaten to impede or interfere with a dog that he or she knows or has reason to believe is a dog guide for a blind or visually impaired person, a hearing aid dog for a deaf or hearing-impaired person, or a service dog for a physically limited person.

(3) Evidence that the defendant initiated or continued conduct toward a dog as described in subsection (1) or (2) of this section after being requested to avoid or discontinue such conduct by the blind, visually impaired, deaf, hearing-impaired, or physically limited person being served or assisted by the dog shall create a rebuttable presumption that the conduct of the defendant was initiated or continued intentionally.

(4) For purposes of this section:

(a) Blind person means a person with totally impaired vision or with vision, with or without correction, which is so severely impaired that the primary means of receiving information is through other sensory input, including but not limited to braille, mechanical reproduction, synthesized speech, or readers;

(b) Deaf person means a person with totally impaired hearing or with hearing, with or without amplification, which is so severely impaired that the primary means of receiving spoken language is through other sensory input, including but not limited to lip reading, sign language, finger spelling, or reading;

(c) Hearing-impaired person means a person who is unable to hear air conduction thresholds at an average of 40 decibels or greater in the person's better ear;

(d) Physically limited person means a person having limited ambulatory abilities, including but not limited to having a permanent impairment or condition that requires the person to use a wheelchair or to walk with difficulty or insecurity to the extent that the person is insecure or exposed to danger; and

(e) Visually impaired person means a person having a visual acuity of 20/200 or less in the person's better eye with correction or having a limitation to the person's field of vision so that the widest diameter of the visual field subtends an angular distance not greater than 20 degrees. (*Neb. RS 28-1009.01*) (*Ord. No. 3875, 2/23/99*)

§6-426 MISDEMEANORS; VOLUME CONTROL. No person shall play, use, operate or permit to be played, used or operated, any radio, tape recorder, cassette player, compact disc (CD) player, or other machine or device for reproducing sound, if it is located in or on:

(1) Any public property, including any public street, highway, building, sidewalk, park or thoroughfare; or any motor vehicle on a public street, highway or public space unless the volume of amplified sound shall be so controlled that it will not be audible for a distance in excess of one hundred (100) feet from the source and so that the volume is not unreasonably great and the noise, raucous, jarring, disturbing or a nuisance to persons within the area of audibility; or

(2) Residential property, whether a unit of a multiple-family residential dwelling or single-family dwelling structure, unless the volume of amplified sound shall be so controlled that it will not be audible in any adjoining unit. Provided, however, that actual notice from the occupant of the adjoining residence to the occupant of the property containing the source of amplified sound shall be a necessary element under this subsection. (*Ord. No. 3956, 6/26/01*)

§6-427 MISDEMEANORS; PUBLIC NUDITY FOR COMMERCIAL PURPOSES.

(1) It shall be unlawful for any person to intentionally expose his or her genitals, pubic area, buttocks, or the human female breast, including the nipple or any portion below the nipple with less than a full opaque covering while employed in providing any service, product, or entertainment in any business or commercial establishment.

(2) It shall also be unlawful for any person to aid, abet, assist or direct another person to intentionally expose his or her genitals, pubic area, buttocks, or the human female breast, including the nipple or any portion below the nipple with less than a full opaque covering while employed in providing any service, product, or entertainment in any business or commercial establishment.

(3) In addition to the penalties set forth in §6-501 violations of this section may be abated and suppressed by injunctive or other equitable relief as allowed by law.

(4) The prohibitions herein set forth are not intended to extend to any expression of opinion or the performance of a bona fide play, ballet, or drama protected by the First Amendment to the Constitution of the United States or by Article I, § 5 of the Constitution of the State of Nebraska. (*Ord 5076, 1/9/2007*)(*Amended by Ord. No. 5095, 10/9/2007; 5202, 5/31/2011; 5203, 5/31/2011*)

§6-428 HARBORING OR HIRING ILLEGAL ALIENS, PROHIBITED.

1. DEFINITIONS: For the purposes of this Ordinance, the following terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

A. ***Illegal alien*** means an alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, Section 1101 et seq. The City shall not conclude that an individual is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United State Code Title 8, Section 1373(c), such individual's immigration status.

B. ***Unlawfully present in the United States*** means unlawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. The City shall not conclude that an alien is unlawfully present in the United States unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, Section 1373 (c), such alien's immigration status.

