

November 10, 2015  
Seward County Board of Equalization

State of Nebraska)  
County of Seward) ss.

A regular meeting of the Seward County Board of Equalization was convened in open and public session at 8:30 a.m. on November 10, 2015 in the Commissioner's room at the Seward County Courthouse. Notice of the meeting was posted on the Courthouse bulletin board and on the Commissioner's room door. The agenda for all meetings is kept continually current and is available for public inspection at the County Clerk's Office during normal business hours. The agenda is held open until one business day prior to the meeting for appearance before the Board. The Board of Equalization has the right to modify the agenda to include items of an emergency nature only at such public meeting.

The Seward County Board of Equalization convened on November 10, 2015 at 8:30 a.m.

|          |                  |   |
|----------|------------------|---|
| Present: | Chairperson:     | Whitney Fleischman  |
|          | Members:         | Mike Luebbe, Diana Garske, Gene Gausman, Roger E. Glawatz |
|          | County Clerk:    | Sherry Schweitzer   |
|          | County Assessor: | Marilyn Hladky  |

The Chairman noted that the public meeting information is posted as required by law and available for public distribution if requested.

The Pledge of Allegiance was recited.

Moved by Gausman and seconded by Luebbe to approve the minutes of October 27, 2015.

Affirmative Vote: Gausman, Luebbe, Garske, Glawatz, Fleischman Motion Carried

Moved by Glawatz and seconded by Garske to approve Tax List Correction # 124-14P.  
Affirmative Vote: Glawatz, Garske, Luebbe, Gausman, Fleischman Motion Carried

Known items on the agenda for November 24, 2015 are as follows:

- 8:30 a.m. Convene and announce Open Meetings Law
- Pledge of Allegiance
- Discuss/Action - Approve minutes of November 10, 2015
- Discuss/Action - Assessor Information Update

Moved by Glawatz and seconded by Gausman to adjourn at 8:35 a.m.

Affirmative Vote: Glawatz, Gausman, Luebbe, Garske, Fleischman Motion Carried

State of Nebraska)  
County of Seward) ss.

I, Sherry Schweitzer, the undersigned County Clerk of Seward County, Nebraska do hereby certify the foregoing minutes are true and are part of the official records of this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 24<sup>th</sup> day of November 2015.

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Chairman

# November 10, 2015

## Seward County Board of Commissioners

State of Nebraska)  
County of Seward) ss.

A regular meeting of the Seward County Board of Commissioners was convened in open and public session at 9:00 a.m. on November 10, 2015 in the Commissioner's room at the Seward County Courthouse. Notice of the meeting was posted on the Courthouse bulletin board and on the Commissioner's room door. The agenda for all meetings is kept continually current and is available for public inspection at the County Clerk's Office during normal business hours. The agenda is held open until one business day prior to the meeting for appearance before the Board. The Board of Commissioners has the right to modify the agenda to include items of an emergency nature only at such public meeting.

The Seward County Board of Commissioners convened on November 10, 2015 at 9:00 a.m.

|          |               |  |
|----------|---------------|--|
| Present: | Chairman:     | Roger E. Glawatz   |
|          | Members:      | Mike Luebbe, Diana Garske, Gene Gausman,<br>Whitney Fleischman |
|          | County Clerk: | Sherry Schweitzer  |

The Chairman noted that the public meeting information is posted as required by law and available for public distribution if requested.

The Pledge of Allegiance was recited.

Moved by Fleischman and seconded by Gausman to approve the minutes of November 3, 2015.

Affirmative Vote: Fleischman, Gausman, Garske, Luebbe, Glawatz Motion Carried

Mike Janssen, Buildings and Grounds Director & Becky Paulsen, Weed/Zoning Administrator updated the Commissioners on activities of their Department.

### **Commissioners Reports:**

Commissioner Luebbe reported he attended the Garland Village Board Meeting, the Public Safety Answering Point meeting, and a meeting with Jones Bank and Cattle Bank representatives.

Georgia Stockley brought 3 right of way requests to the Board for their consideration.

Moved by Garske and seconded by Fleischman to approve the right of way for Seward County PPD between the NW ¼ of Section 3, Township 10 North and SW ¼ of Section 31 Township 11 North, all in Range 3 East of the 6th p.m.

