

Village of Elwood regular meeting minutes, November 16, 2021

A regular meeting of the Board of Trustees of the Village of Elwood, Nebraska was held at the Elwood Village Office, 304 Calvert Avenue on Tuesday, November 16, 2021 at 7:00 pm. The meeting was called to order at 7:00 pm by Board Chair Martin who acknowledged the Open Meetings Act posted on the south wall of the meeting room. Present were Trustees Townsend, Tilson, Kleine and Fong. Notice of the meeting was given in advance thereof by publication in the Valley Voice Newspaper on November 4, 2021 and by posted notices at Security First Bank, Pinnacle Bank, Elwood Post Office and the Village Office. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

A motion was made by Tilson, seconded by Fong to approve the October 19, 2021 regular meeting minutes. There being no further discussion, the roll call vote was: ayes: Kleine, Townsend, Fong, Tilson, Martin; nays: none; motion carried 5-0.

A motion was made by Tilson, seconded by Kleine, to approve and pay the following Village and Library claims as presented. There being no further discussion, the roll call vote was: ayes: Townsend, Fong, Kleine, Tilson, Martin; nays: none; motion carried 5-0. Claims are as follows:

Aflac	256.40	emp pd ins
American Legal Publishing Corp	399.00	model ordinances
AMI Global, LLC	360.00	annual well info fee
ATC Communications	4.95	email
Aurora Cooperative	1,023.83	fuel
Black Hills Energy	85.11	utilities
CAMAS Publishing	68.85	publications
Cardmember Service - Security First CC	209.51	supplies
CenturyLink	126.70	phone
Corder, Kirk	49.00	cell phone
Dawson Pest Control	105.00	spray office
Dawson Public Power District	4,372.92	utilities
Dawson Tire & Wheel	2,429.00	tractor tire
Eakes - Copier	124.65	lease payment
Elwood Hometown Coop Market	9.39	supplies
Hart & Huyser, P.C., L.L.O.	387.50	attorney fees
John Deere Financial	97.86	spray paint
Kleine, James	46.18	replace lost check
MTL, Inc.	98.00	cleaning
Murphy Tractor & Equipment	21,600.00	blade for loader
NDEE-Public Water Operators	230.00	water licenses
NE Dept of Revenue	253.15	sales tax
NE State Treasurer	130.54	dog tag fees
NE Waste Reduction & Recycling Fee	25.00	annual fee
One Call Concepts, Inc.	23.84	locate fees
Pinnacle Bank	393.75	Kirk HSA
Pinnacle Bank	393.75	Shane HSA
Schaben Sanitation - Roll-off	674.71	roll-off dumpster
Schaben Sanitation Inc.	5,970.77	trash
Schutz, Shane	20.00	cell phone
South Central NE Softball League	75.00	replace lost check
Village Uniform	35.20	rugs
TOTAL	40,079.56	
PREAPPROVED/PREPAID CLAIMS:		
Blue Cross/Blue Shield	4,155.19	emp health ins
EFTPS withholding, SS, MC	3,651.12	payroll taxes

Payroll		10,029.28	net payroll
Star Marketing & Admin (Trustmark)		32.70	emp life ins
TD Ameritrade		374.20	retirement company match
TOTAL PREPAID	18,242.49		
TOTAL CLAIMS	58,322.05		
LIBRARY CLAIMS: (pp=prepaid)			
Black Hills Energy (pp)	118.14		utilities
CenturyLink (pp)	120.29		telephone/internet
Dawson Public Power District	115.01		utilities
MTL Inc	196.00		janitor
Village of Elwood	2118.75		wages/ss/mc, trash, outdoor lights
Walmart card	112.90		supplies
Jane Hilton	216.89		meeting/mileage
Pinnacle Bank credit card	46.03		book, postage
TOTAL LIBRARY CLAIMS	3,044.01		

Clerk Jauken requested that two claims be approved to pay before the meeting if the due date is before the meeting date. A motion was made by Fong, seconded by Tilson, to pay Aflac and the Nebraska Department of Revenue sales tax payable if due before the meeting date. There being no further discussion, roll call vote was: ayes: Kleine, Townsend, Tilson, Fong, Martin; nays: none; motion carried 5-0.

The Clerk inquired about paying the budget requests of the Elwood Care Center and Community Redevelopment Authority (CRA) on a schedule instead of in a lump sum. A motion was made by Tilson, seconded by Kleine to table the discussion until the next regular meeting. The roll call vote was: ayes: Fong, Townsend, Kleine, Tilson, Martin; nays: none; motion carried 5-0.

The Trustees discussed the invoice received from Dawson Area Development and noted the Village is working with West Central Development District. No action was taken on the invoice.

A motion was made by Fong, seconded by Kleine to approve the Treasurer's report. There being no further discussion, the roll call vote was: ayes: Tilson, Townsend, Kleine, Fong, Martin; nays: none; motion carried 5-0.

The Community Redevelopment Authority (CRA) minutes were reviewed. CRA Board Chair Katy Weissert was present to report that Lot 1 is open again and they should have Lot 9 paperwork completed soon. Weissert inquired about permission for a private septic system at 102 N. Smith Avenue as the CRA has received an application from the property owner for a redevelopment loan for the rehabilitation of the building. Utility Superintendent Corder reported talking to the owner and they are waiting for information from the Department of Environmental Quality and the septic installation company. Weissert reported that about \$3,800.00 was raised by the school kids for the Veteran's Memorial. The Village will open an account for these funds and any other donations that are received.

Deputy Naputi was present. The Board asked for a check on unlicensed vehicles.

Utility Superintendent Corder reported receiving the plow for the loader. He has no new information on Rush Street improvements. Discussion was held regarding purchasing/leasing a mini excavator or hiring assistance for potential water breaks; the Village will wait on the purchase of a trailer until more excavator information is received.

Trustee Fong received an estimate from Leising Construction to pack and grade the baseball field for \$2600.00. A motion was made by Tilson, seconded by Townsend to hire Leising Construction, Inc. to level and grade the baseball field. There being no further discussion, the roll call vote was: ayes: Kleine, Fong, Townsend, Tilson, Martin; nays: none; motion carried 5-0.

A brief discussion was held regarding getting the lights put up at the ball fields.

Board Chair Martin read Ordinance 2021-03 by Title presenting for the third time. A motion was made by Tilson, seconded by Kleine to pass and adopt Ordinance 2021-03 updating the nuisance ordinance for the Village of Elwood. There being no further discussion, the roll call vote

was: ayes: Fong, Townsend, Kleine, Tilson, Martin; nays: none; motion carried 5-0. Ordinance 2021-03 reads as follows:

VILLAGE OF ELWOOD
Ordinance No. 2021-03

AN ORDINANCE OF THE VILLAGE OF ELWOOD, TO AMEND THE NUISANCE ORDINANCE THAT DEFINES A NUISANCE, PROVIDE FOR THE ABATEMENT AND ENFORCEMENT PROCEDURE; AND TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

BE IT ORDAINED BY THE CHAIRMAN AND BOARD OF TRUSTEES OF THE VILLAGE OF ELWOOD, GOSPER COUNTY, NEBRASKA THAT:

Section 1. The Board has determined that Title IX, Chapter 90, Nuisances, should be amended in the general Municipal Code of the Village of Elwood.

Section 2. Title IX, Chapter 90, is hereby revoked and replaced with the following Title IX, Chapter 90, which reads as follows:

CHAPTER 90
HEALTH AND SANITATION: NUISANCES

§90.01 GENERAL PROVISIONS

PURPOSE. The Village of Elwood, 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. (Neb. Rev. Stat. § 18-1720).

DEFINITIONS.

A. **NUISANCE.** 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;
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street or highway in the municipality;
- (5) In any way renders other persons insecure in life or the use of property;
- (6) Essentially interferes with the comfortable enjoyment of life and property; or
- (7) Tends to depreciate the value of the property of others.

B. **Nuisance** includes, but is not limited to, the maintaining, using, placing, depositing, leaving, or permitting 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 throughout 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 cements, 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 are 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 dissembling of automobiles, trucks, tractors or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or 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 that foul or noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the municipality or are maintained and kept in such a manner as to be injurious to the public health;

- (14) Dead or diseased trees within the right-of-way of Streets within the corporate limits of the Village, or on private property within the one mile zoning jurisdiction beyond the corporate limits (Neb. Rev. Stat. §17-555);
- (15) Undrained lots which hold or may hold stagnant water or any other nuisance;
- (16) Any condition which allows the perpetuating of insects and rodents;
- (17) 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;
- (18) Any vehicle which is not properly registered, or is inoperable, wrecked, junked, or partially dismantled and remaining longer than thirty (30) 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 the same as defined by Neb. Rev. Stat. §60-136: a "motor vehicle, all-terrain vehicle, minibike, trailer, or semitrailer. "Property registered" means as required by Nebraska Statutes.
The number of vehicles allowed to be stored on a property under a manufactured car cover totals two (2).
- (19) Lots, pieces of ground, and the adjoining streets and alleys with growth of weeds or noxious growth;
- (20) All other things specifically designated as nuisances elsewhere in the Village Code. (Neb. Rev. Stat. §18-1720)

§90.02 ABATEMENT SERVICES & NOTICE PROCEDURE FOR NUISANCES

- A. **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.
- B. **IDENTIFYING NUISANCES.**
 - (1) The Village may identify suspected nuisances, in which case the Village Clerk shall notify, upon direction of the Village Board, 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 property or area for any violations of the nuisances of the Village. The Nuisance Officer shall not go upon private property for said audit unless granted permission by the resident/owner of suspected property.
- C. **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 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 Board of Trustees at a regular or special meeting for its confirmation that a nuisance exists as stated in Section 90.03.

§90.03 ENFORCEMENT

ENFORCEMENT PROCEDURES. The nuisance, health and/or sanitation violation is brought to the Governing Body by the Village Nuisance Officer, or the Board of Health, or upon the Governing Body's own action. 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(s).
- (2) The Nuisance Officer shall prepare and serve notice, which shall describe the found nuisance and state the required date of when 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 the 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 or published. For tree nuisance violations the period for requesting a hearing is extended to thirty (30) days after service.
- (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 to be used in exceptional cases.
- (6) If a hearing is requested, the Village Clerk shall fix date of said hearing to be no later than 15 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 occupant of the nuisance property by certified or regular mail.
- (7) The hearing shall be a "show cause" hearing in which the agent, owner, and/or occupant of the nuisance property (objecting party) 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 the owner, occupant, lessee, or mortgagee shall abate and remedy the said public nuisance, but in no case shall this time exceed 60 days. The findings of the Governing Board shall be made no later than 14 days after the hearing and notice of its findings 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 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 trial (Neb. Rev. Stat. §19-710)

B. PENAL COURT ENFORCEMENT PROCEDURE. If the declared nuisance, health, and/or sanitation are 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 issue 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; and
- (3) Each day that the nuisance as 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 abatement of a nuisance. Said civil suit may

commence after fifteen (15) days' notice has been served, and may be filed and prosecuted at the same time any other enforcement procedure has commenced, terminated or is in progress.

§90.04 EXPENSES

A. When the Village has affected the abatement of the nuisance, health and/or sanitation violation through either Village employees or through 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 and/or occupant 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 (2) 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 benefitted 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 3. Said Title IX, Chapter 90 is hereby amended and all conflicting ordinances, resolutions and conflicting sections of ordinances and resolutions to this ordinance are hereby repealed.

SECTION 4. This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

Passed and approved this 16th day of November, 2021.

Tom Martin, Chairman
Elwood Village Board of Trustees

ATTEST:

Laurie Jauken, Village Clerk

First Reading: September 8, 2021

Second Reading: October 19, 2021

Third Reading: November 16, 2021

Board member Tilson moved for adoption of said Ordinance. Board Member Kleine seconded the motion.

Roll Call Vote:

YEA Fong, Townsend, Kleine, Tilson, Martin

NAY None

ABSTAINED None

PUBLICATION:

Date: 11/25/2021

Paper: Valley Voice

The Board reviewed snow removal bids. A motion was made by Fong, seconded by Kleine to hire Lawn In Order for the upcoming snow removal season. There being no further discussion, the roll call vote was: ayes: Townsend, Tilson, Kleine, Fong, Martin; nays: none; motion carried 5-0.

A Special Designated Liquor License request was submitted by Arapahoe Fun Center LLC for an event to be held at the Civic Center on December 4, 2021. A motion was made by Tilson, seconded by Fong to approve said request. There being no further discussion, the roll call vote was: ayes: Kleine, Townsend, Fong, Tilson, Martin; nays: none; motion carried 5-0.

The Elwood Chamber of Commerce, along with three merchants, submitted SDL requests for an event to be held December 9, 2021 at 317 Smith Avenue in Elwood. A motion was made by Tilson, seconded by Fong, to approve the four SDL requests. There being no further discussion, the roll call vote was: ayes: Tilson, Townsend, Fong, Kleine, Martin; nays: none; motion carried 5-0.

Resolution 2021-14, authorizing the signing of the Year-End Certification of City Street Superintendent 2021 by the Village Board Chair, was reviewed by the Trustees. A motion was made by Fong, seconded by Kleine to pass said Resolution. There being no further discussion, the roll call vote was: ayes: Tilson, Townsend, Kleine, Fong, Martin; nays: none; motion carried 5-0.

A survey was reviewed regarding a requested lot split. Any further discussion and action is tabled until the next regular meeting.

There were no approved building permits to review.

Trustee Tilson will be gathering information regarding the possible use of solar panels or wind towers.

Board Chair Martin adjourned the meeting at 8:18 pm.

Laurie Jauken, Clerk/Treasurer