

NEBRASKA BASIC CODE OF ORDINANCES FOR CITIES OF THE SECOND CLASS

By
The League of Nebraska Municipalities

Contains state legislation through July 18, 2019

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FOR CITIES OF THE SECOND CLASS
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PREFACE TO THE NEBRASKA BASIC CODE

The Nebraska Basic Code

This League of Nebraska Municipalities/American Legal Publishing (LNM/ALP) Nebraska Basic Code (NBC) is an effort to provide a modern and comprehensive code of ordinances for smaller Nebraska municipalities without the expense of a customized code of ordinances. Its provisions are also useful to all Nebraska municipalities that wish to have models for the basic municipal ordinances on the subjects contained in the code.

The NBC will be supplemented annually to reflect legislative enactments. The supplements will consist of new pages which will replace the pages contained in this edition. In addition, the supplements will contain new model ordinances that will be included in the NBC unless the municipality decides not to incorporate them into their code.

Authors and Editors

This Nebraska Basic Code is partly based on model ordinances drafted over the last several decades by various attorneys and staff at the League of Nebraska Municipalities, as updated to reflect current state law. It was prepared under the supervision of the Legal Counsel at the League of Nebraska Municipalities. The editorial review and formatting of the NBC was done by the staff of American Legal Publishing Corporation.

Availability of the Code

In addition to this printed version of the NBC, the NBC is available on computer disk in a word processing format or in Folio VIEWS search and retrieval format. For ordering information, contact the publisher, American Legal Publishing Corporation, at 1-800-445-5588 or email Customerservice@amlegal.com.

We hope the Nebraska Basic Code will serve the needs of Nebraska municipalities for many years.

LEAGUE OF NEBRASKA
MUNICIPALITIES

AMERICAN LEGAL PUBLISHING
CORPORATION

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

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§ 10.01 TITLE OF CODE.

This codification of ordinances shall be designated as the City Code of Ordinances and may be so cited.

§ 10.02 INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of state law.

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

§ 10.04 CAPTIONS.

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.05 DEFINITIONS.

(A) *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY, MUNICIPAL CORPORATION, or MUNICIPALITY. The city adopting this Code.

CITY COUNCIL or GOVERNING BODY. The legislative body of the city.

CODE, THIS CODE, or THIS CODE OF ORDINANCES. This city code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

COUNTY. The county in Nebraska in which the city is located.

MAY. The act referred to is permissive.

MONTH. A calendar month.

OATH. Includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**.

OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT. An officer, office, employee, commission, or department of this city unless the context clearly requires otherwise.

PERSON. Includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations.
(Neb. RS 49-801(16))

PRECEDING or **FOLLOWING**. Next before or next after, respectively.

SHALL. The act referred to is mandatory.

SIGNATURE or **SUBSCRIPTION**. Includes a mark when the person cannot write.

STATE. The State of Nebraska.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have **SUBCHAPTERS**.

WRITTEN. Any representation of words, letters, or figures, whether by printing or otherwise.

YEAR. A calendar year, unless otherwise expressed.

§ 10.06 RULES OF INTERPRETATION.

The construction of all ordinances of this city shall be by the following rules, unless that construction is plainly repugnant to the intent of the Mayor and City Council or of the context of the same ordinance:

(A) **AND or OR**. Either conjunction shall include the other as if written “and/or,” if the sense requires it.

(B) *Acts by assistants*. When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, the requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(C) *Gender; singular and plural; tenses*. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(D) *General term*. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

§ 10.07 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

§ 10.08 REFERENCE TO OTHER SECTIONS.

Whenever a section refers to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is materially altered by the amendment or revision.

§ 10.09 REFERENCE TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this city exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§ 10.10 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

§ 10.11 OFFICIAL TIME.

The official time, as established by applicable state/federal laws, shall be the official time within this city for the transaction of all city business.

§ 10.12 REASONABLE TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day is Sunday, it shall be excluded.

§ 10.13 ORDINANCES REPEALED.

This code contains all of the provisions of a general nature pertaining to the subjects enumerated and embraced in this code. All prior ordinances pertaining to the subjects treated by this code are repealed, except that nothing shall affect any rights acquired under, actions involving, or fines, penalties, forfeitures, or liabilities incurred pursuant to those ordinances prior to repeal.

§ 10.14 ORDINANCES UNAFFECTED.

(A) All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code, including ordinances specified in this section, shall remain in full force and effect unless repealed expressly or by necessary implication:

- (1) Vacating or setting the boundaries of streets, alleys, or other public places;
- (2) Annexing or detaching territory;
- (3) Granting or accepting easements, plats, or dedication of land to public use;
- (4) Providing for the acquisition or conveyance of real or personal property;
- (5) Authorizing or directing public improvements to be made;
- (6) Levying taxes or special assessments;
- (7) Appropriating money;
- (8) Granting franchises or special licenses; or
- (9) Providing for the issuance of bonds or other instruments of indebtedness.

(B) All ordinances codified in Title XVII of this code shall remain in full force and effect unless repealed expressly.

§ 10.15 REPEAL OR MODIFICATION OF ORDINANCE.

(A) Whenever any ordinance or part of an ordinance is repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance repealing or modifying it to give effect thereto.

(B) No suit, proceedings, right, liability, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released,

or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force, unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause, or provision is itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

Statutory reference:

Requirements for amendments and revisions, see Neb. RS 17-614

§ 10.16 SECTION HISTORIES; STATUTORY REFERENCES.

(A) A statutory cite included in the history indicates that the text of the section reads substantially the same as the statute. Example: (Neb. RS 18-132)

(B) A statutory cite set forth as a “statutory reference” following the text of the section indicates that the reader should refer to that statute for further information. Example:

§ 39.01 PUBLIC RECORDS AVAILABLE.

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

Statutory reference:

Inspection of public records, see Neb. RS 84-712 et seq.

§ 10.17 LOCAL CHANGES TO THIS CODE OF ORDINANCES.

(A) Any provision of this code of ordinances may be repealed, modified or superseded by an ordinance passed by the City Council.

(B) An ordinance repealing, modifying, or superseding any provision of this code may be codified as part of this code in Title XVII, Local Legislation.

(C) Local legislation codified in Title XVII of this code shall preempt other provisions of this code on the same or similar subjects as expressly stated in the Title XVII legislation or implied by necessity. To the extent that there exists any conflict between local legislation codified in Title XVII and any other provision of this code, the Title XVII local legislation shall control.

§ 10.99 GENERAL PENALTY.

(A) Any person who violates any of the provisions of this city code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any

sum not exceeding \$500. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this code.

(B) (1) Whenever a nuisance exists as defined in Title IX of this code, the city may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case.

Statutory reference:

Authority to abate nuisances, see Neb. RS 18-1720 and 18-1722

Authority to impose fines, see Neb. RS 17-505

TITLE III: ADMINISTRATION

Chapter

- 30. ELECTED OFFICIALS; ORDINANCES**
- 31. APPOINTED CITY OFFICIALS**
- 32. DEPARTMENTS, BOARDS, AND COMMISSIONS**
- 33. GENERAL PROVISIONS**
- 34. ELECTIONS**
- 35. FINANCE AND REVENUE**

Cross-reference:

Local legislation regarding city administration, see Title XVII

CHAPTER 30: ELECTED OFFICIALS; ORDINANCES

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MAYOR**§ 30.01 ELECTION; QUALIFICATIONS; TERM.**

(A) The Mayor shall be elected as provided in the Election Act. The Mayor shall take office on the date of the first regular meeting of the City Council held in December following the statewide general election. The Mayor shall be a resident and registered voter of the city.

(Neb. RS 17-107)

(B) The Mayor shall serve for a term of 4 years or until his or her successor is elected and qualified.
(Neb. RS 32-533)

§ 30.02 POWERS AND DUTIES.

(A) The Mayor shall preside at all meetings of the City Council. The Mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the City Council on any pending matter, legislation, or transaction, and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council. He or she shall have superintendence and control of all the officers and affairs of the city, and shall take care that the ordinances of the city and all laws governing cities of the second class are complied with.

(Neb. RS 17-110)

(B) The Mayor shall have the power to veto or sign any ordinance passed by the City Council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the Mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it, and it shall become effective. If the Mayor vetoes the ordinance, order, bylaw, resolution, contract, or any item or items of appropriations or claims, he or she shall return it to the City Council stating that the measure is vetoed. The Mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the Mayor issues the veto after the meeting, the Mayor shall notify the City Clerk of the veto in writing. The Clerk shall notify the City Council in writing of the Mayor's veto. Any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the Mayor may be passed over his or her veto by a vote of two-thirds of the members of the Council. If the Mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim, but fails to veto the measure within the time required by this section, the measure shall become effective without his or her signature. The Mayor may veto any item or items of any appropriation bill or any claims bill, and approve the remainder thereof, and the item or items vetoed may be passed by the Council over the veto as in other cases.

(Neb. RS 17-111)

(C) The Mayor shall, from time to time, communicate to the City Council such information and recommend such measures as, in his or her opinion, may tend to the improvement of the finances, the police, health, security, ornament, comfort, and general prosperity of the city.

(Neb. RS 17-112)

(D) The Mayor shall have the power, when he or she deems it necessary, to require any officer of the city to exhibit his or her accounts or other papers, and to make reports to the Council, in writing, touching any subject or matter pertaining to his or her office.

(Neb. RS 17-113)

(E) The Mayor shall have such jurisdiction as may be vested in him or her by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him or her by ordinance, excepting taxation, within the extraterritorial zoning jurisdiction of the city.

(Neb. RS 17-114)

(F) The Mayor shall have the power to remit fines and forfeitures, and to grant reprieves and pardons for all offenses arising under the ordinances of the city.

(Neb. RS 17-117)

(G) The Mayor shall hold no other elective or appointive office or employment with the city.

(H) The Mayor shall sign the City Clerk's minutes of all meetings of the City Council, and he or she shall sign all resolutions that have been passed and warrants for the payment of money when ordered by the Council.

(I) The Mayor shall have such other duties as are reposed in the Mayor by the laws of the State of Nebraska or as the Council may by resolution confer upon the Mayor.

Statutory reference:

Restrictions on holding other office or employment, see Neb. RS 17-108.02, 32-109, 32-603, and 32-604

§ 30.03 VACANCY.

(A) The office of Mayor shall be vacant upon the happening of any of the events specified in Neb. RS 32-560 except as provided in Neb. RS 32-561.

(B) (1) In case of any vacancy in the office of Mayor, or in case of his or her disability or absence, the President of the City Council shall exercise the office of Mayor for the unexpired term, until such disability is removed, or in case of temporary absence, until the Mayor returns.

(Neb. RS 32-568)

(2) If the President of the Council assumes the office of Mayor for the unexpired term, there shall be a vacancy on the Council.

(Neb. RS 17-107, 32-568)

Statutory reference:

Additional and similar provisions, see Neb. RS 32-560 through 32-572

Ineligibility of person subjected to recall, see Neb. RS 32-1308

CITY COUNCIL

§ 30.15 ELECTION; QUALIFICATIONS; TERMS.

(A) The City Council shall consist of not less than 4 nor more than 12 residents of the city who are registered voters.

(Neb. RS 17-103)

(B) All Council members shall be nominated and elected on a nonpartisan ballot unless the city provides for a partisan ballot by ordinance.

(Neb. RS 32-557)

(C) If members of the Council are not elected at large:

(1) Unless the city elects Council members at large as provided in Neb. RS 32-554, the city shall be divided into not less than 2 nor more than 6 wards, as provided by ordinance of the City Council. Each ward shall contain, as nearly as practicable, an equal portion of the population;

(Neb. RS 17-102)

(2) Unless the city elects Council members at large as provided in Neb. RS 32-554, each ward of the city shall have at least 2 Council members elected in the manner provided in the Election Act. No person shall be eligible to the office of Council member who is not at the time of the election an actual resident of the ward for which he or she is elected and a registered voter; and

(Neb. RS 17-104)

(3) Such wards shall be substantially equal in population as determined by the most recent federal decennial census.

(Neb. RS 32-553)

(D) The term of office shall begin on the first regular meeting of the Council in December following the statewide general election.

(Neb. RS 17-104)

(E) Members of the Council shall serve for terms of 4 years or until their successors are elected and qualified.

(Neb. RS 32-533)

(F) If the city operates under a city manager plan, members of the City Council shall be residents and registered voters of the city and shall hold no other employment with the city. Any Council member who ceases to possess any of the qualifications required by this section or who has been convicted of a felony or of any public offense involving the violation of the oath of office of such member while in office shall forthwith forfeit such office.

(Neb. RS 19-613)

Cross-reference:

Local legislation setting number of Council members, see Title XVII

Statutory reference:

Restrictions on holding other office or employment, see Neb. RS 17-108.02, 32-109, 32-603, 32-604

Election Act, see Neb. RS 32-101

Other requirements for wards, see Neb. RS 32-552 and 32-553

Ability to elect council members at large or by ward, see Neb. RS 32-554

§ 30.16 PRESIDENT; ACTING PRESIDENT.

(A) The City Council shall elect one of its own body who shall be styled the President of the Council and who shall preside at all meetings of the Council in the absence of the Mayor.

(B) In the absence of the President, the Council shall elect one of its own body to occupy his or her place temporarily, who shall be styled Acting President of the Council.

(C) The President, and Acting President, when occupying the place of the Mayor, shall have the same privileges as other members of the Council; and all acts of the President or Acting President, while so acting, shall be as binding upon the Council and upon the city as if done by the Mayor.

(Neb. RS 17-148)

§ 30.17 STANDING COMMITTEES.

At the organizational meeting of the City Council, the Mayor shall appoint members of such standing committees as the Council may create by ordinance or resolution. The membership of such standing committees may be changed at any time by the Mayor. The Mayor shall be an ex officio member of each standing committee. The members of the standing committees shall serve a term of office of one year, unless reappointed.

§ 30.18 VACANCY; GENERAL PROVISIONS.

(A) The office of member of the City Council shall be vacant upon the happening of any of the events specified in Neb. RS 32-560 except as provided in Neb. RS 32-561.

(B) Any vacancy on the City Council shall be filled as provided in division (C) of this section. (Neb. RS 32-568)

(C) (1) (a) Except as otherwise provided in division (C)(2) or (3) or § 30.03, vacancies in city elective offices shall be filled by the Mayor and Council for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the Council at a regular or special meeting and shall appear as a part of the minutes of such meeting. The Council shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the city or by posting in 3 public places in the city the office vacated and the length of the unexpired term.

(b) The Mayor shall call a special meeting of the Council or place the issue of filling such vacancy on the agenda at the next regular meeting at which time the Mayor shall submit the name of a qualified registered voter to fill the vacancy for the balance of the unexpired term. The regular or special meeting shall occur upon the death of the incumbent or within 4 weeks after the meeting at which such notice of vacancy has been presented. The Council shall vote upon the nominee, and if a majority votes in favor of the nominee, the vacancy shall be declared filled. If the nominee fails to receive a majority of the votes, the nomination shall be rejected and the Mayor shall, at the next regular or special meeting, submit the name of another qualified registered voter to fill the vacancy. If the subsequent nominee fails to receive a majority of the votes, the Mayor shall continue at that meeting to submit the names of qualified registered voters in nomination and the Council shall continue to vote upon the nominations at such meeting until the vacancy is filled. The Mayor shall cast his or her vote for or against the nominee in case of a tie vote of the Council. All Council members present shall cast a ballot for or against the nominee. Any member of the Council who has been appointed to fill a vacancy on the Council shall have the same rights, including voting, as if that person were elected.

(2) The Mayor and Council may, in lieu of filling a vacancy in a city elected office as provided in division (C)(1), call a special city election to fill such vacancy.

(3) If vacancies exist in the offices of one-half or more of the members of the City Council, the Secretary of State shall conduct a special city election to fill such vacancies.

(Neb. RS 32-569)

Statutory reference:

Additional and similar provisions, see Neb. RS 32-560 through 32-572

Ineligibility of person subjected to recall, see Neb. RS 32-1308

§ 30.19 VACANCY DUE TO UNEXCUSED ABSENCES.

(A) In addition to the events listed in Neb. RS 32-560 and any other reasons for a vacancy provided by law, after notice and a hearing, a vacancy on the City Council shall exist if a member is absent from more than 5 consecutive regular meetings of the Council unless the absences are excused by a majority vote of the remaining members.

(Neb. RS 19-3101)

(B) The City Council shall take a vote on whether to excuse a member's absence from a meeting upon either:

- (1) A written request from the member submitted to the City Clerk; or
- (2) A motion of any other Councilmember.

(C) If a Councilmember has been absent from 6 consecutive regular meetings and none of the absences have been excused by a majority vote of the remaining members, the City Clerk shall include this as an item on the agenda for the next regular meeting. At that meeting, the Council shall set a date for a hearing and direct the City Clerk to give the member notice of the hearing by personal service or first class mail to the member's last known address.

(D) At the hearing, the Councilmember shall have the right to present information on why 1 or more of the absences should be excused. If the Council does not excuse 1 or more of the member's absences by a majority vote at the conclusion of the hearing, there shall be a vacancy on the Council.

ORDINANCES, RESOLUTIONS, AND MOTIONS**§ 30.45 GRANT OF POWER.**

In addition to its special powers specifically granted by law, the city shall have the power to make all ordinances, bylaws, rules, regulations, and resolutions, not inconsistent with the laws of the state, as may be expedient for maintaining the peace, good government, and welfare of the city and its trade, commerce, and manufactories, and to enforce all ordinances by inflicting fines or penalties for the breach thereof, not exceeding \$500 for any one offense, recoverable with costs.

(Neb. RS 17-505)

Statutory reference:

Adoption of standard codes, see Neb. RS 18-132 and 19-922

Prosecution in county court, see Neb. RS 25-2703

§ 30.46 INTRODUCTION OF ORDINANCES.

Unless the City Council provides otherwise, ordinances shall be introduced by members of the City Council in 1 of the following ways:

(A) With the recognition of the Mayor, a member may, in the presence and hearing of a majority of the members elected to the City Council, read aloud the substance of the proposed ordinance and file a copy with the City Clerk for future consideration; or

(B) With the recognition of the Mayor, a member may present the proposed ordinance to the Clerk, who, in the presence and hearing of a majority of the members elected to the City Council, shall read aloud the substance of the ordinance and file it for future consideration.

§ 30.47 PROCEDURE FOR RESOLUTIONS AND MOTIONS.

Unless the City Council provides otherwise, resolutions and motions shall be introduced in 1 of the methods prescribed in § 30.46 for the introduction of ordinances. The issue raised by the resolution or motion shall be disposed of in accordance with the usage of parliamentary law adopted for the guidance of the City Council. A majority vote shall be required to pass any resolution or motion. The vote on any resolution or motion shall be by roll call vote.

§ 30.48 ORDINANCES; STYLE, TITLE.

(A) *Style.* The style of all city ordinances shall be: "Be it ordained by the Mayor and Council of the City of _____, Nebraska:...."
(Neb. RS 17-613)

(B) *Title.* No ordinance shall contain a subject which is not clearly expressed in the title.
(Neb. RS 17-614)

§ 30.49 READING AND PASSAGE OF ORDINANCES, RESOLUTIONS, ORDERS, BYLAWS.

(A) All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the City Council. The Mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the Council, and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council. Ordinances of a general or permanent nature shall be read by title on three different days unless 3/4 of the City Council vote to suspend this requirement, except that this requirement shall not be suspended for any ordinance for the annexation of territory. In case this requirement is suspended, the ordinance shall be read by title and

then moved for final passage. Three-fourths of the City Council may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

(Neb. RS 17-614)

(B) On the passage or adoption of every bylaw or ordinance, and every resolution or order to enter into a contract by the City Council, the yeas and nays shall be called and recorded. To pass or adopt any bylaw, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the City Council shall be required. All appointments of the officers by the City Council shall be made *viva voce*, and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded. The requirements of a roll call or *viva voce* vote shall be satisfied by a city which utilizes an electronic voting device which allows the yeas and nays of each member of the City Council to be readily seen by the public.

(Neb. RS 17-616)

§ 30.50 PUBLICATION OR POSTING.

All ordinances of a general nature shall, before they take effect, be published one time, within 15 days after they are passed:

(A) In newspaper in or of general circulation in the city; or

(B) In book or pamphlet form.

(Neb. RS 17-613)

Statutory reference:

Additional provisions, see Neb. RS 18-131

§ 30.51 CERTIFICATE OF PUBLICATION OR POSTING.

The passage, approval, and publication or posting of an ordinance shall be sufficiently proved by a certificate under the seal of the city from the City Clerk showing that the ordinance was passed and approved, and when and in what paper the ordinance was published, or when and by whom and where the ordinance was posted.

(Neb. RS 17-613)

Statutory reference:

Passage; rules and regulations, see Neb. RS 17-615

§ 30.52 EFFECTIVE DATE; EMERGENCY ORDINANCES.

(A) Except as provided in § 30.50 and division (B) of this section, an ordinance for the government of the city which has been adopted by the City Council without submission to the voters of the city shall not go into effect until 15 days after the passage of the ordinance.

(Neb. RS 19-3701)

(B) In the case of riot, infectious or contagious diseases, or other impending danger, failure of a public utility, or any other emergency requiring its immediate operation, an ordinance shall take effect upon the proclamation of the Mayor and the posting thereof in at least 3 of the most public places in the city. The emergency ordinance shall recite the emergency, be passed by a 3/4 vote of the City Council, and be entered of record on the City Clerk's minutes.

(Neb. RS 17-613)

§ 30.53 AMENDMENTS AND REVISIONS.

No ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that an ordinance revising all the ordinances of the city and modifications to zoning or building districts may be adopted as otherwise provided by law.

(Neb. RS 17-614)

Statutory reference:

Modifications to zoning or building districts, see Neb. RS 19-915

Ordinances revising all the ordinances of the city, see Neb. RS 17-614

CHAPTER 31: APPOINTED CITY OFFICIALS

Section

- 31.01 Appointment; terms; removal; powers; duties
- 31.02 Qualification for office
- 31.03 Merger of offices
- 31.04 City Clerk
- 31.05 City Treasurer
- 31.06 City Attorney
- 31.07 Police Chief
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- 31.10 Water Commissioner/Public Works Commissioner
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- 31.12 Overseer of Streets
- 31.13 City Engineer; Special Engineer

Cross-reference:

For any additional local officials, see Title XVII

§ 31.01 APPOINTMENT; TERMS; REMOVAL; POWERS; DUTIES.

(A) (1) The Mayor, with the consent of the City Council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the Mayor.

(2) The terms of office for all officers, except regular police officers, appointed by the Mayor and confirmed by the Council shall be established by the City Council by ordinance. The ordinance shall provide that either:

(a) The officers hold the office to which they have been appointed until the end of the Mayor's term of office and until their successors are appointed and qualified unless sooner removed; or

(b) The officers hold office for one year unless sooner removed.

(Neb. RS 17-107)

(B) (1) The city may enact ordinances or bylaws to regulate and prescribe the powers and duties of officers not provided for in state law.

(Neb. RS 17-604)

(2) If the Mayor and City Council appoint any of the officials specified in this chapter or any other officials, the officials shall have the powers and duties, if any, provided in this chapter or as otherwise provided by city ordinances and state law.

§ 31.02 QUALIFICATION FOR OFFICE.

Each appointive officer who is required to give bond shall qualify by filing the required bond and oath as provided in §§ 33.30 and 33.31. Each appointive officer who is not required to give bond shall qualify by filing the required oath as provided in § 33.31.

§ 31.03 MERGER OF OFFICES.

(A) The City Council may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except Mayor and Councilmember, with any other elective or appointive office or employment so that 1 or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

(B) The offices or employments so merged and combined shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only.

(C) The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined.

(D) For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

(Neb. RS 17-108.02)

Cross-reference:

For local provisions regarding particular merged offices, see Title XVII

§ 31.04 CITY CLERK.

(A) The City Clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the City Council. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the Clerk may transfer the journal of the

proceedings of the City Council to the State Archives of the Nebraska State Historical Society for permanent preservation. The Clerk shall also perform such other duties as may be required by the ordinances of the city.

(Neb. RS 17-605)

(B) (1) It shall be the duty of the Clerk to prepare and publish the official proceedings of the City Council within 30 days after any meeting of the Council. The publication shall be in a newspaper of general circulation in the city, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in Neb. RS 23-122.

(Neb. RS 19-1102)

(2) Publication under division (B)(1) shall be made in one legal newspaper of general circulation in the city. If no legal newspaper is published in the city, then the publication shall be made in one legal newspaper published or of general circulation within the county in which the city is located. The cost of publication shall be paid out of the general funds of the city.

(Neb. RS 19-1103)

(C) The Clerk shall dispose of or destroy city public records when the records have been determined to be of no further legal, administrative, fiscal, or historical value by the State Records Administrator pursuant to Neb. RS 84-1201 through 84-1220, provided the provisions of this division shall not apply to the minutes of the Clerk and the permanent ordinance and resolution books, or any other record classified as permanent by the State Records Administrator.

(Neb. RS 18-1701)

(D) (1) The Clerk shall permit any person to examine and copy the public records in the Clerk's custody, and may charge a fee for providing copies of a public record, as provided in Neb. RS 84-712 through 84-712.09.

(2) The Clerk may charge a reasonable fee for certified copies of any record in his or her office as set by resolution of the City Council.

