

ORDINANCE NO. 621

AN ORDINANCE OF THE VILLAGE OF PENDER, THURSTON COUNTY, NEBRASKA TO AMEND THE NUISANCE ORDINANCE 4-201 WHICH DEFINES A NUISANCE, TO ESTABLISH APPOINT A NUISANCE OFFICER; TO ESTABLISH PROCEDURES FOR NOTIFICATIONS CONCERNING NUISANCES AND ABATEMENT OF NUISANCES WITHIN THE VILLAGE; ESTABLISHING NUISANCE ENFORCEMENT PROCEDURES THROUGH ADMINISTRATIVE PROCEDURES, PENAL ENFORCEMENT AND CIVIL COURT PROCEDURES; AUTHORIZING PUBLICATION IN PAMPHLET FORM, REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CHAIRMAN AND BOARD OF TRUSTEES OF THE VILLAGE OF PENDER, NEBRASKA:

SECTION 1. Ordinance 4-201 shall be amended to read as follows:

ARTICLE I  
GENERAL PROVISIONS

PURPOSE. The Village of Pender by this Article defines its authority to define, regulate, suppress and prevent nuisances, and to declare what shall be a nuisance for its jurisdiction and to provide services to abate same for the health and sanitation of the Village. (NRS §18-1720).

DEFINITIONS.

(A) NUISANCE, generally defined. A nuisance consists of doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing:

- (1) Injures or endangers the comfort, repose, health, or safety of others; or
- (2) Offends decency; or
- (3) Is offensive to the senses; or
- (4) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the municipality; or

- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property;  
or
- (7) Tends to depreciate the value of the property of others; or

(B) NUISANCE, specifically defined, includes, but is not limited to, the maintaining, using, placing, depositing, leaving, or permitting or any of the following specific acts, omissions, places, conditions, and things of:

1. Any odorous, putrid, unsound, or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl;
2. The emission of smoke, dust, fumes, gases, mists, odors, or polluted air from any source that is injurious or dangerous to human health and safety;
3. Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats or other insects and rodents, or which are foul or malodorous;
4. Filthy, littered, or trash-covered cellars, house yards, barnyards, stable-yards, factory-yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises;
5. Dead animals or dead animals buried within the corporate limits;
6. Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the municipality;
7. Hauling any garbage, waste, or refuse matter through the streets, alleys, and public ways except when the same is loaded and conveyed in such a way when none of the contents shall be spilled;
8. Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity. Nothing herein contained shall prevent the temporary retention of waste in receptacles nor the dumping of non-putrefying waste in a place and manner approved by the municipality;
9. Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;
10. Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition in which flies or rats or other insects or rodents may breed or multiply, or which may be a fire danger, or which is so unsightly as to depreciate property values in the vicinity;

11. Any unsafe building, unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards, or other structures are a fire hazard, or a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity;
12. All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;
13. Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located are maintained and kept in such a manner as to be injurious to the public health;
14. Undrained lots which hold or may hold stagnant water or any other nuisance;
15. Any condition which allows the perpetuating of insects and rodents;
16. Storage, accumulation, keeping, placing, or allowing to remain trash, garbage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any junk or abandoned motor vehicles, tractors, trailers, machinery, and equipment;
17. Any vehicle which is not properly registered, or is inoperable, wrecked, junked, or partially dismantled and remaining longer than 45 days on private property. This does not apply to a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the lawful operation of such business enterprise (such as a licensed salvage dealer, motor vehicle dealer or farm implement dealer), or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner, and so long as the premises which said vehicle is located is not a nuisance and is maintained in a healthful and safe condition. "Vehicle" means like same as defined by NRS Section 60-136: a "motor vehicle, all-terrain vehicle, utility-type vehicle, minibike, trailer, or semitrailer." "Properly registered" means as required by Nebraska Statutes;  
Manufactured car cover language: The number of vehicles allowed to be stored on a

- property under a manufactured car cover totals: 2.
18. Lots, pieces of ground, and the adjoining streets and alleys with excessive growth (growth in excess of ten inches) of weeds, grasses, or worthless vegetation as defined in NRS 17-563.
  19. All other things specifically designated as nuisances elsewhere in the Village Code. (NRS §18-1720)

## ARTICLE II

### ABATEMENT SERVICES & NOTICE PROCEDURE FOR NUISANCES

(A) The owner or occupant of any real estate within the corporate limits or extraterritorial zoning jurisdiction of the Village shall keep said real estate free from nuisances, except to the extent that conflicting procedures are otherwise provided, the following procedures shall apply to nuisance abatement procedures.

