

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 15, 2013 AGENDA**

Subject:	Type:	Submitted By:
COUNCIL POLICY STATEMENT — REMOVAL OR BAN AND BAR FROM CITY FACILITIES/PROPERTY	◆ RESOLUTION ORDINANCE RECEIVE/FILE	RITA RAMIREZ ASSISTANT CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared for the approval of a Council Policy Statement pertaining to the removal or ban and bar of individuals from City facilities and/or property.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

There have been occasions in the past when City personnel had to order someone to leave City property for various reasons. Examples would include someone at a public facility such as City Hall, the Recreation Center, Sports Complex or Swimming Pool refusing to follow the facility policies and procedures, behaving in a threatening manner or generally being disruptive. There have also been some instances of employees being directed not to come to certain City facilities while an internal investigation was underway. Each of these cases has been handled individually and, as such, not always consistently. The Department Heads have been discussing their experience with various incidents and have created a Council Policy Statement that would guide how these situations are handled to ensure consistency and enforceability, as well as providing for an appeal process.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, APPROVING A NEW COUNCIL POLICY STATEMENT.

WHEREAS, the City Council has determined that it is necessary and desirable to establish Council Policy Statements as a means of establishing guidelines and direction to the members of the City Council and to the city administration in regard to various issues which regularly occur; and

WHEREAS, a new Council Policy Statement has been prepared regarding the removal and banning and barring of individuals from City property and/or City facilities.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby approve the Council Policy Statement regarding the removal and banning and barring of individuals from City property and/or City facilities.

PASSED AND APPROVED THIS 15TH DAY OF OCTOBER, 2013.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**CITY OF LA VISTA
COUNCIL POLICY STATEMENT**

REMOVAL OR BAN AND BAR FROM CITY FACILITIES/PROPERTY

**Issued: October ____, 2013
Resolution No. 13-XXX**

Purpose

In an effort to maintain a safe environment for public employees and visitors, and pursuant to the powers and authority of the City Council, the following policy addresses (1) excluding and prohibiting individuals from remaining on or entering city-owned property; and (2) prohibiting individuals from telephoning the city.

Nothing in this policy shall be construed to authorize the exclusion of any person lawfully exercising their free speech rights or other rights protected by the state or federal constitution. However, a person engaged in such protected activity, who also commits acts that are not protected, and that violate applicable provision of law, shall be subject to exclusion as provided in this policy.

Scope

The policy applies to all city buildings, properties, and employees.

Definitions

“Ban or Banning” refers to prohibiting individuals from remaining or entering on foresaid property and prohibiting them from returning to the foresaid property for the time period noted.

“Bar or Barring” refers to excluding an individual from foresaid property for the time period noted.

“Removal or Removed” refers to asking or having an individual immediately leave from the foresaid property for the time period noted.

Provisions

I. Exclusions from City-Owned Property

- A. A person is subject to immediate ban & bar from a city-owned building or property, including city parks, if that person is observed to violate any city ordinance, city policy, or state law, or engage in conduct that places other persons or property in imminent threat of danger or harm. The ban and bar need not be based upon a criminal charge or conviction. The ban and bar may be based upon the observations of a police officer or upon the observations of a city employee in connection with their duties.

- B. A person is subject to removal from a city-owned building or property including city parks, if that said person is disrupting or disturbing a city function, recreational activity or private citizen. Removal may be based upon observations of any city employee in connection with their duties.
- C. The removal issued under this policy shall not be for less than one (1) business day and not more than five (5) business days.
- D. The ban and bar issued under this policy shall be for thirty (30) days. If the person to be banned has been banned at any time within the last two (2) years before the date of the present ban and bar, the ban and bar shall be for ninety (90) days. If the person to be banned has been banned on two or more occasions within two years to the date of the present, the ban and bar shall be for one-hundred eighty (180) days.
- E. At any time within the ban and bar period, a person subject to ban and bar order may apply, in writing, to the City Administrator, for a temporary waiver from the effects of the ban and bar order for good cause shown. In exercising discretion under this provision, the City Administrator shall consider the seriousness of the violation for which the person has been banned, the particular need of the person to obtain a waiver, and any other criteria the City Administrator determines to be relevant to the determination of whether or not to grant a waiver. The decision of the City Administrator to grant or deny a waiver, in whole or in part, is committed to the discretion of the City Administrator, shall be in writing, and is final.
- F. All ban and bar orders shall be in writing, state the basis for the order, and include information on the appeal process. The order shall be served personally, or mailed to the person by certified mail if a mailing address is available.
- G. The ban and bar will be recorded and kept on file by the issuing department during the term of the ban. A copy of the ban and bar notice will be sent to the Police Department.
- H. The ban will remain in effect for the specified period unless it is modified (see Section I.(C)) or rescinded due to an appeal (see Section III).
- I. If a person who received a ban and bar remains or returns to excluded properties without compliance with Section I.(D), that person is a trespasser and may be subject to arrest on criminal trespass charges per NE Revised State Statute 28-521.
- J. For the purpose of this policy, the person in charge of city-owned property and buildings is the City Administrator or his/her designee.

