

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
APRIL 5, 2016 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
AMEND VARIOUS SECTIONS OF THE LA VISTA MUNICIPAL CODE	RESOLUTION ◆ ORDINANCES RECEIVE/FILE	PAM BUETHE CITY CLERK

**SYNOPSIS**

Ordinances have been prepared to amend Sections 92.17, 92.21, 93.003, 93.016, 93.019, 93.020, 95.05 and 130.01 of the La Vista Municipal Code.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The changes are a result of American Legal Publishing Corporation incorporating the legislative changes from the 2014/15 legislative session into our Code including some minor language changes.

These changes have been reviewed by the City Attorney and City Clerk.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTIONS 92.17 AND 92.21 RELATING TO NUISANCES; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Section 92.17 of the La Vista Municipal Code is amended to read as follows:

**§ 92.17 ABATEMENT PROCEDURE.**

(A) (1) Whenever a nuisance exists as defined in this subchapter, the city may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

(2) Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as part of the judgement in the case. ('79 Code, § 4-502)

(B) (1) It shall be the duty of every owner or occupant of real estate in the city to keep such real estate free of public nuisances. Upon determination by the Board of Health that the owner or occupant has failed to keep such real estate free of public nuisances, notice to abate and remove such nuisance and notice of the right to a hearing before the City Council and the manner in which it may be requested shall be given to the owner or occupant, or the owner's or occupant's duly authorized agent, by personal service or certified mail. Such notice shall describe the condition as found by the Board of Health and state that the condition has been declared a public nuisance and that the condition must be remedied at once. Within ten days after the receipt of such notice, if the owner or occupant of the real estate does not request a hearing or fails to comply with the order to abate and remove the nuisance, the city shall have such work done and may levy and assess the costs and expenses of the work upon the real estate so benefitted ~~in the same manner as other special assessments taxes for improvements are levied and assessed~~.

(2) If the owner or occupant requests in writing a hearing with the City Council, the City Council shall fix a time and place at which a hearing will be held. Notice of the hearing shall be given by personal service or certified mail and require the owner or occupant to appear before the City Council to show cause why such condition should not be found to be a public nuisance and remedied. Such notice shall be given not less than seven, nor more than 14 days before the time of the hearing. Upon the date fixed for the hearing and pursuant to the notice, the City Council shall hear all objections made by the owner or occupant and shall hear evidence submitted by the Board of Health. If after consideration of all the evidence the City Council finds that the condition is a public nuisance, it shall, by resolution, order and direct the owner or occupant to remedy the public nuisance at once. If the owner or occupant refuses or neglects to comply promptly with the order of the City Council, the City Council shall proceed to cause the abatement of the described public nuisance and may levy and assess the costs and expenses of the work upon the real estate so benefitted ~~in the same manner as other special assessments taxes for improvements are levied and assessed~~. ('79 Code, § 4-302)

(3) Notwithstanding divisions (B)(1) or (2) above:

(a) If the Mayor determines that any public nuisance constitutes an immediate danger to life, safety, health, or property, the city may remove or abate the nuisance (or cause it to be removed or abated) and assess the cost thereof to the property creating the nuisance or on which the nuisance arises, to the extent necessary or appropriate to eliminate the immediacy and/or magnitude of the danger, upon 48 hours personal or certified written notice to the owner or tenant of the subject property (or the owner's or tenant's duly authorized representative) or, in light of the immediacy or magnitude of the danger, such lesser notice that can reasonably be provided under the circumstances; and, in the event any public nuisance is within the scope of Neb. RS 16-230 or 18-1752, the city shall proceed in accordance with the applicable provision or provisions thereof; and the city shall further have the option to proceed in accordance with any other applicable ordinance or state law, as amended from time to time, with respect to any public nuisance.

(b) Unless otherwise provided by state law, the city shall have the option to

proceed under one or more applicable ordinances or state laws with respect to any public nuisance.