C. ***Dwelling unit*** means a single residential unit with living facilities for one or more persons, including space for living, sleeping, eating, cooking, bathing and sanitation, whether furnished or

unfurnished, that is let or rented for valuable consideration. There may be more than one rental unit on a premise. In a multifamily residence or apartment building, each residential unit or apartment constitutes a separate dwelling unit. The term dwelling unit does not include a dormitory room at a postsecondary educational institution, a room at a shelter for the homeless or the abused, or a hotel room.

D. **Lessor** means a person who leases or rents a dwelling unit as, or on behalf of, a landlord.

E. **Occupant** means a person, age 18 or older, who resides at a dwelling unit. A temporary guest of an occupant is not an occupant for the purposes of this ordinance.

F. **Unauthorized alien** means an alien who does not have authorization of employment in the United States, as defined by United States Code Title 8, Section 1324a(h)(3). The City shall not conclude that an individual is an unauthorized alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, Section 1373(c), such individual's lack of authorization of employment in the United States.

G. **Business entity** means any person, group of persons, partnership or corporation that engages in any activity, enterprise, profession or occupation for financial gain, benefit, or livelihood, and shall include all such activities, enterprises, professions, or occupations, whether preformed in one or more establishments by one or more corporate or other organizational units, including departments or establishments operated through leasing arrangements, whether for profit or not-for-profit. The term business entity shall include but not be limited to contractors, subcontractors, self-employed individuals, partnerships, and corporations. The term business entity shall include both business entities that are required to obtain a license or permit to conduct business in the City of Fremont, and businesses that are not required to obtain a license or permit to conduct business in the City of Fremont.

H. **Work** means any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

I. **E-Verify Program** means the electronic verification of employment authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, United States Code Title 8, Section 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government).

J. **Systematic Alien Verification for Entitlements (SAVE) Program** means the electronic program created pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104193, which enables a federal, state, or local government entity to confirm with the United States Department of Homeland Security an alien's immigration status (or a successor program or method of confirmation of immigration status established by the federal government).

Business license means any license, permit, occupation tax registration, business registration, or registration certification issued to a business entity by the City, including but not limited to all such licenses and permits described under the Fremont Municipal Code, Ordinance No. 3139.

City means the City of Fremont, Nebraska.

2. HARBORING ILLEGAL ALIENS:

A. It is unlawful for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

1. For the purpose of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

2. Condition of lease. An occupant may not enter into a contract for the rental or lease of a dwelling unit in the City unless the occupant is either a U.S. citizen or national, or an alien lawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. An occupant who is neither a U.S. citizen or national, nor an alien lawfully present in the United States, who enters into such a contract shall be deemed to have breached a condition of the lease. An occupant who is an alien who subsequent to the beginning of his lease becomes unlawfully present in the United States shall be deemed to have breached a condition of the lease.

3. Prospective Application Only. This Ordinance shall apply only to contracts to let, lease, or rent dwelling units that are entered into and tenancies that begin after the date that the Ordinance becomes effective.

4. The legal obligations imposed by this Section shall be enforced through the process described in Provisions 3 and 4 of this Ordinance, below.

3. ISSUANCE OF OCCUPANCY LICENSES:

A. Prior to occupying any leased or rented dwelling unit, each occupant, age 18 or older, must obtain an occupancy license.

B. It is the occupant's responsibility to submit an occupancy license application to the Fremont Police Department, pay a fee of \$5 to the City, and obtain an occupancy license. If there are multiple occupants seeking to occupy a single rental unit, each occupant must obtain his or her own license. An applicant for an occupancy license may designate the owner or manager of the

dwelling unit as his agent to collect the required information and submit the required application form(s), signed by the applicant, to the Fremont Police Department on the applicant's behalf. The City may establish a procedure whereby an applicant (or designated owner or agent) may submit the required application form(s), signed by the applicant, via facsimile or website portal.

C. The owner or manager of any dwelling unit must notify each prospective occupant of this requirement and shall not permit occupancy of a dwelling unit unless the occupant first obtains an occupancy license.

D. Each occupancy license is valid only for the occupant for as long as the occupant continues to occupy the dwelling unit for which such license was applied. Any relocation to a different dwelling unit requires a new occupancy license.

