

CHAPTER 133: OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

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GENERAL PROVISIONS**§ 133.01 MAINTAINING A NUISANCE.**

(A) A person commits the offense of maintaining a nuisance if he or she erects, keeps up or continues, and maintains any nuisance to the injury of any part of the citizens of this city.

(B) The following shall be deemed nuisances:

(1) The erecting, continuing, using, or maintaining of any building, structure, or other place for the exercise of any trade, employment, manufacture, or other business which, by occasioning noxious exhalations, or noisome or offensive smells, becomes injurious and dangerous to the health, comfort, or property of individuals or the public;

(2) The obstructing or impeding, without legal authority, of the passage of any navigable river, harbor, or collection of water;

(3) The corrupting or rendering unwholesome or impure of any watercourse, stream, or water; or unlawfully diverting any such watercourse from its natural course or state to the injury or prejudice of others; and

(4) The obstructing or encumbering by fences, buildings, structures or otherwise of any of the public highways or streets or alleys of the city.

(C) A person guilty of erecting, continuing, using, maintaining, or causing any such nuisance shall be guilty of a violation of this section, and in every such case, the offense shall be construed and held to have been committed in any county whose inhabitants are or have been injured or aggrieved thereby.

(D) The court, in case of conviction of such offense, shall order every such nuisance to be abated or removed.

(Neb. RS 28-1321) Penalty, see § 10.99

§ 133.02 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 the person first removes all doors and makes the same reasonably safe.

Penalty, see § 10.99

Statutory reference:

Authority to prohibit nuisances within zoning jurisdiction, see Neb. RS 18-1720

§ 133.03 PUTTING CARCASS OR FILTHY SUBSTANCE INTO WELL, SPRING, BROOK, OR STREAM.

Whoever shall put any dead animal, carcass, or part thereof, or other filthy substance, into any well or into any spring, brook, or branch of running water of which use is made for domestic purposes shall be guilty of an offense.

(Neb. RS 28-1304) Penalty, see § 10.99

§ 133.04 PROHIBITED FENCES.

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

Penalty, see § 10.99

Statutory reference:

Restrictions on barbed wire fences, see Neb. RS 39-307

§ 133.05 LITTERING.

(A) 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:

(1) The property is an area designated by law for the disposal of that type of material and the person is authorized by the proper public authority to so use the property; or

(2) The litter is placed in a receptacle or container installed on the property for that purpose.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LITTER. Includes 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. Any material appearing in a place or in a context not associated with that material's function or origin.

(C) Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this section, the operator of the motor vehicle or watercraft commits the offense of littering.

(Neb. RS 28-523) Penalty, see § 10.99

§ 133.06 RAISING OR PRODUCING STAGNANT WATER.

Whoever shall build, erect, continue, or keep up any dam or other obstruction in any river or stream of water in the city and thereby raise an artificial pond, or produce stagnant waters, which shall be manifestly injurious to the public health and safety shall be guilty of an offense, and the court shall, moreover, order every such nuisance to be abated or removed.

(Neb. RS 28-1303) Penalty, see § 10.99

SUBSTANCE OFFENSES**§ 133.20 USE OF TOBACCO BY PERSONS UNDER THE AGE OF 21.**

(A) Whoever, being a person under the age of 21 years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems or alternative nicotine products, or use tobacco in any form whatever in this city shall be guilty of an offense.

(B) Any person charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco.

(Neb. RS 28-1418) Penalty, see § 10.99

§ 133.21 SALE OF TOBACCO TO PERSONS UNDER THE AGE OF 21.

(A) Whoever shall sell, give, or furnish in any way any tobacco in any form whatever, or any cigars, cigarettes or cigarette paper, electronic nicotine delivery systems, or alternative nicotine products, to any person under 21 years of age is guilty of an offense.

(B) (1) In order to further the public policy of deterring licensees or other persons from violating division (A) above, a person who is at least 15 years of age but under 21 years of age may assist a peace officer in determining compliance with division (A) above if:

(a) The parent or legal guardian of the person has given written consent for the person to participate in such compliance check if such person is under 19 years of age;

(b) The person is an employee, a volunteer, or an intern with a state or local law enforcement agency;

(c) The person is acting within the scope of his or her assigned duties as part of a law enforcement investigation;

(d) The person does not use or consume a tobacco product as part of such duties; and

(e) The person is not actively assigned to a diversion program, is not a party to a pending criminal proceeding or a proceeding pending under the State Juvenile Code, Neb. RS 43-245 et seq., and is not on probation.