(B) NUISANCE OFFICER. The Village shall appoint an individual or organization to identify and enforce abatement of nuisances within the Village. Said individual or organization shall be identified as the "Nuisance Officer" and said appointment shall be identified by resolution of the Village.

#### (C) IDENTIFYING NUISANCES

1. The Village Board may identify suspected nuisances, in which case the Village Clerk shall, upon direction of the Village Board, notify the Nuisance Officer of the suspected location, person or persons in violation of any provision of this chapter and provide the address of such alleged nuisance.
2. The Village may request that the Nuisance Officer audit the Village for nuisances in the Village as defined by the Village Code. The Nuisance Officer shall then view the area for any violations of the nuisances of the Village. Nuisance Officer shall not go upon private property for said audit unless granted permission by the resident/owner of suspected property.

(D) CONFIRMING, DOCUMENTING AND PRESENTING NUISANCES. The Nuisance Officer shall identify and confirm that in his or her opinion a nuisance exists as defined by Federal, State or Village law.

1. Upon confirming that a nuisance appears to exist the Nuisance Officer shall document said nuisance with photographs, a report, and other evidence pertinent to the situation. The Nuisance Officer will also obtain the legal description of the

property and identify the current owners, and, if possible, the occupants of the property upon which the nuisance exists.

2. The Nuisance Officer shall then present this information to the Village governing board at a regular or special meeting for its confirmation that a nuisance exists.

### ARTICLE III ENFORCEMENT

ENFORCEMENT PROCEDURES. Once a nuisance, health and/or sanitation violation is brought to the Governing Body by the Village Nuisance Officer or the Board of Health, the Governing Body then may declare by resolution a nuisance, health and/or sanitation violation. The nuisance, health, and/or sanitation ordinances may be enforced by: (1) Village administrative procedures; (2) Penal prosecutions through the Courts, and/or; (3) by civil procedures in the Courts. Any of these procedures, or any combination of these procedures may be used to enforce the nuisance, health and/or sanitation ordinances of the Village.

(A) ADMINISTRATIVE PROCEDURE – The Village may proceed with abatement of the nuisance, sanitation, and/or health violation with or without court involvement after the following procedure is followed:

1. After a nuisance is declared, the Village Clerk notifies the Nuisance Officer to serve notice upon the violator.
2. The Nuisance Officer shall draft and serve notice which shall describe the found nuisance and state the required date of abatement and removal of the nuisance shall be accomplished. The notice shall also provide information as to how the interested parties may request a hearing before the Governing Body described in paragraph 4 herein.
3. The notice shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, said notice shall be given by a single publication in a newspaper of general circulation in the Village or county of the Village, and by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The date of service is determined by the later of certified mail receipt, personal service or publication date.
4. The accused violator (owner/agent/occupant) may request in writing a hearing before the Governing Body of the Village within five (5) days after notice of violation is served, received or published.

5. If no request for a hearing is received in the required time period, the Governing Body may cause a hearing to be held. This option is at the sole discretion of the Governing Body of the Village.
6. If a hearing is requested, the Village Clerk shall fix date of said hearing to be no later than 30 days from receipt of the request for the hearing. Notice of said hearing and with the date and time shall be served upon the agent, owner, and of the nuisance property by personal service or certified mail and regular mail.
7. The Hearing shall be a “show cause” hearing in which the agent, owner, occupant of the nuisance property (objecting property) shall provide evidence why the alleged condition should not be found to be a public nuisance and remedied. This hearing shall be heard before a quorum of the governing body. The presiding official of the Governing Body may conduct the hearing or said presiding official may appoint another person as the hearing officer to conduct the hearing (said hearing officer may be the Village Attorney or the Enforcement Officer). At the hearing the hearing officer shall mark and receive evidence which was presented when the finding of a nuisance was made, relevant evidence of the nuisance since that time, and evidence that the notices were properly given. The objecting party shall then provide its evidence. The rules of evidence are not required at said hearing, but all evidence must be relevant to the particular nuisance being heard. Testimony shall be under oath as administered by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.
8. No later than 14 days after the hearing and consideration of the evidence, the Governing Board may by majority vote rescind the resolution of violation. If the resolution of violation is not rescinded, it shall stand. Furthermore, if the Objector or its designated agent fails to appear at the hearing or does not provide evidence, the nuisance shall stand. If the resolution is not rescinded, the Governing Board may, by resolution, extend the date that owner, occupant, lessee, or mortgages shall abate and remedy the said public nuisance, but in no case shall this time exceed 60 days. The finding of the Governing Board shall be made no later than 14 days after the hearing and notice of its finding shall be served upon the objecting party by regular US Mail within 5 days of the finding. The

finding of this hearing is final, provided that an interested party or parties may appeal such decision to the appropriate court for adjudication.