E. Applications for occupancy licenses shall be made upon forms furnished by the City for such purposes and shall require the following information:

- (1) Full legal name of occupant;
- (2) Mailing address of occupant;
- (3) Address of dwelling unit for which occupant is applying, if different from mailing address;
- (4) Name and business address of dwelling unit owner or manager;
- (5) Date of lease commencement;
- (6) Date of birth of occupant;
- (7) Occupant's country or citizenship;
- (8) Full legal name and date of birth of each minor dependent residing with occupant;
- (9) (a) in cases in which the applicant is a United States citizen or national, a signed declaration that the applicant is a United States citizen or national on a form provided by the City, which notifies the applicant that knowingly making any false statement or claim that he or she is, or at any time has been, a citizen or national of the United States, with the intent to obtain a state benefit or service is a crime under United States Code Title 18, Section 1015(e);

Or

(b) in cases in which the applicant is not a United States citizen or national, an identification number assigned by the federal government that the occupant believes establishes his lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, I-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). If the alien does not know of any such number, he shall so declare. Such a declaration shall be sufficient to satisfy this requirement.

F. Upon receipt of a complete signed application and the payment of the application fee as set forth above, the City shall immediately issue an occupancy license. The City shall not deny an occupancy license to any occupant who submits a completed application and pays the application fee.

G. All information contained in occupancy license applications shall be maintained as confidential by the City, except that the information provided on an application may be disclosed to other government entities where authorized by law, pursuant to United States Code Title 8, Section 1373.

H. It shall be a violation of this section for a lessor to lease or rent a dwelling unit without obtaining and retaining a copy of the occupancy license of every known occupant of the dwelling unit.

I. It shall be a violation of this section for a lessor to lease a dwelling unit without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid occupancy license constitutes an event of default under the lease.

J. It shall be a violation of this section for a landlord or any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy to knowingly permit an occupant to occupy a dwelling unit without a valid occupancy license. It is a defense to a prosecution under this paragraph that the landlord or agent has commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.

K. Any person who violates this section shall be subject to a fine of \$100 for each such violation, upon conviction in the County Court for Dodge County.

L. The lease or rental of a dwelling unit without obtaining and retaining a copy of the occupancy license of every known occupant, age 18 or older, shall be a separate violation for each occupant in a dwelling unit for which no license is obtained and retained, and for each day of such occupancy, beginning on the 46th day after the date of a revocation notice under Section 5.

4. ENFORCEMENT OF HARBORING AND OCCUPANCY PROVISIONS

Notwithstanding any other provision of this Ordinance, the Fremont Police Department (Hereinafter "Department") shall enforce the requirements of this Ordinance as follows.

A. Promptly after issuance of an occupancy license to any occupant who has not declared himself or herself to be either a citizen or a national of the United States, the Department shall, pursuant to Title 8, United States Code, Section 1373(c), request the federal government to ascertain whether the occupant is an alien lawfully present in the United States. The Department shall submit to the federal government the identity and immigration status information contained on the application for the occupancy license, along with any other information requested by the federal government. The Department may enter into a memorandum of understanding to use the Systematic Alien Verification for Entitlements (SAVE) Program operated by the U.S. Department of Homeland Security, or utilize any other process or system designated by the federal government.

B. If the federal government reports that the occupant is not lawfully present in the United States, the Department shall send a deficiency notice to the occupant, at the address of the dwelling unit shown on the application for occupancy license. The deficiency notice shall state that on or before the 60th day following the date of the notice, the occupant may seek to obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is lawfully present in the United States. If the occupant provides such additional information, the Department shall promptly submit that information to the federal government. The occupant may also submit information directly to the federal government.

C. If the federal government notifies the Department that it is unable to conclusively ascertain the immigration status of the occupant, or that the federal government's ascertainment of immigration status is tentative, the Department shall take no further action until final ascertainment of the immigration status of the occupant is received from the federal government. The Department shall not attempt to make an independent determination of any occupant's immigration status. If the federal government notifies the Department that more information is required before the federal government can issue a final ascertainment of the occupant's immigration status, or that the occupant may contest the federal government's ascertainment of status, the Department shall notify the occupant accordingly.

D. No earlier than the 61st day after a deficiency notice has been sent to an occupant, the Department shall again make an inquiry to the federal government seeking to ascertain the immigration status of the occupant. If the federal government reports that the occupant is an alien who is not lawfully present in the United States, the Department shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's occupancy license effective 45 days after the date of the revocation notice.