(2) Any person under the age of 21 years acting in accordance with and under the authority of this division (B) shall not be in violation of Neb. RS 28-1427.
(Neb. RS 28-1419) Penalty, see § 10.99

§ 133.22 MISREPRESENTATION BY PERSON UNDER THE AGE OF 21 TO OBTAIN TOBACCO.

Except as provided in § 133.21(B), any person under the age of 21 years who obtains cigars, tobacco, cigarettes or cigarette material, electronic nicotine delivery systems, or alternative nicotine products from a licensee hereunder by representing that he or she is of the age of 21 years or over is guilty of an offense.
(Neb. RS 28-1427) Penalty, see § 10.99

§ 133.23 MISREPRESENTATION BY MINOR TO OBTAIN ALCOHOL.

No minor, as defined by Neb. RS 53-103.23, shall obtain, or attempt to obtain, alcoholic liquor by misrepresentation of age, or by any other method, in any tavern or other place where alcoholic liquor is sold.
(Neb. RS 53-180.01) Penalty, see § 10.99

Statutory reference:

Penalty for manufacturing false identification intended for minors, see Neb. RS 53-180.05

§ 133.24 MINORS; PROHIBITED ACTS INVOLVING ALCOHOLIC LIQUOR.

(A) For the purpose of this section, the definitions found in Neb. RS 53-103.01 through 53-103.51 shall apply, including, but not limited to, the definitions of the terms “alcoholic liquor,” “consume,” “minor,” “sale,” and “to sell.”

(B) Except as otherwise provided in § 111.15, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place,

including public streets, alleys, roads, or highways, upon property owned by the state or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the state or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a bona fide religious rite, ritual, or ceremony or in his or her permanent place of residence.

(C) It shall be unlawful for any person under 21 years of age to transport, consume, or knowingly possess or have under his or her control beer or other alcoholic liquor in or transported by any motor vehicle.

(Neb. RS 53-180.02) Penalty, see § 10.99

Statutory reference:

Minor Alcoholic Liquor Liability Act, see Neb. RS 53-401 through 53-409

Definitions, where found, see Neb. RS 53-103

§ 133.25 DRINKING ON PUBLIC PROPERTY; OPEN BEVERAGE CONTAINER.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALCOHOLIC BEVERAGE.

(a) Beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description, containing 0.5% or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(b) Wine of not less than 0.5% alcohol by volume;

(c) 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; and

(d) ***ALCOHOLIC BEVERAGE*** does not include trace amounts not readily consumable as a beverage.

HIGHWAY. A road or street, including the entire area within the right-of-way.

LIMOUSINE. A luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and not more than 14 persons behind the driver, with a physical partition separating the driver seat from the passenger compartment. ***LIMOUSINE*** does not include taxicabs, hotel or airport buses or shuttles, or buses.

OPEN ALCOHOLIC BEVERAGE CONTAINER. Except as provided in Neb. RS 53-123.04(3) and 53-123.11(1)(c), any bottle, can, or other receptacle:

- (a) That contains any amount of alcoholic beverage; and
- (b) 1. That is open or has a broken seal; or
- 2. The contents of which are partially removed.

PASSENGER AREA. 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 the area. **PASSENGER AREA** does not include the area behind the last upright seat of the 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.

(B) Except as otherwise provided in this section, 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 city.

(C) Except as provided in § 111.03 or division (D) below, it is unlawful for any person to consume an alcoholic beverage:

- (1) In a public parking area or on any highway in this city; or
- (2) Inside a motor vehicle while in a public parking area or on any highway in this city.

(D) (1) This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by the rules and regulations adopted and promulgated by the State Public Service Commission and subject to Neb. RS Chapter 75, Article 3.

(2) Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this city if:

- (a) The driver of the limousine or bus is prohibited from consuming alcoholic liquor; and
- (b) Alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area.

(Neb. RS 60-6,211.08)

Penalty, see § 10.99

MOTOR VEHICLE AND HIGHWAY OFFENSES**§ 133.40 ABANDONED AUTOMOBILES.**

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED VEHICLE.

(a) A motor vehicle is an ***ABANDONED VEHICLE***:

1. If left unattended, with no license plates or valid "In Transit" stickers issued pursuant to the Motor Vehicle Registration Act, Neb. RS 60-301 et seq., affixed thereto, for more than six hours on any public property;
2. If left unattended for more than 24 hours on any public property, except a portion thereof on which parking is legally permitted;
3. If left unattended for more than 48 hours after the parking of such vehicle has become illegal if left on a portion of any public property on which parking is legally permitted;
4. If left unattended for more than seven days on private property if left initially without the permission of the owner, or after permission of the owner is terminated;
5. If left for more than 30 days in the custody of a city law enforcement agency after the agency has sent a letter to the last registered owner and lienholder under division (D) below; or
6. If removed from private property by the city pursuant to a city ordinance or this code.