Affirmative Vote: Garske, Fleischman, Luebbe, Gausman, Glawatz Motion Carried

Moved by Fleischman and seconded by Luebbe to approve the right of way request for Doug Zimmerman in the West ½ NE ¼ of Section 18 Township 10 North Range 3 East of the 6th p.m.

Affirmative Vote: Fleischman, Luebbe, Garske, Gausman, Glawatz Motion Carried

Moved by Fleischman and seconded by Luebbe to approve the right of way request for Arlan Schellhorn in the E ½ NW ¼ of Section 5 Township 11 North Range 2 East of the 6th p.m.

Affirmative Vote: Fleischman, Luebbe, Gausman, Garske, Glawatz Motion Carried

Moved by Fleischman and seconded by Luebbe to open the public hearing at 9:15 a.m. for a proposed new County Ordinance to establish a law regarding public nudity

and lewd or lascivious behavior; to establish a penalty and provide a method of enforcement; and to provide for an effective date. A complete copy of the full text of the proposed ordinance was published in the Seward County Independent and Milford Times on October 28, 2015 and November 4, 2015 and is available in the County Clerk's Office.

Affirmative Vote: Fleischman, Luebbe, Garske, Gausman, Glawatz Motion Carried

Glawatz stated that each person wanting to speak, pro or con, state your name and 5 minutes will be allowed for you to speak.

Vince Valentino, legal representative for NIRMA explained some history in allowing counties to adopt ordinances. He also stated that the particular ordinance is one like the City of Lincoln has which has passed the courts to have deemed it to be constitutional.

No one else wanted to speak during the hearing.

Moved by Luebbe and seconded by Gausman to close the hearing at 9:24 a.m.

Affirmative Vote: Luebbe, Gausman, Garske, Fleischman, Glawatz Motion Carried

Chairman Glawatz read the Title of the Ordinance: AN ORDINANCE TO ESTABLISH A LAW REGARDING PUBLIC NUDITY AND LEWD OR LASCIVIOUS BEHAVIOR; TO ESTABLISH A PENALTY AND PROVIDE METHOD OF ENFORCEMENT; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Moved by Luebbe and seconded by Fleischman concerning the proposed ordinance governing public nudity and lewd and lascivious behavior, to suspend the requirement of reading by title three times on different days, as permitted by Neb. Rev. State 23-190.

Affirmative Vote: Luebbe, Fleischman, Garske, Gausman, Glawatz Motion Carried

Moved by Fleischman and seconded by Luebbe to proceed to final adoption of the proposed ordinance governing public nudity and lewd or lascivious behavior, by adoption of Resolution # 3208.

## **BOARD OF COUNTY COMMISSIONERS SEWARD COUNTY, NEBRASKA**

### **RESOLUTION NO. 3209 ADOPTING AN ORDINANCE GOVERNING PUBLIC NUDITY AND LEWD OR LASCIVIOUS BEHAVIOR**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers;

WHEREAS, pursuant to Neb. Rev. Stat. §23-103, the powers of the County as a body are exercised by the County Board;

WHEREAS, pursuant to Neb. Rev. Stat. §23-187(g), a County may regulate by ordinance the subject of "violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity;"

WHEREAS, under the direction of the County Board, the County Attorney, and its legal advisors, drafted an ordinance consistent with the above statutes;

WHEREAS, pursuant to Neb. Rev. Stat. §23-188, notice was published in a newspaper of general circulation once per week for two weeks (August 19 and 26, 2015) and such notice contained the entire language of the ordinance and the time and place of the first public hearing;

WHEREAS, pursuant to Neb. Rev. Stat. §23-188, a first reading and first public hearing on the ordinance as originally drafted was held on September 1, 2015, at which time public comment regarding the proposed ordinance was permitted, and after which proposed updates were made;

WHEREAS, pursuant to Neb. Rev. Stat. §23-188, notice was thereafter again published in a newspaper of general circulation once per week for two weeks and (October 28, 2015 and November 4, 2015) such notice contained the entire language of the ordinance, as updated, and the time and place of the second public hearing;

WHEREAS, pursuant to Neb. Rev. Stat. §23-188, a second public hearing on the ordinance was held on November 10, 2015, at which time public comment regarding the proposed ordinance, as updated, was permitted;

WHEREAS, the County Clerk has contacted the Clerks of the cities and villages within the County in accordance with Neb. Rev. Stat. §23-192, and received replies from each which did not require revision of the text of the ordinance;

WHEREAS, the County Board desires to adopt an ordinance governing public nudity and lewd or lascivious behavior, a copy of which is attached.