9. If the Nuisance Officer determines the nuisance is not remedied and abated within the time period designated, the Village shall cause the abatement of the nuisance.
10. If an interested party properly appeals to an appropriate court the findings and orders of the Village, the Village actions shall be stayed during until such time that the legal proceedings are completed or dismissed. In cases of appeal from an action of the Village condemning real property as a nuisance or as dangerous under the police powers of the municipality, the owners of the adjoining property may intervene in the action at any time before the trial (Neb. RS 19-710).

(B) PENAL COURT ENFORCEMENT PROCEDURE. Any person who shall violate or refuse to comply with the enforcement provisions of this chapter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined as set forth herein. If the declared nuisance, health, and/or sanitation violation is not abated within fifteen (15) days that the notice is served upon the owner and/or occupant, and the Village Clerk has not received a request for hearing, the Nuisance Officer may cause issuance of a citation for the code violation.

1. The citation shall be prosecuted to the appropriate court by the Village Attorney or other designated prosecutor for the Village.
2. A person or persons found guilty of these violations shall be guilty of a misdemeanor and fined up to \$500.00 per each offense.
3. Each day that the nuisance is identified in the nuisance resolution and notice, is not abated shall be a separate offense and subject to a separate fine.

(C) CIVIL COURT PROCEDURE. The Governing Board may instruct by resolution the Village Attorney to file a civil action for the abatement of a nuisance. Said civil suit may commence fifteen (15) days after the notice has been served and after the time for remediation of the nuisance has passed as stated in the resolution of the board or as stated in this Ordinance, and may be filed and prosecuted at the same time any other enforcement procedure has commenced, terminated or is in progress.

#### ARTICLE IV EXPENSES

- (A) When the Village has effected the abatement of the nuisance, health and/or sanitation

violation through either Village employees or through a contract with a third party and has incurred expenses and costs thereof, the actual cost thereof shall be charged to the owner, agent, occupant or person in possession, charge or control of such property. The billing shall be calculated at the actual cost of abating the nuisance plus a twenty-five dollar (\$25.00) administrative fee.

(B) This billing shall be submitted to the last known address of the Owner of the nuisance property as found in the County Treasurer's office by regular US mail.

(C) If said costs are not paid within two months after the work is done and one month after the expenses and costs are submitted to the owner and/or occupant, the Village may levy and assess the expenses and costs upon the real estate benefited by the actions in the same manner as other special assessments are levied and assessed, and the Village may collect said assessments in the same procedure as other special assessments are collected. The Village may also recover said expenses and costs of abating the nuisance, health and/or sanitation violation(s) in a civil action in the courts of the appropriate county in Nebraska.

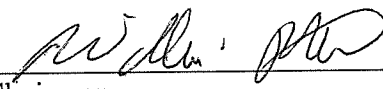
SECTION 2. Said Ordinance is hereby amended and all conflicting ordinances, resolutions and conflicting sections of ordinances and resolutions to this ordinance are hereby repealed, including 4-202; 4-203; 5-511 paragraph 2; and 6-320.

SECTION 3. Publication of this ordinance is authorized in pamphlet form.

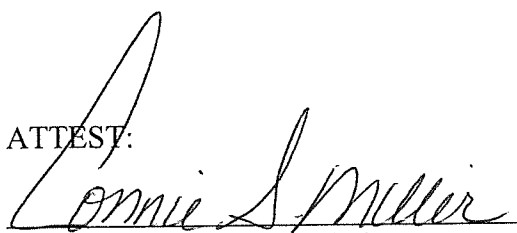
SECTION 4. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 14 day of August, 2017.

VILLAGE OF PENDER

By:   
Chairman  
Village Board of Trustees

ATTEST:

  
Connie Miller, Village Clerk