**SECTION 2.** Section 92.21 of the La Vista Municipal Code is amended to read as follows:

**§ 92.21 DEAD OR DISEASED TREES.**

(A) It is hereby declared a nuisance for a property owner to permit, allow or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city or within the city's extraterritorial zoning jurisdiction.

(B) It is hereby declared a nuisance for a property owner to permit, allow or maintain any dead or diseased trees on private property within the corporate limits of the city or within the city's extraterritorial zoning jurisdiction.

(C) Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within 30 days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the city may have such work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefitted in the same manner as other special assessments taxes for improvements are levied or assessed.

**SECTION 3. Repeal of Conflicting Ordinances.** All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

**SECTION 4. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 5. Effective Date.** This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 5TH DAY OF APRIL, 2016.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTION 93.003; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

**SECTION 1.** Section 93.003 of the La Vista Municipal Code is amended to read as follows:

**§ 93.003 EXCEPTIONS; ADDITIONAL CONDITIONS; REMOVAL; PROCEDURE.**

(A) Permitted obstructions on, in, over, under, or across the street right-of-way pursuant to § 93.002 are further subject all of the following divisions (B) through (I) of this section.

(B) Any exception listed in divisions (B) through (I) of this section shall constitute an obstruction, though permitted to the extent specified. Except for utilities described in § 93.002(H), any person who obtains a permit for, places, installs, locates, maintains, or uses any obstruction on, in, across, over, or under said right-of-way, shall maintain it so as not to interfere with public use of the street rights-of-way, public improvements, or utilities and in accordance with all applicable provisions of the code. Further, said person shall be solely liable and responsible for all claims, losses, liabilities, costs, and expenses whatsoever, arising out of or resulting from the obstruction, including but not limited to property damage, installation, maintenance, repair, replacement, reinstallation, removal, personal injury, and death. Utilities described in § 93.002(H) shall be maintained by and be the responsibility and liability of the person placing them in the right-of-way or obtaining a permit, license, or agreement with the city. The city shall have no obligation or liability whatsoever with respect to any obstruction placed in the street right-of-way pursuant to this subchapter or its damage or removal.

(C) Any obstructions placed or allowed to continue in the street right-of-way pursuant to this subchapter shall be maintained in a neat and orderly appearance and in good repair and condition by the owner or occupant of the property fronting on that portion of the street right-of-way on which the obstruction is located. The Building Inspector is hereby authorized to include in any permit issued pursuant to this subchapter such terms and conditions as he or she determines necessary or advisable, including but not limited to specifications and/or requirements regarding maintenance, repair, and removal, so long as not in conflict with any express provision of this subchapter or other provision of the code. Notwithstanding any other provision of this subchapter to the contrary, the Building Inspector shall be authorized to revoke any permit issued under this subchapter for failure to comply with any term or condition of the permit upon ten days advance written notice to the owner of the lot or ground adjacent to the street right-of-way on which the particular obstruction is located, in which case, the obstruction shall be unpermitted, prohibited, and subject to removal under this subchapter.

(D) (1) The city retains sole, full, and absolute right and authority to regulate and use (and authorize the use of) street rights-of-way, and nothing in this subchapter or in any permit or agreement issued or entered into by the city shall constitute or be interpreted as:

(a) Creating any license, right, or interest whatsoever in any person to any street right-of-way;

(b) Abrogating or limiting the right of the city, its licensees, or designees to perform any public works or public improvements at any time;

(c) A waiver of any other applicable code, ordinance, or regulation of the city or of the city's right to require any permit thereunder;

(d) A waiver or release of any rights of the city in or to the street rights-of-way; or

(e) Limiting the city's rights or authority with respect to said street rights-of-way.

(2) Any permission granted pursuant to this subchapter to place any obstruction in any right-of-way or allow it to remain shall be subject to all other laws, ordinances, rules, and

regulations of the city and may be entirely or partially revoked or revised at any time by the City Council.