WHEREAS, pursuant to Neb. Rev. Stat. §23-190, the County Board voted by a three-fourths vote on November 10, 2015 to suspend the requirement that the County ordinance be read by title on three different days; and,

WHEREAS, a motion was made on November 10, 2015 to proceed to final adoption of the public nudity ordinance; and,

NOW, THEREFORE, BE IT RESOLVED by the Seward County Board of Commissioners that this Board does hereby adopt the ordinance governing public nudity and lewd or lascivious behavior, a copy of which is attached hereto, and will publish the same.

The above Resolution was approved by a vote of the Seward County Board of Commissioners at a public meeting held in accordance with the applicable law on the 10 day of November, 2015.

Dated this 10th day of November, 2015.

Motion by: Fleischman

Seconded by: Luebbe

Aye: Whitney Fleischman, Eugene Gausman, Diana Garske, Michael Luebbe & Roger Glawatz

Attest: Sherry Schweitzer, County Clerk

#### **ORDINANCE NO. 1-2015**

#### **AN ORDINANCE TO ESTABLISH A LAW REGARDING PUBLIC NUDITY AND LEWD OR LASCIVIOUS BEHAVIOR; TO ESTABLISH A PENALTY AND PROVIDE A METHOD OF ENFORCEMENT; AND TO PROVIDE FOR AN EFFECTIVE DATE.**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104, the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers;

WHEREAS, pursuant to Neb. Rev. Stat. §23-103, the powers of the County as a body are exercised by the Seward County Board of Commissioners ("County Board");

WHEREAS, it is the intent of the County Board to enact an Ordinance;

WHEREAS, pursuant to Neb. Rev. Stat. §23-187, the County may regulate, through an ordinance, violations of the public peace and good order of the County by lewd and lascivious behavior and/or public nudity; and,

WHEREAS, the Seward County Board has held public meetings and hearings on the matter, after giving due notice as required by law.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF SEWARD, NEBRASKA:

SECTION 1. Statement of Intent:

It is the intent of this Ordinance to promote the public health, safety, welfare, peace and order of the County. It is also the intent of the County to further the government's interest in avoiding the harmful secondary effects of public nude conduct such as prostitution, sexual assaults, and criminal activity., *See, e.g., Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *Ways v. City of Lincoln*, 331 F.3d 596 (8<sup>th</sup> Cir. 2003). The legislative record documents and the Board's legislative findings concerning negative secondary effects, which are found in Section 3.40 of the Seward County Zoning Resolution, are incorporated herein by reference. This prohibition on public nude conduct is not intended to extend to any expression of opinion or the performance of a bona fide play, ballet, or drama which may not be prohibited under the First Amendment to the Constitution of the United States or by Article I, §5 of the Constitution of the State of Nebraska. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on exercises of free speech that are protected by the First Amendment.

SECTION 2. Definitions: For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, word, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future-tense, words used in the plural number include words in the singular number and words in the singular number include words in the plural number. The word "shall" is always mandatory, and not merely directory.

- a) **Nude, nudity, or a state of nudity** means the showing of the human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering on any part of the areola and nipple, or the showing of covered male genitals in a discernibly turgid state.
- b) **Public place** means all spaces owned by or open to the general public, whether or not an admission or cover charge is levied for entrance thereto; and public streets, sidewalks, alleys, or other public thoroughfares, and areas in or such close proximity thereto, as to be observed by the public traveling on such street, sidewalk, or other thoroughfare.

SECTION 3. Nudity, Prohibited:

It shall be unlawful for a person to, knowingly or intentionally, in a public place or in any place open to the public, appear nude or in a state of nudity.

