

Chapter 4
HEALTH AND SANITATION
Article 1. General Provisions

§4-101 HEALTH; ENFORCEMENT OFFICIAL. *(Repealed by Ord. 02-01, 2/4/02)*

§4-102 HEALTH; STATE RULES. *(Repealed by Ord. 02-01, 2/4/02)*

§4-103 HEALTH; COUNTY HEALTH BOARD. *(Repealed by Ord. 02-01, 2/4/02)*

Article 2. Garbage and Refuse Disposal

§4-201 GARBAGE AND REFUSE DISPOSAL; DEFINITIONS.

- A. The term "garbage" as used in this Chapter shall be construed to mean all animal, fruit, or vegetable waste residue which attends the preparation, dressing, use, cooking, dealing, and/or storage of meats, fish, fowl, fruits, vegetables, cereals, or grains for human consumption, corn husks or cobs, coffee or tea grounds, except oyster or clam shells.
- B. The term "refuse" as used in this Chapter shall be construed to mean and include garbage and ashes as hereinbefore defined and all sweepings, paper, cardboard, feathers, rags, glass, dishes, bottles, crockery, pans, utensils of every kind and nature, pasteboard boxes, poison, food containers, tin cans, tree limbs and branches, and any other waste matter or material not herein designated as garbage which accumulates in the conduct of a household, business establishment, shop, or factory of any kind or nature.
- C. The term "refuse" shall specifically exclude grass cuttings, leaves, oil and oil products, and other products designated as hazardous waste by the Environmental Protection Agency and/or the Department of Environmental Quality, as amended from time to time. *(Amended by Ord. No. 92-15, 9/21/92; 02-01, 2/4/02)*

§4-202 GARBAGE AND REFUSE DISPOSAL; HAULING SERVICE, CERTIFICATE OF APPROVAL REQUIRED. No Refuse Hauler shall operate a refuse hauling business within the City limits of Waverly, Nebraska without first receiving a Certificate of Approval to operate a Franchise Refuse Hauling Service (hereinafter referred to as Certificate of Approval) from the City Clerk and complying with all of the terms and conditions of this Article.

§4-203 GARBAGE AND REFUSE DISPOSAL; HAULING SERVICE, FRANCHISES.

Any person, partnership, or corporation receiving approval from the City Council to operate a Franchise Refuse Hauling Service within the City limits of Waverly, Nebraska, shall be granted such franchised right for a period of five (5) years from the date indicated within the Certificate of Approval itself, and the Franchise Certificate of Approval shall automatically be renewed and continue indefinitely on a year-to-year basis until such time the Franchise Agreement is terminated. The Franchise Agreement may be terminated at any time if the conditions in Chapter 4, Section 205 are met. In granting such franchised rights, in the interest of maintaining high quality service, the City Council shall consider the best interest of the community and shall grant the right to operate a Franchised Refuse Hauling Service to no more persons, partnerships, or corporations than the City of Waverly, Nebraska can reasonably support. *(Amended by Ord. No. 99-2, 4/5/99)*

§4-204 GARBAGE AND REFUSE DISPOSAL; CERTIFICATES OF APPROVAL, ISSUANCE, FEES, BOND REQUIRED.

- A. The City Clerk shall, at the direction of the Mayor and City Council and pursuant to a resolution passed and approved by the City Council, issue a Certificate of Approval to each Refuse Hauler specifically approved by such resolution; Provided, however, that no such Certificate of Approval shall be issued to any Hauler until such Hauler has:
1. Paid to the City Clerk a fee to cover the costs of administration of this Article in the amount of fifty dollars (\$50.00), and
 2. Executed and filed with the City Clerk a bond in the sum of five hundred dollars (\$500.00), with one (1) or more sufficient sureties thereon, conditioned that said applicant will indemnify and save harmless the City of Waverly, Nebraska from any damage or injury due to or on account of the act or neglect or default of such Refuse Hauler, and conditioned further that such Refuse Hauler shall comply with all ordinances or regulations of the City of Waverly, Nebraska, respecting the collecting, hauling, or conveying of refuse; Provided, however, that the execution and filing of such bond shall be waived with respect to each such hauler after the completion of one (1) year of operation unless the City Council shall specifically require a bond of such hauler by resolution, and
 3. Furnished to the City Clerk a copy of a policy of insurance or insurance binder adequate to comply with section 4-208(B).
- B. The City Clerk shall hand-deliver or mail by First Class United States Mail, postage prepaid, an executed original of any such Certificate of Approval together with a copy of this Article to any Refuse Hauler approved by the City Council, immediately upon issuance thereof.
- C. Any Certificate of Approval issued under this section shall be signed by the City Clerk under the official seal of the City of Waverly, Nebraska, and shall appear in form and content substantially as follows:

CERTIFICATE OF APPROVAL

I, the undersigned City Clerk of Waverly, Nebraska, hereby certify that pursuant to Resolution Number _____, _____ has been granted approval to operate a Franchise Refuse Hauling Service within the City Limits of Waverly, Nebraska.

I acknowledge the receipt from the above named Refuse Hauler of the sum of fifty dollars (\$50.00) and proof of adequate insurance coverage as required under Chapter 4, Article 2 of the Waverly Municipal Code.

I further acknowledge that said Refuse Hauler has executed and filed with my office a bond in the sum of five hundred dollars (\$500.00) or that said hauler is exempt and is not required to file a bond under the provisions of Chapter 4, Article 2 of the Waverly Municipal Code.