(E) Any dead or diseased tree in the street right-of-way, or any obstruction that is not permitted or is in violation of this subchapter shall be deemed to be a nuisance and subject to removal. The city may at any time remove or direct the removal of any obstruction:

(1) That is deemed to be a nuisance hereunder;

(2) That in the sole determination of the city interferes with use of the street rights-of-way by the city or its designees, franchisees or licensees, creates or increases risk of death, injury, or property damage, or is damaged, deteriorated, or in disrepair, or

(3) As is necessary for the city, its designee, franchisee, or licensee to perform any public work or improvement.

(F) In addition to any other authority of the city with respect to its rights-of-way under the code, state statute, or other applicable law, the Building Inspector or his or her designee shall be authorized to remove, without any prior notice, any obstruction described in division (E) of this section and not planted or installed below grade in the street right-of-way, or in the event of an emergency or when immediate removal is required in the interests of public health, safety, or welfare. In either case, the Building Inspector or his or her designee shall be authorized to, upon 30 days advance written notice, levy and assess all or any portion of the cost and expense of the work to the persons placing the obstruction in the street right-of-way or to the property owners or occupants of the lots or pieces of ground fronting on that portion of the street right-of-way on which the work is done.

(G) In all cases other than described in division (F) of this section, notice shall be given prior to removal of an obstruction from the street right-of-way. In the case of any dead or diseased trees, notice must be given describing the nuisance, to abate and remove the trees, and of the right and manner to request a hearing. In all other cases, the notice shall describe the reason that removal is required and direct such removal. All notices shall also state that the obstruction must be removed by the owner or occupant, at his or her sole cost and expense (or at the expense of the person placing the obstruction in the right-of-way), by the specified date, and if not removed by that date, the city shall have the option to remove it or have it removed at the owner's or occupant's sole cost and expense (or at the expense of the person placing the obstruction in the right-of-way). Notices hereunder shall be given personally or by certified mail to each owner, or his or her duly authorized agent, and to the occupant, if any, of the lots or pieces of ground fronting on the portion of the street right-of-way on which the obstruction is located. In the event a property owner is not a resident of the county in which the lot or piece of ground is located, the notice shall be sent to the address listed on the tax rolls at the time the notice is first given.

(H) Removal of any obstruction pursuant to divisions (E) through (G) shall be at the sole cost and expense of the person placing the obstruction in the right-of-way, or of the property owners or occupants of the lots or pieces of ground fronting on that portion of the street right-of-way on which the work is done. If within 30 days after notice of removal in division (G) of this section is given, neither the owner nor the occupant complies with the order to abate and remove the obstruction (and in the case of dead or diseased trees, neither the owner nor the occupant requests a hearing), the City Building Inspector or his or her designee may do the work or have it done at the sole cost and expense of the persons placing the obstruction in the street right-of-way, or of the owners or occupants of the lots or pieces of ground fronting thereon. Any amount that is not paid shall be levied and assessed upon the lots or grounds specially benefitted from the work ~~in the same manner as other special assessment taxes for improvements are levied and assessed.~~

(I) A permit to place, maintain, or continue any obstruction in the right-of-way pursuant to this subchapter shall only be issued to the owner of the lot or ground fronting on that portion of the street right-of-way on which the obstruction is located and shall be subject to all of the provisions of this subchapter, which provisions shall be deemed part of and incorporated into each such permit as if set forth therein and shall be enforceable against the owner and all successors in interest to the lot or ground. Except as otherwise provided in § 93.002, no fee shall be charged to obtain a permit.

**SECTION 2. Repeal of Conflicting Ordinances.** All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 4. Effective Date.** This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 5TH DAY OF APRIL, 2016.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTIONS 93.016; 93.019 AND 93.020 RELATING TO SIDEWALKS; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

**SECTION 1.** Section 93.016 of the La Vista Municipal Code is amended to read as follows:

**§ 93.016 NOTICE TO COMPLY.**

(A) The city shall, during the month of October of each year, publish or cause to be published in one or more newspapers of general circulation within the city a general notice setting forth the requirements of this subchapter.