(E) The Clerk shall permit no records, public papers, or other documents of the city kept and preserved in his or her office to be taken therefrom, except by such officers of the city as may be entitled to the use of the same, but only upon their leaving a receipt therefor, and except pursuant to Neb. RS 84-712(2). He or she shall keep all the records of his or her office, including a record of all licenses issued by him or her, in a blank book with a proper index. He or she shall include as part of his or her records all petitions under which the City Council shall order public work to be done at the expense of the property fronting thereon, together with references to all resolutions and ordinances relating to the same. He or she shall endorse the date and hour of filing upon every paper or document so filed in his or her office. All such filings made by him or her shall be properly docketed. Included in his or her

records shall be all standard codes, amendments thereto, and other documents incorporated by reference and arranged in triplicate in a manner convenient for reference. He or she shall keep an accurate and complete account of the appropriation of the several funds and draw, sign, and attest all warrants ordered for the payment of money on the particular fund from which the same is payable. At the end of each month, he or she shall then make a report of the amounts appropriated to the various funds and the amount of the warrants drawn thereon.

(F) The Clerk shall deliver all warrants, ordinances, and resolutions under his or her charge to the Mayor for his or her signature. He or she shall also deliver to officers, employees, and committees all resolutions and communications which are directed at such officers, employees, or committees. With the seal of the city, he or she shall duly attest the Mayor's signature to all ordinances, deeds, and papers required to be attested to when ordered to do so by the City Council.

(G) The Clerk shall issue and sign all licenses, permits, and occupation tax receipts authorized by law and required by the city ordinances. He or she shall collect all occupation taxes and license money, except where some other city officer is specifically charged with that duty. He or she shall keep a register of all licenses granted in the city and the purpose for which they have been issued.

(H) The Clerk shall keep in a book with a proper index, copies of all notices required to be published or posted by the Clerk by order of the City Council or under the ordinances of the city. To each of the file copies of the notices shall be attached the printer's affidavit of publication, if the notices are required to be published, or the Clerk's certificate under seal where the same are required to be posted only.

(I) The Clerk shall receive all objections to creation of paving districts and other street improvements. He or she shall receive the claims of any person against the city, and in the event that the claim is disallowed in part or in whole, the Clerk shall notify the claimant or his or her agent or attorney by letter within 5 days after the disallowance, and the Clerk shall then prepare transcripts on appeals of any disallowance of a claim in all proper cases.

§ 31.05 CITY TREASURER.

(A) (1) The City Treasurer shall be the custodian of all money belonging to the city. He or she shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports. The Treasurer shall, at the end of every month, and as often as may be required, render an account to the City Council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the City Clerk's office. If the Treasurer fails to render his or her account within 20 days after the end of the month, or by a later date established by the City Council, the Mayor may use this failure as cause to remove the Treasurer from office.

(2) The Treasurer shall keep a record of all outstanding bonds against the city, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. The Treasurer shall accompany the annual statement submitted pursuant to Neb. RS 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

(Neb. RS 17-606)

(B) (1) The Treasurer shall prepare and publish annually within 60 days after the close of the city fiscal year a statement of the receipts and expenditures of funds of the city for the preceding fiscal year. The statement shall also include the information required by Neb. RS 16-318(3) or Neb. RS 17-606(2). Not more than the legal rate provided for in Neb. RS 33-141 shall be charged and paid for such publication.

(Neb. RS 19-1101)

(2) Publication shall be made in one legal newspaper of general circulation in the city. If no legal newspaper is published in the city, then such publication shall be made in one legal newspaper published or of general circulation within the county in which the city is located.

(Neb. RS 19-1103)

(C) (1) All warrants upon the Treasurer shall be paid in the order of their presentation therefor and as otherwise provided in Neb. RS 77-2201 through 77-2215.

(Neb. RS 77-2201)

(2) The Treasurer shall keep a warrant register, which register shall show in columns arranged for that purpose the number, the date, and the amount of each warrant presented and registered, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the warrant is registered, the date of payment, the amount of interest, and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed.

(Neb. RS 77-2202)

(3) The Treasurer shall make duplicate receipts for all sums which shall be paid into his or her office, which receipts shall show the source from which such funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash, in warrants, or otherwise. The Treasurer shall deliver one of the duplicates to the person making the payment and retain the other in his or her office.

(Neb. RS 77-2209)

(4) The Treasurer shall daily, as money is received, foot the several columns of the cash book and of the register, and carry the amounts forward, and at the close of each year, in case the amount of money received by the Treasurer is insufficient to pay the warrants registered, he or she shall close the account for that year in the register and shall carry forward the excess.

(Neb. RS. 77-2210)

(5) The cash book, register, and retained receipts of the Treasurer shall at all times be open to the inspection of any person in whose name any warrants are registered and unpaid.
(Neb. RS 77-2212)

(D) The Treasurer shall permit any person to examine and copy the public records in the Treasurer's custody, and may charge a fee for providing copies of a public record, as provided in Neb. RS 84-712 through 84-712.09.

(E) The Treasurer shall keep all money belonging to the city separate and distinct from his or her own money. He or she shall cancel all bonds, coupons, warrants, and other evidences of debt against the city, whenever paid by him or her, by writing or stamping on the face thereof, "Paid by the City Treasurer," with the date of payment written or stamped thereon. He or she shall collect all special taxes, allocate special assessments to the several owners, and obtain from the County Treasurer a monthly report as to the collection of delinquent taxes.

§ 31.06 CITY ATTORNEY.

(A) The City Attorney shall be the legal advisor of the City Council. He or she shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the city, or that may be ordered by the Council. When requested, he or she shall attend meetings of the Council and give them his or her opinion upon any matters submitted to him or her, either orally or in writing, as may be required. He or she shall draft or review for legal correctness ordinances, contracts, franchises, and other instruments as may be required, and he or she shall perform such other duties as may be imposed upon him or her by general law or ordinance. The Council shall have the right to pay the City Attorney compensation for legal services performed by him or her for it on such terms as the Council and Attorney may agree, and to employ additional legal assistance and to pay for such legal assistance out of the funds of the city.

(Neb. RS 17-610)

(B) The City Attorney shall also examine, when requested to do so by the City Council, the ordinance records and advise and assist the City Clerk as much as may be necessary to the end that each procedural step will be taken in the passage of each ordinance to insure that it will be a valid and subsisting local law in so far as its passage and approval are concerned.

§ 31.07 POLICE CHIEF.

(A) The Police Chief shall direct the police work of the city and shall be responsible for the maintenance of law and order. Unless the Mayor and City Council provide otherwise, he or she shall act as Health Inspector and Building Inspector.

(B) If the city has an agreement with the County Sheriff for law enforcement purposes, the County Sheriff shall have all the powers and duties of the Police Chief and city police officers as specified in the agreement.

Cross-reference:

Police department provisions, see § 32.60 et seq.

For any local law enforcement designation or provisions, see Title XVII

§ 31.08 POLICE OFFICERS.

(A) (1) The Mayor, by and with the consent of the Council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the Mayor and Council may be removed, demoted, or suspended at any time by the Mayor as provided in division (A)(2) of this section. A police officer, including the Chief of Police, may appeal to the City Council such removal, demotion, or suspension with or without pay. After a hearing, the City Council may uphold, reverse, or modify the action.

(2) The City Council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the Chief of Police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the Chief of Police, upon the written accusation of the Police Chief, the Mayor, or any citizen or taxpayer. The City Council shall establish by ordinance procedures for acting upon such written accusation, in accordance with Neb. RS 17-107. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(3) This section does not apply to a police officer during his or her probationary period.
(Neb. RS 17-107)

(B) The City Council may establish a law enforcement reserve force. Members of such force shall be appointed at the discretion of the Council. The Council may limit the size of such reserve force.

(Neb. RS 81-1438)

Cross-reference:

Police department provisions, see § 32.60 et seq.

Statutory reference:

Other provisions on law enforcement reserve force, see Neb. RS 81-1439 through 81-1446

§ 31.09 FIRE CHIEF.

The Fire Chief shall be elected by the members of the Fire Department. He or she shall enforce all laws and ordinances covering the prevention of fires, the storage and use of explosives and flammable

substances, the installation of fire alarm systems, the maintenance of fire extinguishing equipment, the regulation of fire escapes, and the inspection of all premises requiring adequate fire escapes.

Cross-reference:

Fire department provisions, see § 32.35 et seq.

§ 31.10 WATER COMMISSIONER/PUBLIC WORKS COMMISSIONER.

(A) (1) As soon as a system of waterworks or mains or portion or extension of any system of waterworks or water supply has been established by the city, the Mayor shall nominate and by and with the advice and consent of the City Council shall appoint any competent person who shall be known as the Water Commissioner of the city and whose term of office shall be for 1 fiscal year or until his or her successor is appointed and qualified. Annually at the first regular meeting of the City Council in December, the Water Commissioner shall be appointed as provided in this section.

(2) The Water Commissioner may at any time, for sufficient cause, be removed by a 2/3 vote of the City Council. Any vacancy occurring in the office of Water Commissioner by death, resignation, removal from office, or removal from the city may be filled in the manner provided in this section for the appointment of the Commissioner.

(3) The Water Commissioner shall, before he or she enters upon the discharge of his or her duties, execute a bond or provide evidence of equivalent insurance to the city in a sum to be fixed by the Mayor and Council, but not less than \$5000, conditioned upon the faithful discharge of his or her duties, and such bond shall be signed by 2 or more good and sufficient sureties, to be approved by the Mayor and Council or executed by a corporate surety.

(4) The Water Commissioner, subject to the supervision of the Mayor and City Council, shall have the general management and control of the system of waterworks or mains or portion or extension of any system of waterworks or water supply in the city.

(5) In a city where no Board of Public Works exists, and the city has other public utilities than its waterworks system, the Mayor and Council shall by ordinance designate Water Commissioner as Public Works Commissioner with authority to manage not only the system of waterworks but also other public utilities, and all of the provisions of this division (A) applying to the Water Commissioner shall apply to the Public Works Commissioner.

(Neb. RS 17-541)

(B) (1) The Water Commissioner shall collect all money received by the city on account of its system of waterworks and shall faithfully account for and pay over the same to the City Treasurer, taking his or her receipt therefor in duplicate, filing one of the same with the City Clerk.

(2) He or she shall make a detailed report to the City Council, at least once every 6 months, of the condition of the water system, of all mains, pipes, hydrants, reservoirs, and machinery, and such improvements, repairs, and extension thereof as he or she may think proper. The report shall show the amount of receipts and expenditures on account thereof for the preceding 6 months. No money shall be

expended for improvements, repairs, or extension of the waterworks system except upon recommendation of the Water Commissioner.

(3) The Water Commissioner shall perform such other duties as may be prescribed by ordinance.

(4) The Water Commissioner shall be paid such salary as the Council may by ordinance provide, and upon his or her written recommendation, the Mayor and Council shall employ such laborers and clerks as may to them seem necessary.

(5) Neither the Mayor nor any member of the Council shall be eligible to the office of Water Commissioner during the term for which he or she was elected.

(6) If the city owns public utilities other than the waterworks system and the Water Commissioner has been designated by ordinance as the Public Works Commissioner under the authority of division (A) of this section, then all provisions of this division (B) in reference to a Water Commissioner shall apply to the Public Works Commissioner.

(Neb. RS 17-543)

(C) In the event the city shall have created a Board of Public Works as provided in § 32.06, the Water Commissioner shall, subject to confirmation by the Mayor and Council, be employed thereafter by the Board at such reasonable compensation as may be agreed upon at the time of such employment and shall thereafter be under the jurisdiction of the Board, any of the provisions of Neb. RS 17-501 to 17-560 to the contrary notwithstanding. Any Water Commissioner under the jurisdiction and control of the Board of Public Works may be removed by the Board, after an opportunity to be heard before the Mayor and Council if he or she shall so request, for malfeasance, misfeasance or neglect in office.

(Neb. RS 17-804)

§ 31.11 SEWER COMMISSIONER.

(A) The Sewer Commissioner, subject to the supervision of the Mayor and City Council, shall have the general management and control of the sewer system in the city.

(B) He or she shall collect all money received by the city on account of its sewer system and shall faithfully account for and pay over the same to the City Treasurer, taking his or her receipt therefor in duplicate, filing one of the same with the City Clerk.

(C) He or she shall make a detailed report to the City Council, at least once every 6 months, of the condition of the sewer system and such improvements, repairs, and extension thereof as he or she may think proper. The report shall show the amount of receipts and expenditures on account thereof for the preceding 6 months.

(D) He or she shall issue permits for all connections to the sewer system and inspect and supervise all repairs made to the system.

(E) The Sewer Commissioner shall perform such other duties as may be prescribed by ordinance.

§ 31.12 OVERSEER OF STREETS.

(A) The Overseer of Streets shall, subject to the order of the Mayor and Council, have general charge, direction, and control of all works on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the Council may require.

(Neb. RS 17-119)

(B) It shall be his or her responsibility to see that gutters and drains in the city function properly and that they are kept in good repair.

(C) He or she shall, at the request of the City Council make a detailed report to the Council on the condition of the streets, sidewalks, culverts, alleys, and bridges of the city and shall direct their attention to such improvements, repairs, and extension thereof as he or she may think proper.

(D) The Overseer of Streets shall issue such permits and perform such other duties as may be prescribed by ordinance.

Statutory reference:

Incentive payments to street superintendents, see Neb. RS 39-2512

§ 31.13 CITY ENGINEER; SPECIAL ENGINEER.

(A) (1) The City Engineer shall, when requested by the Mayor or City Council, make estimates of the cost of labor and material which may be done or furnished by contract with the city and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the City Council may require.

(2) When the city has appointed a Board of Public Works and the Mayor and City Council have by ordinance so authorized, the Board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the Board.

(Neb. RS 17-568.01)

(B) The Mayor and City Council may employ a special engineer to make, or assist in making, any estimate necessary or to perform any other duty provided for in Neb. RS 17-568.01. Any work executed by such special engineer shall have the same validity and serve in all respects as though executed by the City Engineer.

(Neb. RS 17-568)

(C) The City Engineer shall make a record of the minutes of his or her surveys and of all work done for the city and, when directed by the Mayor and City Council, shall accurately make such plats, sections, profiles, and maps as may be necessary in the prosecution of any public work, which shall be public records and belong to the city and be turned over to his or her successor.

Statutory reference:

Duties related to areas to be annexed, see Neb. RS 17-405

Duties related to sewerage systems, see Neb. RS 17-150 and 17-919

CHAPTER 32: DEPARTMENTS, BOARDS, AND COMMISSIONS

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BOARDS AND COMMISSIONS**§ 32.01 LIBRARY BOARD.**

(A) When the City Council has decided by ordinance to establish and maintain a public library and reading room under Neb. RS 51-201 to 51-219, and except as otherwise provided by the Council pursuant to Neb. RS 51-202, the Library Board shall have 5 appointed members who shall be residents of the city and who shall serve terms of 4 years. The Board members shall be appointed by a majority vote of the members of the City Council. Neither the Mayor nor any member of the City Council shall be a member of the Library Board. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and any successors to those members shall be appointed as the terms of those members expire. In cases of vacancies by resignation, removal, or otherwise, the City Council shall fill the vacancy for the unexpired term. No member shall receive any pay or compensation for any services rendered as a member of the Library Board.

(Neb. RS 51-202)

(B) (1) The members of the Library Board shall immediately after their appointment meet and organize by electing from their number a president, a secretary, and such other officers as may be necessary. A majority of the members of the Library Board shall constitute a quorum for the transaction of business.

(Neb. RS 51-204)

(2) No member of the Board shall serve in the capacity of both the president and secretary of the Board. It shall be the duty of the secretary to keep the full and correct minutes and records of all meetings and to file the same with the City Clerk where they shall be available for public inspection at any reasonable time.

(3) The Board shall meet at such times as the Board may designate. Special meetings may be held upon the call of the president or a majority of the members of the Board.

Cross-reference:

Library provisions, see Ch. 90 of this code

Local legislation regarding Library Board, see Title XVII

§ 32.02 PLANNING COMMISSION.

(A) (1) If the City Council adopts zoning or other regulations pursuant to Neb. RS 19-901 *et seq.*, the Planning Commission shall consist of 5, 7, or 9 regular members, as specified by the City Council by ordinance, who shall represent, insofar as is possible, the different professions or occupations in the city and shall be appointed by the Mayor by and with the approval of a majority vote of the members elected to the City Council. Two of the regular members may be residents of the area over which the city is authorized to exercise extraterritorial zoning and subdivision regulation. When there are 500 residents in the area over which the city exercises extraterritorial zoning and subdivision regulation, 1 regular member of the Commission shall be a resident from such area. If it is determined by the City Council

that 500 residents reside in the area subject to extraterritorial zoning or subdivision regulation, and no such resident is a regular member of the Commission, the first available vacancy on the Commission shall be filled by the appointment of such an individual. A number of commissioners equal to a majority of the number of regular members appointed to the Commission shall constitute a quorum for the transaction of any business. All regular members of the Commission shall serve without compensation. The term of each regular member shall be three years, except that 1/3 or fewer of the regular members of the first commission to be so appointed shall serve for terms of one year, 1/3 or fewer for terms of two years, and the remaining members for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the Council, be removed by the Mayor with the consent of a majority vote of the members elected to the Council for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the Mayor.

(2) The Mayor may, with the approval of a majority vote of the elected members of the Council, appoint one alternate member to the Planning Commission. The alternate member shall serve without compensation. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the Mayor with the approval of a majority vote of the elected members of the Council. The alternate member may attend any meeting and may serve as a voting and participating member of the Commission at any time when less than the full number of regular Commission members is present and capable of voting.

(3) A regular or alternate member of the Planning Commission may hold any other municipal office except:

(a) Mayor;

(b) A member of the City Council;

(c) A member of any community redevelopment authority or limited community redevelopment authority created under Neb. RS 18-2102.01; or

(d) A member of any citizen advisory review committee created under Neb. RS 18-2715. (Neb. RS 19-926)

(B) The Commission shall elect its Chairperson from its members and create and fill such other offices as it may determine. The term of the Chairperson shall be one year, and he or she shall be eligible for reelection. The Commission shall hold at least one regular meeting in each calendar quarter, except the City Council may require the Commission to meet more frequently and the Chairperson of the Commission may call for a meeting when necessary to deal with business pending before the Commission. The Commission shall adopt rules and regulations for the transaction of business and shall

keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record.

(Neb. RS 19-927)

(C) No member of the Commission shall serve in the capacity of both the Chairperson and Secretary of the Commission. The Secretary shall keep the full and correct minutes and records of all meetings and file them with the City Clerk where they shall be available for public inspection during office hours.

(D) The City Council may provide the funds, equipment, and accommodations necessary for the work of the Commission, but the expenditures of the Commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the Council; and no expenditures nor agreements for expenditures shall be valid in excess of such amounts.

(Neb. RS 19-928)

(E) (1) (a) Except as provided in Neb. RS 19-930 to 19-933, the Planning Commission shall:

(i) Make and adopt plans for the physical development of the city, including any areas outside its boundaries which in the Commission's judgment bear relation to the planning of such city and including a comprehensive development plan as defined by Neb. RS 19-903;

(ii) Prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning ordinance in cooperation with other interested city departments; and

(iii) Consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the comprehensive development plan and its implemental programs. The Commission may delegate authority to any such group to conduct studies and make surveys for the commission, make preliminary reports on its findings, and hold public hearings before submitting its final reports.

(b) The City Council shall not take final action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning until it has received the recommendation of the Planning Commission, provided that the Planning Commission shall make its recommendation so that it is received by the City Council within 60 days after the Commission begins consideration of a matter or within such other number of days as the City Council has set by ordinance.

(c) A recommendation from the Planning Commission shall not be required for subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks, if the City Council has designated, by ordinance, an agent pursuant to Neb. RS 19-916.

(2) (a) The Commission may, with the consent of the City Council, in its own name (i) make and enter into contracts with public or private bodies, (ii) receive contributions, bequests, gifts, or grant

funds from public or private sources, (iii) expend the funds appropriated to it by the city, (iv) employ agents and employees, and (v) acquire, hold, and dispose of property.

(b) The Commission may on its own authority make arrangements consistent with its program, conduct or sponsor special studies or planning work for any public body or appropriate agency, receive grants, remuneration, or reimbursement for such studies or work, and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(3) (a) The Commission may grant conditional uses or special exceptions to property owners for the use of their property if the City Council has, through a zoning ordinance or special ordinance, generally authorized the Commission to exercise such powers and has approved the standards and procedures adopted by the Commission for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the zoning ordinance as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized.

(b) The power to grant conditional uses or special exceptions shall be the exclusive authority of the Commission, except that the City Council may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the zoning ordinance. The Council may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and will promote the public interest.

(c) An appeal of a decision by the Commission or Council regarding a conditional use or special exception shall be made to the district court.

(Neb. RS 19-929)

Cross-reference:

Local legislation regarding Planning Commission, see Title XVII

Statutory reference:

Other provisions on planning commissions, see Neb. RS 19-925 through 19-933

§ 32.03 BOARD OF ADJUSTMENT.

(A) If the City Council adopts zoning or other regulations pursuant to Neb. RS 19-901 et seq., except as provided in division (B), the Council shall provide for the appointment of a Board of Adjustment. Any actions taken by the Board of Adjustment shall not exceed the powers granted by division (F).

(Neb. RS 19-907)

(B) If the county has adopted a comprehensive development plan, as defined by Neb. RS 23-114.02, and is enforcing zoning regulations based upon such a plan, the zoning board of adjustment of the county shall, upon request of the City Council, serve as the zoning Board of Adjustment for the city. If the city is located in more than one county, it shall be served by request or otherwise only by the county zoning

board of adjustment of the county in which the greatest area of the city is located, and the jurisdiction of such county zoning board of adjustment shall include all portions of the city and its extraterritorial control, regardless of county lines.

(Neb. RS 19-912.01)

(C) (1) The Board of Adjustment shall consist of 5 regular members, plus 1 additional member designated as an alternate who shall attend and serve only when 1 of the regular members is unable to attend for any reason, each to be appointed for a term of 3 years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. The first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city at such time as more than 200 persons reside within such area if the Board does not already include such a person. Thereafter, at all times, at least 1 member of the Board of Adjustment shall reside outside of the corporate boundaries of the city but within its extraterritorial zoning jurisdiction.

(2) The Board of Adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Neb. RS 19-901 to 19-914. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board may determine. Such Chairperson, or in his or her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(Neb. RS 19-908)

(D) A number of members equal to a majority of the number of regular members appointed to the Board of Adjustment shall constitute a quorum for the transaction of any business. All members of an appointed Board of Adjustment shall serve without compensation and shall hold no other city office except for the member of the Planning Commission appointed to serve on the Board of Adjustment. No member of the Board of Adjustment shall serve in the capacity of both Chairperson and Secretary of the Board. The Secretary shall keep the full and correct minutes and records of all meetings and file them with the City Clerk where they shall be available for public inspection during office hours.

(E) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him or her, that

by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(Neb. RS 19-909)

(F) (1) The Board of Adjustment shall, subject to such appropriate conditions and safeguards as may be established by the City Council, have only the following powers:

(a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made by the City Council or Planning Commission regarding a conditional use or special exception under Neb. RS 19-929(3);

(b) To hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and

(c) When by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under Neb. RS 19-901 and 19-903 to 19-904.01 and divisions (C) and (F) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(2) (a) No such variance shall be authorized by the Board unless it finds that:

(i) The strict application of the zoning regulation would produce undue hardship;

(ii) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

(iii) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and

(iv) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

(b) No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this division (F), the Board may, in conformity with Neb. RS 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of 4 members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

(Neb. RS 19-910)

(G) Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the city, may present to the district court a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within 15 days after the filing of the decision in the office of the board. Upon the filing of such petition a summons shall be issued and be served upon the Board of Adjustment, together with a copy of the petition. Return of service shall be made within 4 days after the issuance of the summons. Within 10 days after the return day of such summons, the Board of Adjustment shall file an answer to the petition which shall admit or deny the substantial averments of the petition and shall state the contentions of the Board with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing answer, the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. The appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

(Neb. RS 19-912)

Cross-reference:

Local legislation regarding Board of Adjustment, see Title XVII

§ 32.04 BOARD OF HEALTH.

(A) (1) The Board of Health shall consist of 4 members: The Mayor, who shall be chairperson, the President of the City Council, and 2 other members. One member shall be a physician or health care

provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the Board's medical advisor. If the Mayor has appointed a Chief of Police, the Chief of Police shall serve on the Board as secretary and quarantine officer.

(2) A majority of the Board of Health shall constitute a quorum and shall enact rules and regulations, which shall have the full force and effect of law, to safeguard the health of the people of the city, may enforce them, and may provide fines and punishments for the violation of such rules and regulations. The Board shall have power to and shall make all needful rules and regulations relating to matters of sanitation of the city, including the removal of dead animals, the sanitary condition of the streets, alleys, vacant grounds, stockyards, cattle and hog pens, wells, cisterns, privies, waterclosets, cesspools, stables, and all buildings and places not specified where filth, nuisances, or offensive matter is kept or is liable to or does accumulate. It may regulate, suppress, and prevent the occurrence of nuisances and enforce all laws of the state and ordinances of the city relating to nuisances or to matters of sanitation of the city. The Board shall also have control of hospitals, dispensaries, places for treatment of sick, and matters relating to the same under such restrictions and provisions as may be provided by ordinance of the city.