E. The terms of this section shall be applied uniformly, and enforcement procedures shall not differ based on a person's race, ethnicity, religion, or national origin.

F. Judicial review shall also be available as follows:

1. Any landlord or occupant who has received a deficiency notice or a revocation notice may seek pre-deprivation or post-deprivation judicial review of the notice by filing suit against the City in a court of competent jurisdiction.

2. In the event that such a suit is filed prior to or within fifteen days after the date of the relevant revocation notice, if any, revocation shall be automatically stayed until final conclusion of judicial review.

3. The landlord or occupant may seek judicial review of the question of whether the Department complied with the provisions of this Ordinance or other relevant provisions of federal, state, or City law, or the question of whether the occupant is an alien not lawfully present in the United States, or of both such questions.

4. In a suit for judicial review in which the question of whether the occupant is an alien not lawfully present in the United States is to be decided, that question shall be determined under federal law. In answering the question, the court shall defer to any conclusive ascertainment of immigration status by the federal government.

5. The court may take judicial notice of any ascertainment of the immigration status of the occupant previously provided by the federal government. The court may, either sua sponte or at the request of a party, request the federal government to provide, in automated, documentary, or testimonial form, a new ascertainment of the immigration status of the occupant pursuant to United States Code Title 8, Section 1373(c). The most recent ascertainment of the immigration status of an individual by the federal government shall create a rebuttable presumption as to the individual's immigration status.

5. BUSINESS LICENSES, CONTRACTS OR GRANTS; THE E-VERIFY PROGRAM.

A. It is the policy of the City to discourage business entities from knowingly recruiting, hiring for employment, or continuing to employ any person who is an unauthorized alien to perform work within the City.

B. This Section shall not apply to the hiring of an independent contractor by a business entity, or to the intermittent hiring of casual labor for domestic tasks customarily performed by the residents of a dwelling. Such independent contractors or laborers are not employees within the meaning of this Section. This Section shall be interpreted to be fully consistent with United States Code Title 8, Section 1324a, and with all other applicable provisions of federal law.

C. An authorized representative of any business entity that applies for any business license or permit in the City, or is awarded a contract for work to be performed in the City, or applies for any grant or loan from the City shall be required to execute an affidavit to the effect that the business entity does not knowingly employ any person who is an unauthorized alien. The business entity shall also provide documentation confirming that the business entity has registered in the E-Verify Program. Compliance with this section shall be a condition of any license or permit granted by the City, any contract awarded by the City and of any grant or loan given by the City.

D. All agencies of the City shall register in the E-Verify Program and use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.

E. Every business entity employing one or more employees and performing work within the City shall register in the E-Verify Program within 60 days after the effective date of this Ordinance, and shall use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.

F. Any business entity employing one or more employees that begins performing work within the City later than 60 days after the effective date of this Ordinance shall register in the E-Verify

Program prior to commencing any work within the City, and shall use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.

G. In the enforcement of this Section, at no point shall any City official attempt to make an independent determination of the authorization of employment in the United States of any individual employed by a private business entity in the City.

H. This Section shall be enforced by the City Attorney as follows:

1. If a business entity possesses a license, permit, contract, loan, or grant issued by the City and violates this Section, by failing to register in the E-Verify Program and verify the authorization of employment in the United States of each employee hired after such registration, the business entity shall be tried at a public hearing before the City Council. Due process, including notice, the opportunity to present evidence and to be heard, and the right to appeal to the District Court of Dodge County, shall be accorded to all parties. If the City Council determines that a person or business entity has violated this Section, it may, according to the terms of such license, permit, contract, loan or grant, revoke the license, cancel the contract, recall the grant or accelerate the loan and institute an action to collect any sums due.

2. The City Attorney may bring a civil action against any business entity suspected of violating this section, by failing to register in the E-Verify Program and verify the authorization of employment in the United States of each employee hired after such registration, in a court of competent jurisdiction in Dodge County. The City Attorney may seek injunctive relief compelling the business entity to comply with this section.

I. The following judicial review shall also be available:

1. Any business entity that is subjected to enforcement under this Ordinance may seek pre-deprivation or post-deprivation judicial review of the enforcement of this Ordinance with respect to such business entity in any court of competent jurisdiction. While such judicial review is occurring, any actions by the City to revoke a license, permit, contract, loan, or grant issued by the City shall be stayed.