(B) In addition to the above general notice, notice to abate and remove such snow, sleet, mud, ice or other substances shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate or remove the snow, sleet, mud, ice or other substances the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either:

(1) Levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited ~~in the same manner as other special assessment taxes for improvements are levied and assessed~~; or

(2) Recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(C) At all times thereafter until new snow, sleet, mud, ice or other substances accumulate the following year, the city shall have the right, without providing further notice to such owner, agent, occupant, tenant, or person in possession, charge or control of such lot or ground, to continue removing all snow, sleet, mud, ice or other substances.

**SECTION 2.** Section 93.019 of the La Vista Municipal Code is amended to read as follows:

**§ 93.019 CITY CONSTRUCTION, RESOLUTION, PROCEDURE.**

(A) Whenever the City Council may deem it necessary and expedient so to do, it may, by resolution, require a sidewalk to be constructed in front of or adjacent to any premises, along any street, avenue, or boulevard in the city. The resolution may but need not be in the following form:

"CITY OF LA VISTA  
SIDEWALK RESOLUTION  
BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL  
OF THE CITY OF LA VISTA:

"That it is hereby declared necessary and expedient that sidewalks be constructed and laid to the established grade, along and upon the place provided for sidewalks, upon the side of the streets, avenues, or boulevards in the City of La Vista, of such materials and width as is herein designated and adjoining the following described premises, to-wit:

(Here street address and legal descriptions)

"Such sidewalks to be constructed under the supervision of the Public Works Department of the City of La Vista (or other appropriate agency) and in accordance with Ordinance No. of the City of La Vista and the plans and specifications and requirements as prepared by the City Engineer and adopted and approved by the Mayor and City Council; provided that the owner or owners of the premises herein described shall have thirty (30) days from and after the publication of notice hereof in which to lay or construct said

sidewalks or to commence the laying or construction of said sidewalks as provided herein; and provided, further, that if the said owner or owners fail, neglect, or refuse to lay or construct said sidewalks or to enter upon the laying or constructing of said sidewalks as herein ordered within thirty (30) days after the last publication of such notice, and then and thereafter the City of La Vista will cause the same to be laid or constructed as herein ordered and the cost thereof will be thereafter levied and assessed by the Mayor and City Council as a special assessmenttax against the afore-described premises.

"Said sidewalks shall be constructed of the following materials and to the following width, to-wit:

"The City Engineer's estimate of the construction cost of said work and improvement is \$ \_\_\_\_\_ per lineal foot of sidewalk and \$ \_\_\_\_\_ in the aggregate."

(B) The City Council may, in its discretion, before considering such resolution, request the City Clerk to notify or cause to be notified the owners or occupants of premises in front of or adjacent to which a sidewalk is to be laid, constructed, or widened of the date, time, and place such resolution will be considered so they may appear and be heard if they so desire, but the failure to give such notice shall not invalidate such proceedings or any special assessments thereafter levied for such sidewalk or improvement; provided, further, that it shall be proper for the City Council, in its discretion, by one concurrent resolution to require the construction or widening of sidewalks along and adjoining to any number of pieces of property; and that in such concurrent resolution the City Council shall name and designate but one kind of material as the material to be used in the construction of the sidewalks ordered therein.

**SECTION 3.** Section 93.020 of the La Vista Municipal Code is amended to read as follows:

**§ 93.020 NOTICE TO PROPERTY OWNERS.**

(A) Upon the passage of any resolution directing the construction of any sidewalk, it shall be the duty of the City Clerk to cause to be published once in a legal newspaper of general circulation in the city of a notice directed to the owners of the property described in said resolution, notifying such owners of the passage of said resolution and that they will have 30 days from and after the date of publication of such notice within which to construct the sidewalks so ordered or cause the same to be done, and further notifying said owners that if they fail to lay and construct said sidewalks or cause the same to be done within 30 days after publication of such notice, then and in that case the city will cause said sidewalks to be laid and constructed, the cost of which will be levied and assessed thereafter by the Mayor and City Council of the city as a special assessmenttax against their said premises. Said notice shall also contain the City Engineer's estimate of costs of said work or improvement, and no special assessment in excess of the amount of said estimate shall be assessed against said property.