(Neb. RS 17-121)

(B) The members of the Board of Health other than the Mayor, President of the Council, and Chief of Police shall serve terms of office of the length specified by the City Council and may be reappointed.

(C) The Board of Health shall reorganize at its meeting after appointments are regularly considered by the City Council and, if necessary, select a member to serve as secretary. No member of the Board of Health shall hold more than one Board of Health position. The secretary shall keep full and correct minutes and records of all meetings and file the same with the City Clerk where they shall be available for public inspection during office hours.

(D) The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the Chairperson or any 2 members of the Board of Health.

(E) The members of the Board of Health shall serve without compensation. The Board of Health shall be funded by the City Council from time to time out of the general fund.

(F) The Board of Health shall regularly inspect such premises and businesses as the City Council may direct.

(G) All members of the Board of Health shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate.

Cross-reference:

Health and safety regulations, see Chapter 91

§ 32.05 BOARD OF PARK COMMISSIONERS.

(A) If the Mayor and City Council have provided for the creation of a Board of Park Commissioners or Board of Park and Recreation Commissioners pursuant to Neb. RS 17-952, the Board shall be composed of not less than 3 members, who shall be residents of the city, and who shall have charge of all parks and recreational facilities belonging to the city, and shall have the power to establish rules for the management, care, and use of the same.

(Neb. RS 17-952)

(B) Neither the Mayor nor any member of the City Council shall serve as a member of the Board while serving a term of office as Mayor or member of the City Council. The members of the Board shall serve terms of office of the length specified by the City Council and may be reappointed.

(C) The Board shall organize at its meeting after appointments are regularly considered by the City Council and select members to serve as chairperson and secretary. No member of the Board shall hold more than one Board position. The secretary shall keep full and correct minutes and records of all meetings and file the same with the City Clerk where they shall be available for public inspection during office hours.

(D) The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the Chairperson or any 2 members of the Board. A majority of the Board members shall constitute a quorum for the transaction of business.

(E) The members of the Board shall serve without compensation. The Board shall be funded by the City Council from time to time out of the general fund.

(F) All members of the Board shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate.

Cross-reference:

Local legislation regarding Park and/or Recreation Commissioners, see Title XVII

§ 32.06 BOARD OF PUBLIC WORKS.

(A) Whenever the city has or is about to establish or acquire any system of waterworks, power plant, ice plant, gas plant, sewerage, heating or lighting plant, or distribution system and the City Council has created a Board of Public Works, the Board shall consist of not less than 3, nor more than 6 members, residents of the city, to be appointed by the Mayor, subject to the approval of the City Council. The members may be removed by the Mayor and a majority of the members elected to the City Council at any time. The term of the first members of the Board shall be 1, 2, 3, or 4 years in the manner designated by the Mayor, as the case may be, after which the term of each member shall be 4 years; and the terms of not more than 2 members shall expire at any one time.

(Neb. RS 17-801)

(B) The Board of Public Works shall have the active direction and supervision of any or all of the utility systems owned or operated by the city as conferred on it by the City Council. The City Council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act. The Board shall have the power to operate any utility referred to it and to exercise all powers conferred by law upon the city for the operation and government of such utility to the same extent, in the same manner, and under the same restrictions as the City Council could do if no such Board of Public Works existed, except that the Board of Public Works shall not make any expenditure or contract any indebtedness other than for ordinary running expenses, exceeding the amount established by the City Council, without first obtaining the approval of the City Council. The Board of Public Works shall report to the City Council at regular intervals as it may require.

(Neb. RS 17-802)

(C) If so authorized and empowered by the Mayor and Council, the Board of Public Works may cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of any public utility operated by the city. For that purpose the Board of Public Works may make contributions to pay premiums or dues under such plan, authorize deductions from salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance.

(Neb. RS 17-802.01)

(D) The members of the Board of Public Works shall organize as soon as practicable after their appointment, by electing a chairperson and secretary, who shall serve until the first meeting in June next following; and thereafter the Board shall elect a chairperson and secretary at the first meeting in June each year. In the absence of the regular officers, temporary officers to serve in their places may be chosen by the members present at any meeting. They shall establish regular times for meeting and may adopt such rules as may be necessary or desirable for the conduct of their business. They shall keep a record of their proceedings and if there is a legal newspaper published in or of general circulation in the city, shall publish therein the minutes of each meeting within 30 days after it is held.

(Neb. RS 17-805)

(E) Each of the members of the Board of Public Works shall take an oath to discharge faithfully the duties of the office before entering upon the discharge thereof. Each of the members of the Board before entering upon the duties of the office shall be required to give bond to the city with corporate surety. Such bond shall be in the sum of \$5000 and shall be conditioned for the faithful performance of the duties of member of the Board of Public Works; and the surety on such bond shall be approved by the Mayor and Council and shall be filed with the City Treasurer, provided that the premium on the bond shall be paid out of any public utility fund designated by the Mayor and Council.

(Neb. RS 17-806)

(F) No member of the Board of Public Works shall ever be financially interested, directly or indirectly, in any contract entered into by them on behalf of such city for more than \$10,000 in one year.

(Neb. RS 17-807)

(G) If the Board determines that the best interests of the city and the patrons of the utility will be better or more economically served, they may employ the duly elected City Clerk as ex officio

bookkeeper and collector for the utility or utilities, and he or she may be paid a reasonable salary for the extra services required of him or her in such position in addition to his or her salary as City Clerk.
(Neb. RS 17-808)

(H) Rates or charges for service may be fixed or changed by resolution duly adopted by the Board of Public Works.

(Neb. RS 17-810)

Cross-reference:

Local legislation regarding Board of Public Works, see Title XVII

FIRE DEPARTMENT

§ 32.35 OPERATION AND FUNDING.

(A) The city may operate a Fire Department through the Fire Chief and firefighters.

(B) The city shall have power to procure fire engines, hooks, ladders, buckets, and other apparatus, to organize fire engine, hook and ladder, and bucket companies, to prescribe rules of duty and the government of the Fire Department with such penalties as the City Council may deem proper, not exceeding \$100, and to make all necessary appropriations for the Fire Department.

(Neb. RS 17-147)

(C) If the city has only a voluntary fire department or companies, the City Council may levy a tax annually of not more than \$0.07 on each \$100 upon the taxable value of all the taxable property within the city for the maintenance and benefit of the fire department or companies. The amount of such tax shall be established at the beginning of the year and shall be included in the adopted budget statement. Upon collection of such tax, the City Treasurer shall disburse the same upon the order of the Fire Chief with the approval of the City Council.

(Neb. RS 17-718)

Statutory reference:

Fire station acquisition, construction, and maintenance, see Neb. RS 17-953 et seq.

§ 32.36 FIRE CHIEF.

The Fire Chief shall manage the Fire Department, and it shall be his or her duty to inform the City Council when any of the fire engines, hose, ladders, or other apparatus needs repair. Upon the written consent and directive of the City Council, the Fire Chief shall cause the repair, improvement, or maintenance of the equipment and shall personally supervise and approve of the same. It shall be the duty of the Fire Chief to come before the City Council at the regular meeting in January of each year to give an annual report to the City Council of the general condition and the proposed additions or improvements recommended by him or her.

§ 32.37 MEMBERSHIP.

(A) The Fire Department shall consist of so many members as may be decided by the City Council. The members may organize themselves in any way they may decide, subject to the review of the City Council.

(B) The volunteer Fire Department shall not have upon its rolls at one time more than 25 persons, for each engine and hose company in the Fire Department, and no hook and ladder company shall have upon its rolls at any one time more than 25 members. No organization shall be deemed to be a bona fide fire or hook and ladder company until it has procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of \$700, and of a hook and ladder company to the value of \$500.

(Neb. RS 35-102)

(C) Members in good standing are those who keep their dues promptly paid up and are present and render active service when called out for the legitimate purposes of the Fire Department.

(Neb. RS 35-103)

(D) Volunteer firefighters of the Fire Department shall be deemed employees of the city while in the performance of their duties as members of the Department. Members of the volunteer Fire Department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the Fire Chief or some person authorized to act for the Chief for membership therein to the Mayor and City Council and upon confirmation shall be deemed employees of the city. Members of the Fire Department after confirmation to membership may be removed by a majority vote of the City Council and thereafter shall not be considered employees of the city. Firefighters of the Fire Department shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of the city, but only if directed to do so by the Fire Chief or some person authorized to act for the Chief.

(Neb. RS 48-115)

(E) The City Council shall purchase and maintain in force a policy of group term life insurance to age 65 covering the lives of all of the active volunteer fire and rescue personnel, except that when any such person serves more than 1 city or rural or suburban fire protection district, the policy shall be purchased only by the first city or district which he or she serves. The policy shall provide a minimum death benefit of \$10,000 for death from any cause and shall, at the option of the insured, be convertible to a permanent form of life insurance at age 65. The coverage of such policy shall terminate as to any individual who ceases to be an active volunteer member of the Fire Department.

(Neb. RS 35-108)

(F) For purposes of the prohibition on receipt of any witness fee, attendance fee, or mileage fee by an employee of the city called as a witness in connection with his or her officially assigned duties, volunteer firefighters and rescue squad members testifying in that capacity alone shall not be deemed employees of the city.

(Neb. RS 33-139.01)

(G) The City Council may compensate or reimburse any member of the Fire Department for expenses incurred in carrying out his or her duties in an amount set by resolution.

(H) All members of the Fire Department shall be subject to such rules and regulations, and shall perform such duties, as may be prescribed or required of them by the Fire Chief or the City Council. The members of the Fire Department shall, during the time of a fire or great public danger, have and exercise the powers and duties of police officers and shall have full power and authority to arrest all persons guilty of any violation of the city code or the laws of the state.

(I) Members of the Fire Department may hold meetings and engage in social activities with the approval of the City Council. The secretary shall, upon request, keep a record of all meetings and shall make a report to the City Council of all meetings and activities of the Fire Department.

§ 32.38 RECORDS.

The Fire Chief shall keep or cause to be kept a record of all meetings of the Fire Department, the attendance record of all members, and a record of all fires and shall make a full report of these records to the City Clerk during the last week in April each year. The record of any fire shall include the cause, origin, circumstances, property involved, and whether criminal conduct may have been involved. In the event of sizable property damage, the Fire Chief shall include the information of whether the losses were covered by insurance, and if so, in what amount. All records shall be available to the public at any reasonable time.

§ 32.39 FIRES.

It shall be the duty of the Fire Department to use all proper means for the extinguishment of fires, to protect property within the city, and to secure the observance of all ordinances, laws, and other rules and regulations with respect to fires and fire prevention.

§ 32.40 DISTANT FIRES.

(A) Upon the permission of the Mayor or Fire Chief, or pursuant to any agreement with a fire district for mutual aid protection, such fire equipment of the city as may be designated by the City Council as rural equipment may be used beyond the corporate limits to extinguish reported fires.

(B) The firefighters of the city shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside the corporate limits of the city when directed to do so by the City Council or the Fire Chief or some person authorized to act for the Chief, and in so doing, may take such fire equipment of the city as may be designated by the City Council.

§ 32.41 INSPECTIONS.

(A) The Fire Chief where a Fire department is established or the Mayor where no Fire Department exists, at all reasonable hours, may enter into all buildings and upon all premises within his or her jurisdiction for the purposes of examination, in harmony with Neb. RS 81-501.01 to 81-531, the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal. (Neb. RS 81-512)

(B) It shall be the duty of the Fire Chief, when directed to do so by the City Council, to inspect or cause to be inspected by Fire Department officers, members, or some other official as often as may be necessary, but not less than 2 times a year, all buildings, premises, and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to create a fire hazard. The inspection shall be of the storage, sale, and use of flammable liquids, combustibles, and explosives; electric wiring and heating; the means and adequacy of exits, in case of fire in schools, churches, hotels, halls, theaters, factories, hospitals, and all other buildings in which numbers of persons congregate from time to time for any purpose whether publicly or privately owned; the design, construction, location, installation, and operation of equipment for storing, handling, and utilizing liquefied petroleum gases, specifying the odorization of such gases and the degree thereof; and chemicals, prozylin plastics, nitrocellulose films, or any other hazardous material that may now or hereafter exist.

§ 32.42 NOTICE OF VIOLATION.

(A) Upon the finding that the city code has been violated, the Fire Chief shall notify, or cause to be notified, the owner, occupant, or manager of the premise where a violation has occurred. Notice may be made personally or by delivering a copy to the premise and affixing it to the door of the main entrance of the premise. Whenever it may be necessary to serve such an order upon the owner, the order may be served personally, or by mailing a copy to the owner's last known post office address if the owner is absent from the jurisdiction.

(B) Any such order shall be immediately complied with by the owner, occupant, or manager of the premise or building. The owner, occupant, or manager may, within 5 days after the order by the Fire Chief or his or her agent, appeal the order with the City Council requesting a review, and it shall be the duty of the City Council to hear the same within not less than 5 days nor more than 10 days from the time when the request was filed in writing with the City Clerk. The City Council shall then affirm, modify, or rescind the order as safety and justice may require, and the decision shall then be final, subject only to any remedy which the aggrieved person may have at law or equity. The order shall be modified or rescinded only where it is evident that reasonable safety exists and that conditions necessitate a variance due to the probable hardship in complying literally with the order of the Fire Chief. A copy of any decision so made shall be sent to both the Fire Chief and the owner, occupant, or manager making the appeal.

§ 32.43 POWER OF ARREST.

The Fire Chief or the Assistant Fire Chief shall have the power, during the time of a fire and for a period of 36 hours after its extinguishment, to arrest any suspected arsonist, or other person hindering or resisting the fire fighting effort, or any person who conducts himself or herself in a noisy or disorderly manner. The officials shall be severally vested with the usual powers and authority of city police officers to command all persons to assist them in the performance of their duties.

§ 32.44 FIRE INVESTIGATION.

The Fire Chief shall investigate or cause to be investigated the cause, origin, and circumstances of every fire occurring in the city by which property has been destroyed or damaged. All fires of unknown origin shall be reported, and such officer shall especially make an investigation and report as to whether the fire was the result of carelessness, accident, or design. The investigation shall begin immediately after of the occurrence of the fire, and the State Fire Marshal shall have the right to supervise and direct the investigation whenever he or she deems it expedient or necessary. The officer making the investigation of fires occurring in the city shall forthwith notify the State Fire Marshal and shall within 1 week of the occurrence of the fire furnish him or her written statement of all the facts relating to the cause and origin of the fire and such further information as he or she may call for.

(Neb. RS 81-506)

POLICE DEPARTMENT**§ 32.60 DUTIES.**

(A) If the Mayor and City Council have provided for the appointment of a Police Chief, the Police Department shall consist of the Chief of Police and such further number of regular police officers as may be duly ordered by resolution of the Council.

(B) The Chief of Police shall, subject to the direction of the Mayor, have control and management of all matters relating to the Police Department and its officers and members and shall have the custody and control of all property and books belonging to the Department. The Chief shall devote his or her whole time to the city affairs and interests of the city and to the preservation of peace, order, safety, and cleanliness thereof.

(C) The Department shall execute and enforce all laws and also the orders of the Mayor. It shall be the duty of the Department to protect the rights of persons and property. The Department shall take notice of all nuisances, impediments, obstructions, and defects in the streets, avenues, alleys, business places, and residences of the city. The Department shall execute, or cause to be executed, the processes issued and shall cause all persons arrested to be brought before the proper court for trial as speedily as possible. The Chief of Police and all regular and special police officers shall become thoroughly

conversant with the laws of the city and shall see that the same are strictly enforced and shall make sworn complaints against any person or persons for violation of the same. It shall be the duty of every city police officer making a lawful arrest to search all persons in the presence of some other person, whenever possible, and to carefully keep and produce to the proper judicial official upon the trial everything found upon the person of such prisoners. All personal effects so taken from prisoners shall be restored to them upon their release. The Police Chief and other police officers shall file such reports as may be required by the city ordinances and the laws of the state. No law enforcement official shall have any interest in any establishment having a liquor license.

(D) Suitable badges shall be furnished to the city police by the city. Any police officer who loses or destroys the same shall be required to pay the replacement costs. If a police officer leaves the city police force, he or she shall immediately deliver his or her badge to the Police Chief.

(E) City police officers shall have full power and authority to call on any person whenever necessary to assist them in performing public duties, and failure, neglect, or refusal to render such assistance shall be deemed an offense.

Penalty, see § 10.99

Cross-reference:

Refusing to aid a police officer, see § 132.03

§ 32.61 RESERVE OFFICER BOND.

No appointment of a law enforcement reserve officer shall be valid until a bond in the amount of \$2,000, payable to the city, has been filed with the City Clerk by the individual appointed or a blanket surety bond arranged and paid for by the City Council and bonding all such officers of the City Council has been filed. These bonds shall be subject to the provisions of Neb. RS Ch. 11, art. 1.

(Neb. RS 81-1444)

§ 32.62 ARREST AND ENFORCEMENT JURISDICTION.

(A) The police officers of the city shall have the power to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as the County Sheriff and to keep such offenders in the city prison, county jail or other place of confinement to prevent their escape until trial can be had before the proper officer.

(Neb. RS 17-118)

(B) Every city law enforcement officer has the power and authority to enforce the laws of this state and the city or otherwise perform the functions of that office anywhere within his or her primary jurisdiction.

(C) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LAW ENFORCEMENT OFFICER IN NEED OF ASSISTANCE.

- (a) A law enforcement officer whose life is in danger; or
- (b) A law enforcement officer who needs assistance in making an arrest and the suspect:
 - (i) Will not be apprehended unless immediately arrested;
 - (ii) May cause injury to himself or herself or others or damage to property unless immediately arrested; or
 - (iii) May destroy or conceal evidence of the commission of a crime.

PRIMARY JURISDICTION. The geographic area within territorial limits of the city.

(D) Any city law enforcement officer who is within this state, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

- (1) Any city law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow that person into any other jurisdiction in this state and there arrest and detain that person and return that person to the officer's primary jurisdiction;
- (2) Any city law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow that person anywhere in an area within 25 miles of the boundaries of the officer's primary jurisdiction and there arrest and detain that person and return that person to the officer's primary jurisdiction;
- (3) Any city law enforcement officer has this enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance; and
- (4) If the city, under the provisions of the Interlocal Cooperation Act or the Joint Public Agency Act, enters into a contract with any other city or county for law enforcement services or joint law enforcement services, law enforcement personnel may have this enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, the city shall provide liability insurance coverage for its own law enforcement personnel as provided in Neb. RS 13-1802.

(E) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of Neb. RS 28-1465, 28-1466, 28-1472, 37-1254.01,

37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, a city law enforcement officer has the power and authority to do any of the following or any combination thereof:

- (1) Transport that person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;
- (2) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or
- (3) With respect to that person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat, or aircraft while under the influence of alcoholic liquor or of any other drug or otherwise in violation of Neb. RS 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02.

(Neb. RS 29-215)

(F) If city law enforcement personnel are rendering aid in their law enforcement capacity outside the limits of the city in the event of disaster, emergency, or civil defense emergency or in connection with any program of practice or training for a disaster, emergency, or civil defense emergency when that program is conducted or participated in by the Nebraska Emergency Management Agency or with any other related training program, the law enforcement personnel have the power and authority to enforce the laws of this state or any legal ordinances or resolutions of the local government where they are rendering aid or otherwise perform the functions of their office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within their primary jurisdiction. The city shall self-insure or contract for insurance against any liability for personal injuries or property damage that may be incurred by it or by its personnel as the result of any movement made pursuant to this division.

(Neb. RS 81-829.65)

§ 32.63 OFFICERS; DISCIPLINE OR REMOVAL FROM DUTY.

(A) (1) The City Council shall by ordinance adopt rules and regulations governing the removal or discipline of any police officer, including the Chief of Police. The ordinance shall include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted.

(2) Both the police officer and the individual imposing the disciplinary action shall have the right at the hearing to be heard and to present evidence to the Council for its consideration.

(3) Not later than 30 days following the adjournment of the meeting at which the hearing was held, the Council shall vote to uphold, reverse, or modify the removal or disciplinary action. The failure of the Council to act within 30 days or the failure of a majority of the elected Councilmembers to vote to reverse or modify the removal or disciplinary action shall be construed as a vote to uphold the removal

or disciplinary action. The decision of the Council shall be based upon its determination that, under the facts and evidence presented at the hearing, the challenged removal or disciplinary action was necessary for the proper management and the effective operation of the Police Department in the performance of its duties under the statutes of the state.

(4) Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this division, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(Neb. RS 17-107)

(B) (1) Except as provided otherwise in an ordinance adopted by the Council, the procedures specified in this division (B) shall constitute the rules and regulations required by Neb. RS 17-107.

(2) No police officer, including the Chief of Police, shall be disciplined, suspended, demoted, removed, or discharged except upon written notice stating the reasons for such disciplinary action, suspension, demotion, removal, or discharge. Such notice shall also contain a statement informing the police officer of his or her right to a hearing before the City Council.

(3) Any police officer so disciplined, suspended, demoted, removed, or discharged may, within 10 days after being notified of such disciplinary action, suspension, demotion, removal, or discharge, file with the City Clerk a written demand for a hearing before the City Council. The Council shall set the matter for hearing not less than 10 nor more than 20 days after the filing of the written demand for a hearing. The Council shall give the police officer written notice of the hearing not less than 7 days prior to the hearing.

(4) At the hearing, the police officer shall have the right to:

- (a) Respond in person to the charges and to present witnesses and documentary evidence;
- (b) Confront and cross-examine available adverse witnesses; and
- (c) To be represented by counsel.

CHAPTER 33: GENERAL PROVISIONS

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MEETINGS**§ 33.01 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MEETING. All regular, special, or called meetings, formal or informal, of a public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action.

PUBLIC BODY.

(1) (a) The City Council;

(b) All independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, ordinance, or otherwise pursuant to law; and

(c) Advisory committees of the bodies listed above.

(2) **PUBLIC BODY** does not include subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless the subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body.

(Neb. RS 84-1409)

§ 33.02 OPEN TO PUBLIC; NOTICE; AGENDA.

(A) The formation of public policy is public business and may not be conducted in secret. Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

(Neb. RS 84-1408)

(B) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by the public body and recorded in its minutes. The notice shall be transmitted to all members of the public body and to the public. The notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, is readily available for public inspection at the office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than 24 hours before the scheduled commencement of the meeting or 48 hours before the scheduled commencement of a meeting of the City Council scheduled outside the

corporate limits of the city. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(Neb. RS 84-1411)

§ 33.03 NOTICE TO NEWS MEDIA.

The City Clerk, in the case of the City Council, and the secretary or other designee of each other public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(Neb. RS 84-1411)

§ 33.04 COUNCIL MEETINGS; WHEN; QUORUM; VOTES.

(A) Regular meetings of the City Council shall be held at such times as the Council may provide by ordinance. A majority of all the members elected to the Council shall constitute a quorum for the transaction of any business, but a fewer number may adjourn from time to time and compel the attendance of absent members. Unless a greater vote is required by law, an affirmative vote of at least $\frac{1}{2}$ of the elected members shall be required for the transaction of any business.

(Neb. RS 17-105)

(B) (1) The Mayor or any 3 Councilmembers shall have power to call special meetings of the City Council, the object of which shall be submitted to the Council in writing; and the call and object, as well as the disposition thereof, shall be entered upon the journal by the City Clerk.

(Neb. RS 17-106)

(2) On filing the call for a special meeting, the City Clerk shall notify the Mayor and Councilmembers of the special meeting, stating the time and purpose.

(C) Unless otherwise provided by the Council, on the request of any 2 members, whether a quorum is present or not, all absent members shall be sent for and compelled to attend.

(D) At the hour appointed for a meeting, the City Clerk shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present, the Council shall be called to order by the Mayor, if present, or if absent, by the President of the Council.

§ 33.05 EMERGENCY MEETINGS.

When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in that meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of § 33.03 shall be complied with in conducting

emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(Neb. RS 84-1411)

§ 33.06 ATTENDANCE OTHER THAN IN PERSON.

A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment. (Neb. RS 84-1411)

§ 33.07 CLOSED SESSIONS.

(A) (1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if that individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct; or

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if that person has not requested a public meeting.

(2) Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(B) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action means a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given

by members of the public body to legal counsel or other negotiators in closed sessions authorized under division (A)(1)(a) of this section.

(C) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for the protection of the public interest or the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. The challenge and its disposition shall be recorded in the minutes.

(D) Nothing in this section shall be construed to require that any meeting be closed to the public. (Neb. RS 84-1410)

§ 33.08 PROHIBITED ACTS; EXEMPT EVENTS.

(A) No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing this subchapter or the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or electronic communication shall be used for the purpose of circumventing the requirements of this subchapter or the Act.

(B) This subchapter and the Act do not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(Neb. RS 84-1410)

§ 33.09 PUBLIC PARTICIPATION.

(A) Subject to this subchapter and the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to § 33.07, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(B) It shall not be a violation of division (A) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(C) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be

placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(D) No public body shall, for the purpose of circumventing this subchapter or the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(E) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(F) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if, a member entity of the public body is located outside of this state and the other requirements of Neb. RS 84-1412 are met.

(G) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(H) Public bodies shall make available at the meeting, for examination and copying by members of the public, at least 1 copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least 1 current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

(Neb. RS 84-1412)

§ 33.10 CITY COUNCIL; ORDER OF BUSINESS.