SECTION 4. Sexual Contact, Prohibited:

- a) It shall be unlawful for any employee or performer (including amateur performers) in any business or commercial establishment

to have any sexual contact with any other employee, performer, person, or patron for gratuity, pay or other remuneration, direct or indirect, or in conjunction with or as part of any performance or entertainment in any business or commercial establishment.

- b) It shall be unlawful for any person or patron to have sexual contact with any employee or performer in any business or commercial establishment.
- c) For the purposes of this section, sexual contact shall mean the intentional touching between a patron, a performer, or employee involving contact by or with a patron's, performer's, or employee's sexual organ, buttock(s), or breast(s), whether covered or not, or kissing, when such contact can reasonably be construed as being for the purpose of sexual arousal or sexual gratification of either party or any observer.
- d) It shall be unlawful for any person purposely or knowingly to solicit, induce, or attempt to induce another person to engage in an act or acts prohibited hereunder.
- e) It shall be unlawful for the owner, lessee, proprietor, or manager of any business or commercial establishment to knowingly allow any person on the premises of such business or commercial establishment to engage in an act or acts prohibited hereunder.

SECTION 5. Exceptions:

- a) No person shall be in violation of this Ordinance for breastfeeding a child.
- b) This Ordinance shall not apply to children under the age of twelve years old.
- c) No person shall be in violation of this Ordinance for appearing nude or in a state of nudity in any dressing/changing room, locker room, restroom facility, or hospital, clinic, or other similar medical facility in which appearing nude or in a state of nudity is necessary for health-related purposes.
- d) No person shall be in violation of this Ordinance for appearing nude or in a state of nudity in the presence of a licensed physical therapist, licensed massage therapist, licensed athletic trainer, or licensed cosmetologist, engaged in performing the functions authorized under the license held.
- e) This Ordinance shall not apply to models that are part of a nude modeling studio that is part of a proprietary school licensed by the State of Nebraska; or a college or junior college or university supported entirely or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
- f) This Ordinance shall also not apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, art center, museum, school, institution of higher learning or other similar establishment which is primarily devoted to such

exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, art or drama.

SECTION 6. Penalty:

Any person found to be in violation of this Ordinance shall be guilty of a crime, punishable by a maximum of a five hundred dollar fine.

SECTION 7. Effective Area:

This Ordinance is effective in Seward County, including any unincorporated towns or villages, but it shall not be effective within the corporate boundaries of Beaver Crossing, Bee, Cordova, Garland, Goehner, Milford, Pleasant Dale, Seward, Staplehurst, and Utica; nor shall it be effective within the area outside of the corporate boundaries of Beaver Crossing, Bee, Cordova, Garland, Goehner, Milford, Pleasant Dale, Seward, Staplehurst, and Utica in which those cities have been granted and are exercising powers by ordinance on a similar subject matter.

SECTION 8: Effective Date:

This Ordinance shall take effect and be in force fifteen days after its passage, approval, and publication, as provided by law.

Affirmative Vote: Fleischman, Luebbe, Gausman, Garske, Glawatz Motion Carried

Maria Hatfield, Jail Administrator and Joe Yocum, Sheriff were present when the Commissioners discussed the CBM Managed Services contract extension. Wendy Elston, County Attorney stated that because of the Purchasing Act, this extension is not in compliance with the Purchasing Act and that this service had to be provided by public bidding.

Elston stated that a "month by month" arrangement could be made but Hatfield stated that she was afraid that the present food services company may not want to do that. Yocum stated because of the problem, current jail staff may have to fix meals. Elston stated that the issue of food service for the Jail *does* need to follow State Statute for food service. Yocum and Hatfield will talk to the current provider to see if they would service the jail on a monthly arrangement.

**Commissioners Reports (Cont.):**

Commissioner Garske reported she attended a meeting with Firespring and visited with the Road Department.

Commissioner Gausman reported information about abandoned cemeteries and attended a Firespring meeting.

Commissioner Fleischman reported she attended a meeting with several department heads, worked on correspondence with constituents, and was getting statistics together on General Assistance for a meeting at the State Capital.

Commissioner Glawatz reported he attended a meeting with the Chamber of Commerce, met with the Seward County Vision meeting, attended the Region V meeting, met with financial advisors about future funding for Justice Center.