(B) In addition to the publication of notice as herein above provided, a copy of the notice so published shall be either served upon the occupant in possession of the property to be improved or shall be posted upon said premises at least 20 days prior to the commencement of construction.

(C) The notice may be substantially in the following form:

**"NOTICE**

To the owners of the several pieces of real estate hereinafter described:  
You, and each of you, are hereby notified that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council of the City of La Vista, passed, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Mayor of said City approved La Vista Sidewalk Resolution number \_\_\_\_\_, by which it has been declared and ordered necessary and expedient that sidewalks be constructed and laid to the established grade, along and upon the place provided for sidewalks adjoining the foregoing described premises, said sidewalks to be constructed under the supervision of the Public Works Department of the City of La Vista and in accordance with plans and specifications approved by the Mayor and City Council and on file with the City Clerk and to be constructed of \_\_\_\_\_ and to be \_\_\_\_\_ feet in width.

You, and each of you, are further notified that you will have 30 days from and after the date of publication of this notice in which to lay and construct said sidewalks as ordered in said resolution; and you are further notified and warned that if you fail, neglect and refuse to lay and construct said sidewalks, as in said resolution ordered, within 30 days after the date of publication of this notice, then, and in that case, the City of La Vista will cause the same to be laid, constructed or widened, as ordered in said resolution, the cost of which will be levied and assessed by the City Council of the City of La Vista, as a special assessmenttax against your said premises.

The City Engineer's estimate for the cost of said work or improvement is \$\_\_\_\_\_ per lineal foot of sidewalk and \$\_\_\_\_\_ in the aggregate."

(D) Return shall be in the following form:

"RETURN  
STATE OF NEBRASKA )  
COUNTY OF SARPY ) SS  
CITY OF LA VISTA )

I, \_\_\_\_\_ of the City of La Vista, Sarpy County, Nebraska, hereby certify that I served a copy of the within sidewalk resolution on \_\_\_\_\_ by delivering to \_\_\_\_\_, the occupant in possession of the property involved, personally, a true and correct copy of the within resolution with all the endorsements thereon (or by posting a copy of said resolution on said property) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said day being at least 20 days prior to the date of commencement of the construction of said sidewalk improvement.

(E) The publisher of such legal newspaper or his or her agent shall file with the City Clerk an affidavit of the publication of the resolution as soon as the publication herein required is completed. Such publication, together with the appropriate return showing that either a copy of said resolution was served on the occupant in possession of the property involved or that there was posted a copy thereof on said premises as required by law shall be deemed good and sufficient notice to the owners of the property, resident or nonresident, in front of, abutting or adjacent to which the sidewalk is to be constructed. The affidavit of the printer or his or her agent shall be *prima facie* evidence of the publication herein required and shall be preserved and made a part of the records of the city.

**SECTION 4. Repeal of Conflicting Ordinances.** All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

**SECTION 5. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 6. Effective Date.** This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