(b) An all-terrain vehicle or minibike is an ***ABANDONED VEHICLE***:

1. If left unattended for more than 24 hours on any public property, except a portion thereof on which parking is legally permitted;
2. If left unattended for more than 48 hours after the parking of such vehicle has become illegal if left on a portion of any public property on which parking is legally permitted;
3. If left unattended for more than seven days on private property if left initially without the permission of the owner, or after permission of the owner is terminated;

4. If left for more than 30 days in the custody of a city law enforcement agency after the agency has sent a letter to the last registered owner and lienholder under division (D) below; or

5. If removed from private property by the city pursuant to a city ordinance or this code.

(c) A mobile home is an **ABANDONED VEHICLE** if left in place on private property for more than 30 days after a local governmental unit, pursuant to an ordinance or resolution, has sent a certified letter to each of the last registered owners and posted a notice on the mobile home, stating that the mobile home is subject to sale or auction or vesting of title as set forth in Neb. RS 60-1903.

(d) No motor vehicle subject to forfeiture under Neb. RS 28-431 shall be an **ABANDONED VEHICLE** under this section.

MOBILE HOME. A movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units separately towable but designed to be joined into one integral unit, and shall include a manufactured home as defined in Neb. RS 71-4603. **MOBILE HOME** does not include a mobile home or manufactured home for which an affidavit of affixture has been recorded pursuant to Neb. RS 60-169.

PRIVATE PROPERTY. Any privately owned property which is not included within the definition of public property.

PUBLIC PROPERTY. Any public right-of-way, street, highway, alley, or park or other state, county, or city-owned property.
(Neb. RS 60-1901)

(B) If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid "In Transit" stickers issued pursuant to Neb. RS 60-376 affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of \$500 or less, title shall immediately vest in the city. Any certificate of title issued under this division (B) to the city shall be issued at no cost to the city.
(Neb. RS 60-1902)

(C) (1) Except for vehicles governed by division (B) above, the city shall make an inquiry concerning the last registered owner of such vehicle as follows:

(a) Abandoned vehicle with license plates affixed, to the jurisdiction which issued such license plates; or

(b) Abandoned vehicle with no license plates affixed, to the Department of Motor Vehicles.

(2) The city shall notify the last registered owner, if any, and any lienholder, if any, within 15 business days that the vehicle in question has been determined to be an abandoned vehicle and that, if unclaimed, either:

(a) It will be sold or will be offered at public auction after five days from the date such notice was mailed; or

(b) Title will vest in the city 30 days after the date such notice was mailed.

(3) If the agency described in division (C)(1)(a) or (C)(1)(b) above also notifies the city that a lien or mortgage exists, such notice shall also be sent to the lienholder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle.

(4) Title to an abandoned vehicle, if unclaimed, shall vest in the city:

(a) Five days after the date the notice is mailed if the vehicle will be sold or offered at public auction under division (C)(2)(a) above;

(b) Thirty days after the date the notice is mailed if the city will retain the vehicle; or

(c) If the last registered owner cannot be ascertained, when notice of such fact is received.

(5) After title to the abandoned vehicle vests pursuant to division (C)(4) above, the city may retain for use, sell, or auction the abandoned vehicle. If the city has determined that the vehicle should be retained for use, the city shall, at the same time that the notice, if any, is mailed, publish in a newspaper of general circulation in the jurisdiction an announcement that the city intends to retain the abandoned vehicle for its use and that title will vest in the city 30 days after the publication.

(Neb. RS 60-1903)

(D) (1) If a city law enforcement agency has custody of a motor vehicle for investigatory purposes and has no further need to keep it in custody, it shall send a certified letter to each of the last registered owners, if any, and lienholders, if any, within 15 calendar days stating that the vehicle is in the custody of the law enforcement agency, that the vehicle is no longer needed for law enforcement purposes, and that after 30 days, the agency will dispose of the vehicle.

(2) This division (D) shall not apply to motor vehicles that are subject to forfeiture under Neb. RS 28-431.

(3) No storage fees shall be assessed against the registered owner of a motor vehicle held in custody for investigatory purposes under this division (D) unless the registered owner or the person in

possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor related to the offense for which the law enforcement agency took the vehicle into custody. If a registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor but is not convicted, the registered owner shall be entitled to a refund of the storage fees. (Neb. RS 60-1903.01)

(E) (1) A law enforcement agency is authorized to remove an abandoned or trespassing vehicle from private property upon the request of the private property owner on whose property the vehicle is located and upon information indicating that the vehicle is an abandoned or trespassing vehicle. After removal, the law enforcement agency with custody of the vehicle shall follow the procedures in Neb. RS 60-1902 and 60-1903.