Moved by Fleischman and seconded by Gausman to accept the County Clerk Report for October 2015 in the amount of \$23,143.50.

Affirmative Vote: Fleischman, Gausman, Luebbe, Garske, Glawatz Motion Carried

Moved by Garske and seconded by Fleischman to accept the Clerk of the District Court Report for October 2015 in the amount of \$4,161.59.

Affirmative Vote: Garske, Fleischman, Gausman, Luebbe, Glawatz Motion Carried

Commissioner Fleischman reported on the update for the Justice Center. She stated that Beckenhauer Construction is scheduling things so that they can get the building enclosed by the middle of December.

Robert Latimer of TransCanada was present to discuss the XL Keystone Pipeline. He gave information about the pipeline. It was just announced last week that President Obama denied the project. He had a map which showed present pipelines TransCanada currently operates. He also informed the Commissioners about a submitted report to the Nebraska Service Commission.

Michaela Tuttle, HR Director along with Tom Nielsen of Firespring was present to discuss the managing of county IT devices, servers and networks. Nielsen stated that because there are a couple of offices not allowing Firespring to put their product on their computers, the county can be harmed when everybody is not in the "county pool." He stated that there was a problem about possible phishing attempt that was attempted a few weeks ago. He stated that if offices want to hire someone else to fix printers, etc. that was fine, but would like everybody to be able to have the same anti-virus program on each computer so that security can be assured for all offices.

Bob Dahms stated that he feels Symantek is a better product and has an individual who moonlights from his current job to provide support.

Nielsen stated that it would be in the best interest of the County to have all offices on the same safety network.

Chairman Glawatz stated that he felt that it was the Commissioners choice to provide the best service and support for county computers.

Marilyn Hladky, Assessor spoke about some reasons why she does not want to agree to have Firespring install any safety/anti-virus program on the computers in her office.

No decision was made but the item will be on the agenda next week for a decision.

The Commissioners recessed at 11:23 a.m.

The Commissioners re-convened at 11:30 a.m.

Moved by Fleischman and seconded by Garske to authorize the Chairman sign the National Insurance Joinder Agreement for Long Term Disability.

Affirmative Vote: Fleischman, Garske, Luebbe, Gausman, Glawatz Motion Carried

Yocum was in attendance to ask for Guidance on Transfer of Funds for unclaimed property from inmates. He stated that currently, when a person is incarcerated, their money is put into an account at the Sheriff's Office. When the person is let out, they write a check to the person. If the check is not cashed, they have unclaimed property that needs to be submitted to the State Treasurer. They have previously given the money to the County Treasurer. Schweitzer suggested that the Sheriff's Office submit a claim for the correct amount and put the money in the Sheriff's Office Account. Then, checks with appropriate paperwork are submitted to the State Treasurer who collects Unclaimed Property. She will contact the State Auditor to make sure the suggested process is okay.

He also asked about repairs to a generator in his building. Yocum stated that the Sheriff, Jail and 911 Departments all share in the cost. Schweitzer will look up information from past repairs to see how it was handled.



Known items on the agenda for Board of Commissioners on November 17, 2015 are as follows:

- 8:30 a.m. Convene and announce Open Meetings Law
- Pledge of Allegiance
- Discuss/Action – Public/Officials/Boards
- Discuss/Action - Approve minutes of November 10, 2015

**Other Business Matters to Address When Time Allows**

- Commissioners Reports
- Right of Way Request(s): None
- Discuss/Action – Determine who will manage County IT devices; servers & networks
- Discuss/Action - Justice Center Update
- 9:30 a.m. Discuss/Action - Open bids for the Staplehurst Road Shop Bathroom Project
- 10:00 a.m. Discuss/Action – Brian Coyman/Edward Jones – Funding for the Justice Center

Moved by Fleischman and seconded by Luebbe to adjourn at 11:50 a.m.  
Affirmative Vote: Fleischman, Luebbe, Garske, Gausman, Glawatz Motion Carried

State of Nebraska)  
County of Seward) ss.

I, Sherry Schweitzer, the undersigned County Clerk of Seward County, Nebraska do hereby certify the foregoing minutes are true and are part of the official records of this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 17<sup>th</sup> day of November 2015.

\_\_\_\_\_  
County Clerk

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Chairman