I further certify that I have hand-delivered or mailed by First Class United States Mail, postage prepaid, a copy of Chapter 4, Article 2 of the Waverly Municipal Code, together with an executed original of this Certificate to the above-named Refuse Hauler.

(SEAL)

City Clerk

(Amended by Ord. No. 99-3, 4/5/99)

§4-205 GARBAGE AND REFUSE DISPOSAL; FRANCHISE TERMINATION, PUBLIC HEARING.

- A. When the Mayor or a majority of the City Council find and determine on the basis of citizen complaints or otherwise that the service provided by any Refuse Hauler is undesirable and that such hauler's services must be either improved or terminated, the Mayor or a majority of the members of the City Council may call a public hearing to be conducted by the Mayor and City Council to be held no sooner than the seventh (7th) day following publication of notice thereof, for the purpose of hearing citizen complaints regarding the service provided by any or all Refuse Haulers. Notice of such hearing shall be mailed by Certified United States Mail, postage prepaid, return receipt requested, to all Refuse Haulers engaged in serving the City of Waverly, Nebraska, no later than the first date of publication of such notice. Any Refuse Hauler whose services are in question shall have the right to appear at such hearing and put on evidence showing cause why its franchise should not be terminated. In the event that a majority of the City Council members determine that the services of any Refuse Hauler or Haulers require substantial improvement, the City Council shall, by Resolution, direct the City Clerk to inform the Refuse Hauler or Haulers involved of such deficiencies as the Council shall determine require correction. The City Clerk shall prepare a list of such deficiencies and mail the same to each such hauler together with a copy of this Article, by Certified United States Mail, postage prepaid, return receipt requested, no later than the seventh (7th) day following said public hearing.
- B. If at any time after the expiration of thirty (30) days following receipt by any such Refuse Hauler of the notice provided for in Subsection A of this Section, a majority of the members of the City Council determine that the deficiencies as detailed in said notice have not been satisfactorily corrected, then the City of Waverly, Nebraska shall have the right to terminate its franchise approval of any person, partnership, or corporation engaged in the operation of a Refuse Removal Service upon ten (10) days notice.

§4-206 GARBAGE AND REFUSE DISPOSAL; RATES TO SUBSCRIBERS. Upon receiving a Certificate of Approval, Haulers shall be allowed to charge the residential subscribers to their Refuse Hauling Service no more than fifteen dollars (\$16.00) per single family dwelling unit, per month for pick up at the curb or sixteen dollars (\$17.00) per single family dwelling unit, per month for pick up from the house or other dwelling unit; Provided, however, that subscribers who are unable to place their refuse at the curb due to age or infirmity shall be charged at the rate herein provided for pick up at the curb in accordance with Section 4-209(B) of this Code. All subscribers shall receive pick up service at the curb at the rate provided herein, unless they deliver or mail to the offices of the Refuse Hauler serving their area, a written request for service at the house or dwelling unit. Each such Refuse Hauler may charge such additional fee (in excess of the maximum monthly rate as the same may be established from time to time by the City Council), for the disposal of grass cuttings, leaves, extraordinarily large, bulky, or heavy items, as shall be mutually agreeable to the subscriber and hauler.

The City Council may, from time to time, uniformly increase or decrease this maximum monthly rate by ordinance for good cause shown. Commercial subscribers may subscribe to this service upon such terms and conditions as may be mutually agreed upon by the commercial subscriber and the hauler. (*Amended by Ord. Nos. 4-200.206, 11/2/81; 87-12, 8/3/87; 92-15, 9/21/92; 96-8, 9/16/96; 05-05, 6/20/05*)

§4-207 REFUSE HAULERS; SERVICES TO BE PROVIDED. Each Refuse Hauler receiving a Certificate of Approval shall provide the following services to each residential subscriber to its service:

- A. Collection of all refuse from each dwelling unit at least once (1 time) within every seven (7) day period and shall pick up refuse at the curb or at the written request of any subscriber, from the house or dwelling unit as provided in section 4-206.
- B. Such collection shall be accomplished between the hours of six o'clock (6:00) a.m. and four o'clock (4:00) p.m.; Provided, however, that no refuse shall be collected on Sundays.
- C. Notwithstanding any provision to the contrary contained herein, no Refuse Hauler shall be required to collect ashes from any residential subscriber.
- D. Refuse Hauler shall provide a seasonal service, of not less than weekly, for the collection of grass cuttings and leaves. (*Amended by Ord. Nos. 92-15, 9/21/92 and 99-4, 4/5/99*)

§4-208 GARBAGE AND REFUSE DISPOSAL; HAULERS, REQUIREMENTS, EQUIPMENT, PERSONNEL, INSURANCE, AVAILABILITY. Each Refuse Hauler receiving a Certificate of Authority under this Article shall maintain:

- A. Vehicles which comply with the following specifications:
 1. Shall have a watertight, metal body, fully enclosed; Provided however, that special equipment for use in commercial collection need not be fully enclosed, but shall be watertight. "Watertight," as used herein, shall mean so constructed that liquid materials will not spill or be discharged therefrom between point of loading and the designated disposal ground.
 2. Shall be so constructed as to be readily cleaned.
 3. Shall be kept clean and presentable, both inside and outside, at all times.
 4. Shall have imprinted on its two (2) longest sides the Refuse Hauler's name and the phone number of the Refuse Hauler's place of business. Such letters and numbers shall be at least four inches (4") high and the color of such lettering shall contrast with the background color of the truck.
- B. Insurance in no less than the following amounts: Liability, one hundred/three hundred thousand dollars (\$100,000/\$300,000); property damage, one hundred thousand dollars (\$100,000); medical payments, five thousand dollars (\$5,000). Said insurance shall indemnify the City of Waverly, Nebraska, and/or any citizen of the City of Waverly, Nebraska, against any and all damage to persons and/or property that said hauler might cause in the conduct of its refuse collection service.
- C. Adequate personnel to insure that collections are made expeditiously and quietly without littering of either public or private property.