(2) A law enforcement agency is authorized to contact a private towing service in order to remove an abandoned or trespassing vehicle from private property upon the request of the private property owner on whose property the vehicle is located and upon information indicating that the vehicle is an abandoned or trespassing vehicle. A vehicle towed away under this subsection is subject to Neb. RS 52-601.01 through 52-605 and 60-2410 by the private towing service which towed the vehicle.

(3) A private property owner is authorized to remove or cause the removal of an abandoned or trespassing vehicle from such property and may contact a private towing service for such removal. A private towing service that tows the vehicle shall notify, within 24 hours, the designated law enforcement agency in the jurisdiction from which the vehicle is removed and provide the registration plate number, the vehicle identification number, if available, the make, model, and color of the vehicle, and the name of the private towing service and the location, if applicable, where the private towing service is storing the vehicle. A vehicle that is towed away under this subsection is subject to Neb. RS 52-601.01 through 52-605 and 60-2410 by the private towing service that towed the vehicle.

(4) For the purpose of this section, a **TRESPASSING VEHICLE** is a vehicle that is parked without permission on private property that is not typically made available for public parking. (Neb. RS 60-1903.02)

(F) If a state agency caused an abandoned vehicle described in division (A)(a)(5) or (A)(b)(4) above to be removed from public property in this city, the state agency shall be entitled to custody of the vehicle. If a state agency caused an abandoned vehicle described in division (A)(a)(1), (A)(a)(2), (A)(a)(3), or (A)(a)(4) or (A)(b)(1), (A)(b)(2), or (A)(b)(3) above to be removed from public property in this city, the state agency shall deliver the vehicle to the city, which shall have custody. (Neb. RS 60-1904)

(G) Any proceeds from the sale of an abandoned vehicle in the city's custody, less any expenses incurred by the city, shall be held by the city without interest for the benefit of the owner or lienholders

of such vehicle for a period of two years. If not claimed within such two-year period, the proceeds shall be paid into the General Fund of the city.

(Neb. RS 60-1905)

(H) Neither the owner, owner's agent, owner's employee, lessee, nor occupant of the premises from which any abandoned vehicle is removed, nor the city, shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the city or its contractual agent, while in the possession of a private towing service, or as a result of any subsequent disposition.

(Neb. RS 60-1906)

(I) No person shall cause any vehicle to be an abandoned vehicle as described in division (A)(a)(1), (A)(a)(2), (A)(a)(3), or (A)(a)(4) or (A)(b)(1), (A)(b)(2), or (A)(b)(3) above.

(Neb. RS 60-1907)

(J) No person other than one authorized by the city or appropriate state agency shall destroy, deface, or remove any part of a vehicle which is left unattended on a highway or other public place without license plates affixed or which is abandoned. Anyone violating this division (J) shall be guilty of an offense.

(Neb. RS 60-1908)

(K) The last registered owner of an abandoned vehicle shall be liable to the city for the costs of removal and storage of such vehicle.

(Neb. RS 60-1909)

(L) Any person violating the provisions of this section shall be guilty of an offense.

(Neb. RS 60-1911)

Penalty, see § 10.99

§ 133.41 UNLICENSED OR INOPERABLE VEHICLES.

(A) No person in charge or control of any property within the city, other than city property, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any partially dismantled, inoperable, wrecked, junked, or discarded vehicle to remain on that property longer than 30 days.

(B) No unlicensed vehicle shall be permitted to remain on any private or public property for any length of time, provided that this section shall not apply to the following:

- (1) A vehicle bearing a valid "In Transit" sticker;
- (2) A vehicle in an enclosed building;

(3) A vehicle on the premises of a business enterprise operated in a lawful place and manner when the vehicle is necessary to the lawful operation of the business; or

(4) A vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(C) Any vehicle allowed to remain on property in violation of this section shall constitute a nuisance and shall be abated, and any person violating this section shall be guilty of an offense.

Penalty, see § 10.99

Statutory reference:

"In Transit" stickers, see Neb. RS 60-376

WEAPONS OFFENSES

§ 133.55 DISCHARGE OF FIREARMS.

It shall be unlawful for any person, except an officer of the law in the discharge of official duty, to fire or discharge any gun, pistol, or other fowling piece within the city, except that nothing in this section shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have written permission from the City Council.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see Neb. RS 17-556

§ 133.56 SLINGSHOTS, AIR GUNS, BB GUNS.

It shall be unlawful for any person to discharge a slingshot, air gun, BB gun, or the like loaded with rock or other dangerous missiles at any time or under any circumstances within the city.

Penalty, see § 10.99