II. Telephone Contact

For purposes of NE Revised State Statute 28-1310 Intimidation by Telephone Call, the City Administrator, Chief of Police, and Designees have the authority to issue a ban and bar forbidding persons from calling specific city telephone numbers. All orders

forbidding a person from calling city telephone numbers must be in writing, state the basis for the order, include information on the appeal process and be either served personally or mailed to the person by certified mail if a mailing address is available.

III. Appeal

- A. Any ban and bar from city property, and any prohibition against calling city telephone numbers, may be appealed by filing a notice of appeal within five (5) business days. The notice of appeal shall be mailed to the City Clerk's Office, and will be considered timely only if postmarked within the five (5) day period.
- B. The City Clerk's Office will arrange a hearing on the issue in front of an appointed Ban and Bar Review panel within ten (10) business days of receiving the request.
- C. The panel shall consider any evidence and argument that the panel considers relevant to whether the exclusion or prohibition is consistent with the policy, NE State Statute 28-1310, or any other applicable law. This may include, but is not limited to, affidavits, witnesses, or declarations from involved persons. The city shall have the burden to justify the ban and bar by a preponderance of the evidence.
- D. The written decision of the panel shall be issued within ten (10) business days of the hearing and shall affirm, modify, or cancel the ban and bar. The decision is final.

IV. Ban and Bar Review Panel

The Ban and Bar Review Panel will consist of three (3) city officials: The City Administrator or his/her designee; the City Council President; and the Chief of Police or his/her designee.

CITY OF LA VISTA

NOTICE OF REMOVAL OR BAN & BAR

VIOLATOR	DL/ID NUMBER				STATE		
	NAME: LAST		FIRST		MIDDLE INITIAL		
	ADDRESS						
	CITY		STATE		ZIP CODE		
	SEX	RACE	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES

REASON FOR BAN & BAR

- ☐ Violation of City Ordinance ☐ Violation of State Law ☐ Other
☐ Violation of City Policy ☐ Disrupting or disturbing a city function, recreational activity or citizen

VIOLATER BANNED FROM

- ☐ All City Facilities ☐ City Hall ☐ Library
☐ All City Parks ☐ Recreation Center ☐ _____

☐ NOTICE OF REMOVAL

You are hereby formally removed from the premises checked above for a period of: _____ (no less than 1 business day, but no more than 5 business days).

☐ NOTICE OF BAN AND BAR

You are in violation of City Ordinance, adopted City Policy, or state law, or engaged in conduct that places persons or property in imminent danger of harm. This document shall serve as Notice of Ban & Bar. You are hereby formally banned from the premises checked above for a period of: ☐ 30 Days ☐ 90 Days ☐ 180 Days

You may enter the premise checked above only to conduct necessary official business. Necessary official business is defined as:

- 1) Appearing on your own matter.
 - 2) Appearing on a matter for someone else because you have a legal authority to do so.
 - 3) Having a prearranged verifiable meeting with staff in the building.
- If during the banned period you need to conduct necessary business in any facility from which you are banned, upon entering the building you must register your presence with the front office.
 Failure to comply with this Notice of Ban & Bar may result in your arrest and a request for prosecution under the Nebraska Criminal Trespass Statute 28-521.

Subject Signature _____ Date: _____

- ☐ Receipt of this notice hereby acknowledged ☐ Refused to Sign

Any ban from City property may be appealed in writing within five (5) business days of receipt of this Notice of Ban & Bar. The appeal shall be mailed to the City Administrator's Office at 8116 Park View Boulevard, La Vista, Nebraska 68128. It will be considered timely only if postmarked or received within the five (5) day period.

DATE ISSUED	ISSUING CITY EMPLOYEE'S SIGNATURE
PRINT NAME OF EMPLOYEE	IR# (if applicable):