- D. A billing system adequate to provide to each subscriber, at least quarterly, a statement detailing the amount presently due and owing, and reciting the date on which payment is due and the address to which payment should be mailed. If any interest or service charge is assessed, a Refuse Hauler assessing such interest or service charge shall comply with all applicable statutory requirements imposed by the United States Government or the State of Nebraska.
- E. A business office capable of handling the questions, complaints, and suggestions of each subscriber during normally accepted business hours.
- F. Receptacles, selected by the refuse hauler, for the disposal of refuse, and separate receptacles, selected by the refuse hauler, for the disposal of grass cuttings and leaves, each to be provided to subscribers upon request. *(Amended by Ord. Nos. 92-15, 9/21/92 and 99-14, 4/5/99)*

§4-209 GARBAGE AND REFUSE DISPOSAL; RESIDENTIAL SUBSCRIBERS, REGULATIONS. Each residential subscriber to a Refuse Hauling Service within the City of Waverly, Nebraska, shall:

- A. Place all refuse in suitable, airtight containers, not exceeding thirty (30) gallons capacity and fifty (50) pounds in weight, or in receptacles provided by the Refuse Hauler.
- B. Place all such containers at or near the curb line prior to six o'clock (6:00) a.m. on the scheduled collection date for such subscriber's location, unless such subscriber shall have submitted, in writing to the refuse hauler, a request for pick up from the house or dwelling unit rather than at the curb; Provided, however, that when, because of age or infirmity, any citizen shall request the Refuse Hauler to collect refuse or garbage at some point other than the curb line, the Refuse Hauler shall do so at no additional charge.
- C. Cut all branches and brush into lengths of no more than four feet (4').
- D. Contact the Refuse Hauler in advance when requiring disposal of items other than normal garbage or household refuse which will fit into containers approved for use in subsection A of this section.
- E. Place grass cuttings or leaves in airtight containers, paper disposable bags, or receptacles provided by the Refuse Hauler. Disposing of grass cuttings and/or leaves in plastic bags is prohibited. *(Amended by Ord. No. 92-15, 9/21/92)*

§4-210 GARBAGE AND REFUSE DISPOSAL; COMMERCIAL SUBSCRIBERS, REGULATIONS. Each commercial subscriber to a refuse hauling service shall abide by such rules and regulations as to the disposal of refuse as shall be agreed upon by subscriber and Refuse Hauler; and shall maintain receptacles for garbage which shall be constructed of substantial material and lined with or made of iron, tin, or zinc, and which shall include a self-closing lid. Notwithstanding any provision to the contrary contained herein, no refuse hauler shall be required to collect ashes from any commercial subscriber.

§4-211 GARBAGE AND REFUSE DISPOSAL; SHARING SUBSCRIPTION PROHIBITED. No person, partnership, or corporation shall utilize the subscription to any Refuse Hauling Service or utilize the refuse collection receptacles of any other person, partnership, or corporation.

No residential or commercial subscriber to a Refuse Hauling Service shall permit any other person, partnership, or corporation to utilize the Refuse Hauling Service to which he, she, or it subscribes, nor permit any other person, partnership, or corporation to utilize the receptacles he, she, or it provides for the collection of refuse.

§4-212 GARBAGE AND REFUSE DISPOSAL; VIOLATION, PENALTY.

- A. Any residential subscriber to a Refuse Hauling Service, or any person, partnership, or corporation who or which shall violate section 4-209 or section 4-211 of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined one hundred dollars (\$100.00) and shall stand committed to jail until such fine and costs be paid or otherwise discharged according to law. Each and every day that such violation continues after notification of the same by the City Clerk shall constitute a distinct and separate offense.
- B. Any commercial subscriber to a Refuse Hauling Service, or any person, partnership, or corporation who or which shall violate section 4-210 or section 4-211 of this Article shall be deemed guilty of a Class I Misdemeanor as defined by §6-501 of this Code. Each and every day that such violation continues after notification of the same by the City Clerk shall constitute a distinct and separate offense. (*Amended by Ord. 02-01, 2/4/02, 07-05, 5/7/07*)

Article 3. Nuisances

§4-301 NUISANCES; GENERALLY DEFINED. A nuisance consists in 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, 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, or
6. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others. (*Ref. 18-1720 RS Neb.*)

§4-302 NUISANCE; SPECIFICALLY DEFINED. The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances:

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. Vaults, dumps, pits or like places which are not securely protected from flies or rats, or which are foul or malodorous.
3. Filthy, littered or trash-covered cellars, yards or premises.
4. 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.
5. 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 Municipality, nor the dumping of non-putrefying waste in a place and manner approved by the Municipality.
6. 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.
7. 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, inoperable 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.
8. Any 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 said 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.
9. 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.
10. Stagnant water permitted or maintained on any lot or piece of ground.
11. 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 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.
12. All other things specifically designated as nuisances elsewhere in this Code. (*Ref. 18-1720 RS Neb.*)(*Amended by Ord. 02-01, 2/4/02*)