Promptly at the hour set by law on the day of each regular meeting, the members of the City Council, the Mayor, the City Clerk, and such other city officials that may be required shall take their regular stations in the meeting place, and the business of the city shall be taken up for consideration and disposition in the manner prescribed by the official agenda on file at the office of the City Clerk.

§ 33.11 VOTES.

(A) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted, or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a city which utilizes an electronic voting device which allows the yeas and nays of each member of the City Council to be readily seen by the public.

(B) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(Neb. RS 84-1413)

Cross-reference:

City Council voting procedures, see §§ 30.49 and 33.04

§ 33.12 CITY COUNCIL; PARLIAMENTARY PROCEDURE.

Unless the City Council provides otherwise, the rules of parliamentary procedure specified in this section shall apply to meetings of the City Council. The Mayor shall preserve order during meetings of the City Council and shall decide all questions of order, subject to an appeal to the Council. When any person is called to order, he or she shall be seated until the point is decided. When the Mayor is putting the question, no person shall leave the meeting room. Every person present, previous to speaking, shall rise from his or her seat and address the presiding officer and while speaking shall confine his or her comments to the question. When 2 or more persons rise at once, the Mayor shall recognize the one who spoke first. All resolutions or motions shall be reduced to writing before being acted upon, if requested by the City Clerk or any member of the Council. Every member of the Council who is present when a question is voted upon shall cast his or her vote unless excused by a majority of the members of the Council present. No motion shall be put or debated unless seconded. When seconded, it shall be stated by the Mayor before being debatable. In all cases where a motion or resolution is entered on the minutes, the name of the member of the Council making the motion or resolution shall be entered also. After each vote, the "yeas" and "nays" shall be taken and entered in the minutes. Before the vote is actually taken, any resolution, motion, or proposed ordinance may be withdrawn from consideration by the sponsor with the consent of the member of the Council seconding the resolution, motion, or ordinance. When, in the consideration of an ordinance, different times or amounts are proposed, the question shall be put on the largest sum, or the longest time. A question to reconsider shall be in order when made by a member voting with the majority, but the motion to reconsider must be made before the expiration of the third regular meeting after the initial consideration of the question. When any question is under debate, no motion shall be made, entertained, or seconded except the previous question, a motion to table, and to adjourn. Each of those motions shall be decided without debate. Any of the rules of the Council for meetings may be suspended by a 2/3 vote of the members present. In all cases in which provisions are not made by these rules, Robert's Rules of Order is the authority by which the Council shall decide all procedural disputes that may arise.

§ 33.13 MINUTES.

(A) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(B) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(C) Minutes shall be written and available for inspection within 10 working days or prior to the next convened meeting, whichever occurs earlier, except that the city may have an additional 10 working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency. (Neb. RS 84-1413)

§ 33.14 CHANGE IN OFFICE.

(A) The Mayor and City Council shall meet at the time and place of the first regular meeting in December in each election year, and the outgoing officers and the outgoing members of the Council shall present their reports. Upon the outgoing Council having completed its business, the outgoing members of the Council shall surrender their offices to the incoming members, and the outgoing officers shall thereupon each surrender to their successors in office all property, records, papers, and moneys belonging to the same.

(B) The newly elected members of the Council and those continuing in office shall convene immediately after the prior Council adjourns and proceed to organize themselves for the ensuing year. The Mayor shall call the meeting to order. The Clerk shall report to the Council the names of all Councilmembers-elect who have qualified for their respective offices. The Council shall examine the credentials of its members and any other elective officers of the city to see that each has been duly and properly elected and to see that such oaths and bonds as are required have been given. The Clerk's report shall be spread upon the minutes of the meeting preceding the roll call.

(C) After ascertaining that all Councilmembers and officers are duly qualified and after the Clerk has called the roll, the Council shall elect a President of the Council. The Mayor shall nominate his or her candidates for appointive offices in which the terms of incumbents are expired and call for a vote on approval of the candidates. The Mayor shall then proceed with the regular order of business.

BONDS AND OATHS

§ 33.30 BONDS; REQUIREMENTS.

(A) The city may enact ordinances or bylaws to require from all officers and servants, elected or appointed, bonds and security or evidence of equivalent insurance for the faithful performance of their duties. The city may pay the premium for such bonds or insurance coverage. (Neb. RS 17-604)

(B) (1) All official bonds of officers of the city shall be in form joint and several and made payable to the city in such penalty as the City Council may fix.

(2) In place of the individual bonds required to be furnished by municipal officers, a schedule, position, blanket bond or undertaking, or evidence of equivalent insurance may be given by municipal

officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking, or evidence of insurance coverage covering all the officers, including officers required by law to furnish an individual bond or undertaking, may be furnished. The municipality may pay the premium for the bond or insurance coverage. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by law or by the City Council, and with such terms and conditions as may be required. (Neb. RS 11-104)

(3) The penalty amount on any bond shall not fall below the legal minimum, when one has been set by the state, for each particular official.

(C) (1) Official bonds, with the oath endorsed thereon, shall be filed in the City Clerk's office within the following time:

(a) Of all officers elected at any general election, following receipt of their election certificate and not later than ten days before the first Thursday after the first Tuesday in January next succeeding the election;

(b) Of all appointed officers, within 30 days after their appointment; and

(c) Of officers elected at any special election and city officers, within 30 days after the canvass of the votes of the election at which they were chosen.

(2) The filing of the bond with the oath endorsed thereon does not authorize a person to take any official action prior to the beginning of his or her term of office pursuant to Article XVII, section 5, of the Constitution of Nebraska.

(Neb. RS 11-105)

(D) All official bonds of city officers shall be executed by the principal named in such bonds and by at least 2 sufficient sureties who shall be freeholders of the county in which such bonds are given, or any official bond of a city officer may be executed by the officer as principal and by a guaranty, surety, fidelity, or bonding company as surety, or by 2 or more such companies. Only such companies as are legally authorized to transact business in this state shall be eligible to suretyship on the bond of a city officer.

(Neb. RS 11-109)

(E) The City Clerk shall carefully record and preserve the bonds in his or her office and shall give certified copies thereof, when required, under the seal of his or her office, and shall be entitled to receive for the same the usual fee allowed by law for certified copies of records in other cases.

(Neb. RS 11-110)

(F) (1) The approval of each official bond shall be endorsed upon such bond by the officer approving the same, and no bond shall be filed and recorded until so approved.

(Neb. RS 11-111)

(2) No bond shall be deemed to be given or complete until the approval of the City Council and all sureties are endorsed in writing on the instrument by the Mayor and City Clerk pursuant to the approval of the City Council.

(G) All official bonds shall obligate the principal and sureties for the faithful discharge of all duties required by law of such principal and shall inure to the benefit of any persons injured by a breach of the conditions of such bonds.

(Neb. RS 11-112)

(H) No official bond shall be rendered void by reason of any informality of irregularity in its execution or approval.

(Neb. RS 11-113)

(I) No city official shall be taken as security on the bond of any administrator, executor, or other officer from whom by law bond is or may be required.

(Neb. RS 11-114)

(J) If any person elected or appointed to any office neglects to have his or her official bond executed and approved as provided by law and filed for record within the time limited by this section, the City Clerk shall immediately issue an order to such person to show cause why he or she has failed to properly file such bond and why his or her office should not be declared vacant. If such person properly files the official bond within ten days of the issuance of the show cause order for appointed officials or before the date for taking office for elected officials, such filing shall be deemed to be in compliance with this section. If such person does not file the bond within ten days of the issuance of such order for appointed officials or before the date for taking office for elected officials and sufficient cause is not shown within that time, his or her office shall thereupon ipso facto become vacant and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other cases of vacancy in the same office.

(Neb. RS 11-115)

(K) Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

(Neb. RS 11-116)

(L) When the incumbent of an office is reelected or reappointed, he or she shall qualify by taking the oath and giving the bond as above directed, but when such officer has had public funds or property in his or her control, his or her bond shall not be approved until he or she has produced and fully accounted for such funds and property. When it is ascertained that the incumbent of an office holds over by reason of the nonelection or nonappointment of a successor or of the neglect or refusal of the successor to qualify, he or she shall qualify anew within 10 days from the time at which his or her successor, if elected, should have qualified.

(Neb. RS 11-117)

(M) No person shall be surety for the same officer for more than 2 successive terms of the same office, but this provision shall not apply to incorporated surety companies.

(Neb. RS 11-118)

(N) If the sureties on the official bond of any appointed officer of the city, in the opinion of the City Council, become insufficient, the Council may, by resolution, fix a reasonable time within which the officer may give a new bond or additional sureties as directed. If the officer fails, refuses, or neglects to give a new bond or additional sureties to the satisfaction and approval of the Council, the office shall, by such failure, refusal, or neglect, become vacant and it shall be the duty of the Council to appoint a competent and qualified person to fill the office.

§ 33.31 OATH OF OFFICE; CITY OFFICIALS.

(A) All officials of the city, whether elected or appointed, except when a different oath is specifically provided herein, shall before entering upon their respective duties take and subscribe the following oath, which shall be endorsed upon their respective bonds:

“I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska, against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely and without mental reservation or for the purpose of evasion; and that I will faithfully and impartially perform the duties of the office of _____, according to law and to the best of my ability. And I do further swear that I do not advocate nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am in this position I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence. So help me God.”

(B) If any such officer is not required to give bond, the oath shall be filed with the City Clerk.
(Neb. RS 11-101)

COMPENSATION; CONFLICTS OF INTEREST

§ 33.45 COMPENSATION; HOW FIXED; LIMITATIONS.

(A) The officers and employees of the city shall receive such compensation as the Mayor and Council shall fix by ordinance.

(Neb. RS 17-108)

(B) The city may enact ordinances or bylaws to regulate and prescribe the compensation of officers not provided for in state law.

(Neb. RS 17-604)

(C) No officer shall receive any pay or perquisites from the city other than his or her salary. The City Council shall not pay or appropriate any money or other valuable thing to any person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of the city.

(Neb. RS 17-611)

(D) The salary of any elective officer shall not be increased or diminished during the term for which he or she shall have been elected, except when there has been a combination and merger of offices as provided in § 31.03, except that when there are officers elected to the Council, or any other board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such council, board or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he or she was elected if during the same time the emoluments thereof were increased.

(Neb. RS 17-612)

§ 33.46 CONFLICT OF INTEREST INVOLVING CONTRACTS.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS ASSOCIATION.

(a) A business:

1. In which the individual is a partner, limited liability company member, director, or officer; or

2. In which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth \$1,000 or more at fair market value or which represents more than a 5% equity interest or is a stockholder of publicly traded stock worth \$10,000 or more at fair market value or which represents more than 10% equity interest.

(b) An individual who occupies a confidential professional relationship protected by law shall be exempt from this definition. This definition shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker.

(Neb. RS 49-1408)

IMMEDIATE FAMILY. A child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes.

(Neb. RS 49-1425)

OFFICER.

(a) Includes:

1. A member of any board or commission of the city which spends and administers its own funds, who is dealing with a contract made by such board or commission; or
2. Any elected city official.

(b) **OFFICER** does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(B) (1) Except as provided in Neb. RS 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of the contract with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the County Attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within 1 year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefitted thereby.

(2) The prohibition in this division (B) shall apply only when the officer or his or her parent, spouse, or child:

- (a) Has a business association with the business involved in the contract; or
- (b) Will receive a direct pecuniary fee or commission as a result of the contract.

(C) Division (B) of this section does not apply if the contract is an agenda item approved at a meeting of the governing body and the interested officer:

(1) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(2) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would

prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(3) Does not act for the governing body which is a party to the contract as to inspection or performance under the contract in which he or she has an interest.

(D) An officer who has no business association with the business involved in the contract, or will not receive a direct pecuniary fee or commission as a result of the contract, shall not be deemed to have an interest within the meaning of this section.

(E) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than 5% of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(F) If an officer's parent, spouse, or child is an employee of the officer's governing body, the officer may vote on all issues of the contract which are generally applicable to all employees, or all employees within a classification, and do not single out his or her parent, spouse, or child for special action.

(G) Neb. RS 49-14,102 does not apply to contracts covered by this section.
(Neb. RS 49-14,103.01)

(H) (1) The person charged with keeping records for the governing body shall maintain separately from other records a ledger containing the information listed in divisions (H)(1)(a) through (H)(1)(e) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to division (C) of this section. This information shall be kept in the ledger for 5 years from the date of the officer's last day in office and shall include:

- (a) The names of the contracting parties;
- (b) The nature of the interest of the officer in question;
- (c) The date that the contract was approved by the governing body;
- (d) The amount of the contract; and
- (e) The basic terms of the contract.

(2) The information supplied relative to the contract shall be provided no later than 10 days after the contract has been signed by both parties. The ledger kept pursuant to this division (H) shall be available for public inspection during the normal working hours of the office in which it is kept.
(Neb. RS 49-14,103.02)

(I) An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to this section. The statement required to be filed by division (H) of this section shall be filed within 10 days after the account is opened. Thereafter, the person charged with keeping records for the governing body shall maintain a running account of amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to this section.

(Neb. RS 49-14,103.03)

(J) Notwithstanding divisions (A) through (I) of this section, the governing body may prohibit contracts over a specific dollar amount in which an officer of the governing body may have an interest. (Neb. RS 49-14,103.05)

(K) The governing body may exempt from divisions (A) through (I) of this section, contracts involving \$100 or less in which an officer of that body may have an interest.

(Neb. RS 49-14,103.06)

Statutory reference:

Other provisions on conflicts of interest, see Neb. RS 18-305 through 18-312 and 49-1499.03 through 49-14,103

Penalty for violation of restrictions on contracts, see Neb. RS 49-14,103.04

NOTICES

§ 33.60 NOTICES; PUBLICATION.

If the city is required to publish a notice or advertisement in a legal newspaper in or of general circulation in the city, and if there is no legal newspaper in or of general circulation in the city, then the city shall publish such notice or advertisement in a legal newspaper in or of general circulation in the county in which the city is located. If there is no legal newspaper in or of general circulation in such county, then the city shall publish such notice or advertisement by posting a written or printed copy thereof in each of three public places in the city for the same period of time the city is required to publish the notice or advertisement in a legal newspaper.

CHAPTER 34: ELECTIONS

Section

- 34.01 Generally
- 34.02 Notice
- 34.03 Registered voters; qualifications
- 34.04 Special elections
- 34.05 Election of officers; certifications required
- 34.06 Partisan ballot; when allowed; requirements
- 34.07 Candidate filing forms; deadlines; filing officer
- 34.08 Filing fee
- 34.09 Petition, write-in, and other candidates for general election ballot; procedures
- 34.10 Recall procedure
- 34.11 Exit polls

Statutory reference:

Election Act, see Neb. RS 32-101

§ 34.01 GENERALLY.

(A) All city issues and offices shall be combined on the statewide primary and general election ballots whenever possible. The issuance of separate ballots shall be avoided in a statewide election if city offices or issues can reasonably be combined with the nonpartisan ballot and state law does not require otherwise. All city elections involving the election of officers shall be held in accordance with the Election Act and in conjunction with the statewide primary or general election.

(Neb. RS 32-556)

(B) When the city holds an election in conjunction with the statewide primary or general election, the election shall be held as provided in the Election Act. Any other election held by the city shall be held as provided in the Election Act unless otherwise provided by the charter, code, or bylaws of the city.

(Neb. RS 32-404)

§ 34.02 NOTICE.

The notice of election required to be published by the Election Commissioner or County Clerk pursuant to Neb. RS 32-802 shall serve as the notice requirement for all city elections which are held in conjunction with the statewide primary or general election.

§ 34.03 REGISTERED VOTERS; QUALIFICATIONS.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

REGISTERED VOTER. An elector who has a current voter registration record on file with the Election Commissioner or County Clerk in the county of his or her residence.

(Neb. RS 32-115)

(B) All registered voters residing within the corporate limits of the city on or before election day shall be entitled to vote at all city elections.

(Neb. RS 17-602)

Statutory reference:

Definition of elector, see Neb. RS 32-110

§ 34.04 SPECIAL ELECTIONS.

(A) (1) Except as provided in Neb. RS 77-3444, any issue to be submitted to the registered voters at a special election by the city shall be certified by the City Clerk to the Election Commissioner or County Clerk at least 50 days prior to the election. A special election may be held by mail as provided in Neb. RS 32-952 through 32-959. Any other special election under this section shall be subject to division (B) of this section.

(2) In lieu of submitting the issue at a special election, the city may submit the issue at a statewide primary or general election or at any scheduled county election, except that no such issue shall be submitted at a statewide election or scheduled county election unless the issue to be submitted has been certified by the City Clerk to the Election Commissioner or County Clerk by March 1 for the primary election and by September 1 for the general election.

(3) After the Election Commissioner or County Clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the City Clerk shall be responsible for the publication or posting of any required special notice of the submission of the issue other than the notice required to be given of the statewide election issues. The Election Commissioner or County Clerk shall prepare the ballots and issue ballots for early voting and shall also conduct the submission of the issue, including the receiving and counting of ballots on the issue. The election returns shall be made to the Election Commissioner or County Clerk. The ballots shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the County Canvassing Board, the Election Commissioner or County Clerk shall certify the election results to the City Council. The canvass by the County Canvassing Board shall have the same force and effect as if made by the City Council.

(Neb. RS 32-559)

(B) Any special election under the Election Act shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifically provided. No special election shall be held under the Election Act in April, May, June, October, November, or December of an even-numbered year unless it is held in conjunction with the statewide primary or general election.
(Neb. RS 32-405)

§ 34.05 ELECTION OF OFFICERS; CERTIFICATIONS REQUIRED.

No later than January 5 of each even-numbered year, the City Council shall certify to the Secretary of State, the Election Commissioner, or the County Clerk the name of the city, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office. The Secretary of State, Election Commissioner, and County Clerk shall prescribe the forms to be used for certification to him or her.

(Neb. RS 32-404)

§ 34.06 PARTISAN BALLOT; WHEN ALLOWED; REQUIREMENTS.

All elective city officers shall be nominated and elected on a nonpartisan basis unless the city provides for a partisan ballot by ordinance. No ordinance providing for nomination and election on a partisan ballot shall permit affiliation with any party not recognized as a political party for purposes of the Election Act. Such ordinance providing for nomination and election on a partisan ballot shall be adopted and effective not less than 60 days prior to the filing deadline.

(Neb. RS 32-557)

§ 34.07 CANDIDATE FILING FORMS; DEADLINES; FILING OFFICER.

(A) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in division (B). If a candidate is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office between December 1 and March 1 prior to the date of the general election.

(Neb. RS 32-606)

(B) Candidate filing forms shall be filed in the office of the Election Commissioner or County Clerk.

(Neb. RS 32-607)

Statutory reference:

Filling of vacancy on ballot, see Neb. RS 32-625 and 32-627

Withdrawal after filing, see Neb. RS 32-622

§ 34.08 FILING FEE.

(A) Except as provided in division (D) or (E) of this section, a filing fee shall be paid to the City Treasurer by or on behalf of each candidate for city office prior to filing for office. The fee shall be placed in the general fund of the city. No candidate filing forms shall be filed until the proper payment or the proper receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the City Treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(B) Except as provided in division (D) or (E) of this section, the filing fee shall be a sum equal to 1% of the annual salary as of November 30 of the year preceding the election for the office for which he or she files as a candidate.

(C) All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer. Any undeclared write-in candidate who is nominated or elected by write-in votes shall pay the filing fee required for the office within 10 days after the canvass of votes by the county canvassing board and shall file the receipt with the person issuing the certificate of nomination or the certificate of election prior to the certificate being issued.

(D) No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than \$500 per year.

(E) (1) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis.

(2) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AVAILABLE RESOURCES. Includes every type of property or interest in property that an individual owns and may convert into cash except:

(i) Real property used as a home;

(ii) Household goods of a moderate value used in the home; and

(iii) Assets to a maximum value of \$3,000 used by a recipient in a planned effort directed towards self-support.

PAUPER. A person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own.

(F) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the City Council prior to the date of the election. Upon approval of the claim by the City Council, the filing fee shall be refunded.

(Neb. RS 32-608)

§ 34.09 PETITION, WRITE-IN, AND OTHER CANDIDATES FOR GENERAL ELECTION BALLOT; PROCEDURES.

(A) (1) Any registered voter who was not a candidate in the primary election and who was not registered to vote with a party affiliation on or after March 1 and before the general election in the calendar year of the general election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed in this section and Neb. RS 32-621 or by nomination by political party convention or committee pursuant to Neb. RS 32-627 or 32-710.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under Neb. RS 32-625(2) and the candidate files for the office by petition as prescribed in divisions (B) and (C) of this section, files as a write-in candidate as prescribed in Neb. RS 32-615, or is nominated by political party convention or committee pursuant to Neb. RS 32-710.

(Neb. RS 32-616)

(B) Petitions for nomination shall conform to the requirements of Neb. RS 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. A sample copy of the petition shall be filed with the filing officer prior to circulation. Petitions shall be signed by registered voters residing in the city, if candidates are chosen at large, or in the ward in which the officer is to be elected, if candidates are chosen by ward, and shall be filed with the filing officer in the same manner as provided for candidate filing forms in § 34.07. Petition signers and petition circulators shall conform to the requirements of Neb. RS 32-629 and 32-630. No petition for nomination shall be filed unless there is attached thereto a receipt showing the payment of the filing fee required pursuant to Neb. RS 32-608. The petitions shall be filed by September 1 in the year of the general election.

(Neb. RS 32-617)

(C) (1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be at least 10% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the city or in the ward in which the officer is to be elected, not to exceed 2,000.

(2) The number of signatures of registered voters needed to place the name of a candidate for an office upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least 4,000, and at least 750 signatures shall be obtained in each congressional district in the state;

(b) For each partisan office to be filled by the registered voters of a county, at least 20% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the county, not to exceed 2,000, except that the number of signatures shall not be required to exceed 25% of the total number of registered voters voting for the office at the immediately preceding general election; and

(c) For each partisan office to be filled by the registered voters of a political subdivision other than a county, at least 20% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the political subdivision, not to exceed 2,000.

(Neb. RS 32-618)

§ 34.10 RECALL PROCEDURE.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

FILING CLERK. The Election Commissioner or County Clerk.
(Neb. RS 32-1301)

(B) (1) The Mayor, any member of the City Council, and any other elected official of the city may be removed from office by recall pursuant to this section.

(2) The recall procedure and special election provisions of this section shall apply to members of the City Council who are elected by ward. Only registered voters of such member's ward may sign a recall petition or vote at the recall election. The recall election shall be held within the member's ward. When a member of the City Council is nominated by ward in the primary election and elected at large in the general election, the recall provisions shall apply to the registered voters at the general election.
(Neb. RS 32-1302)

(C) (1) A petition demanding that the question of removing the Mayor, a member of the City Council, or any other elected official be submitted to the registered voters shall be signed by registered voters equal in number to at least 35% of the total vote cast for that office in the last general election, except that for City Council office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least 35% of the number of votes cast for the person receiving the most votes for such office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of Neb. RS 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least 1 registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name and office of the official sought to be removed, shall

include in concise language of 60 words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in Neb. RS 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in Neb. RS 25-505.01, by leaving a copy of the filing form at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in concise language of 60 words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within 20 days after the official receives the copy of the filing form. The filing clerk shall prepare the petition papers within 5 business days after receipt of the defense statement. The principal circulator or circulators shall gather the petition papers within 20 days after being notified by the filing clerk that the petition papers are available. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within 30 days from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of Neb. RS 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

(Neb. RS 32-1303)

(D) Each petition paper shall conform to the requirements of Neb. RS 32-1304.

(E) (1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within 30 days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in division (C) of this section.

(2) Within 15 days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting his or her signature be removed before the petitions are filed with the filing clerk for signature verification. If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

(Neb. RS 32-1305)

(F) (1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the City Council that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in Neb. RS 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in Neb. RS 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The City Council shall order an election to be held not less than 50 nor more than 80 days after the notification of the official whose removal is sought under division (F)(1) of this section, except that if any other election is to be held in the city within 90 days after such notification, the City Council shall provide for the holding of the recall election on the same day. All resignations shall be tendered as provided in Neb. RS 32-562. If the official whose removal is sought resigns before the recall election is held, the City Council may cancel the recall election if the City Council notifies the election commissioner or county clerk of the cancellation at least 24 days prior to the election, otherwise the recall election shall be held as scheduled.

(3) If the City Council fails or refuses to order a recall election within the time required, the election may be ordered by the district court having jurisdiction over a county in which the elected official serves. If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.

(Neb. RS 32-1306)

(G) The form of the official ballot at a recall election held pursuant to division (F) of this section shall conform to the requirements of Neb. RS 32-1307.

(H) (1) If a majority of the votes cast at a recall election are against the removal of the official named on the ballot or the election results in a tie, the official shall continue in office for the remainder of his or her term but may be subject to further recall attempts as provided in division (I) of this section.

(2) If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office which shall be filled as otherwise provided in this section and Neb. RS 32-567 to 32-570 and 32-574.

(3) If the election results show a margin of votes equal to 1% or less between the removal or retention of the official in question, the Secretary of State, Election Commissioner, or County Clerk shall order a recount of the votes cast unless the official named on the ballot files a written statement with the filing clerk that he or she does not want a recount.

(4) If there are vacancies in the offices of one-half or more of the members of the City Council or any other governing body at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the Secretary of State, Election Commissioner, or County Clerk.

(5) No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same governing body during the remainder of his or her term of office.
(Neb. RS 32-1308)

(I) No recall petition filing form shall be filed against an elected official within 12 months after a recall election has failed to remove him or her from office or within 6 months after the beginning of his or her term of office or within 6 months prior to the incumbent filing deadline for the office.
(Neb. RS 32-1309)

§ 34.11 EXIT POLLS.

No person shall conduct an exit poll, a public opinion poll, or any other interview with voters on election day seeking to determine voter preference within 20 feet of the entrance of any polling place or, if inside the polling place or building, within 100 feet of any voting booth.
(Neb. RS 32-1525) Penalty, see § 10.99

CHAPTER 35: FINANCE AND REVENUE

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GENERAL PROVISIONS

§ 35.01 DEFINITIONS.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

BIENNIAL BUDGET. A budget by the city that provides for a biennial period to determine and carry on the city's financial and taxing affairs.

BIENNIAL PERIOD. The two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by the city in determining and carrying on its financial and taxing affairs.

PUBLIC FUNDS. All money, including non-tax money, used in the operation and functions of governing bodies. If the city has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the city from a licensed lottery operator shall be considered **PUBLIC FUNDS**, and **PUBLIC FUNDS** shall not include amounts awarded as prizes. (Neb. RS 13-503)

§ 35.02 ANNUAL AUDIT; FINANCIAL STATEMENTS.

(A) (1) For the purpose of this division (A), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCOUNTANT. A duly licensed public accountant or certified public accountant who otherwise is not an employee of or connected in any way with the city.

ANNUAL AUDIT REPORT. The written report of the accountant and all appended statements and schedules relating thereto presenting or recording the findings of an examination or audit of the financial transactions, affairs, or financial condition of the city and its proprietary functions for the fiscal year immediately prior to the making of the annual report.

FISCAL YEAR. The fiscal year for the city or the fiscal year established in Neb. RS 18-2804 for a proprietary function if different than the city fiscal year. (Neb. RS 19-2902)

(2) The City Council shall cause an audit of the city's accounts to be made by a recognized independent and qualified accountant as expeditiously as possible following the close of the fiscal year and to cover all financial transactions and affairs of the city for that preceding fiscal year. The audit shall be made on a cash or accrual method at the discretion of the City Council. The audit shall be completed and the annual audit report made by the accountant shall be submitted within 6 months after the close of the fiscal year in any event, unless an extension of time is granted by a written resolution adopted by the City Council. If the city owns or operates any type of public utility or other enterprise which substantially generates its own revenue, that phase of the affairs of the city shall be audited separately from other functions of the city and the result shall appear separately in the annual audit report made by the accountant to the city and such audit shall be on an accrual basis and shall contain statements and materials which conform to generally accepted accounting principles. For the utilities operated through the Board of Public Works, the City Council may provide for an entirely separate audit, on an accrual basis, of such operations and report and by a different accountant than the one making the general audit.

(Neb. RS 19-2903)

(3) The annual audit report shall set forth, insofar as possible, the financial position and results of financial operations for each fund or group of accounts of the city. When the accrual method is selected for the annual audit report, the report shall be in accordance with generally accepted accounting principles. The annual audit report shall also include the professional opinion of the accountant with respect to the financial statements, or, if an opinion cannot be expressed, a declaration that the accountant is unable to express such an opinion with an explanation of the reasons why he or she cannot do so.

(Neb. RS 19-2904)

(4) At least 3 copies of such annual audit report shall be properly signed and attested by the accountant; 2 copies shall be filed with the City Clerk, and 1 copy shall be filed with the Auditor of Public Accounts. The annual audit report filed, together with any accompanying comment or explanation, shall become a part of the public records of the City Clerk and shall at all times thereafter be open and subject to public inspection.

(Neb. RS 19-2905)

(B) The City Council shall provide and file with the City Clerk, not later than August 1 of each year, financial statements showing the city's actual and budgeted figures for the most recently completed fiscal year.

(Neb. RS 13-606)

Statutory reference:

Other provisions on audits, Neb. RS 19-2906 through 19-2909

§ 35.03 CONTRACTS AND PURCHASES; BIDDING AND OTHER REQUIREMENTS.

(A) Except as provided in Neb. RS 18-412.01 for a contract with a public power district to operate, renew, replace, or add to the electric distribution, transmission, or generation system of the city, no contract for enlargement or general improvements, such as water extensions, sewers, public heating

system, bridges, work on streets, or any other work or improvement when the cost of the enlargement or improvement is assessed to the property, costing over \$30,000, shall be made unless it is first approved by the City Council.

(B) Except as provided in Neb. RS 18-412.01, before the City Council makes any contract in excess of \$30,000 for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of the enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the City Engineer and submitted to the City Council. In advertising for bids as provided in divisions (C) and (E) of this section, the City Council may publish the amount of the estimate.

(C) Advertisements for bids shall be required for any contract costing over \$30,000 entered into:

(1) For enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of the enlargement or improvement is assessed to the property; or

(2) For the purchase of equipment used in the construction of the enlargement or general improvements.

(D) A city electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for the enlargement or improvement without advertising for bids if the price is:

(1) \$30,000 or less;

(2) \$60,000 or less and the city electric utility has gross annual revenue from retail sales in excess of \$1,000,000;

(3) \$90,000 or less and the city electric utility has gross annual revenue from retail sales in excess of \$5,000,000; or

(4) \$120,000 or less and the city electric utility has gross annual revenue from retail sales in excess of \$10,000,000.

(E) The advertisement provided for in division (C) of this section shall be published at least 7 days prior to the bid closing in a legal newspaper in or of general circulation in the city. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of or serious injury or damage to life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by Neb. RS 17-613 when adopted by a 3/4 vote of the City Council and entered of record.

(F) If, after advertising for bids as provided in this section, the City Council receives fewer than 2 bids on a contract or if the bids received by the City Council contain a price which exceeds the

estimated cost, the City Council may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(G) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the City Council or Board of Public Works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the city, the City Council or Board of Public Works may authorize the manufacture and assemblage of those materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

(Neb. RS 17-568.01)

(H) Any city bidding procedure may be waived by the City Council or Board of Public Works:

(1) When materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in Neb. RS 81-145 through 81-162;

(2) When the contract is negotiated directly with a sheltered workshop pursuant to Neb. RS 48-1503; or

(3) When required to comply with any federal grant, loan, or program.

(Neb. RS 17-568.02)

(I) (1) Notwithstanding any other provisions of law or a home rule charter, a city which has established, by an interlocal agreement with any county, a joint purchasing division or agency may purchase personal property without competitive bidding if the price for the property has been established by the federal General Services Administration or the materiel division of the Department of Administrative Services.

(2) For the purpose of this division (I), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PERSONAL PROPERTY. Includes but is not limited to supplies, materials, and equipment used by or furnished to any officer, office, department, institution, board, or other agency.

PURCHASING or **PURCHASE.** The obtaining of personal property by sale, lease, or other contractual means.

(Neb. RS 18-1756)

Statutory reference:

Requirements for public lettings, see Neb. RS 73-101 et seq.

§ 35.04 ORDERS OR WARRANTS FOR MONEY; CONTRACTS; EXPENDITURES; REQUIREMENTS.

(A) The Mayor and City Council shall have no power to appropriate, issue, or draw any order or warrant on the City Treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of § 35.05, and funds for the class or object out of which such claim is payable have been included in the adopted budget statement or transferred according to law.

(Neb. RS 17-708)

(B) No contract shall be hereafter made by the City Council, or any committee or member, and no expense shall be incurred by any of the officers or departments of the city, whether the object of the expenditures shall have been ordered by the City Council or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided in division (A).

(Neb. RS 17-709)

(C) All warrants drawn upon the City Treasurer must be signed by the Mayor and countersigned by the City Clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.

(Neb. RS 17-711)

§ 35.05 CLAIMS AND ACCOUNTS PAYABLE.

(A) (1) All liquidated and unliquidated claims and accounts payable against the city shall:

(a) Be presented in writing;

(b) State the name and address of the claimant and the amount of the claim; and

(c) Fully and accurately identify the items or services for which payment is claimed or the time, place, nature, and circumstances giving rise to the claim.

(2) As a condition precedent to maintaining an action for a claim, other than a tort claim as defined in Neb. RS 13-903, the claimant shall file such claim within 90 days of the accrual of the claim in the office of the City Clerk.

(3) The City Clerk shall notify the claimant or his or her agent or attorney by letter mailed to the claimant's address within 5 days if the claim is disallowed by the City Council.

(4) No costs shall be recovered against the city in any action brought against it for any claim or for any claim allowed in part which has not been presented to the City Council to be audited, unless the recovery is for a greater sum than the amount allowed with the interest due.

(Neb. RS 17-714)

(B) Upon the allowance of claims by the City Council, the order for their payment shall specify the particular fund or appropriation out of which they are payable as specified in the adopted budget statement; and no order or warrant shall be drawn in excess of 85% of the current levy for the purpose for which it is drawn, unless there is sufficient money in the treasury at the credit of the proper fund for its payment; provided that if there exists at the time such warrant is drawn, obligated funds from the federal government or the state, or both from the federal government and the state, for the general purpose or purposes of such warrant, then such warrant may be drawn in excess of 85% of the current levy for the purpose for which it is drawn to the additional extent of 100% of such obligated federal or state funds. No claim shall be audited or allowed unless an order or warrant for the payment thereof may legally be drawn.

(Neb. RS 17-715)

§ 35.06 COLLECTION OF SPECIAL ASSESSMENTS; PROCEDURE.

(A) The city shall have authority to collect the special assessments which it levies and to perform all other necessary functions related thereto including foreclosure.

(B) The City Council of any city collecting its own special assessments shall direct that notice that special assessments are due shall be mailed or otherwise delivered to the last known address of the person against whom those special assessments are assessed or to the lending institution or other party responsible for paying those special assessments. Failure to receive the notice shall not relieve the taxpayer from any liability to pay the special assessments and any interest or penalties accrued thereon.

(C) A city collecting its own assessments shall:

(1) File notice of the assessments and the amount of assessment being levied for each lot or tract of land to the Register of Deeds; and

(2) File a release of assessment upon final payment of each assessment with the Register of Deeds.

(Neb. RS 18-1216)

Statutory reference:

Refunding erroneously paid special assessments, see Neb. RS 17-703

§ 35.07 SPECIAL ASSESSMENT FUND.

All money received on special assessments shall be held by the City Treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and this money shall

be used for no other purpose whatever, unless to reimburse the city for money expended for any such improvement.

(Neb. RS 17-710)

§ 35.08 SINKING FUNDS; GIFTS OF MONEY OR PROPERTY.

(A) The city is hereby empowered to receive money or property by donation, bequest, gift, devise, or otherwise for the benefit of any one or more of the public purposes for which sinking funds are established by this section, as stipulated by the donor. Title to any money or property so donated shall vest in the City Council, or in its successors in office, who shall become the owners thereof in trust to the uses of the sinking fund or funds. In the event of a donation of real estate, the City Council may manage such real estate as in the case of real estate donated to the city for city library purposes under the provisions of Neb. RS 51-215 and 51-216.

(Neb. RS 19-1301)

(B) The City Council, subject to all the limitations set forth in this section, shall have the power to levy a tax of not to exceed \$0.105 on each \$100 in any one year upon the taxable value of all the taxable property within the city for a term of not to exceed 10 years, in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of the city, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of any one or more of the following public improvements, including acquisition of any land incident to the making thereof: City libraries; city auditoriums or community houses for social or recreational purposes; city halls; city public libraries, auditoriums, or community houses in a single building; city swimming pools; city jails; city fire stations, together with firefighting equipment or apparatus; city parks; city cemeteries; city medical buildings, together with furnishings and equipment; or city hospitals. The city shall not be authorized to levy the tax or to establish the sinking fund as provided in this division if, having bonded indebtedness, such city has been in default in the payment of interest thereon or principal thereof for a period of 10 years prior to the date of the passage of the resolution providing for the submission of the proposition for establishment of the sinking fund as required in division (C).

(Neb. RS 19-1302)

(C) Before any sinking fund or funds are established or before any annual tax is levied for any such planned city improvements mentioned in division (B) by the city, the City Council shall declare its purpose by resolution to submit to the qualified electors of the city at the next general city election the proposition to provide the city with the specific city improvement planned under this section. The resolution of submission shall, among other things, set forth a clear description of the improvement planned, the estimated cost according to the prevailing costs, the amount of annual levy over a definite period of years, not exceeding 10 years, required to provide such cost, and the specific name or designation for the sinking fund sought to be established to carry out the planned improvement, together with a statement of the proposition for placement upon the ballot at the election. Notice of the submission of the proposition, together with a copy of the official ballot containing the proposition, shall be published in its entirety 3 successive weeks before the day of the election in a legal newspaper in or of general circulation in the city or, if no legal newspaper is in or of general circulation in the city, in a

legal newspaper in or of general circulation in the county in which the city is located. No such sinking fund shall be established unless the same has been authorized by a majority or more of the legal votes of the city cast for or against the proposition. If less than a majority of the legal votes favor the establishment of the sinking fund, the planned improvement shall not be made, no annual tax shall be levied therefor, and no sinking fund or sinking funds shall be established in connection therewith, but such resolution of submission shall immediately be repealed. If the proposition shall carry at such election in the manner prescribed in this division, the City Council and its successors in office shall proceed to do all things authorized under such resolution of submission but never inconsistent with this section. The election provided for under this section shall be conducted as provided under the Election Act.

(Neb. RS 19-1303)

(D) All funds received by the City Treasurer, by donation or by tax levy, as hereinbefore provided, shall, as they accumulate, be immediately invested by the Treasurer, with the written approval of the City Council, in the manner provided in § 35.11. Whenever investments of such sinking fund or funds are made, as aforesaid, the nature and character of the same shall be reported to the City Council, and the investment report shall be made a matter of record by the City Clerk in the proceedings of the City Council. The sinking fund, or sinking funds, accumulated under the provisions of this section, shall constitute a special fund, or funds, for the purpose or purposes for which the same was authorized and shall not be used for any other purpose unless authorized by 60% of the qualified electors of the city voting at a general election favoring such change in the use of the sinking fund or sinking funds. The question of the change in the use of the sinking fund or sinking funds, when it fails to carry, shall not be resubmitted in substance for a period of 1 year from and after the date of such election.

(Neb. RS 19-1304)

Statutory reference:

Additional levy limitations, see Neb. RS 17-702

Investment in warrants, see Neb. RS 77-2337

§ 35.09 DEPOSIT OF FUNDS.

(A) (1) The City Treasurer shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as City Treasurer. These deposits shall be subject to all regulations imposed by law or adopted by the City Council for the receiving and holding thereof. The fact that a stockholder, director, or other officer of the bank, capital stock financial institution, or qualifying mutual financial institution is also serving as Mayor, a member of the City Council, as a member of the Board of Public Works, or as any other officer of the city shall not disqualify the bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for the city funds.

(2) The City Council shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions a bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured or guaranteed by the Federal Deposit Insurance Corporation or, in lieu thereof, security given as provided in the Public Funds Deposit Security Act, to secure the

payment of all such deposits and accretions. The City Council shall approve this bond or giving of security. The City Treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved.

(Neb. RS 17-607)

(B) The insurance afforded to depositors in banks, capital stock financial institutions, or qualifying mutual financial institutions through the Federal Deposit Insurance Corporation shall be deemed and construed to be a surety bond or bonds to the extent that the deposits are insured or guaranteed by that corporation, and for deposits so insured or guaranteed, no other surety bond or bonds or other security shall be required.

(Neb. RS 77-2362)

(C) Neb. RS 77-2366 shall apply to deposits in capital stock financial institutions. Neb. RS 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(Neb. RS 17-607 and 77-2362)

Statutory reference:

*Other provisions on deposits of public funds, see Neb. RS 77-2363 and 77-2364
Public Funds Deposit Security Act, see Neb. RS 77-2386*

§ 35.10 CERTIFICATES OF DEPOSIT; TIME DEPOSITS; CONDITIONS.

The City Treasurer may, upon resolution of the Mayor and City Council authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution, or qualifying mutual financial institution in the state to the extent that those certificates of deposit or time deposits are insured or guaranteed by the Federal Deposit Insurance Corporation. Deposits may be made in excess of the amounts so secured by the corporation, and the amount of the excess deposit shall be secured by a bond or by security given in the same manner as is provided for cities of the first class in Neb. RS 16-714 through 16-716 as of the time the deposit is made. Neb. RS 77-2366 shall apply to deposits in capital stock financial institutions. Neb. RS 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(Neb. RS 17-720)

§ 35.11 INVESTMENT AND USE OF SURPLUS FUNDS.

(A) When the City Treasurer holds funds of the city in excess of the amount required for maintenance or set aside for betterments and improvements, the Mayor and City Council may, by resolution, direct and authorize the Treasurer to invest the surplus funds in the outstanding bonds or registered warrants of the city, bonds and debentures issued either singly or collectively by any of the 12 federal land banks, the 12 intermediate credit banks, or the 13 banks for cooperatives under the supervision of the Farm Credit Administration, or in interest-bearing bonds or the obligations of the United States. The interest on such bonds or warrants shall be credited to the fund out of which the bonds or warrants were purchased.

(Neb. RS 17-608)

(B) All income received by the city from public utilities and from the payment and collection of water taxes, rents, rates or assessments shall be applied to the payment of running expenses, interest on bonds or money borrowed and the erection and construction of public utilities; should there be any surplus, it shall be annually created into a sinking fund for the payment of public utility bonds or for the improvements of the works, or into the general fund as the Council may direct. The surplus remaining, if any, may, if the Council, be invested in interest-bearing bonds or obligations of the United States. (Neb. RS 17-540)

(C) The Mayor and City Council may, by resolution, direct and authorize the Treasurer to dispose of the surplus electric light, water, or gas funds, or the funds arising from the sale of electric light, water, or natural gas distribution properties, by the payment of outstanding electric light, water, or gas distribution bonds or water warrants then due. The excess, if any, after such payments, may be transferred to the general fund of the city.

(Neb. RS 17-609)

(D) Any surplus funds arising out of the operation of any system of waterworks, power plant, ice plant, gas plant, sewerage, heating or lighting plant, or distribution system by the Board of Public Works, or by the City Council, where any of such utilities are not being operated by such a Board, may be invested, if not invested pursuant to the provisions of any other law upon the subject, in like manner and subject to the same conditions as the investment of similar funds of cities of the first class, as provided in Neb. RS 16-691.01.

(Neb. RS 17-803)

(E) (1) Whenever the city has accumulated a surplus of any fund in excess of its current needs or has accumulated a sinking fund for the payment of its bonds and the money in such sinking fund exceeds the amount necessary to pay the principal and interest of any such bonds which become due during the current year, the City Council may invest any such surplus in excess of current needs or such excess in its sinking fund in certificates of deposit, in time deposits, and in any securities in which the State Investment Officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made. The State Investment Officer shall upon request furnish a copy of current authorized investment guidelines of the Nebraska Investment Council.

(2) Nothing in division (E)(1) shall be construed to authorize investments in venture capital. (Neb. RS 77-2341)

§ 35.12 BOND ISSUES.

The City Council may, after meeting all the requirements of state law, issue bonds, fund bonds, and retire bonds for such purposes as may be permitted by state law. The City Council shall have the

authority to levy special assessments for the payment of interest and principal on these bonds and may spread the payments up to the maximum number of years permitted by state law.

Statutory reference:

Bonds in general, see Neb. RS 18-1801 through 18-1805

Funding and refunding bonds, see Neb. RS 10-606 through 10-612

General provisions, see Neb. RS 10-101 through 10-143

§ 35.13 DEBT COLLECTION; AUTHORITY TO CONTRACT WITH COLLECTION AGENCY.

(A) The city may contract to retain a collection agency licensed pursuant to Neb. RS 45-601 through 45-622, within or without this state, for the purpose of collecting public debts owed by any person to the city.

(B) No debt owed pursuant to division (A) of this section may be assigned to a collection agency unless:

(1) There has been an attempt to advise the debtor by first-class mail, postage prepaid, at the last known address of the debtor:

(a) Of the existence of the debt; and

(b) That the debt may be assigned to a collection agency for collection if the debt is not paid; and

(2) At least 30 days have elapsed from the time the notice was sent.

(C) A collection agency which is assigned a debt under this section shall have only those remedies and powers which would be available to it as an assignee of a private creditor.

(D) For purposes of this section, debt shall include all delinquent fees or payments except delinquent property taxes on real estate. In the case of debt arising as a result of an order or judgment of a court in a criminal or traffic matter, a collection fee may be added to the debt. The collection fee shall be \$25 or 4.5% of the debt, whichever is greater. The collection fee shall be paid by the person who owes the debt directly to the person or agency providing the collection service.

(Neb. RS 45-623)

§ 35.14 CREDIT CARDS; AUTHORITY TO ACCEPT.

(A) If authorized by the City Council, any city official may accept credit cards, charge cards, or debit cards, whether presented in person or electronically, or electronic funds transfers as a method of cash payment of any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature, whether general or special, as provided by Neb. RS 77-1702.

(B) The total amount of the taxes, levies, excises, duties, customs, tolls, interest, penalties, fines, licenses, fees, or assessments of whatever kind or nature, whether general or special, paid for by credit card, charge card, debit card, or electronic funds transfer shall be collected by the city official.

(C) With respect to a facility which it operates in a proprietary capacity, the City Council may choose to accept credit cards, charge cards, or debit cards, whether presented in person or electronically, or electronic funds transfers as a means of cash payment and may adjust the price for services to reflect the handling and payment costs.

(D) The city official shall obtain, for each transaction, authorization for use of any credit card, charge card, or debit card used pursuant to this section from the financial institution, vending service company, credit card or charge card company, or third-party merchant bank providing that service.

(E) The types of credit cards, charge cards, or debit cards accepted and the payment services provided shall be determined by the State Treasurer and the Director of Administrative Services with the advice of a committee convened by the State Treasurer and the director. The committee shall consist of the State Treasurer, the Tax Commissioner, the director, and representatives from counties, cities, and other political subdivisions as may be appropriate. The committee shall develop recommendations for the contracting of such services. The State Treasurer and the director shall contract with one or more credit card, charge card, or debit card companies or third-party merchant banks for services on behalf of the state and those counties, cities, and political subdivisions that choose to participate in the state contract for such services. The State Treasurer and the director shall consider, for purposes of this section, any negotiated discount, processing, or transaction fee imposed by a credit card, charge card, or debit card company or third-party merchant bank as an administrative expense. If the City Council chooses not to participate in the state contract, it may choose types of credit cards, charge cards, and debit cards and may negotiate and contract independently or collectively as a governmental entity with 1 or more financial institutions, vending service companies, credit card, charge card, or debit card companies, or third-party merchant banks for the provision of these services.

(F) Subject to the direction of the City Council, a city official authorizing acceptance of credit card or charge card payments shall be authorized but not required to impose a surcharge or convenience fee upon the person making a payment by credit card or charge card so as to wholly or partially offset the amount of any discount or administrative fees charged to the city, but the surcharge or convenience fee shall not exceed the surcharge or convenience fee imposed by the credit card or charge card companies or third-party merchant banks which have contracted under division (E) of this section. The surcharge or convenience fee shall be applied only when allowed by the operating rules and regulations of the credit card or charge card involved or when authorized in writing by the credit card or charge card company involved. When a person elects to make a payment to the city by credit card or charge card and such a surcharge or convenience fee is imposed, the payment of the surcharge or convenience fee shall be deemed voluntary by that person and shall be in no case refundable. If a payment is made electronically by credit card, charge card, debit card, or electronic funds transfer as part of a system for providing or retrieving information electronically, the city official shall be authorized but not required to impose an additional surcharge or convenience fee upon the person making a payment.

(G) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

ELECTRONIC FUNDS TRANSFER. The movement of funds by nonpaper means, usually through a payment system, including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire system.

(Neb. RS 13-609)

ANNUAL BUDGET

§ 35.25 FISCAL YEAR.

The fiscal year of the city and any public utility of the city commences on October 1 and extends through the following September 30 except as provided in the Municipal Proprietary Function Act.
(Neb. RS 17-701)

§ 35.26 BUDGET PROCEDURES.

The budget instruction manual prepared by the Auditor of Public Accounts is incorporated by reference for the purpose of proper budget preparation.

§ 35.27 EXPENDITURES PRIOR TO ADOPTION OF BUDGET.

(A) On and after the first day of its fiscal year in 1993 and of each succeeding year or on or after the first day of its biennial period and until the adoption of the budget by the City Council in September, the City Council may expend any balance of cash on hand for the current expenses of the city. Except as provided in division (B) of this section, these expenditures shall not exceed an amount equivalent to the total amount expended under the last budget in the equivalent period of the prior budget year or biennial period. These expenditures shall be charged against the appropriations for each individual fund or purpose as provided in the budget when adopted.

(Neb. RS 13-509.01)

(B) The restriction on expenditures in division (A) of this section may be exceeded upon the express finding of the City Council that expenditures beyond the amount authorized are necessary to enable the city to meet its statutory duties and responsibilities. The finding and approval of the expenditures in excess of the statutory authorization shall be adopted by the City Council in open public session. Expenditures authorized by this section shall be charged against appropriations for each individual fund or purpose as provided in the budget when adopted, and nothing in this section shall be construed to authorize expenditures by the city in excess of that authorized by any other statutory provision.

(Neb. RS 13-509.02)

§ 35.28 PROPOSED BUDGET STATEMENT; CONTENTS; AVAILABILITY; CORRECTION.

(A) The City Council shall annually or biennially prepare a proposed budget statement on forms prescribed and furnished by the Auditor of Public Accounts. The proposed budget statement shall be made available to the public prior to publication of the notice of the hearing on the proposed budget statement pursuant to § 35.29. A proposed budget statement shall contain the following information, except as provided by state law:

(1) For the immediately preceding fiscal year or biennial period, the revenue from all sources, including motor vehicle taxes, other than revenue received from personal and real property taxation, allocated to the funds and separately stated as to each such source: the unencumbered cash balance at the beginning and end of the year or biennial period; the amount received by taxation of personal and real property; and the amount of actual expenditures;

(2) For the current fiscal year or biennial period, actual and estimated revenue from all sources, including motor vehicle taxes, allocated to the funds and separately stated as to each such source: the actual unencumbered cash balance available at the beginning of the year or biennial period; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. This statement shall contain the cash reserve for each fiscal year or biennial period and shall note whether or not the reserve is encumbered. The cash reserve projections shall be based upon the actual experience of prior years or biennial periods. The cash reserve shall not exceed 50% of the total budget adopted exclusive of capital outlay items;

(3) For the immediately ensuing fiscal year or biennial period, an estimate of revenue from all sources, including motor vehicle taxes, other than revenue to be received from taxation of personal and real property, separately stated as to each such source: the actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year or biennial period; the amounts proposed to be expended during the year or biennial period; and the amount of cash reserve, based on actual experience of prior years or biennial period, which cash reserve shall not exceed 50% of the total budget adopted exclusive of capital outlay items;

(4) A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property:

(a) For the purpose of paying the principal or interest on bonds issued by the City Council; and

(b) For all other purposes.

(5) A uniform summary of the proposed budget statement, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the Municipal Proprietary Function Act, and a grand total of all funds maintained by the City Council; and

(6) A list of the proprietary functions which are not included in the budget statement. These proprietary functions shall have a separate budget statement which is approved by the City Council as provided in the Municipal Proprietary Function Act.

(B) The actual or estimated unencumbered cash balance required to be included in the budget statement by this section shall include deposits and investments of the city as well as any funds held by the County Treasurer for the city and shall be accurately stated on the proposed budget statement.

(C) The city shall correct any material errors in the budget statement detected by the Auditor of Public Accounts or by other sources.

(Neb. RS 13-504)

(D) The estimated expenditures plus the required cash reserve for the ensuing fiscal year or biennial period less all estimated and actual unencumbered balances at the beginning of the year or biennial period and less the estimated income from all sources, including motor vehicle taxes, other than taxation of personal and real property shall equal the amount to be received from taxes, and that amount shall be shown on the proposed budget statement pursuant to this section. The amount to be raised from taxation of personal and real property, as determined above, plus the estimated revenue from other sources, including motor vehicle taxes, and the unencumbered balances shall equal the estimated expenditures, plus the necessary required cash reserve, for the ensuing year or biennial period.

(Neb. RS 13-505)

§ 35.29 PROPOSED BUDGET STATEMENT; HEARING; ADOPTION; CERTIFICATION OF TAX AMOUNT.

(A) The City Council shall each year or biennial period conduct a public hearing on its proposed budget statement. Notice of the place and time of the hearing, together with a summary of the proposed budget statement, shall be published 4 calendar days prior to the date set for hearing in a newspaper of general circulation within the city's jurisdiction. For purposes of such notice, the 4 calendar days shall include the day of publication but not the day of hearing. When the total operating budget, not including reserves, does not exceed \$10,000 per year or \$20,000 per biennial period, the proposed budget summary may be posted at the City Council's principal headquarters.

(B) After the hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of the hearing. The amount to be received from personal and real property taxation shall be certified to the levying board after the proposed budget statement is adopted or is amended and adopted as amended. The certification of the amount to be received from personal and real property taxation shall specify separately the amount to be applied to the payment of principal or interest on bonds issued by the City Council and the amount to be received for all other purposes.

(C) If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of the changes shall be published within 20 calendar days after its adoption

in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for the changes.

(D) Upon approval by City Council, the budget shall be filed with the Auditor of Public Accounts. The Auditor may review the budget for errors in mathematics, improper accounting, and noncompliance with the Nebraska Budget Act or Neb. RS 13-518 to 13-522. If the Auditor detects such errors, he or she shall immediately notify the Council of such errors. The Council shall correct any such error as provided in § 35.34. Warrants for the payment of expenditures provided in the budget adopted under this section shall be valid notwithstanding any errors or noncompliance for which the Auditor has notified the Council.

(Neb. RS 13-506)

(E) When a levy increase has been authorized by vote of the electors, the adopted budget statement shall indicate the amount of the levy increase.

(Neb. RS 13-507)

§ 35.30 ADOPTED BUDGET STATEMENT; FILING; CERTIFICATION OF AMOUNT OF TAX.

(A) (1) After publication and hearing on the proposed budget statement and within the time prescribed by law, the City Council shall file with and certify to the levying board or boards on or before September 20 of each year or September 20 of the final year of a biennial period and file with the Auditor of Public Accounts a copy of the adopted budget statement which complies with Neb. RS 13-518 to 13-522, together with the amount of the tax required to fund the adopted budget, setting out separately:

(a) The amount to be levied for the payment of principal or interest on bonds issued by the City Council; and

(b) The amount to be levied for all other purposes.

(2) Proof of publication shall be attached to the statements.

(B) If the prime rate published by the Federal Reserve Board is 10% or more at the time of the filing and certification required under this subsection, the City Council, in certifying the amount required, may make allowance for delinquent taxes not exceeding 5% of the amount required plus the actual percentage of delinquent taxes for the preceding tax year or biennial period and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year or biennial period which is still pending. Except for such allowances, the City Council shall not certify an amount of tax more than 1% greater or lesser than the amount determined under § 35.28.

(C) The City Council shall use the certified taxable values as provided by the County Assessor pursuant to Neb. RS 13-509 for the current year in setting or certifying the levy. The City Council may designate one of its members to perform any duty or responsibility required of the Council by this section.

(Neb. RS 13-508)

§ 35.31 APPROPRIATION BILL.

The City Council shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed, "The Annual Appropriation Bill," in which the Council may appropriate those sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the city.

(Neb. RS 17-706)

§ 35.32 GENERAL FUND.

If the city has not decided to follow the all-purpose levy method of financing for the fiscal year, all money not specifically appropriated in the annual appropriation bill shall be deposited in and known as the General Fund.

§ 35.33 TRANSFER OF FUNDS.

(A) Whenever during the current fiscal year it becomes apparent to the City Council that due to unforeseen emergencies there is temporarily insufficient money in a particular fund to meet the requirements of the adopted budget of expenditures for that fund, the Council may by a majority vote, unless otherwise provided by state law, transfer money from other funds to such fund.

(B) No expenditure during any fiscal year shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in § 35.34 or by state law.

(C) Any officer or officers of the City Council who obligate funds contrary to the provisions of this section shall be guilty of an offense.

(Neb. RS 13-510) Penalty, see § 10.99

§ 35.34 BUDGET REVISION.

(A) (1) Unless otherwise provided by law, the City Council may propose to revise the previously adopted budget statement and shall conduct a public hearing on that proposal whenever during the current fiscal year it becomes apparent to the City Council that:

(a) There are circumstances which could not reasonably have been anticipated at the time the budget for the current year was adopted;

(b) The budget adopted violated Neb. RS 13-518 through 13-522, such that the revenue of the current fiscal year for any fund thereof will be insufficient, additional expenses will be necessarily incurred, or there is a need to reduce the budget requirements to comply with Neb. RS 13-518 through 13-522; or

(c) The City Council has been notified by the Auditor of Public Accounts of a mathematical or accounting error or noncompliance with the Nebraska Budget Act.

(2) The public hearing requirement shall not apply to emergency expenditures pursuant to Neb. RS 81-829.51.

(B) Notice of the time and place of the hearing shall be published at least 4 calendar days prior to the date set for hearing in a newspaper of general circulation within the Council's jurisdiction. For purposes of such notice, the 4 calendar days shall include the day of publication but not the day of hearing. This published notice shall set forth:

(1) The time and place of the hearing;

(2) The amount in dollars of additional or reduced money required and for what purpose;

(3) A statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year to meet the need for additional money in that manner;

(4) A copy of the summary of the originally adopted budget previously published; and

(5) A copy of the summary of the proposed revised budget.

(C) At the hearing any taxpayer may appear or file a written statement protesting any application for additional money. A written record shall be kept of all such hearings.

(D) Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the City Council, the Council shall file with the County Clerk of the county or counties in which the City Council is located, and with the Auditor of Public Accounts, a copy of the revised budget, as adopted. The City Council may then issue warrants in payment for expenditures authorized by the adopted revised budget. These warrants shall be referred to as registered warrants and shall be repaid during the next fiscal year from funds derived from taxes levied therefor.

(E) Within 30 days after the adoption of the budget under § 35.29, the City Council may, or within 30 days after notification of an error by the Auditor of Public Accounts, the Council shall correct an adopted budget which contains a clerical, mathematical, or accounting error which does not affect the total amount budgeted by more than 1% or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the City Council shall file a copy of the corrected budget with the County Clerk of the county or counties in which the City Council is located

and with the Auditor of Public Accounts. The City Council may then issue warrants in payment for expenditures authorized by the budget.

(Neb. RS 13-511)

§ 35.35 PROPRIETARY FUNCTIONS; FISCAL YEAR; BUDGET STATEMENTS; FILING; HEARING; ADOPTION; RECONCILIATION.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PROPRIETARY FUNCTION. A water supply or distribution utility, a wastewater collection or treatment utility, an electric generation, transmission, or distribution utility, a gas supply, transmission, or distribution utility, an integrated solid waste management collection, disposal, or handling utility, or a hospital or a nursing home owned by the city.

(Neb. RS 18-2803)

SUBSIDIZATION. The costs of operation of a proprietary function are regularly financed by appropriations from the city's general fund in excess of the amount paid by the city to the proprietary function for actual service or services received.

(Neb. RS 18-2804)

(B) The City Council may establish a separate fiscal year for each proprietary function, except that any proprietary function which is subsidized by appropriations from the city's general fund shall have the same fiscal year as the city.

(C) (1) At least 30 days prior to the start of the fiscal year of each proprietary function, a proposed proprietary budget statement shall be prepared in writing and filed with the City Clerk containing the following information:

(a) For the immediately preceding fiscal year, the revenue from all sources, the unencumbered cash balance at the beginning and end of the year, the amount received by taxation, and the amount of actual expenditure;

(b) For the current fiscal year, actual and estimated revenue from all sources separately stated as to each such source, the actual unencumbered cash balance available at the beginning of the year, the amount received from taxation, and the amount of actual and estimated expenditure, whichever is applicable;

(c) For the immediately ensuing fiscal year, an estimate of revenue from all sources separately stated as to each such source, the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amounts proposed to be expended during the fiscal year, and the amount of cash reserve based on actual experience of prior years; and

(d) A uniform summary of the proposed budget statement which shall include a total of all funds maintained for the proprietary function.

(2) The statement shall contain the estimated cash reserve for each fiscal year and shall note whether or not the reserve is encumbered. The cash reserve projections shall be based upon the actual experience of prior years.

(3) Each proprietary budget statement shall be filed on forms prescribed and furnished by the Auditor of Public Accounts following consultation with representatives of such governing bodies as operate proprietary functions subject to the provisions of the Municipal Proprietary Function Act. (Neb. RS 18-2805)

(D) (1) After a proposed proprietary budget statement is filed with the City Clerk, the City Council shall conduct a public hearing on the statement. Notice of the time and place of the hearing, a summary of the proposed proprietary budget statement, and notice that the full proposed proprietary budget statement is available for public review with the City Clerk during normal business hours shall be published 1 time at least 5 days prior to the hearing in a newspaper of general circulation within the City Council's jurisdiction or by mailing to each resident within the City Council's jurisdiction.

(2) After the hearing, the proposed proprietary budget statement shall be adopted or amended and adopted as amended, and a written record shall be kept of the hearing. If the adopted proprietary budget statement reflects a change from the proposed proprietary statement presented at the hearing, a copy of the adopted proprietary budget statement shall be filed with the City Clerk within 20 days after its adoption and published in a newspaper of general circulation within the City Council's jurisdiction or by mailing to each resident within the City Council's jurisdiction.

(Neb. RS 18-2806)

(E) If the actual expenditures for a proprietary function exceed the estimated expenditures in the proprietary budget statement during its fiscal year, the City Council shall adopt a proprietary function reconciliation statement within 90 days after the end of the fiscal year which reflects any difference between the adopted proprietary budget statement for the previous fiscal year and the actual expenditures and revenue for that fiscal year. After the adoption of a proprietary function reconciliation statement, it shall be filed with the City Clerk and published in a newspaper of general circulation within the City Council's jurisdiction or by mailing to each resident within the City Council's jurisdiction. If the difference between the adopted proprietary budget for the previous fiscal year and the actual expenditures and revenues for that fiscal year is greater than 10%, the proprietary function reconciliation statement shall only be adopted following a public hearing.

(Neb. RS 18-2807)

(F) If the budget of a proprietary function is included in the city budget statement created pursuant to the Nebraska Budget Act, the Municipal Proprietary Function Act need not be followed for that proprietary function. Any income from a proprietary function which is transferred to the general fund of the city shall be shown as a source of revenue in the city budget statement created pursuant to the Nebraska Budget Act.

(Neb. RS 18-2808)

TAX LEVIES**§ 35.45 PROPERTY TAX LEVY FOR GENERAL REVENUE PURPOSES.**

The city shall have power to levy taxes for general revenue purposes in any 1 year not to exceed \$0.35 on each \$100 upon the taxable value of all the taxable property in the city. The valuation of such property shall be ascertained from the books or assessment rolls of the County Assessor.

(Neb. RS 17-506)

§ 35.46 LEVIES FOR OTHER TAXES AND SPECIAL ASSESSMENTS.

The city shall have power to levy any other tax or special assessment authorized by law.
(Neb. RS 17-507)

§ 35.47 ALL-PURPOSE LEVY; EXTRAORDINARY LEVIES; ALLOCATION; ABANDONMENT.

(A) Notwithstanding provisions in the statutes of Nebraska and this code to the contrary, for any fiscal year the City Council may decide to certify to the County Clerk for collection 1 all-purpose levy required to be raised by taxation for all city purposes instead of certifying a schedule of levies for specific purposes added together. Subject to the limits in § 35.48, the all-purpose levy shall not exceed an annual levy of \$1.05 on each \$100 upon the taxable valuation of all the taxable property in the city. Otherwise authorized extraordinary levies to service and pay bonded indebtedness of the city may be made by the city in addition to such all-purpose levy.

(Neb. RS 19-1309)

(B) If the method provided in division (A) is followed in city financing, the city shall allocate the amount so raised to the several departments of the city in its annual budget and appropriation ordinance, or in other legal manner, as the City Council deems wisest and best.

(Neb. RS 19-1310)

(C) If the city elects to follow the method provided in division (A), it shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

(Neb. RS 19-1311)

(D) If it is necessary to certify the amount to county officers for collection, the same shall be certified as a single amount for general fund purposes.

(Neb. RS 19-1312)

§ 35.48 PROPERTY TAX LEVY; MAXIMUM; AUTHORITY TO EXCEED.

(A) Property tax levies for the support of the city for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this division (A), except as provided in division (C). The city may levy a maximum levy of \$0.45 per \$100 of taxable valuation of property subject to the levy plus an additional \$0.05 per \$100 of taxable valuation to provide financing for the city's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to Neb. RS 51-201, museum pursuant to Neb. RS 51-501, visiting community nurse, home health nurse, or home health agency pursuant to Neb. RS 71-1637, or statue, memorial, or monument pursuant to Neb. RS 80-202. Property tax levies for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against the city which require or obligate the city to pay that judgment, to the extent the judgment is not paid by liability insurance coverage of the city, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Division of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this division (A). The limitations on tax levies provided in this division (A) are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this division (A) are those provided by or authorized by this section. Tax levies in excess of the limitations in this section shall be considered unauthorized levies under Neb. RS 77-1606 unless approved under division (C). (Neb. RS 77-3442)

(B) (1) All city airport authorities established under the Cities Airport Authorities Act, community redevelopment authorities established under the Community Development Law, and off-street parking districts established under the Offstreet Parking District Act may be allocated property taxes as authorized by law which are authorized by the city and are counted in the municipal levy limit provided by division (A), except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Division of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. For off-street parking districts established under the Offstreet Parking District Act, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district. The City Council shall review and approve or disapprove the levy request of the political subdivisions subject to this division (B). The City Council may approve all or a portion of the levy request and may approve a levy request that would allow a levy greater than that permitted by law. The levy allocated by the city may be exceeded as provided in division (C).

(2) On or before August 1, all political subdivisions subject to city levy authority under this division (B) shall submit a preliminary request for levy allocation to the City Council. The preliminary request of the political subdivision shall be in the form of a resolution adopted by a majority vote of members present of the political subdivision's governing body. The failure of a political subdivision to make a preliminary request shall preclude that political subdivision from using procedures set forth in Neb. RS 77-3444 to exceed the final levy allocation as determined in this division (B).

(3) (a) The City Council shall:

1. Adopt a resolution by a majority vote of members present which determines a final allocation of levy authority to its political subdivisions; and

2. Forward a copy of that resolution to the chairperson of the governing body of each of its political subdivisions.

(b) No final levy allocation shall be changed after September 1 except by agreement between both the City Council and the governing body of the political subdivision whose final levy allocation is at issue.

(Neb. RS 77-3443)

(C) (1) The city may exceed the limits provided in division (A) by an amount not to exceed a maximum levy approved by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to exceed the limits must be approved prior to October 10 of the fiscal year which is to be the first to exceed the limits.

(2) The City Council may call for the submission of the issue to the voters:

(a) By passing a resolution calling for exceeding the limits by a vote of at least 2/3 of the members of the City Council and delivering a copy of the resolution to the County Clerk or Election Commissioner of every county which contains all or part of the city; or

(b) Upon receipt of a petition by the County Clerk or Election Commissioner of every county containing all or part of the city requesting an election signed by at least 5 % of the registered voters residing in the city.

(3) The resolution or petition shall include the amount of levy which would be imposed in excess of the limits provided in division (A) and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than 5 years. Any resolution or petition calling for a special election shall be filed with the County Clerk or Election Commissioner no later than 30 days prior to the date of the election, and the time of publication and providing a copy of the notice of election required in Neb. RS 32-802 shall be no later than 20 days prior to the election.

(4) The County Clerk or Election Commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least 30 days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act. For petitions filed with the County Clerk or Election Commissioner on or after May 1, 1998, the petition shall be in the form as provided in Neb. RS 32-628 through 32-631.

(5) Any excess levy authority approved under this division (C) shall terminate pursuant to its terms, on a vote of the City Council to terminate the authority to levy more than the limits, at the end of the fourth fiscal year following the first year in which the levy exceeded the limit, or as provided in division (C)(8), whichever is earliest.

(6) The City Council may pass no more than 1 resolution calling for an election pursuant to this division (C) during any 1 calendar year. Only 1 election may be held in any 1 calendar year pursuant to a petition initiated under this division (C). The ballot question may include any terms and conditions set forth in the resolution or petition and shall include the language specified in Neb. RS 77-3444.

(7) If a majority of the votes cast upon the ballot question are in favor of the tax, the County Board shall authorize a tax in excess of the limits in division (A), but the tax shall not exceed the amount stated in the ballot question. If a majority of those voting on the ballot question are opposed to the tax, the City Council shall not impose the tax.

(8) (a) The city may rescind or modify a previously approved excess levy authority prior to its expiration by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to rescind or modify must be approved prior to October 10 of the fiscal year for which it is to be effective.

(b) The City Council may call for the submission of the issue to the voters:

1. By passing a resolution calling for the rescission or modification by a vote of at least 2/3 of the members of the City Council and delivering a copy of the resolution to the County Clerk or Election Commissioner of every county which contains all or part of the city; or

2. Upon receipt of a petition by the County Clerk or Election Commissioner of every county containing all or part of the city requesting an election signed by at least 5% of the registered voters residing in the city.

(c) The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either the excess levy authority will be rescinded or the excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of the modification shall be stated. The modification shall not have a duration greater than 5 years. The County Clerk or Election Commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least 30 days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election required in Neb. RS 32-802 shall be no later than 20 days prior to the election. The election shall be held pursuant to the Election Act.

(Neb. RS 77-3444)

§ 35.49 PROPERTY TAX LEVY; CERTIFICATION OF AMOUNT; COLLECTION.

The City Council shall, at the time and in the manner provided by law, cause to be certified to the County Clerk the amount of tax to be levied upon the taxable value of all the taxable property of the city which the city requires for the purposes of the adopted budget statement for the ensuing year, including all special assessments and taxes assessed as otherwise provided. The County Clerk shall place the same on the property tax lists to be collected in the manner provided by law for the collection of county taxes in the county where the city is situated. In all sales for any delinquent taxes for municipal purposes, if

there are other delinquent taxes due from the same person or a lien on the same property, the sale shall be for all the delinquent taxes. Such sales and all sales made under or by virtue of this section or the provision of law herein referred to shall be of the same validity and in all respects be deemed and treated as though such sales had been made for the delinquent county taxes exclusively.

(Neb. RS 17-702)

§ 35.50 PROPERTY TAX REQUEST; PROCEDURE FOR SETTING.

(A) If the annual assessment of property would result in an increase in the total property taxes levied by a county, municipality, school district, learning community, sanitary and improvement district, natural resources district, educational service unit, or community college, as determined using the previous year's rate of levy, the city's property tax request for the current year shall be no more than its property tax request in the prior year, and the city's rate of levy for the current year shall be decreased accordingly when such rate is set by the county board of equalization pursuant to Neb. RS 77-1601. The City Council shall pass a resolution or ordinance to set the amount of its property tax request after holding the public hearing required in division (C) of this section. If the City Council seeks to set its property tax request at an amount that exceeds its property tax request in the prior year, it may do so after holding the public hearing required in division (C) of this section and by passing a resolution or ordinance that complies with division (D) of this section.

(B) If the annual assessment of property would result in no change or a decrease in the total property taxes levied by a county, municipality, school district, learning community, sanitary and improvement district, natural resources district, educational service unit, or community college, as determined using the previous year's rate of levy, the city's property tax request for the current year shall be no more than its property tax request in the prior year, and the city's rate of levy for the current year shall be adjusted accordingly when such rate is set by the county board of equalization pursuant to Neb. RS 77-1601. The City Council shall pass a resolution or ordinance to set the amount of its property tax request after holding the public hearing required in division (C) of this section. If the City Council seeks to set its property tax request at an amount that exceeds its property tax request in the prior year, it may do so after holding the public hearing required in division (C) of this section and by passing a resolution or ordinance that complies with division (D) of this section.

(C) The resolution or ordinance required under this section shall only be passed after a special public hearing called for the purpose is held and after notice is published in a newspaper of general circulation in the area of the city at least 4 calendar days prior to the hearing. For purposes of such notice, the 4 calendar days shall include the day of publication but not the day of hearing. If the city's total operating budget, not including reserves, does not exceed \$10,000 per year or \$20,000 per biennial period, the notice may be posted at the City Council's principal headquarters.

(D) The hearing notice shall contain the following information:

(1) The certified taxable valuation under Neb. RS 13-509 for the prior year, the certified taxable valuation under Neb. RS 13-509 for the current year, and the percentage increase or decrease in such valuations from the prior year to the current year;

- (2) The dollar amount of the prior year's tax request and the property tax rate that was necessary to fund that tax request;
- (3) The property tax rate that would be necessary to fund last year's tax request if applied to the current year's valuation;
- (4) The proposed dollar amount of the tax request for the current year and the property tax rate that will be necessary to fund that tax request;
- (5) The percentage increase or decrease in the property tax rate from the prior year to the current year; and
- (6) The percentage increase or decrease in the total operating budget from the prior year to the current year.

(E) Any resolution or ordinance setting a city's property tax request at an amount that exceeds the city's property tax request in the prior year shall include, but not be limited to, the following information:

- (1) The name of the city;
- (2) The amount of the property tax request;
- (3) The following statements:
 - (a) The total assessed value of property differs from last year's total assessed value by ____ percent;
 - (b) The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property, would be \$____ per \$100 of assessed value;
 - (c) The (name of city) proposes to adopt a property tax request that will cause its tax rate to be \$____ per \$100 of assessed value; and
 - (d) Based on the proposed property tax request and changes in other revenue, the total operating budget of (name of city) will exceed last year's by ____ percent; and
- (4) The record vote of the City Council in passing such resolution or ordinance.

(F) Any resolution or ordinance setting a property tax request under this section shall be certified and forwarded to the County Clerk on or before October 13 of the year for which the tax request is to apply.

(G) Any tax levy which is not in compliance with this section and Neb. RS 77-1601 shall be construed as an unauthorized levy under Neb. RS 77-1606.
(Neb. RS 77-1601.02)

§ 35.51 MOTOR VEHICLE FEE.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LIMITS OF THE CITY. Includes the extraterritorial zoning jurisdiction of the city.

PERSON. Includes bodies corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, cooperatives, and associations. Person does not include any federal, state, or local government or any political subdivision thereof.

(B) Except as otherwise provided in division (D) of this section, the governing body of the city shall have power to require any individual whose primary residence or person who owns a place of business which is within the limits of the city and that owns and operates a motor vehicle within such limits to pay an annual motor vehicle fee and to require the payment of such fee upon the change of ownership of such vehicle. All such fees which may be provided for under this section shall be used exclusively for constructing, repairing, maintaining, or improving streets, roads, alleys, public ways, or parts thereof or for the amortization of bonded indebtedness when created for such purposes.

(C) No motor vehicle fee shall be required under this section if:

(1) A vehicle is used or stored but temporarily in the city for a period of six months or less in a 12-month period;

(2) An individual does not have a primary residence or a person does not own a place of business within the limits of the city and does not own and operate a motor vehicle within the limits of the city; or

(3) An individual is a full-time student attending a postsecondary institution within the limits of the city and the motor vehicle's situs under the Motor Vehicle Certificate of Title Act is different from the place at which he or she is attending such institution.

(D) After December 31, 2012, no motor vehicle fee shall be required of any individual whose primary residence is or person who owns a place of business within the extraterritorial zoning jurisdiction of the city.

(E) The fee shall be paid to the County Treasurer of the county in which the city is located when the registration fees as provided in the Motor Vehicle Registration Act are paid. These fees shall be credited by the County Treasurer to the road fund of the city.

(Neb. RS 18-1214)

Statutory reference:

Motor Vehicle Registration Act, see Neb. RS 60-301

TITLE V: PUBLIC WORKS

Chapter

50. GENERAL PROVISIONS

Cross-reference:

Local legislation regarding utilities and public works, see Title XVII

CHAPTER 50: GENERAL PROVISIONS

- 50.01 Denial of service; when prohibited
- 50.02 Discontinuance of service; notice procedure
- 50.03 Diversion of services, meter tampering, unauthorized reconnection, prohibited; evidence
- 50.04 Diversion of services; civil action
- 50.05 Delinquent utility charges; lien; civil action

Cross-reference:

Trespass; public power infrastructure facility, see § 130.02

§ 50.01 DENIAL OF SERVICE; WHEN PROHIBITED.

No applicant for the services of a public or private utility company furnishing water, natural gas, or electricity at retail in this city shall be denied service because of unpaid bills for similar service which are not collectible at law because of statutes of limitations or discharge in bankruptcy proceedings.
(Neb. RS 70-1601)

§ 50.02 DISCONTINUANCE OF SERVICE; NOTICE PROCEDURE.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

DOMESTIC SUBSCRIBER. Shall not include municipalities, cities, villages, political subdivisions, companies, corporations, partnerships, limited liability companies, or businesses of any nature.

(Neb. RS 70-1602)

(B) No public or private utility company, including any utility owned and operated by the city, furnishing water, natural gas, or electricity at retail in this city shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless the utility company first gives notice to any subscriber whose service is proposed to be terminated. Such notice shall be given in person, by first-class mail, or by electronic delivery, except that electronic delivery shall only be used if the subscriber has specifically elected to receive such notices by electronic delivery. If notice is given by first-class mail or electronic delivery, such notice shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven days after notice is sent or given. Holidays and weekends shall be excluded from the seven days.

(Neb. RS 70-1605)

(C) The notice required by division (A) shall contain the following information:

- (1) The reason for the proposed disconnection;
- (2) A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the utility regarding payment of the bill;
- (3) The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;
- (4) The name, address, and telephone number of the utility's employee or department to whom the domestic subscriber may address an inquiry or complaint;
- (5) The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;
- (6) A statement that the utility may not disconnect service pending the conclusion of the conference;
- (7) A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that a domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the utility within 5 days of receiving notice under this section and will prevent the disconnection of the utility's service for a period of 30 days from such filing. Only 1 postponement of disconnection shall be allowed under this division for each incidence of nonpayment of any past-due account;
- (8) The cost that will be borne by the domestic subscriber for restoration of service;
- (9) A statement that the domestic subscriber may arrange with the utility for an installment payment plan;
- (10) A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and
- (11) Any additional information not inconsistent with this section which has received prior approval from the City Council or Board of Public Works, in the case of a city utility, or the board of directors or administrative board of any other utility.

(Neb. RS 70-1606)

(D) The utility shall establish a third-party notice procedure for the notification of a designated third party of any proposed discontinuance of service and shall advise its subscribers, including new subscribers, of the availability of such procedures.

(Neb. RS 70-1607)

(E) The provisions of Neb. RS 70-1608 through 70-1614 shall apply to disputes over a proposed discontinuance of service.

(F) The procedures adopted for resolving utility bills by the City Council or Board of Public Works for any city utility, 1 copy of which is on file in the office of the City Clerk, are hereby incorporated by reference in addition to any amendments thereto and are made a part of this section as though set out in full.

(G) This section shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public.

(Neb. RS 70-1615)

§ 50.03 DIVERSION OF SERVICES, METER TAMPERING, UNAUTHORIZED RECONNECTION, PROHIBITED; EVIDENCE.

(A) It is an offense for any person to do any of the following:

(1) To connect any instrument, device, or contrivance with any wire supplying or intended to supply electricity or electric current or to connect any pipe or conduit supplying gas or water, without the knowledge and consent of any city utility supplying such products or services, in such a manner that any portion thereof may be supplied to any instrument by or at which electricity, electric current, gas, or water may be consumed without passing through the meter made or provided for measuring or registering the amount or quantity thereof passing through it;

(2) To knowingly use or knowingly permit the use of electricity, electric current, gas, or water obtained unlawfully pursuant to this section;

(3) To reconnect electrical, gas, or water service without the knowledge and consent of any city utility supplying such service if the service has been disconnected pursuant to Neb. RS 70-1601 through 70-1615 or § 50.02 of this code; or

(4) To willfully injure, alter, or by any instrument, device, or contrivance in any manner interfere with or obstruct the action or operation of any meter made or provided for measuring or registering the amount or quantity of electricity, electric current, gas, or water passing through it, without the knowledge and consent of any city utility supplying the electricity, electric current, gas, or water passing or intended to pass through the meter.

(B) Proof of the existence of any wire, pipe, or conduit connection or reconnection or of any injury, alteration, interference, or obstruction of a meter is *prima facie* evidence of the guilt of the person in possession of the premises where that connection, reconnection, injury, alteration, interference, or obstruction is proved to exist.

(Neb. RS 28-515.02) Penalty, see § 10.99

§ 50.04 DIVERSION OF SERVICES; CIVIL ACTION.

(A) For purposes of this section, the definitions found in Neb. RS 25-21,275 shall apply.

(B) (1) The city utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts bypassing, tampering, or unauthorized metering, when that act results in damages to the utility. A city utility may bring a civil action for damages pursuant to this section against any person receiving the benefit of utility service through means of bypassing, tampering, or unauthorized metering.

(2) In any civil action brought pursuant to this section, the city utility shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover as damages:

(a) The amount of actual damage or loss if the amount of the damage or loss is susceptible of reasonable calculation; or

(b) Liquidated damages of \$750 if the amount of actual damage or loss is not susceptible of reasonable calculation.

(3) In addition to damage or loss under division (B)(2)(a) or (B)(2)(b), the utility may recover all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering including, but not limited to, disconnection, reconnection, service calls, equipment, costs of the suit, and reasonable attorneys' fees in cases within the scope of Neb. RS 25-1801.

(Neb. RS 25-21,276)

(C) (1) There shall be a rebuttable presumption that a tenant or occupant at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of that bypassing, tampering, or unauthorized metering if the tenant or occupant:

(a) Had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist; and

(b) Was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services to the premises.

(2) There shall be a rebuttable presumption that a customer at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of that bypassing,

tampering, or unauthorized metering if the customer controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering was proven to exist. (Neb. RS 25-21,277)

(D) The remedies provided by this section shall be deemed to be supplemental and additional to powers conferred by existing laws. The remedies provided in this section are in addition to and not in limitation of any other civil or criminal statutory or common-law remedies.

(Neb. RS 25-21,278)

Penalty, see § 10.99

§ 50.05 DELINQUENT UTILITY CHARGES; LIEN; CIVIL ACTION.

(A) All water rates, taxes, or rent assessed by the City Council shall be a lien upon the premises or real estate, upon or for which the same is used or supplied; and such taxes, rents, or rates shall be paid and collected and such lien enforced in such manner as the Council shall by ordinance direct and provide.

(B) All sewer charges established by the City Council shall be a lien upon the premises or real estate for which the same is used or supplied. Such lien shall be enforced in such manner as the Council provides by ordinance.

(C) If the service charge established by the City Council for the use of any city sewage disposal plant and sewerage system is not paid when due, such sum may be recovered by the city in a civil action or it may be certified to the County Assessor and assessed against the premises served and collected or returned in the same manner as other city taxes are certified, assessed, collected, and returned.

(Neb. RS 18-503)

(D) Unless the City Council otherwise provides, on June 1 of each year, the City Clerk shall report to the Council a list of all unpaid accounts due for utilities service together with a description of the premises served. If the Council approves the report, the Clerk shall certify the report to the County Clerk to be collected as a special tax in the manner provided by law.

Statutory reference:

Similar provisions, see Neb. RS 17-538, 17-925.01

TITLE VII: TRAFFIC CODE

Chapter

70. GENERAL PROVISIONS

71. TRAFFIC REGULATIONS

72. PARKING REGULATIONS

Cross-reference:

Local legislation regarding traffic, see Title XVII

CHAPTER 70: GENERAL PROVISIONS

Section

- 70.01 Definitions
- 70.02 Traffic regulations; general authority
- 70.03 Regulation of highways; police powers
- 70.04 Prohibitions on operation of vehicles
- 70.05 Ordinances contrary to state law prohibited
- 70.06 Placement and maintenance of traffic control devices
- 70.07 Enforcement of rules and laws
- 70.08 Failure or refusal to obey order
- 70.09 Obedience to traffic control devices; exceptions
- 70.10 Authorized emergency vehicles; privileges
- 70.11 Traffic officers

70.99 Traffic infractions; penalty

Statutory reference:

Nebraska Rules of the Road, see Neb. RS 60-601

§ 70.01 DEFINITIONS.

For the purpose of this title, the following definitions and the other definitions in Neb. RS 60-606 through 60-676 shall apply unless the context clearly indicates or requires a different meaning.

ALLEY. A highway intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic.

(Neb. RS 60-607)

AUTHORIZED EMERGENCY VEHICLE. Such fire department vehicles, police vehicles, rescue vehicles, and ambulances as are publicly owned, such other publicly or privately owned vehicles as are designated by the Director of Motor Vehicles, and such publicly owned military vehicles of the National Guard as are designated by the Adjutant General pursuant to Neb. RS 55-133.

(Neb. RS 60-610)

BUSINESS DISTRICT. The territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including, but not

limited to, hotels, banks, office buildings, railroad stations, or public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of a highway.
(Neb. RS 60-613)

HIGHWAY. The entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(Neb. RS 60-624)

MANUAL. The Manual on Uniform Traffic Control Devices adopted by the Department of Transportation pursuant to Neb. RS 60-6,118.

(Neb. RS 60-631)

MOTOR VEHICLE. Every self-propelled land vehicle, not operated upon rails, except bicycles, mopeds, self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices.

(Neb. RS 60-638)

PEACE OFFICER. The Police Chief or other chief law enforcement official, any city police officer, or any other person authorized to enforce city ordinances. With respect to directing traffic only, peace officer shall also include any person authorized to direct or regulate traffic.

(Neb. RS 60-646)

RESIDENTIAL DISTRICT. The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

(Neb. RS 60-654)

ROADWAY. That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes 2 or more separate roadways, the term roadway shall refer to any such roadway separately but not to all such roadways collectively.

(Neb. RS 60-656)

SCHOOL CROSSING ZONE. The area of a roadway designated to the public by the state Department of Transportation or City Council as a school crossing zone through the use of a sign or traffic control device as specified by the City Council in conformity with the Manual but does not include any area of a freeway. A school crossing zone starts at the location of the first sign or traffic control device identifying the school crossing zone and continues until a sign or traffic control device indicates that the school crossing zone has ended.

(Neb. RS 60-658.01)

SHOULDER. That part of the highway contiguous to the roadway and designed for the accommodation of stopped vehicles, for emergency use, and for lateral support of the base and surface courses of the roadway.

(Neb. RS 60-661)

TRAFFIC. Pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any highway for purposes of travel.

(Neb. RS 60-669)

TRAFFIC CONTROL DEVICE. Any sign, signal, marking, or other device not inconsistent with the Nebraska Rules of the Road placed or erected by authority of the City Council or any official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(Neb. RS 60-670)

TRAFFIC CONTROL SIGNAL. Any signal, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(Neb. RS 60-671)

TRAFFIC INFRACTION. The violation of any provision of the Nebraska Rules of the Road or of any law, ordinance, order, rule, or regulation regulating traffic which is not otherwise declared to be a misdemeanor or a felony or, in this title, an offense.

(Neb. RS 60-672)

VEHICLE. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway except devices moved solely by human power or used exclusively upon stationary rails or tracks.

(Neb. RS 60-676)

§ 70.02 TRAFFIC REGULATIONS; GENERAL AUTHORITY.

(A) The City Council may, in its jurisdiction, enact regulations permitting, prohibiting, and controlling the use of motor vehicles, minibikes, motorcycles, off-road recreation vehicles of any and all types, other powered vehicles, electric personal assistive mobility devices, and vehicles which are not self-propelled. Any person who operates any of such vehicles without the permission of the City Council or its designated representative or in a place, time, or manner which has been prohibited by the City Council shall be guilty of an offense.

(B) The City Council may further authorize the supervising official of any area under its ownership or control to permit, control, or prohibit operation of any motor vehicle, minibike, motorcycle, off-road recreational vehicle of any or all types, other powered vehicle, electric personal assistive mobility device, or vehicle which is not self-propelled on all or any portion of any area under its ownership or control at any time by posting or, in case of an emergency, by personal notice. Any person operating any such vehicle where prohibited, where not permitted, or in a manner so as to endanger the peace and safety of the public or as to harm or destroy the natural features or manmade features of any such area shall be guilty of an offense.

(Neb. RS 60-678) Penalty, see § 10.99

§ 70.03 REGULATION OF HIGHWAYS; POLICE POWERS.

(A) The City Council with respect to highways under its jurisdiction and within the reasonable exercise of the police power may:

- (1) Regulate or prohibit stopping, standing, or parking;
- (2) Regulate traffic by means of peace officers or traffic control devices;
- (3) Regulate or prohibit processions or assemblages on the highways;
- (4) Designate highways or roadways for use by traffic moving in one direction;
- (5) Establish speed limits for vehicles in public parks;
- (6) Designate any highway as a through highway or designate any intersection as a stop or yield intersection;
- (7) Restrict the use of highways as authorized in § 70.04;
- (8) Regulate operation of bicycles and require registration and inspection of such, including requirement of a registration fee;
- (9) Regulate operation of electric personal assistive mobility devices;
- (10) Regulate or prohibit the turning of vehicles or specified types of vehicles;
- (11) Alter or establish speed limits authorized in the Nebraska Rules of the Road;
- (12) Designate no-passing zones;
- (13) Prohibit or regulate use of controlled-access highways by any class or kind of traffic except those highways which are a part of the state highway system;
- (14) Prohibit or regulate use of heavily traveled highways by any class or kind of traffic it finds to be incompatible with the normal and safe movement of traffic, except that such regulations shall not be effective on any highway which is part of the state highway system unless authorized by the Department of Transportation;
- (15) Establish minimum speed limits as authorized in the Rules;
- (16) Designate hazardous railroad grade crossings as authorized in the Rules;
- (17) Designate and regulate traffic on play streets;

(18) Prohibit pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk as authorized in the Rules;

(19) Restrict pedestrian crossings at unmarked crosswalks as authorized in the Rules;

(20) Regulate persons propelling push carts;

(21) Regulate persons upon skates, coasters, sleds, and other toy vehicles;

(22) (a) Notwithstanding any other provision of law, adopt and enforce an ordinance or resolution prohibiting the use of engine brakes on the National System of Interstate and Defense Highways that has a grade of less than 5 degrees within its jurisdiction.

(b) For the purpose of this division, the following definition shall apply unless the context clearly indicates or requires a different meaning.

ENGINE BRAKE. A device that converts a power producing engine into a power-absorbing air compressor, resulting in a net energy loss;

(23) Adopt and enforce such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; and

(24) Adopt other traffic regulations except as prohibited by state law or contrary to state law.

(B) The City Council shall not erect or maintain any traffic control device at any location so as to require the traffic on any state highway or state-maintained freeway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the Department of Transportation.

(C) No ordinance or regulation enacted under division (A)(4), (5), (6), (7), (10), (11), (12), (13), (14), (16), (17), or (19) shall be effective until traffic control devices giving notice of such local traffic regulations are erected upon or at the entrances to such affected highway or part thereof affected as may be most appropriate.

(Neb. RS 60-680)

§ 70.04 PROHIBITIONS ON OPERATION OF VEHICLES.

(A) The City Council may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles, for a total period not to exceed 180 days in any 1 calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which the City Council is responsible whenever any such highway by reason of deterioration, rain, snow, or other climatic condition will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weight thereof reduced. The City Council shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end

of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until such signs are erected and maintained.

(B) The City Council may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.
(Neb. RS 60-681)

§ 70.05 ORDINANCES CONTRARY TO STATE LAW PROHIBITED.

The City Council shall not enact or enforce any ordinance directly contrary to the Nebraska Rules of the Road unless expressly authorized by the Legislature.

(Neb. RS 60-6,108)

§ 70.06 PLACEMENT AND MAINTENANCE OF TRAFFIC CONTROL DEVICES.

The City Council shall place and maintain such traffic control devices upon highways under its jurisdiction as it deems necessary to indicate and to carry out the provisions of this title or to regulate, warn, or guide traffic. All such traffic control devices erected pursuant to this title shall conform with the Manual.

(Neb. RS 60-6,121)

§ 70.07 ENFORCEMENT OF RULES AND LAWS.

(A) All peace officers are hereby specifically directed and authorized and it shall be deemed and considered a part of the official duties of each of such officers to enforce the provisions of Nebraska Rules of the Road and this title, including the specific enforcement of maximum speed limits, and any other state or city law regulating the operation of vehicles or the use of the highways.

(B) To perform the official duties imposed by this section, peace officers shall have the power:

(1) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act or this title or of any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;

(2) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of this state relating to misdemeanors or felonies or of similar city ordinances if and when designated or called upon to do so as provided by law;

(3) At all times to direct all traffic in conformity with law or, in the event of a fire or other emergency or in order to expedite traffic or insure safety, to direct traffic as conditions may require;

(4) When in uniform, to require the driver of a vehicle to stop and exhibit his or her operator's license and registration certificate issued for the vehicle and submit to an inspection of such vehicle and the license plates and registration certificate for the vehicle and to require the driver of a motor vehicle to present the vehicle within 5 days for correction of any defects revealed by such motor vehicle inspection as may lead the inspecting officer to reasonably believe that such motor vehicle is being operated in violation of the statutes of Nebraska, the rules and regulations of the Director of Motor Vehicles, or any city ordinance or regulation;

(5) To inspect any vehicle of a type required to be registered according to law in any public garage or repair shop or in any place where such a vehicle is held for sale or wrecking;

(6) To serve warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways; and

(7) To investigate traffic accidents for the purpose of carrying on a study of traffic accidents and enforcing motor vehicle and highway safety laws.

(Neb. RS 60-683)

Statutory reference:

Motor Vehicle Operator's License Act, see Neb. RS 60-462

§ 70.08 FAILURE OR REFUSAL TO OBEY ORDER.

(A) Any person who knowingly fails or refuses to obey any lawful order of any peace officer who is controlling or directing traffic shall be guilty of a traffic infraction.

(B) Any person who knowingly fails to obey any lawful order of a peace officer shall be guilty of an offense whenever such order is given in furtherance of the apprehension of a person who has violated the Nebraska Rules of the Road or this title or of a person whom such officer reasonably believes has violated the Rules or this title.

(Neb. RS 60-6,110) Penalty, see § 10.99

§ 70.09 OBEDIENCE TO TRAFFIC CONTROL DEVICES; EXCEPTIONS.

(A) The driver of any vehicle shall obey the instructions of any traffic control device applicable thereto placed in accordance with the Nebraska Rules of the Road or this title, unless otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle in the Rules and this title.

(B) No provision of the Rules or this title for which traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by a reasonably observant person. Whenever any provision of the Rules or this title does not state that traffic control devices are required, such provision shall be effective even though no devices are erected or in place.

(C) Whenever traffic control devices are placed in position approximately conforming to the requirements of the Rules or this title, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary is established by competent evidence.

(D) Any traffic control device placed pursuant to the Rules or this title and purporting to conform with the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of the Rules or this title unless the contrary is established by competent evidence.

(Neb. RS 60-6,119) Penalty, see § 70.99

§ 70.10 AUTHORIZED EMERGENCY VEHICLES; PRIVILEGES.

(A) Subject to the conditions stated in the Nebraska Rules of the Road and this title, the driver of an authorized emergency vehicle, when responding to an emergency call, when pursuing an actual or suspected violator of the law, or when responding to but not when returning from a fire alarm, may:

(1) Stop, park, or stand, irrespective of the provisions of the Rules and this title, and disregard regulations governing direction of movement or turning in specified directions; and

(2) Except for wreckers towing disabled vehicles and highway maintenance vehicles and equipment:

(a) Proceed past a steady red indication, a flashing red indication, or a stop sign but only after slowing down as may be necessary for safe operation; and

(b) Exceed the maximum speed limits so long as he or she does not endanger life, limb, or property.

(B) Except when operated as a police vehicle, the exemptions granted in division (A) shall apply only when the driver of such vehicle, while in motion, sounds an audible signal by bell, siren, or exhaust whistle as may be reasonably necessary and when such vehicle is equipped with at least 1 lighted light displaying a red light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle.

(C) The exemptions granted in division (A) shall not relieve the driver from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect such driver from the consequences of his or her reckless disregard for the safety of others.

(D) Authorized emergency vehicles operated by police and fire departments shall not be subject to the size and weight limitations of sections Neb. RS 60-6,288 to 60-6,290 and 60-6,294.

(Neb. RS 60-6,114)

§ 70.11 TRAFFIC OFFICERS.

The City Council or the city police may at any time detail officers, to be known as "traffic officers," at street intersections. All traffic officers shall be vested with the authority to regulate and control traffic at the intersections to which they are assigned. It shall be their duty to direct the movement of traffic and prevent congestion and accidents. It shall be unlawful for any person to violate any order or signal of any such traffic officer notwithstanding the directive of a stop sign or signal device that may have been placed at any such intersection.

Penalty, see § 70.99

§ 70.99 TRAFFIC INFRACTIONS; PENALTY.

(A) Unless otherwise declared in this title with respect to particular offenses, a violation of any provision of this title shall constitute a traffic infraction.

(Neb. RS 60-682)

(B) Any person who is found guilty of a traffic infraction in violation of this title for which a penalty has not been specifically provided shall be fined:

(1) Not more than \$100 for the first offense;

(2) Not more than \$200 for a second offense within a 1-year period; and

(3) Not more than \$300 for a third and subsequent offense within a 1-year period.

(Neb. RS 60-689)

Statutory reference:

Other provisions on traffic infractions, see Neb. RS 60-684 through 60-694.01

CHAPTER 71: TRAFFIC REGULATIONS

Section

General Provisions

- 71.01 Restrictions on direction of travel
- 71.02 Right-of-way; stop and yield signs
- 71.03 Interference with traffic control devices or railroad signs or signals
- 71.04 Signs, markers, devices, or notices; prohibited acts
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- 71.20 Basic rule
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- 71.22 Bridges and other elevated structures
- 71.23 Alternative maximum limits
- 71.24 Near schools

- 71.99 Violations; fines

GENERAL PROVISIONS

§ 71.01 RESTRICTIONS ON DIRECTION OF TRAVEL.

(A) The City Council with respect to highways under its jurisdiction may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all times or at such times as shall be indicated by traffic control devices.

(B) Except for emergency vehicles, no vehicle shall be operated, backed, pushed, or otherwise caused to move in a direction which is opposite to the direction designated by competent authority on any deceleration lane, acceleration lane, access ramp, shoulder, or roadway.

(C) A vehicle which passes around a rotary traffic island shall be driven only to the right of such island.

(Neb. RS 60-6,138)

§ 71.02 RIGHT-OF-WAY; STOP AND YIELD SIGNS.

(A) The City Council may provide for preferential right-of-way at an intersection and indicate such by stop signs or yield signs erected by such authorities.

(B) Except when directed to proceed by a peace officer or traffic control signal, every driver of a vehicle approaching an intersection where a stop is indicated by a stop sign shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, such driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on such highway as to constitute an immediate hazard if such driver moved across or into such intersection.

(C) The driver of a vehicle approaching a yield sign shall slow to a speed reasonable under the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, such driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard if such driver moved across or into such intersection.

(Neb. RS 60-6,148) Penalty, see § 70.99

§ 71.03 INTERFERENCE WITH TRAFFIC CONTROL DEVICES OR RAILROAD SIGNS OR SIGNALS.