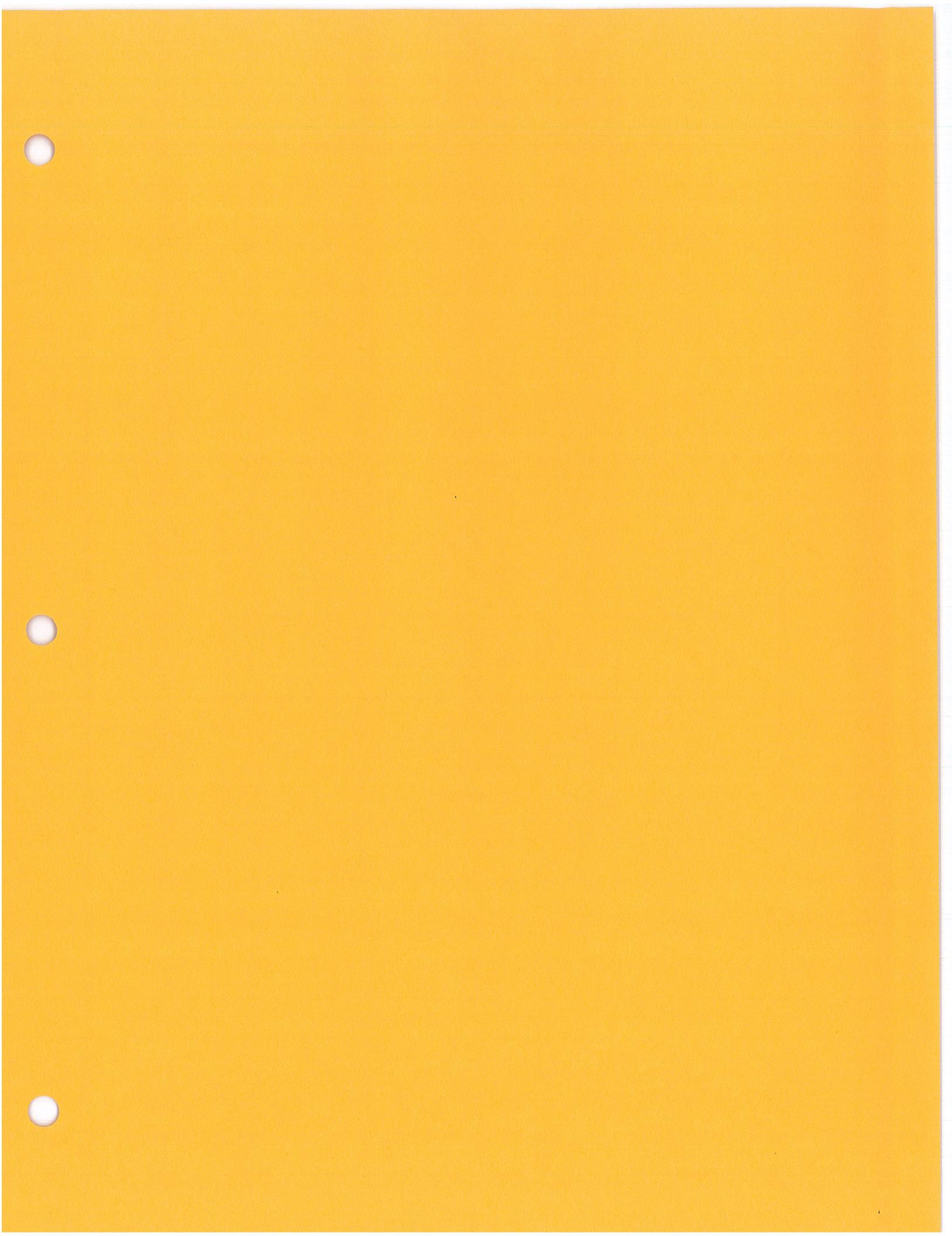
PASSED AND APPROVED THIS 5TH DAY OF APRIL, 2016.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC  
City Clerk



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTION 95.05; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

**SECTION 1.** Section 95.05 of the La Vista Municipal Code is amended to read as follows:

**§ 95.05 PITTING ANIMALS; DEFINITIONS; PROHIBITIONS.**

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

**BEARBAITING.** The pitting of any animal against a bear.

**COCKFIGHTING.** The pitting of a fowl against another fowl.

**DOGFIGHTING.** The pitting of a dog against another dog.

**PITTING.** Bringing animals together in combat.  
(Neb. RS 28-1004)

(B) (1) No person shall knowingly:

(a) Promote, engage in or be employed at dogfighting, cockfighting, bearbaiting or pitting an animal against another;

(b) Receive money for the admission of another person to a place kept for such purpose;

(c) Own, use, train, sell or possess an animal for such purpose;

(d) Permit any act as described in division (B)(1) to occur on any premises owned or controlled by him or her.