2. Any business entity or employee subject to the terms of this Ordinance may seek judicial review of the question of whether the City has complied with the provisions of this Ordinance or other relevant provisions of federal, state, or City law in the County Court for Dodge County, or in any other court of competent jurisdiction.

SECTION 2. CONSTRUCTION AND SEVERABILITY:

A. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens, nationals, and aliens.

B. If any part or provision of this Ordinance is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.

(Ord 5076, 1/9/2007)(Amended by Ord. No. 5202, 5/31/2011)

§6-429 PURPOSE AND INTENT. The City Council of Fremont, Nebraska is enacting this Ordinance to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The Council is authorized to enact this Ordinance pursuant to its police powers.

The Council finds that graffiti is a public nuisance and a blighting factor, which is destructive of the rights and values of property owners as well as the entire community. Unless the City acts to remove graffiti from public and private property, the graffiti tends to remain and multiply. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City.

The City Council intends, through enacting this Ordinance, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement.

(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-430 DEFINITIONS. For the purposes of enacting this Ordinance, the following words shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) Aerosol paint container means any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.

(b) Broad-tipped marker means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth (1/4th) of an inch, containing ink or other pigmented liquid that is not water soluble.

(c) Etching equipment means any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface.

(d) Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, applied, attached, adhered, painted, or engraved on or otherwise affixed to any surface of public or private property by person or persons using any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed to be a public nuisance by the City Council.

(e) Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of making, scarring or leaving a visible mark on any natural or man-made surface.

(f) Paint stick or graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth (1/8th) of an inch in width.

(g) Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-431 PROHIBITED CONDUCT. Defacement. It shall be unlawful for any person to write, paint, draw or apply, in any manner, any inscription, figure, or mark of any type (commonly known and referred to as “graffiti”) on any public or private building or other real or personal property including, but not limited to, natural objects such as rocks and trees, owned, operated, or maintained by a governmental entity or any agency or instrumentality thereof, or owned by any person, firm, or corporation, unless permission of the owner or operator of the property has been obtained.

(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-432 PENALTIES. (a) Fines: Any person violating the provisions of this division shall be punished in accordance with §6-501 of the Code with a minimum fine of one hundred fifty dollars (\$150.00) for the first offense; two hundred fifty dollars (\$250.00) for the second offense; and three hundred dollars (\$300.00) for each subsequent offense.

(b) Restitution: In addition to any punishment specified in this Section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of a minor, the parents or legal guardian shall be jointly and individually liable with the minor to make the restitution.

c) Community Service: In lieu of, or as part of, the penalties specified in this Section, a minor or adult may be required to perform community service as described by the court:

(1) The minor or adult shall perform at least 30 hours of community service.

(2) At least one parent or guardian of the minor shall be in attendance a minimum of 50 percent of the period of assigned community service.

(3) The entire period of community service shall be performed under the supervision of a community service provider approved by the court.

(4) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal.

(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-433 GRAFFITI DECLARED A NUISANCE. (a) The existence of graffiti on public or private property in violation of this Ordinance is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Code.

(b) It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.

(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-434 REMOVAL OF GRAFFITI BY PERPETRATOR. Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, the Director of the Department of Public Works, or as directed by the City Administrator. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this Ordinance. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.

(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-435 NOTICE OF REMOVAL. If graffiti is not removed by the perpetrator according to the preceding Section, the graffiti shall be removed pursuant to the following provisions:

(a) Whenever the City Administrator or his/her designee determines that graffiti exists on any public and private buildings, structures or places which are visible to any person utilizing any public right-of-way in this city, whether this is a road, parkway, alley, or otherwise, and that seasonal temperatures permit the painting of exterior surfaces, the City Administrator or his/her designee shall cause a notice to be issued to the property owner or person(s) in possession or charge of the property to abate such nuisance. The property owner shall have seven (7) days after the date of the notice to remove or paint over the graffiti, or the conditions will be subject to abatement by the city. If the property owner elects to paint over the graffiti, the paint used to obliterate the graffiti shall be as close as practicable to background color(s).