§4-303 NUISANCES; ABATEMENT PROCEDURE. It shall be the duty of every owner, occupant, lessee, or mortgagee of real estate in the Municipality to keep such real estate free of public nuisances. Upon determination by the Lancaster County Health Department that said owner, occupant, lessee, or mortgagee has failed to keep such real estate free of public nuisances, the Governing Body shall thereupon cause notice to be served upon the owner, occupant, lessee, mortgagee or agent thereof, by publication and by certified mail. Such notice shall describe the condition as found by the Lancaster County Health Department and state that said condition has been declared a public nuisance, and that the condition must be remedied at once. If the person receiving the notice has not complied therewith or taken an appeal from the determination of the Lancaster County Health Department within five (5) days after receipt of certified mail or within five (5) days after date of publication whichever is later, the Lancaster County Health Department shall notify the Governing Body of such non-compliance and the Governing Body shall, upon receipt of such notice, cause a hearing date to be fixed and notice thereof to be served upon the owner, occupant, lessee, or mortgagee, or agent of the real estate. Such notice of hearing shall be by personal service or certified mail, and require such party or parties to appear before the Governing Body to show cause why such condition should not be found to be a public nuisance and remedied. A return of service shall be required by the Governing Body. Such notice shall be given not less than five (5) days prior to the time of hearing, provided that whenever the owner, lessee, occupant, or mortgagee of such real estate is a non-resident or cannot be found in the State, then the Municipal Clerk shall publish, in a newspaper of general circulation in the Municipality, such notice of hearing for two (2) consecutive weeks, the last publication to be at least one (1) week prior to the date set for the hearing. Upon the date fixed for the hearing and pursuant to notice, the Governing Body shall hear all objections made by interested parties and shall hear evidence submitted by the Lancaster County Health Department. If after consideration of all of the evidence, the Governing Body shall find that the said condition is a public nuisance, it shall, by resolution, order and direct the owner, occupant, lessee, or mortgagee to remedy the said public nuisance at once; Provided, the party or parties may appeal such decision to the appropriate court for adjudication, during which proceedings the decision of the Governing Body shall be stayed. Should the owner or occupant refuse or neglect to promptly comply with the order of the Governing Body, the Governing Body shall proceed to cause the abatement of the described public nuisance. Upon completion of the work by the Municipality, a statement of the cost of such work shall be transmitted to the Governing Body, which is authorized to bill the property owner or occupant, or to levy the cost as a special assessment against the land. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments. *(Ref. 17-123.01, 18-1720 RS Neb.)(Amended by Ord. 02-01, 2/4/02)*

§4-304 NUISANCES; JURISDICTION. The City Clerk and Building Inspector of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Municipality 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 (1) mile thereof and all territory within the corporate limits. *(Ref. 18-1720 RS Neb.)(Amended by Ord. 02-01, 2/4/02)*

Article 4. Pollution

§4-401 AIR POLLUTION; PROHIBITED. It shall be unlawful for any person, firm, or corporation to permit the emission of smoke from any source that is injurious or offensive to the residents of the Municipality, in the judgment of the Lancaster County Health Department. Air shall be considered to be polluted when the discharge into the open air of dust, fumes, gases, mist, odors, smoke, or any combination thereof is of such character and in a quantity which to any group of persons interferes with their health, repose, or safety, or causes severe annoyance or discomfort or is offensive and objectionable to normal persons and causes injury to real and personal property of any kind. The standards for air pollution established or adopted by the State of Nebraska shall be presumptive evidence as to when the air is deemed to be polluted under this Section. It is hereby unlawful for any such person, firm, or corporation to permit or cause the escape of the aforesaid nuisances, and the escape of the said dust, fumes, gases, mists, odors, and smoke is hereby declared to be a nuisance, and shall be summarily abated upon written notice by the Municipality to the violator. Such abatement may be in addition to the penalty for air pollution in the Municipality. *(Ref. 28-1016 RS Neb.)(Amended by Ord.02-01, 2/4/02)*

§4-402 NOXIOUS USE OF BUILDING OR PREMISE. It shall be unlawful for any person to use a building or premise in any part of the Municipality for any trade, industry, or other purpose that is detrimental to the public health, safety, and welfare. Such a noxious or offensive use is hereby declared to constitute a public nuisance. *(Ref. 28-1016 RS Neb.)*

Article 5. Noise Control

§4-501 NOISE CONTROL; DEFINITIONS. For the purposes of this Article only, certain words and phrases used therein are defined as follows:

AMBIENT NOISE shall mean the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.

A-WEIGHTED SOUND LEVEL shall mean the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

COMMERCIAL AREA shall mean any area in the MX, LC, CC, DT, or GC Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

CONSTRUCTION shall mean any site preparation, assembly, erection, substantial repair, alteration, or similar action on public or private property.

DECIBEL (dB) shall mean a logarithmic and dimensionless unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure which is twenty (20) micropascals [twenty (20) micronewtons per square meter.]

EMERGENCY shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demand immediate action.

EMERGENCY WORK shall mean any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

EQUIVALENT A-WEIGHTED SOUND LEVEL (Leq) shall mean the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. For the purposes of this Article, a time period of one (1) hour shall be used, unless otherwise specified.

GROSS VEHICLE WEIGHT RATING (GVWR) shall mean the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GVWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

HEALTH OFFICER shall mean the director of the Lincoln-Lancaster County Health Department, or his representatives, agents, or employees.

IMPULSIVE SOUND shall mean sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms. The C-weighting filter network shall be used for measurement purposes.

INDUSTRIAL AREA shall mean any area in the LI or GI Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

MOTOR VEHICLE shall mean any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck trailers, semi-trailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies, racing vehicles, or all terrain vehicles but not including motorcycles.

MOTORBOAT shall mean any vessel which operates on water which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices, and hover craft.

MOTORCYCLES shall mean an unenclosed motor vehicle having a saddle for the use of the operator and two (2) or three (3) wheels in contact with the ground, including, but not limited to motor scooters, mini-bikes, and motor-driven cycles.

MUFFLER shall mean a device for diminishing the sound of projected noise from an internal combustion engine, commercial, or industrial blowers, where necessary.

NOISE shall mean any sound not occurring in the natural environment which causes or tends to cause an adverse psychological or physiological effect on humans.

NOISE DISTURBANCE shall mean any sound not occurring in the natural environment which would tend to annoy or disturb humans with reasonable sensitivities, or which injures or endangers the comfort, health, welfare, hearing, peace, or safety of other persons.

NOISE DISTURBANCE shall mean any sound not occurring in the natural environment which would tend to annoy or disturb humans with reasonable sensitivities, or which injures or endangers the comfort, health, welfare, hearing, peace, or safety of other persons.

NOISE SENSITIVE ZONE shall mean any area designated pursuant to the Waverly Zoning Ordinance, adopted by reference in Chapter 11, Section 11-101, for the purpose of insuring exceptional quiet.

PERSON shall mean any individual, association, partnership, or corporation.

POWERED MODEL VEHICLE shall mean any self-propelled airborne, waterborne, or land-borne plane, vessel, or vehicle which is not designed to carry passengers, including but not limited to, any model airplane, boat, car, or rocket.

PUBLIC RIGHT-OF-WAY shall mean any street, avenue, boulevard, highway, sidewalk, or alley or similar place which is owned or controlled by a government entity.

PUBLIC PLACE shall mean real property or structures thereon which are owned or controlled by a government entity.

PURE TONE shall mean any sound which can be distinctly heard as a single pitch or a set of single pitches.

REAL PROPERTY BOUNDARY shall mean an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one (1) person from that owned by another person, but not including intra-building real property divisions.

RESIDENTIAL AREA shall mean any area in the R-1, R-2, R-3, and R-4 Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

RMS SOUND PRESSURE shall mean the square root of the time-averaged square of the sound pressure, denoted Prms.

SOUND shall mean an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium. The description of the sound may include any characteristic of such sound, including duration, intensity and frequency.

SOUND LEVEL shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, C, Flat, or Linear, as specified in American National Standards Institute specifications for sound meters (ANSI S1.4-1971, or the latest approved revision thereof.) If the frequency weighting employed is not indicated, the A-weighting shall apply.

SOUND LEVEL METER shall mean an instrument which includes a microphone, amplifier, RMS Detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels.

SOUND PRESSURE shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

SOUND PRESSURE LEVEL shall mean twenty (20) times the logarithm to the base of ten (10) of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micropascals ($20 \times 10^6 \text{ N/m}^2$). The sound pressure level is denoted l_p or SPL and is expressed in decibels.

VIBRATION shall mean an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference.

WEEKDAY shall mean any day Monday through Friday. (*Amended by Ord. 02-01, 2/4/02*)

§4-502 **NOISE CONTROL; ADMINISTRATION.** The noise control program established by this Article shall be administered by the Lincoln-Lancaster County Health Department. In order to implement and enforce this Article and for the general purpose of sound and vibration abatement and control, the Health Officer shall have, in addition to any other authority vested in it, the power to:

- A. Conduct, or cause to be conducted, research, monitoring, and other studies related to sound and vibration.
- B. Conduct programs of public education regarding the causes, effects, and general methods of abatement and control of noise and vibration, or regarding the actions prohibited by this Article or by any applicable state or federal regulations.
- C. Work to coordinate the noise and vibration control activities of the Municipality, and cooperate with all appropriate local, state, and federal agencies or private persons or organizations to promote compliance with this Article and to promote uniform noise and vibration standards.
- D. Consult with any Municipality official or agency responsible for any proposed or final standard, or similar action on the advisability of revising such action if the Health Officer has reason to believe that such action is not consistent with this Article.
- E. Review public projects which are subject to mandatory review or approval by Municipal commissions and/or committees, department for compliance with this Article, if such projects are likely to cause sound or vibration in violation of this Article.
- F. Conduct inspections, surveys and examinations of properties for the purpose of determining compliance with or violation of this Article. (*Amended by Ord. 02-01, 2/4/02*)

§4-503 NOISE CONTROL; HEALTH OFFICER DUTIES. In order to implement and enforce this Article effectively, the Health Officer shall within reasonable time after the effective date of this Article:

- A. Prepare recommendations, to be approved by the City Council, for the designation of noise-sensitive areas or zones which contain noise sensitive activities. Noise-sensitive activities include, but are not limited to houses within commercial areas, (excluding apartments located within commercial structures), operations of schools, libraries open to the public, churches, retirement homes, hospitals, nursing homes, auditoriums, concert halls, and music shells.
- B. Investigate and pursue possible violations of this Article, and take any legal and proper action necessary to abate such violations.
- C. Study the existing transportation systems, such as truck routes within the community; determine areas with sensitivity to sound and vibration caused by transportation; recommend changes or modifications to transportation systems to minimize the sound and vibration impact on residential areas and noise-sensitive zones; and assist in or review the total transportation planning of the community, including new roads, highways, bus routes, airports, and other systems for public transportation, to ensure that the impact of sound and vibration receives adequate consideration.
- D. Develop a generalized sound level map of the City, a long-term plan for achieving quiet in the City and integrate this plan into the planning process of the City.
- E. Administer noise program grants and other funds and gifts from public and private sources, including the State and Federal governments.

§4-504 NOISE CONTROL; HEALTH OFFICER, PERIODIC REPORTS. The Lincoln-Lancaster County Health Department Health Officer shall evaluate and report, as needed, on the effectiveness of the City Noise Control Program and make recommendations for any legislative or budgetary changes necessary to improve the program. This report shall be made to the City Council. (*Amended by Ord. 02-01, 2/4/02*)

§4-505 NOISE CONTROL; NOISE DISTURBANCES PROHIBITED.

- A. No person shall make, continue, or cause to be made or continued, any noise disturbance. Without limiting the foregoing, the following acts and the causing thereof, are declared to be in violation of this prohibition:
 - 1. Radios, television sets, musical instruments, and similar devices: Operating, playing, or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance across a residential real property boundary or within a noise-sensitive zone, except for activities open to the public and for which any required permit has been issued.
 - 2. Loudspeakers/public address systems: Using or operating for any purpose any loudspeaker, public address system, or similar device in such a manner as to cause a noise disturbance across a residential property boundary or within a noise-sensitive zone.

3. Animals and birds: Owing, possessing, or harboring any animal or bird which makes sounds which create a noise disturbance across a residential property boundary or within a noise-sensitive zone.
4. Loading and unloading: Loading, unloading, opening, closing, or handling of boxes, carts, containers, building materials, or similar materials in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise-sensitive zone.
5. Construction: Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work:
 - a. Between the hours of ten o'clock(10:00) p.m. and six o'clock (6:00) a.m. the following day on any day in such a manner as to create a noise disturbance across a residential real property boundary or noise-sensitive zone, except for emergency work of public service utilities or by variance issued pursuant to this Article.
 - b. This Section shall not apply to the use of domestic power tools of a type normally found in the home.
6. Vehicle or motorboat repairs and testing: Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential property boundary or within a noise-sensitive zone.
7. Powered model vehicles: Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary, in a public space or within a noise-sensitive zone. Maximum sound levels in the public space shall conform to those set forth for residential land use in Table 4, Section 4-509. Maximum sound levels for residential property and noise-sensitive zones shall be governed by Section 4-509 and Subsection 9(a) of this Section, respectively.
8. Stationary non-emergency signaling devices: Sounding or permitting the sounding of any signal from any stationary bell, chime, whistle, siren, or similar device intended primarily for non-emergency purposes, from any place, in such a manner as to create a noise disturbance across a residential property boundary or within a noise-sensitive zone.

Devices used in conjunction with places of religious worship, public and private educational institutions, and railroad grade crossing warning devices shall be exempt from the operation of this provision.
9. Within noise-sensitive zones:
 - a. Creating or causing the creation of any sound within any noise-sensitive zone designated in Section 4-503, so as to disrupt the activities normally conducted within the zone or interfere with the functions of such activity, provided, that conspicuous signs are displayed indicating the presence of the zone; or
 - b. Creating or causing the creation of any unnecessary or unusually loud sound within any noise-sensitive zone, designated pursuant to Section 4-503 while such zone is in use for any of the activities for which exceptional quiet is necessary; Provided, that conspicuous signs are displayed indicating the presence of the zone.
10. Tampering: Removing, impairing, or rendering inoperative by any person other than for purposes of maintenance, repair or replacement, of any muffler, or noise control device, or noise label of any product, or use of a product which has a muffler, or noise control device or noise label removed or rendered inoperative, with knowledge that such action has occurred.

11. Horns, signaling devices, etc.: The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any street or public place of the City so as to create a noise disturbance across a residential real property boundary or noise-sensitive zone except as a danger warning.
 12. Portable air compressors: No person shall operate a portable air compressor which produces an average sound level in excess of seventy-six (76) dBA.
 13. Tampering with sound monitoring equipment: The removing or rendering inaccurate or inoperative any sound equipment monitoring device positioned by or for the Health Officer; Provided, such device or the immediate area is clearly labeled to warn of the potential illegality.
 14. Adequate mufflers:
 - a. No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler in good working order and in constant operation;
 - b. No person shall remove, impair, or render inoperative, or cause to be removed, impaired,
 15. Refuse collection vehicle:
 - a. No person shall operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse between the hours of four o'clock (4:00) p.m. and six o'clock (6:00) a.m. the following day in a residential area or noise-sensitive zone; or
 - b. Collect refuse with a refuse collection vehicle between the hours of four o'clock (4:00) p.m. and six o'clock (6:00) a.m. the following day in a residential area or noise-sensitive zone.
 16. Standing motor vehicles: No person shall operate or permit the operation of any motor vehicle with a gross weight rating (GVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached to such vehicle, for a period longer than five (5) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, within one hundred fifty feet (150') [forty-six meters (46m)] of a residential area or designated noise-sensitive zone in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise-sensitive zone. Emergency vehicles in the performance of their duty shall be exempt from this subsection.
 17. Fans or blowers: Operating or permitting the operation of fans or blowers for the purpose of drying, cooling, or transfer of air in such a manner as to cause a noise disturbance across a residential real property or commercial real property boundary or within a noise-sensitive zone, in accordance with Table 4, Section 4-509.
- B. When the maximum sound levels listed in Table 4 of Section 4-509 are deemed necessary to determine the existence of a noise in Subparts (1), (2), (4), (6), (7), and (16) of Subsection A., the time base for determination of the maximum Leq level shall be ten (10) minutes rather than one (1) hour.

§4-506 NOISE CONTROL; MOTORIZED VEHICLES AND MOTORCYCLES ON PUBLIC RIGHT-OF-WAY. *(Repealed by Ord. 02-01, 2/4/02)*

§4-507 NOISE CONTROL; RECREATIONAL MOTORIZED VEHICLES OPERATING OFF PUBLIC RIGHT-OF-WAY. *(Repealed by Ord. 02-01, 2/4/02)*

§4-508 NOISE CONTROL; RAIL CARRIER OPERATION.

- A. No rail carrier shall operate any locomotive(s), singly or in combination, in a stationary condition, for a period that exceeds five (5) minutes in any one (1) hour period within six hundred feet (600') of any residential area or noise sensitive zone.
- B. No rail carrier shall operate any locomotive or combination of locomotives when moving at any time under any condition of grade, load, acceleration, or deceleration in such a manner that the sound level emitted by the locomotive exceeds the level set forth in Table 3 below. All readings shall be taken at one hundred feet (100') [thirty meters (30m)] from the center-line of any section of track which exhibits less than a two degree (2°) curve or a radius of curvature greater than two thousand eight hundred sixty-five feet (2,865') [eight hundred seventy-three meters (873m)].

TABLE 3
RAIL CARRIER OPERATIONS UNDER MOVING CONDITIONS

	<u>Sound Level Limit, in dBA</u>
Manufactured on or before December 31, 1979	96 dBA
Manufactured after December 31, 1979	90 dBA

No rail carrier shall operate any rail car or combination of rail cars which while in motion produce sound levels in excess of:

1. Eighty-eight (88) dBA at rail car speeds up to and including forty-five (45) mph [seventy-two (72) km/hr]; or
2. Ninety-three (93) dBA at rail car speeds greater than forty-five (45) mph [seventy-two (72) km/hr].

All measurements shall be taken in accordance with procedures outlined in this Section and on any section of track which is free of special track work or bridge or trestles.

- C. Nothing in this Section shall be construed to prohibit, restrict, penalize, enjoin, or in any other manner regulate the movement of rail carriers which are in all respects conducted in accordance with, or pursuant to, applicable Federal laws or regulations.

§4-509 NOISE CONTROL; MAXIMUM PERMISSIBLE SOUND LEVELS BY RECEIVING LAND USE.

A. No person shall create or operate or cause to be created or operated on any property in the AG, R-1, R-2, R-3, R-4, MX, LC, CC, DT, GC, LI, AND GI Zoning Districts as designated pursuant to Article 4 of the Waverly Zoning Ordinance, any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 4 below when measured at or within the property boundary of the receiving land use.

TABLE 4.
SOUND LEVELS BY RECEIVING LAND USE

<u>Receiving Land-Use Category</u>	<u>Time</u>	<u>Maximum One-Hour *Leq Level</u>
R1, R2, R3, R4	7:00 a.m. – 10:00 p.m.	65
MX, LC, CC, DT, GC, LI	10:00 p.m. – 7:00 a.m.	55
GI, AG	7:00 a.m. – 10:00 p.m. 10:00 p.m. – 7:00 a.m.	65 55

*Leq is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. It is the average sound level and accurately portrays the sound the human ear actually hears.

B. Exemptions. The provisions of this Article shall not apply to:

1. Activities covered by the following Sections: 4-505(5) (Construction), 4-505(8) (Stationary Non-Emergency Signaling Devices), 4-505 (15) (Refuse Collection Vehicles), 4-507 (Recreational Motorized Vehicles Operating Off Public Rights-of-Way);
2. The unamplified human voice;
3. Interstate railway locomotives and cars, and any railway facility subject to regulation by the U.S. Environmental Protection Agency;
4. Agricultural activities conducted on agriculturally zoned land;
5. Domestic lawn and garden tools.

§4-510 NOISE CONTROL; EMERGENCY EXCEPTION. The provisions of this Article shall not apply to:

- A. The emission of sound for the purpose of alerting persons to the existence of an emergency, or
- B. The emission of sound in the performance of emergency work.

Nothing in this Section, however, shall be construed to permit law enforcement, ambulance, fire or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary.

§4-511 NOISE CONTROL; VARIANCES, APPEAL.

- A. The City Council shall have the authority to grant an initial variance to the strict application of Sections 4-505, 4-508(A), 4-509(4) for a period of not to exceed fifteen (15) calendar days. Any person seeking such a variance shall contain the information which demonstrates that bringing the source of sound activity for which a variance is sought into compliance with this Article would constitute an unreasonable hardship on the applicant, on community or other persons.
- B. The City Council shall have the authority to grant an extension to any variance. Any person seeking such an extension shall file an application with the City Clerk. Notice of an application for an extension shall be posted by a sign placed in a conspicuous place on or near the property upon which action is pending. No extension shall be granted for a period of two (2) days from and after posting of the property.
- C. Any individual who claims to be adversely affected by allowance of any requested extension of a variance may, prior to the end of the two (2) day period after posting of the property, file a statement with the City Clerk containing any information to support the claim. If the City Council finds that a sufficient controversy exists regarding an application, a public hearing shall be held. All such hearings shall be during the next regularly scheduled council meeting. In determining whether to grant or deny any application, the City Council shall balance the hardship to the applicant, the community, and other persons of not granting the variance or extension against the adverse impact on the health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance or extension. Applicants for variances of extensions and persons contesting extensions may be required to submit any information the municipality may reasonably require. In granting or denying an application, the City Clerk shall place on public file a copy of the decision and the reasons for denying or granting the variance or extension and the criteria to be considered in deciding whether to grant variances and extensions.

Variances or extensions shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The variance or extension shall not become effective until all conditions are agreed to by the applicant. Non-compliance with any condition of the variance or extension shall terminate such variance or extension and subject the applicant to those provisions of this Article regulating the source of sound or activity for which the variance or extension was granted.

The City Council may issue guidelines defining the procedures to be followed in applying for a variance or extension and the criteria to be considered in deciding whether to grant variances and extensions. *(Amended by Ord.02-01, 2/4/02)*

§4-512 NOISE CONTROL; ABATEMENT ORDERS.

- A. The city council or other agency responsible for enforcement of any provision of this Article may issue an order requiring abatement of any source or sound alleged to be in violation of this Article within a reasonable time period. Such abatement orders may be issued in lieu of prosecution for violation, and failure to comply with any abatement order shall be a violation for this Article.

- B. The city council shall order an immediate halt to any sound which exposes any person to continuous sound levels in excess of those shown in Table 5 below or to impulsive sound levels in excess of those shown in Table 6 below; Provided, that no such order shall be issued if the only persons exposed to sound levels in excess of those listed in Tables 5 and 6 are exposed as a result of:
 - 1. Trespass,
 - 2. Invitation upon private property by the person causing or permitting the sound, or
 - 3. Employment by the person or contractor of the person causing or permitting the sound.

- C. Any person, firm, partnership, association, corporation, company or organization of any kind who violates an order issued pursuant to this Section shall be guilty of a Class I Misdemeanor as defined by §6-501 of this Code. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense.

TABLE 5
CONTINUOUS SOUND LEVELS WHICH POSE AN
IMMEDIATE THREAT TO HEALTH AND WELFARE*

<u>Sound Level Limit in dBA</u>	<u>Duration</u>
90	24.0 Hours
93	12.0 Hours
96	6.0 Hours
99	3.0 Hours
102	1.5 Hours
105	45.0 Minutes
108	22.0 Minutes

* Use equal energy time intensity trade-off if levels vary, find energy equivalent over twenty-four (24) hours.

TABLE 6
IMPULSIVE SOUND LEVELS WHICH POSE AN
IMMEDIATE THREAT TO HEALTH AND WELFARE

Number of Repetitions	Per 24-Hour Period
Sound Level Limit in dBA	Per 24-Hour Period
145	1
135	10
125	100

(Amended by Ord. 02-01, 2/4/02, 07-05, 5/7/07))

§4-513 NOISE CONTROL; PENALTY.

- A. Any person, firm, partnership, association, corporation, company, or organization of any kind violating any of the provisions of this Article, except Section 4-512 shall be deemed guilty of a Class II Misdemeanor as defined by §6-501 of this Code. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense.
- B. Notwithstanding the provisions of Subsection A. of this Section, the fine schedule in Table 7 below shall be used to determine the amount of the penalty to be assessed for violations of Section 4-506. The fines listed for the various increments above the decibel (dBA) limits do not include court costs.
- C. When the owner and/or operator of a vehicle alleged to be in violation of the noise limits specified in Section 4-506 presents a letter of certification of the court that indicate corrective action has been taken to bring the noise level of the vehicle into compliance with the prescribed limit, the court may grant a complete or partial waiver of any fine imposed in Table 7. A letter of certification must be signed by a representative of either the Lincoln/Lancaster County Health Department or a local law enforcement office.

TABLE 7
FINE SCHEDULE FOR VIOLATIONS OF SOUND LEVEL
LIMITS FOR MOTORIZED VEHICLES AND MOTOR-CYCLES
ON PUBLIC RIGHT-OF-WAY

Incremental Range in Excess of Sound Level Limit (dBA)	Amount of Fine (\$)
1-3	10
4-6	25
7-10	35
11-13	45
14-17	55
18-21	65
22-25	75
26-29	85
30+ 100	

(Amended by Ord. 07-05, 5/5/07)

§4-514 NOISE CONTROL; ADDITIONAL REMEDY, INJUNCTION. The Municipality shall take such action as necessary and legal to enforce the provisions of this Article. As an additional remedy, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provisions hereof and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health, or peace of residents in the area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. No provision of this Article shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, or any person for injury or damage arising from any violation of this Article or from other law. *(Amended by Ord. 02-01, 2/4/02)*