(2) No person shall knowingly and willingly be present at and witness as a spectator dogfighting, cockfighting, bearbaiting or the pitting of an animal against another as prohibited in division (B)(1) of this section.

(3) Any person who violates division (B)(1) or (B)(2) shall be guilty of a Class **III A V** felony and the sentencing court shall make such orders and have such authority as provided by state law.—(Neb. RS 28-1005, Neb. RS 28-1019) ('79 Code, § 6-206)

(C) (1) No person shall knowingly or intentionally own or possess animal fighting paraphernalia with the intent to commit a violation of this section.

(2) (a) For purposes of this section, except as provided in division (C)(2)(b) of this section,

**ANIMAL FIGHTING PARAPHERNALIA** means equipment, products, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of the pitting of an animal against another as defined in division (A) of this section.

**ANIMAL FIGHTING PARAPHERNALIA** includes, but is not limited to, the following:

1. A breaking stick, which means a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object;
2. A cat mill, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other

small animal beyond the grasp of the dog;

3. A treadmill, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing place;

4. A fighting pit, which means a walled area designed to contain an animal fight;

5. A springpole, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;

6. A heel, which means any edged or pointed instrument designed to be attached to the leg of a fowl;

7. A boxing glove or muff, which means a fitted protective covering for the spurs of a fowl; and

8. Any other instrument commonly used in the furtherance of pitting an animal against another.

(b) **ANIMAL FIGHTING PARAPHERNALIA** does not include equipment, products, or materials of any kind used by a veterinarian licensed to practice veterinary medicine and surgery in this state.

(3) Any person violating division (C)(1) of this section is guilty of a Class I misdemeanor and the sentencing court shall make such orders and have such authority as provided by state law.-(Neb. RS 28-1005.01, Neb. RS 28-1019) (Am. Ord. 1143, passed 5-3-11) **Penalty, see § 95.99**

**SECTION 2. Repeal of Conflicting Ordinances.** All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 4. Effective Date.** This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 5TH DAY OF APRIL, 2016.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTION 130.01; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Section 130.01 of the La Vista Municipal Code is amended to read as follows:

**§ 130.01 CRIMINAL MISCHIEF.**

(A) It shall be unlawful for any A person commits criminal mischief if he or she:

(1). to in any manner intentionally or recklessly damages or destroys any property of any kind belonging to another ("Property"), including but not limited to, any real or personal property, tomb, grave, monument, gravestone or tree, or any thing of valueany property located upon any government property or cemetery, or any property of historical, local, state, or national significance.

(2). Intentionally tampers with property of another so as to endanger person or property, or

(3). Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.

(B) Unless a penalty is otherwise provided in applicable state statute or in another chapter or section of this code with respect to a particular violation, any person, firm, or entity that violates any of the provisions of this section shall be guilty of a misdemeanor, and:

(1) Criminal mischief is a Class IV felonyThe penalty, if the actor intentionally or maliciously causes pecuniary loss in excess of \$5,000.00 or more, or a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service, shall be imprisonment for no more than twofive years, or a fine of no more than \$10,000, or both.

(2) Criminal mischief is a Class I misdemeanorThe penalty, if the actor intentionally or maliciously causes pecuniary loss between of \$1,500.00 or more but less than \$5,000.00, shall be imprisonment for no more than onesix months, or a fine of no more than \$1,000, or both.

(3) Criminal mischief is a Class II misdemeanorThe penalty, if the actor intentionally or maliciously causes pecuniary loss of \$500.00 or more but less than \$1,500.00, shall be imprisonment for no more than six months, or a fine of no more than \$1,000.00, or both.

(43) Criminal mischief is a Class III misdemeanorThe penalty, if the actor intentionally, maliciously, or recklessly causes pecuniary loss in an amount of less than \$500.00 or less, or if his or her action results in no pecuniary loss, or a loss to which a pecuniary value cannot be determined with reasonable certainty, shall be imprisonment of no more than three months, or a fine of no more than \$500, or both.

SECTION 2. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 4. Effective Date.** This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 5TH DAY OF APRIL, 2016.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk