

**VILLAGE OF ELM CREEK
BOARD OF TRUSTEES
REGULAR MEETING MINUTES
NOVEMBER 20, 2019, 7:30 P.M.**

A Regular Meeting of the Elm Creek Village Board of Trustees was convened in open and public session at the Elm Creek Village Center, 535 W. Boyd Avenue, Elm Creek, Nebraska at 7:30 p.m. on November 20, 2019. Advance Notice of this meeting was given in advance thereof by posting of Notice in three public places within the Village and publication in the Beacon Observer, as shown in the Certificate of Posting affixed to these minutes. Advance Notice was simultaneously given to the Chairman and all members of the Board of Trustees and their acknowledgment of receipt of Notice and the agenda are affixed to these minutes. Tanner Tool called the meeting to order at 7:31 p.m. by calling for the roll with the following members responding: Kyle Lawrence, Davis Miner, Cory Halliwell, and Tanner Tool. Absent: Mike Brown. Tanner announced that the Open Meeting Laws were in the hallway leading to the meeting room for the public's inspection.

CONSENT AGENDA

It was moved by Tanner and seconded by Cory to approve the Consent Agenda consisting of the Claims for the month of November 2019 in the amount of \$88,804.50 and to approve the minutes to the meeting on October 23, 2019. Ayes: Kyle, Davis, Cory, Tanner. Nays: none. Absent: Mike Brown. The motion carried.

SHERIFF'S REPORT:

Sergeant Ristine was at the meeting to report for the Sheriff's Department. There was not much to report for the month of October.

REGULAR AGENDA

AGENDA ITEM #1: DISCUSSION/ACTION RE: Review One & Six Plan for 2020 Fiscal Year

Lance Harter with Oak Creek Engineering to review with the board the One & Six Plan. Lance reported that Blessing Construction will not be here by the end of the year to work on the Calkins Ave and Easy Street project that was originally to be completed by December 2nd. The board has requested to have Lance go back to Blessing Construction for a new date of completion and to ask for a reduction in costs. Suzanne and Lance have discussed some streets in town needing work done, namely Elm Avenue. Suzanne has looked into some grants to help with the cost. Grants work better for residential streets as opposed to downtown/commercial streets. She has also looked into a downtown revitalization grant for downtown Tyler Street. Both of those were suggested to be included on the Six Year Plan. No further action taken.

AGENDA ITEM #2: DISCUSSION/ACTION RE: RFP for Calkins landscape

It was moved by Tanner and seconded by Kyle to direct staff to publish notice for a request for proposals for twenty-nine 4-6ft high trees, with drip system as presented and an option B from the bidder. Ayes: Kyle, Davis, Tanner and Cory. Nays: None. Absent: Mike. The motion carried.

AGENDA ITEM #3: DISCUSSION/ACTION RE: RFP for lagoon rip rap project

Lance will continue to discuss with Tim. No action taken.

AGENDA ITEM #4: DISCUSSION/ACTION RE: Water Meter project

No action taken.

AGENDA ITEM #5: DISCUSSION/ACTION RE: Pool Painting Bids

Tabled.

AGENDA ITEM #6: DISCUSSION/ACTION RE: Approve SCEDD Invoice #998 for general administrative services as part of the Owner Occupied Rehab project

It was moved by Tanner and seconded by Davis to approve payment of the SCEDD Invoice #998 for general administrative services as part of the Owner Occupied Rehab project 18-HO-34054 in the amount of \$1,125.00.

Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

AGENDA ITEM #7: DISCUSSION/ACTION RE: Approval of Request for CDBG Funds Drawdown #2

It was moved by Tanner and seconded by Cory to approve the request for CDBG Funds Drawdown #2. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

AGENDA ITEM #8: DISCUSSION/ACTION RE: Truck Traffic Ordinance/Resolution

No action

AGENDA ITEM #9: DISCUSSION/ACTION RE: Travel Expense Policy #003 and Form 003-A

It was moved by Tanner and seconded by Davis to approve the Travel Expense Policy #003 and Form 003-A.

Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

AGENDA ITEM #10: DISCUSSION/ACTION RE: Amendments to the Nuisance Ordinances

It was moved by Tanner and seconded by Cory to suspend the statutory requirements that an ordinance be read on three separate occasions, so that ordinance 2019-39 might be introduced, read by number and called for passage at the same meeting. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

ORDINANCE NO. 2019-39

AN ORDINANCE RELATING TO NUISANCES; TO PROVIDE FOR DEFINITIONS OF NUISANCES; TO AMEND THE ABATEMENT PROCEDURE AND JURISDICTION; TO GRANT AUTHORITY FOR INSPECTIONS; TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CHAIRPERSON OF THE BOARD OF TRUSTEES OF THE VILLAGE OF ELM CREEK, NEBRASKA.

Section One. Village of Elm Creek, Nebraska Code of Ordinances shall be amended by repealing Section 90.01 and replacing said section with the following:

§ 90.01 DEFINITION.

(A) *General definition.* For the purpose of the is chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

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 either:

- (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 or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
- (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) *Specific definition.* The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things caused to be or remain in or upon any private lot, building, structure or premises, or in or upon any street, avenue, alley, park or parkway, or at any other public or private place, of any one or more of the following conditions or things are hereby declared to be and constitute **NUISANCES**; provided that this enumeration shall not be deemed to be conclusive:

- (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) Privies, vaults, cesspools, dumps, pits or like places which are not securely protected from flies or rats, or which are foul or malodorous;
- (3) 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;
- (4) Filthy, littered or trash-covered cellars, house-yards, barnyards, stable-yards, factory-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 and/or the zoning jurisdiction of the Municipality;
- (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 that 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; provided, nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the Municipal Administrator, nor the dumping of non-putrefying waste in a place and manner provided by the Municipal Administrator;

(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 said articles or materials create a condition in which flies or rats may breed or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity thereof;

(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 either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof;

(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 said 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) Stagnant water permitted or maintained on any lot or piece of ground;

(14) 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 premises 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 said places in which said animals are confined, or said premises on which said vegetable or animal matter is located, are maintained and kept in such a manner that foul and 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;

(15) Dead or diseased trees within the right-of-way of streets and/or alleys within the corporate limits of the Village, or on private property within the one (1) mile zoning jurisdiction beyond the corporate limits;

(16) Any condition which allows the perpetuating of insects and rodents;

(17) Pits or excavations within the municipality not being used for the purpose of building where such pits or excavations are made and the leaving of any such pits or excavations in an exposed condition for a period of twenty-four (24) hours or longer;

(18) Permitting, maintaining or allowing weeds, rank grass, sweet clover, any growth of worthless vegetation twelve (12) inches or more in height, and other plants of rank growth as defined by Nebraska Statutes and the Nebraska Department of Health Regulations on lots and grounds and on the streets and alleys on which the same abut;

(19) The burning or disposal of refuse, sawdust, oil, fuel oil or other materials in such a manner as to cause or permit ashes, sawdust, suet, gases or other materials arising from such burning to damage the property of the residents of the Municipality or to injure and endanger the health, comfort or repose of persons, or to injure the property of any person;

(20) The throwing, depositing, placing or accumulation of litter on any lot, tract or piece of ground within this Municipality. The term "litter" shall include, but not be limited to:

(a) Trash, rubbish, refuse, garbage, paper, rag and ashes;

(b) Wood, plaster, cement, brick or stone building rubble;

(c) Grass, leaves and worthless vegetation;

(d) Offal and dead animals; and

(e) Any machine or machines, vehicle or vehicles, wind turbines, or parts of a machine, vehicle, or wind turbine which have lost their identity, character, utility or serviceability as such through deterioration, dismantling or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded or thrown away or left as waste, wreckage or junk.

(21) 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 section 60-136 RS Neb.: a motor vehicle, all-terrain vehicle, minibike, trailer, or semitrailer. PROPERLY REGISTERED means as required by Nebraska Statutes;

(22) Any structure or part of a structure which remains or is damaged to present a dangerous or unsafe condition to the public including, but not limited to, structures damaged by fire, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, animals, insects, transients, or create an attraction to children; structures which, in the opinion of the Municipal Administrator, present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued and any building permit has lapsed for more than thirty (30) days; after eighteen (18) months from the date of the first building permit and where no inspection for newly completed work has been requested from the municipality within the last forty-five (45) days; or

(23) All other things specifically designated as nuisances elsewhere in this code.

(1991 Code, §§ 4-301, 4-302) Penalty, see § 10.99

Statutory reference:

Authority to regulate and abate nuisances, see Neb. RS 18-1720

Section Two. Village of Elm Creek, Nebraska Code of Ordinances shall be amended by repealing sections 90.02 and 90.03 and replacing said sections with the following:

§ 90.02 ABATEMENT PROCEDURE

(A) It shall be the duty of every owner or occupant of real estate in the municipality to keep that real estate free of public nuisances. Upon determination of the Municipal Administrator that the owner or occupant has failed to keep that real estate free of public nuisances, notice to abate and remove the nuisance and notice of the right to a hearing before the Board of Trustees 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. The notice shall describe the condition as found by the Municipal Administrator 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 the 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 municipality shall have the work done and may levy and assess the costs and expenses of the work upon the real estate so benefited in the same manner as other special taxes for improvements are levied and assessed.

(B) If the owner or occupant requests in writing a hearing with the Board of Trustees, the Board of Trustees 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 Board of Trustees to show cause why that condition should not be found to be a public nuisance and remedied. This 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 Board of Trustees shall hear all objections made by the owner or occupant and shall hear evidence submitted by the Municipal Administrator. If, after consideration of all the evidence, the Board of Trustees 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 promptly comply with the order of the Board of Trustees, the Board of Trustees 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 benefited in the same manner as other special taxes for improvements are levied and assessed.

(1991 Code, § 4-303) (Ord. 2016-01, passed 3-24-2016)

Statutory reference:

Authority to regulate and abate nuisances, see Neb. RS 18-1720

§ 90.03 JURISDICTION

The Municipal Administrator and County Sheriff shall enforce this Municipal Code against all nuisances. The jurisdiction of the Municipal Administrator, County Sheriff, and court shall extend to, and the territorial

application of this chapter shall include, all territory adjacent to the limits of the municipality within one mile thereof and all territory within the corporate limits.

(1991 Code, § 4-304)

Statutory reference:

Authority to regulate and abate nuisances, see Neb. RS 18-1720

Zoning jurisdiction, see Neb. RS 17-1001

Section Three. Village of Elm Creek, Nebraska Code of Ordinances shall be amended by inserting the following section after section 90.05:

§ 90.06 INSPECTION.

The Municipal Administrator or his/her designee shall have the authority and it shall be his/her duty to enter into and examine at any and all times all buildings, lots and places or all descriptions within the Municipality for the purpose of ascertaining the conditions thereof so far as the public health and safety may be affected thereby. If the property owner or occupant of any building or premises in the Municipality prevents or attempts to prevent any employee of the Municipality or its agent from entering or examining such building or premises for the purpose described above during reasonable hours, the Municipality may then request an administrative search warrant from the district court.

Section Four. Any ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section Five. This ordinance shall be published and shall take effect and be in full force from and after its passage, approval and publication as required by law.

PASSED AND APPROVED this 20th day of November, 2019.

Tanner Tool, Chairman
Village of Elm Creek, Board of Trustees

ATTEST:

Wendy Clabaugh, Village Clerk

It was moved by Tanner and seconded by Davis to adopt Ordinance 2019-39 as Ordinance of the Village of Elm Creek. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

AGENDA ITEM #11: DISCUSSION/ACTION RE: Veteran's Memorial discussion

No action

AGENDA ITEM #12: DISCUSSION/ACTION RE: Scheduling a work session regarding planning and zoning

Suzanne will be scheduling a 2-3 hour work session with the board to discuss planning and zoning, priority projects.

AGENDA ITEM #13: DISCUSSION/ACTION RE: Model Ordinances

It was moved by Tanner and seconded by Cory to suspend the statutory requirements that an ordinance be read on three separate occasions, so that ordinances 2019-28 through 2019-37 might be introduced, read by number and called for passage at the same meeting. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

1. 2019-28 AN ORDINANCE RELATING TO PUBLIC INDECENCY; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
2. 2019-29 AN ORDINANCE RELATING TO GAMBLING; TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
3. 2019-30 AN ORDINANCE RELATING TO GENERAL ELECTION BALLOT PROCEDURES; TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
4. 2019-31 AN ORDINANCE RELATING TO INTOXICATED PERSONS; TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
5. 2019-32 AN ORDINANCE RELATING TO PROPERTY TAX REQUEST; HEARING NOTICES; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
6. 2019-33 AN ORDINANCE RELATING TO RABIES; TO REDEFINE TERMS; TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
7. 2019-34 AN ORDINANCE RELATING TO RABIES; TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
8. 2019-35 AN ORDINANCE RELATING TO ESTABLISHING SINKING FUNDS; TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
9. 2019-36 AN ORDINANCE RELATING TO RECALL ELECTION PROCEDURES; TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.
10. 2019-37 AN ORDINANCE RELATING TO RABIES; POSTEXPOSURE MANAGEMENT OF DOMESTIC ANIMALS AND LIVESTOCK; TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.

It was moved by Tanner and seconded by Cory to adopt Ordinances 2019-28 through 2019-37 as Ordinances of the Village of Elm Creek. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

AGENDA ITEM #14: DISCUSSION/ACTION RE: Tobacco Ordinance

It was moved by Tanner and seconded by Davis to suspend the statutory requirements that an ordinance be read on three separate occasions, so that Ordinance 2019-38 might be introduced, read by number and called for passage at the same meeting. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

ORDINANCE NO. 2019-38

AN ORDINANCE RELATING TO TOBACCO; TO ADD A NEW CHAPTER PROVIDING FOR TOBACCO LICENSES AND THE REGULATION THEREOF; TO AMEND SUBSTANCE OFFENSES RELATED TO TOBACCO USE AND SALE TO MINORS; TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND TO PROVIDE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CHAIRPERSON OF THE BOARD OF TRUSTEES OF THE VILLAGE OF ELM CREEK, NEBRASKA.

Section One. Village of Elm Creek, Nebraska Code of Ordinances shall be amended by adding a new chapter entitled Chapter 113: TOBACCO with the addition of the following provisions thereafter:

§ 113.01 DEFINITIONS.

(1) Alternative nicotine product means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any electronic nicotine delivery system, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

(2) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (b) tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (2)(a) of this section;

(3)(a) Electronic nicotine delivery system means any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

(b) Electronic nicotine delivery system includes, but is not limited to, the following:

(i) Any substance containing nicotine, tobacco, or tobacco derivatives, whether sold separately or sold in combination with a product or device that is intended to deliver to a person nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form;

(ii) Any product or device marketed, manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or similar products, names, descriptors, or devices; and

(iii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives.

(c) Electronic nicotine delivery system does not include the following:

(i) An alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(ii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when not sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives;

(4) Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, an electronic nicotine delivery system, or an alternative nicotine product and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products behind locked doors; and

(5) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products and (b) does not permit persons under the age of nineteen years to enter the premises unless accompanied by a parent or legal guardian.

§ 113.02 LICENSE TO SELL; ISSUANCE.

Licenses for the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material to persons 19 years of age or over shall be issued to individuals, partnerships, limited liability companies, and corporations by the Village Clerk upon application duly made as provided in Neb. RS 28-1422.

(Neb. RS 28-1421)

Statutory reference:

License required, see Neb. RS 28-1420

Prohibited sales, see Neb. RS 28-1421

§ 113.03 LICENSE FOR SALE OF TOBACCO; APPLICATION; CONTENTS.

Every person, partnership, limited liability company, or corporation desiring a license under this chapter shall file with the Village Clerk a written application stating the name of the person, partnership, limited liability company, or corporation for whom such license is desired and the exact location of the place of business and shall deposit with such application the amount of the license fee provided in section 113.04. If the applicant is an individual, the application shall include the applicant's social security number.

§ 113.04 LICENSE; TERM; FEES; FALSE SWEARING; PENALTY.

(A) The term for which such license shall run shall be from the date of filing such application and paying such license fee to and including December 31 of the calendar year in which application for such license is made.

(B) The license fee for any person, partnership, limited liability company, or corporation selling at retail shall be \$10.00.

(C) Any person, partnership, limited liability company, or corporation selling annually in the aggregate more than 150,000 cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in any form, at wholesale, shall pay a license fee of \$100.00, and if such combined annual sales amount to less than 150,000 cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco, the annual license fee shall be \$15.00. No wholesaler's license shall be issued in any year on a less basis than \$100.00 per annum unless the applicant for the same shall file with such application a statement duly sworn to by himself or herself, or if applicant is a partnership, by a member of the firm, or if a limited liability company, by a member or manager of the company, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in every form have not exceeded in the aggregate 150,000 annually, and that such sales will not exceed such aggregate amount for the current year for which the license is to issue. Any person swearing falsely in such affidavit shall be guilty of an offense, and such wholesaler's license shall be revoked until the full license fee is paid.

(D) If application for license is made after July 1 of any calendar year, the fee shall be one-half of the fee provided in this section.

(Neb. RS 28-1423)

§ 113.05 RIGHTS OF LICENSEE.

(A) The license provided for in Neb. RS 28-1421 and Neb. RS 28-1422 shall, when issued, authorize the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material by the licensee and employees, to persons 19 years of age or over, at the place of business described in such license for the term therein authorized, unless the license is forfeited as a result of court action as provided in Neb. RS 28-1425.

(Neb. RS 28-1424)

(B) If the license is revoked and forfeited pursuant to Neb. RS 28-1425, all rights under the license shall at once cease and terminate.

(Neb. RS 28-1425)

Statutory reference:

Sale of person under 19 prohibited; penalties, see Neb. RS 28-1425

§ 113.06 LICENSES FOR SALE OF TOBACCO; FEES INURE TO SCHOOL FUND.

All money collected as license fees under the provisions of this chapter, shall be paid over by the clerk receiving it to the treasurer of the school fund for the Village.

§ 113.07 TRANSFER OF TOBACCO LICENSE.

In case of the sale of a business where the owner has a license hereunder, the licensing authority may authorize such license to be transferred to the purchaser. In case of a change of location by any licensee hereunder, the licensing authority may transfer such license to the new location.

§ 113.08 REVOCATION OF TOBACCO LICENSE; REISSUE.

In the event that the license of a licensee hereunder shall be revoked and forfeited as provided in Neb. RS 28-1425, no new license shall be issued to such licensee until the expiration of one year from the date of such revocation and forfeiture.

Section Two. Village of Elm Creek, Nebraska Code of Ordinances shall be amended by repealing sections 133.20 and 133.21 and replacing said sections with the following:

§ 133.20 USE OF TOBACCO BY PERSON UNDER AGE OF NINETEEN YEARS; PENALTY.

Whoever, being a person under the age of nineteen years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor. 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.

§ 133.21 SALE OF TOBACCO TO PERSON UNDER AGE OF NINETEEN YEARS; PENALTY.

Whoever shall sell, give, or furnish, in any way, any tobacco in any form whatever, or any cigarettes, cigarette paper, electronic nicotine delivery systems, or alternative nicotine products, to any person under nineteen years of age, is guilty of a Class III misdemeanor for each offense.

Section Three. Village of Elm Creek, Nebraska Code of Ordinances shall be amended by inserting the following section after section 133.21:

§ 133.22 MISREPRESENTATION BY MINOR TO OBTAIN TOBACCO; PENALTY.

Any person under the age of nineteen years who obtains cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products from a licensee by representing that he or she is of the age of nineteen years or over is guilty of a Class V misdemeanor.

Section Four. Any ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section Five. This ordinance shall be published and shall take effect and be in full force from and after its passage, approval and publication as required by law.

PASSED AND APPROVED this 20th day of November, 2019.

Tanner Tool, Chairman
Village of Elm Creek, Board of Trustees

ATTEST:

Wendy Clabaugh, Village Clerk

It was moved by Tanner and seconded by Cory to adopt Ordinances 2019-38 as Ordinance of the Village of Elm Creek. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

AGENDA ITEM #15: DISCUSSION/ACTION RE: Credit Cards for Municipal Administrator and Utility Supervisor

It was moved by Tanner and seconded by Kyle to approve the authorization and issuance of credit cards for the Municipal Administrator and Utility Supervisor. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

AGENDA ITEM #16: DISCUSSION/ACTION RE: Executive Session

It was moved by Tanner and seconded by Davis to go into executive session at 8:51pm to discuss real estate purchases. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried. It was moved by Tanner and seconded by Cory to come out of executive session at 9:41pm. Ayes: Kyle, Davis, Tanner and Cory. Nays: none. Absent: Mike. The motion carried.

DEPARTMENT REPORTS

BUILDING PERMITS: No new building permits.

EMPLOYEE REPORTS: Auditors will be here December 2nd-4th. Suzanne has digitized old photos and had one put on canvas to show to the board. Tim's barricades that he ordered are in for the board's inspection. Suzanne would like to have at least one or two board members attend the Midwinter Conference in Lincoln scheduled for February 24th and 25th. Suzanne will work on putting together an RFP for Sanitation that she will try and have ready for February bidding. She also brought up to the board that at looking at the Interlocal Agreement with the Agency Board that if the Village Board is looking to dissolve the Agency Board, it does require 12 month advance notice. If this is the direction that the board wants to go in, Suzanne will talk to the Fire Board/Fire Department about have an agreement with them for renting the space from the Village.

AGENDA ITEM #19: Adjournment

All agenda items having been considered, it was moved by Davis and seconded by Mike to adjourn this Regular Meeting. Ayes: Davis, Kyle, Cory, Tanner. Nays: none. Absent: Mike. The motion carried and the meeting was adjourned at 9:58p.m.

Chairman-Elm Creek Village Board

ATTEST:

Village Clerk

(SEAL)