(b) The notice to abate graffiti pursuant to this section shall consist of a written notice to be served upon the owner(s) of the affected premises, as such owner's name and address appears on the last property tax assessment rolls of the county. If there is no known address for the owner, the notice shall be sent in care of the property address to persons in possession or in charge of the property. The notice required by this Section may be served in any one of the following manners:

1. By personal service on the owner, occupant or person in charge or control of the property.

2. By registered or certified mail addressed to the owner at the owner's last known address. If this address is unknown, the notice will be sent to the property address. The notice shall be substantially in the following form:

NOTICE OF INTENT TO REMOVE GRAFFITI

Date:

NOTICE IS HEREBY GIVEN that you are required by law at your expense to remove or paint over the graffiti located on the property commonly known as: _____, Fremont, Nebraska, which is visible to the public view, within seven (7) days after the date of this notice. If you fail to do so, City employees or private contractors employed by the City will enter upon your property and abate the public nuisance by removal or painting over the graffiti.

Original 7/31/2009

The cost of the abatement by the City employees or its private contractors will be assessed upon your property and such costs will constitute a lien upon the land until paid.

All persons having any objections, comments interest in said matters or requests for a hearing are hereby notified to submit a request for a hearing to the City Administrator of the City of Fremont, Nebraska, or his/her designee within five (5) days from the date of this notice. At the conclusion of the seven (7) day period, if no hearing has been requested, the City may proceed with the abatement of the graffiti inscribed on your property, at your expense, without further notice.

City of Fremont, Nebraska
A Municipal Corporation

By: _____

Title: _____

(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-436 REMOVAL BY CITY. Upon failure of persons to comply with the notice by the designated date, or such continued date thereafter as the City Administrator or his/her designee approves, then the City Administrator, or his/her designee is hereby authorized and directed to cause the graffiti to be abated by city forces or private contract, and the city or its private contractor is expressly authorized to enter upon the premises for such purposes. All reasonable efforts to minimize damage from such entry shall be taken by the city, and any paint used to obliterate graffiti shall be as close as practicable to background color(s). If the City Administrator provides for the removal of the graffiti or other inscribed material, he shall not authorize nor undertake to provide for the painting or repair of any more extensive area than that where the graffiti or other inscribed material is located.

(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-437 CITY'S COSTS DECLARED LIEN. Any and all costs incurred by the city in the abatement of the graffiti nuisance under the provisions of this division shall constitute a lien against the property upon which such nuisance existed.

§6-438 PRIVATE PROPERTY CONSENT FORMS. Property owners in the city may consent in advance to city entry onto private property for graffiti removal purposes. The city will make forms for such consent available.

§6-439 MISDEMEANORS; SEXUAL PREDATOR DEFINITIONS, RESIDENCY RESTRICTIONS; PENALTIES; EXCEPTION.

(1) Definitions: For purposes of this Section, the following definitions shall apply:

(A) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;

(B) School means a public, private, denominational, or parochial school which meets the requirements for state accreditation or approval;

(C) Reside means to sleep, live, or dwell at a place, which may include more than one location, and may be mobile or transitory;

(D) Residence means a place where an individual sleeps, lives, or dwells, which may include more than one location, and may be mobile or transitory;

(E) Sex offender means an individual who has been convicted of a crime listed in Nebr. Rev. Stat. Section 29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act;

(F) Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has committed an aggravated offense as defined in Nebr. Rev. Stat. Section 29-40001.01 and who has victimized a person eighteen years of age or younger.

(2) **PROHIBITED LOCATION OF RESIDENCE.** It is unlawful for any sexual predator to reside within five hundred feet from a school or child care facility.

(3) **MEASURE OF DISTANCE.** For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the residence to the nearest outer boundary line of the school or child care facility.

(4) **PENALTIES.** A person who violates this section shall be punished as provided in Section 6-501.

(5) **EXCEPTIONS.** This ordinance shall not apply to a sexual predator who:

(A) Resides within a prison or correctional or treatment facility operated by the state or a political subdivision.

(B) Established a residence before July 1, 2006, and has not moved from that residence; or

(C) 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.

(Ord. 5203, 5/31/2011)

Article 5. Penal Provision

§6-501 **VIOLATION; PENALTY.** Any person who violates any of the prohibitions or provisions of any Article or section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand dollars (\$1,000.00) and/or imprisonment for any length of time not to exceed three (3) months, in the discretion of the court.