No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any traffic control device, any railroad sign or signal, or any part of such a device, sign, or signal.

(Neb. RS 60-6,129) Penalty, see § 70.99

§ 71.04 SIGNS, MARKERS, DEVICES, OR NOTICES; PROHIBITED ACTS.

(A) Any person who willfully or maliciously shoots upon the public highway and injures, defaces, damages, or destroys any signs, monuments, road markers, traffic control devices, traffic surveillance devices, or other public notices lawfully placed upon such highways shall be guilty of an offense.

(B) No person shall willfully or maliciously injure, deface, alter, or knock down any sign, traffic control device, or traffic surveillance device.

(C) It shall be unlawful for any person, other than a duly authorized representative of the Department of Transportation, the county, or the city, to remove any sign, traffic control device, or

traffic surveillance device placed along a highway for traffic control, warning, or informational purposes by official action of the department, county, or city. It shall be unlawful for any person to possess a sign or device which has been removed in violation of this division.

(D) Any person violating division (B) or (C) of this section shall be guilty of an offense and shall be assessed liquidated damages in the amount of the value of the sign, traffic control device, or traffic surveillance device and the cost of replacing it.

(Neb. RS 60-6,130) Penalty, see § 10.99

§ 71.05 TIRE REQUIREMENTS AND PROHIBITIONS; PERMISSIVE USES.

(A) Every solid rubber tire on a vehicle moved on any highway shall have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(B) No tire on a vehicle moved on a highway shall have on its periphery any clock, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that:

(1) This prohibition shall not apply to pneumatic tires with metal or metal-type studs not exceeding 5/16 of an inch in diameter inclusive of the stud-casing with an average protrusion beyond the tread surface of not more than 7/64 of an inch between November 1 and April 1, except that school buses, mail carrier vehicles, and emergency vehicles shall be permitted to use metal or metal-type studs at any time during the year;

(2) It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; and

(3) It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid.

(C) (1) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer:

(a) Having any metal tire in contact with the roadway; or

(b) Equipped with solid rubber tires.

(2) Division (C)(1) shall not apply to farm vehicles having a gross weight of 10,000 pounds or less or to implements of husbandry.

(D) The city may, in its discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery.

(Neb. RS 60-6,250)

Statutory reference:

Rubber tired cranes, see Neb. RS 60-6,288

SPEED LIMITS

§ 71.20 BASIC RULE.

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. A person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(Neb. RS 60-6,185) Penalty, see § 70.99

§ 71.21 MAXIMUM LIMITS.

(A) Except when a special hazard exists that requires lower speed for compliance with § 71.20, the limits set forth in this section and Neb. RS 60-6,187, 60-6,188, 60-6,305, and 60-6,313 shall be the maximum lawful speeds unless reduced pursuant to division (B), and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

(1) Twenty-five miles per hour in any residential district;

(2) Twenty miles per hour in any business district;

(3) Fifty miles per hour upon any highway that is gravel or not dustless surfaced;

(4) Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;

(5) Sixty-five miles per hour upon any four-lane divided highway not a part of the state highway system;

(6) Sixty-five miles per hour upon any part of the state highway system other than an expressway, a super-two highway, or a freeway.

(B) The maximum speed limits established in division (A) may be reduced by the Department of Transportation or the City Council pursuant to § 71.23 or Neb. RS 60-6,188.

(C) The City Council may erect and maintain suitable signs along highways under its jurisdiction in such number and at such locations as it deems necessary to give adequate notice of the speed limits established pursuant to division (A) or (B) upon such highways.

(Neb. RS 60-6,186) Penalty, see § 71.99

§ 71.22 BRIDGES AND OTHER ELEVATED STRUCTURES.

(A) No person shall drive a vehicle over any public bridge, causeway, viaduct, or other elevated structure at a speed which is greater than the maximum speed which can be maintained with safety thereon when such structure is posted with signs as provided in division (B).

(B) The Department of Transportation or the City Council may conduct an investigation of any bridge or other elevated structure constituting a part of a highway under its jurisdiction, and if it finds that the structure cannot safely withstand vehicles traveling at the speed otherwise permissible, the Department or the City Council shall determine and declare the maximum speed of vehicles which the structure can safely withstand and shall cause suitable signs stating the maximum speed to be erected and maintained before each end of the structure.

(C) Upon the trial of any person charged with a violation of division (A), proof of the determination of the maximum speed by the Department or the City Council and the existence of such signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety on the bridge or structure.

(Neb. RS 60-6,189) Penalty, see § 71.99

§ 71.23 ALTERNATIVE MAXIMUM LIMITS.

(A) Whenever the Department of Transportation determines, upon the basis of an engineering and traffic investigation, that any maximum speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, place, or part of the state highway system outside of the corporate limits of cities and villages as well as inside the corporate limits of cities and villages on freeways which are part of the state highway system, it may determine and set a reasonable and safe maximum speed limit for such intersection, place, or part of such highway which shall be the lawful speed limit when appropriate signs giving notice thereof are erected at such intersection, place, or part of the highway, except that the maximum rural and freeway limits shall not be exceeded. Such a maximum speed limit may be set to be effective at all times or at such times as are indicated upon such signs.

(B) On all highways within its corporate limits, except on state-maintained freeways which are part of the state highway system, the City Council shall have the same power and duty to alter the maximum speed limits as the Department if the change is based on engineering and traffic investigation, except that

no imposition of speed limits on highways which are part of the state highway system in the city shall be effective without the approval of the Department.

(C) Not more than six such speed limits shall be set per mile along a highway, except in the case of reduced limits at intersections, and the difference between adjacent limits shall not be more than 20 miles per hour.

(D) When the Department or the City Council determines by an investigation that certain vehicles in addition to those specified in Neb. RS 60-6,187, 60-6,305, and 60-6,313 cannot with safety travel at the speeds provided in §§ 71.21 and 71.22 and Neb. RS 60-6,187, 60-6,305, and 60-6,313 or set pursuant to this section, § 71.22, or Neb. RS 60-6,188, the Department or the City Council may restrict the speed limit for such vehicles on highways under its respective jurisdiction and post proper and adequate signs.

(Neb. RS 60-6,190)

§ 71.24 NEAR SCHOOLS.

(A) It shall be unlawful for the driver of any vehicle, when passing premises on which school buildings are located and which are used for school purposes, during school recess or while children are going to or leaving school during the opening or closing hours, to drive the vehicle at a rate of speed in excess of 15 miles per hour past the premises.

Penalty, see § 71.99

(B) The driver shall stop at all stop signs located at or near such school premises, and it shall be unlawful for the driver to make a U-turn at any intersection where such stop signs are located at or near such school premises.

Penalty, see § 70.99

§ 71.99 VIOLATIONS; FINES.

(A) Any person who operates a vehicle in violation of any maximum speed limit established for any highway or freeway is guilty of a traffic infraction and upon conviction shall be fined:

(1) \$10 for traveling 1-5 miles per hour over the authorized speed limit;

(2) \$25 for traveling over 5 miles per hour but not over 10 miles per hour over the authorized speed limit;

(3) \$75 for traveling over 10 miles per hour but not over 15 miles per hour over the authorized speed limit;

(4) \$125 for traveling over 15 miles per hour but not over 20 miles per hour over the authorized speed limit;

(5) \$200 for traveling over 20 miles per hour but not over 35 miles per hour over the authorized speed limit; and

(6) \$300 for traveling over 35 miles per hour over the authorized speed limit.

(B) (1) The fines prescribed in division (A) shall be doubled if the violation occurs within a maintenance, repair, or construction zone established pursuant to Neb. RS 60-6,188.

(2) For the purpose of this division (B), the following definition shall apply unless the context clearly indicates or requires a different meaning.

MAINTENANCE, REPAIR, OR CONSTRUCTION ZONE.

(a) (i) The portion of a highway identified by posted or moving signs as being under maintenance, repair, or construction; or

(ii) The portion of a highway identified by maintenance, repair, or construction zone speed limit signs displayed pursuant to Neb. RS 60-6,188; and

(iii) Within such portion of a highway where road construction workers are present.

(b) The maintenance, repair, or construction zone starts at the location of the first sign identifying the maintenance, repair, or construction zone and continues until a posted or moving sign indicates that the maintenance, repair, or construction zone has ended.

(C) The fines prescribed in division (A) shall be doubled if the violation occurs within a school crossing zone.

(Neb. RS 60-682.01)

CHAPTER 72: PARKING REGULATIONS

Section

General Provisions

- 72.01 Regulation or prohibition authorized
- 72.02 Roadway outside business or residential district
- 72.03 General prohibitions; exceptions
- 72.04 Obstructing street, intersection, or entrance
- 72.05 Intersections
- 72.06 Alleys
- 72.07 Truck parking, loading, and unloading
- 72.08 Display or repair of vehicle
- 72.09 Current registration
- 72.10 Time limits
- 72.11 Snow; weather emergencies; highway maintenance
- 72.12 Parallel, angle, and center parking
- 72.13 Backing freight vehicle to curb
- 72.14 Unattended motor vehicle
- 72.15 Painting of curbs

Administration and Enforcement

- 72.50 Tickets
- 72.51 Removal of illegally stopped vehicles; liability for costs

GENERAL PROVISIONS

§ 72.01 REGULATION OR PROHIBITION AUTHORIZED.

(A) The City Council with respect to highways under its jurisdiction and within the reasonable exercise of the police power may regulate or prohibit stopping, standing, or parking.
(Neb. RS 60-680)

(B) If the City Council regulates or prohibits stopping, standing, or parking all vehicles or a particular kind or class of vehicles on a highway or a portion of a highway, no person shall stop, stand,

or park a vehicle subject to such regulation or prohibition on the highway or portion thereof longer than a period of time necessary to load and unload freight or passengers.

Penalty, see § 70.99

§ 72.02 ROADWAY OUTSIDE BUSINESS OR RESIDENTIAL DISTRICT.

(A) No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of 200 feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed 24 hours.

(B) No person shall stop, park, or leave standing any vehicle on a freeway except in areas designated or unless so directed by a peace officer, except that when a vehicle is disabled or inoperable or the driver of the vehicle is ill or incapacitated, such vehicle shall be permitted to park, stop, or stand on the shoulder facing in the direction of travel with all wheels and projecting parts of such vehicle completely clear of the traveled lanes, but in no event shall such parking, standing, or stopping upon the shoulder of a freeway exceed 12 hours.

(C) No person, except law enforcement, fire department, emergency management, public or private ambulance, or authorized Department of Transportation or local authority personnel, shall loiter or stand or park any vehicle upon any bridge, highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

(D) Whenever a vehicle is disabled or inoperable in a roadway or for any reason obstructs the regular flow of traffic for reasons other than an accident, the driver shall move or cause the vehicle to be moved as soon as practical so as to not obstruct the regular flow of traffic.

(E) This section does not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position until such time as it can be removed pursuant to division (D) of this section.

(Neb. RS 60-6,164) Penalty, see § 70.99

§ 72.03 GENERAL PROHIBITIONS; EXCEPTIONS.

(A) Except when necessary to avoid conflict with other traffic or when in compliance with law or the directions of a peace officer or traffic control device, no person shall:

(1) Stop, stand, or park any vehicle:

(a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

- (b) On a sidewalk;
- (c) Within an intersection;
- (d) On a crosswalk;
- (e) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone unless the City Council indicates a different length by signs or markings;
- (f) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
- (g) Upon any bridge or other elevated structure over a highway or within a highway tunnel;
- (h) On any railroad track; or
- (i) At any place where official signs prohibit stopping.

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

- (a) In front of a public or private driveway;
- (b) Within 15 feet of a fire hydrant;
- (c) Within 20 feet of a crosswalk at an intersection;
- (d) Within 30 feet of any flashing signal, stop sign, yield sign, or other traffic control device located at the side of a roadway;
- (e) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of such entrance when properly signposted;
- (f) At any place where official signs prohibit standing; or

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

- (a) Within 50 feet of the nearest rail of a railroad crossing; or
- (b) At any place where official signs prohibit parking.

(B) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as shall be unlawful.

(Neb. RS 60-6,166) Penalty, see § 70.99

§ 72.04 OBSTRUCTING STREET, INTERSECTION, OR ENTRANCE.

No person shall, except in case of an accident or emergency, stop any vehicle in any location where stopping will obstruct any street, intersection, or entrance to an alley or public or private drive.

Penalty, see § 70.99

§ 72.05 INTERSECTIONS.

Except when necessary to avoid conflict with other traffic or when in compliance with law or the directions of a peace officer or traffic control device, no person shall park a vehicle or leave a vehicle standing for any purpose, except momentarily to load or discharge passengers, within 25 feet of the intersection of curb lines, or if none, then within 15 feet of the intersection of property lines, or where the curb lines are painted red or another color specified by the City Council to indicate such prohibition. Penalty, see § 70.99

§ 72.06 ALLEYS.

(A) No person shall park a vehicle with any portion thereof projecting into any alley entrance.

(B) No person shall park a vehicle in any alley, except for the purpose of loading or unloading during the time necessary to load or unload, which shall not exceed the maximum limit of $\frac{1}{2}$ hour. Every vehicle while loading or unloading in an alley shall be parked in such manner as will cause the least obstruction possible to traffic in the alley.

Penalty, see § 70.99

§ 72.07 TRUCK PARKING, LOADING, AND UNLOADING.

(A) It shall be unlawful for the operator of any truck with an overall length of more than 20 feet to park or stop such vehicle on a street within the business district except to load or unload when loading or unloading in an alley is impossible and then only for the period of time reasonably necessary to load or unload.

(B) If the City Council provides truck parking areas adjoining or adjacent to the business district, all truck operators shall use such parking areas for all parking purposes.

(C) Except in an area provided for by the City Council by resolution, it shall be unlawful for the operator of any truck, including an oil tanker, to park or stop for any period of time within the limits

of any street outside the business district except for the purpose of loading or unloading the cargo thereof in the ordinary course of business.

Penalty, see § 70.99

§ 72.08 DISPLAY OR REPAIR OF VEHICLE.

It shall be unlawful for any person to park upon any highway or public place within the city any vehicle displayed for sale. Except when necessary due to a breakdown or other emergency, no person shall adjust or repair, or race the motor of, any motor vehicle or motorcycle while standing on the highways of the city. No person or employee connected with a garage or repair shop shall use sidewalks or highways in the vicinity of the garage or shop for the purpose of working on vehicles of any description.

Penalty, see § 70.99

§ 72.09 CURRENT REGISTRATION.

It shall be unlawful to park or place on the highways or other public property any vehicle required to be registered by the Motor Vehicle Registration Act that is not registered in accordance with the Act.

Penalty, see § 70.99

Statutory reference:

Motor Vehicle Registration Act, see Neb. RS 60-301

§ 72.10 TIME LIMITS.

(A) It shall be unlawful to park a vehicle on a public street for over 24 consecutive hours except where a different maximum time limit is posted.

(B) If the City Council adopts a resolution entirely prohibiting, or fixing a time limit for, the parking and stopping of vehicles on any highway, it is unlawful to park or stop any vehicle in such highway for a period of time longer than fixed in the resolution.

Penalty, see § 70.99

§ 72.11 SNOW; WEATHER EMERGENCIES; HIGHWAY MAINTENANCE.

(A) Unless the City Council provides otherwise, it is unlawful to park or stand any vehicle on any highway in the city at any time within 12 hours after a snowfall of 3 inches or more has occurred within a 24 hour period if the snow has not been removed within that time.

(B) The Police Chief, the city police, or any other designated person may order any highway or portion thereof vacated for weather emergencies or highway maintenance. Notice shall be given by personally notifying the owner or operator of a vehicle parked on such highway or by posting appropriate

signs along the highway not less than 4 hours prior to the time that the vacation order is to be effective. It is unlawful to park a vehicle on a highway or portion thereof vacated in accordance with this division (B).

(C) A vehicle parked in violation of this section may be removed and parked, under the supervision of the city police, to a suitable nearby location without further notice to the owner or operator of such vehicle.

Penalty, see § 70.99

§ 72.12 PARALLEL, ANGLE, AND CENTER PARKING.

(A) Except as otherwise provided in this section, any vehicle stopped or parked upon a 2-way roadway where parking is permitted shall be so stopped or parked with the right-hand wheels parallel to and within 12 inches of the right-hand curb or edge of such roadway. No vehicle shall be parked upon a roadway when there is a shoulder adjacent to the roadway which is available for parking.

(B) Except when otherwise provided by the City Council, every vehicle stopped or parked upon a 1-way roadway shall be so stopped or parked parallel to the curb or edge of such roadway, in the direction of authorized traffic movement, with its right-hand wheels within 12 inches of the right-hand curb or edge of the roadway or its left-hand wheels within 12 inches of the left-hand curb or edge of such roadway.

(C) The City Council may permit angle or center parking on any roadway, except that angle or center parking shall not be permitted on any federal-aid highway or on any part of the state highway system unless the Director-State Engineer has determined that such roadway is of sufficient width to permit angle or center parking without interfering with the free movement of traffic.

(D) The City Council may prohibit or restrict stopping, standing, or parking on highways under its jurisdiction and erect and maintain proper and adequate signs thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

(Neb. RS 60-6,167)

(E) Where stalls are designated either on the curb or pavement, vehicles shall be parked within those stalls.

(F) Vehicles must not be parked at any curb in such a position as to prevent another vehicle already parked at the curb from moving away.

Penalty, see § 70.99

§ 72.13 BACKING FREIGHT VEHICLE TO CURB.

The operator of a vehicle of an over-all length of less than 20 feet, including load, while loading or unloading freight may back the vehicle to the curb but shall occupy as little of the street as possible. Penalty, see § 70.99

§ 72.14 UNATTENDED MOTOR VEHICLE.

No person having control or charge of a motor vehicle shall allow such vehicle to stand unattended on a highway without first doing the following:

- (A) Stopping the motor of such vehicle;
- (B) Except for vehicles equipped with motor starters that may be actuated without a key, locking the ignition, removing the key from the ignition;
- (C) Effectively setting the brakes thereon; and
- (D) When standing upon any roadway, turning the front wheels of such vehicle to the curb or side of such roadway.

(Neb. RS 60-6,168) Penalty, see § 70.99

§ 72.15 PAINTING OF CURBS.

(A) The curb space within 15 feet in either direction of a fire hydrant shall be painted red, or another color specified by the City Council, to indicate that parking is prohibited in such area.

(B) If the City Council adopts a resolution regulating or prohibiting the parking or stopping of vehicles at the curb on highways in front of certain facilities or at certain locations, the curbs adjacent to any such facility or location shall be painted in such manner as directed by the City Council to indicate such regulation or prohibition.

(C) It shall be the duty of the City Council or its agent to cause the curb space to be painted and to keep the same painted as provided in this chapter or as specified by the City Council. The marking or designating of portions of highways where the parking of vehicles is prohibited or limited shall be done only by the city through its proper officers, at the direction of the City Council. No person shall paint the curb of any highway or in any manner set aside, or attempt to prevent the parking of vehicles in, any highway or part thereof, except at such places where the parking of vehicles is prohibited by the provisions of this chapter or by a resolution adopted by the City Council.

Penalty, see § 70.99

ADMINISTRATION AND ENFORCEMENT**§ 72.50 TICKETS.**

All tickets issued for violations of nonmoving traffic regulations contained in this chapter shall, in addition to information normally stated on such tickets, carry the following information:

- (A) The amount of the fine if paid within 30 days;
- (B) The amount of the fine if not paid within 30 days;
- (C) The location where payment may be made; and
- (D) The fact that a complaint will be filed after 30 days if the fine is not paid in that time.

§ 72.51 REMOVAL OF ILLEGALLY STOPPED VEHICLES; LIABILITY FOR COSTS.

(A) Whenever any peace officer, or any authorized employee of a law enforcement agency who is employed by the city and specifically empowered by ordinance to act, finds a vehicle standing upon a highway in violation of any of the provisions of this chapter, the individual may remove the vehicle, have such vehicle removed, or require the driver or other person in charge of the vehicle to move such vehicle to a position off the roadway of the highway or from the highway.

(B) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any towing or storage fee shall be a lien upon the vehicle prior to all other claims. Any person towing or storing a vehicle shall be entitled to retain possession of the vehicle until the charges are paid. The lien provided for in this section shall not apply to the contents of any vehicle.

(Neb. RS 60-6,165)

TITLE IX: GENERAL REGULATIONS

Chapter

90. LEISURE AND RECREATION

91. HEALTH AND SAFETY

92. PUBLIC WAYS AND PROPERTY

93. ANIMALS

Cross-reference:

Local legislation regarding these topics, see Title XVII

CHAPTER 90: LEISURE AND RECREATION

Section

Parks and Recreational Facilities

- 90.01 Operation and funding
- 90.02 Injury to property

Library

- 90.15 Funding
- 90.16 Library Board; general powers and duties
- 90.17 Grounds and building
- 90.18 Sale and conveyance of real estate
- 90.19 Mortgages; release or renewal
- 90.20 Cost of use
- 90.21 Discrimination prohibited
- 90.22 Annual report
- 90.23 Penalties; recovery; disposition
- 90.24 Donations
- 90.25 Improper book removal

PARKS AND RECREATIONAL FACILITIES

§ 90.01 OPERATION AND FUNDING.

(A) If the city has already acquired or hereafter acquires land for park purposes or recreational facilities or has already built or hereafter builds swimming pools, recreational facilities, or dams, the Mayor and City Council may each year make and levy a tax upon the taxable value of all the taxable property in the city. The levy shall be collected and put into the city treasury and shall constitute the park and recreation fund of the city. The funds so levied and collected shall be used for amusements, for laying out, improving, and beautifying such parks, for maintaining, improving, managing, and beautifying such swimming pools, recreational facilities, or dams, and for the payment of salaries and wages of persons employed in the performance of such labor.

(Neb. RS 17-951)

(B) If the Mayor and City Council create a Board of Park Commissioners or Board of Park and Recreation Commissioners, when such Board has been appointed and qualified, all accounts against the park fund or park and recreation fund shall be audited by the Board, and warrants against the fund shall be drawn by the Chairperson of the Board, and warrants so drawn shall be paid by the City Treasurer out of the fund.

(Neb. RS 17-952)

(C) (1) Whether the title to real estate for parks, public grounds, swimming pools, or dams, either for recreational or conservational purposes, shall be acquired by gift, devise, or purchase as provided in Neb. RS 17-948, the jurisdiction of the City Council or Park Board shall at once be extended over such real estate; and the City Council or Park Board shall have power to enact bylaws, rules or ordinances for the protection and preservation of any real estate acquired, and to provide rules and regulations for the closing of the park or swimming pool, in whole or in part, to the general public, and charge admission thereto during such closing, either by the city or by any person, persons, or corporation leasing same. They may provide suitable penalties for the violation of such bylaws, rules, or ordinances; and the police power of the city shall be at once extended over the same.

(Neb. RS 17-949)

(2) The Park Board shall not enter into a contract of any nature that involves an expenditure of funds, except for ordinary operating expenses, unless the contract has been approved by resolution of the majority of the members of the City Council prior to the contractual agreement.

Statutory reference:

Levy limits, see Neb. RS 77-3442

Parks and recreational facilities generally, see Neb. RS 17-948 through 17-952

§ 90.02 INJURY TO PROPERTY.

It shall be unlawful for any person to maliciously or willfully cut down, injure, or destroy any tree, plant, or shrub in any city park or recreational facility. It shall be unlawful for any person to injure or destroy any sodded or planted area or injure or destroy any building, structure, equipment, fence, bench, table, or any other property of any city park or recreational area. No person shall commit any waste on or litter the city parks or other public grounds.

Penalty, see § 10.99

Statutory reference:

Littering of public and private property, see Neb. RS 28-523

LIBRARY

§ 90.15 FUNDING.

(A) (1) If the City Council has established a public library free of charge for the use of the inhabitants of the city or contracted for the use of a public library already established, the Council may levy a tax of not more than \$0.105 on each \$100 upon the taxable value of all the taxable property in the city annually to be levied and collected in like manner as other taxes in the city. The levy shall be subject to Neb. RS 77-3442 and 77-3443. The amount collected from such levy shall be known as the library fund.

(Neb. RS 51-201)

(2) The fund shall also include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing property and real estate from any source for the purpose of endowing the public library.

(B) All taxes levied or collected and all funds donated or in any way acquired for the erection, maintenance, or support of the public library shall be kept for the use of the library separate and apart from all other funds of the city, shall be drawn upon and paid out by the City Treasurer upon vouchers signed by the president of the Library Board and authenticated by the secretary of the Board, and shall not be used or disbursed for any other purpose or in any other manner. The city may establish a public library sinking fund for major capital expenditures.

(Neb. RS 51-209)

(C) Any money collected by the library shall be turned over at least monthly by the Librarian to the City Treasurer along with a report of the sources of the revenue.

§ 90.16 LIBRARY BOARD; GENERAL POWERS AND DUTIES.

(A) The Library Board shall have the power to make and adopt such bylaws, rules, and regulations for its own guidance and for the government of the library and reading room as it may deem expedient, not inconsistent with Neb. RS 51-201 through 51-219.

(Neb. RS 51-205)

(B) The Library Board shall have exclusive control of expenditures, of all money collected or donated to the credit of the library fund, of the renting and construction of any library building, and the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose.

(Neb. RS 51-207)

(C) The Library Board may erect, lease, or occupy an appropriate building for the use of such a library, and appoint a suitable librarian and assistants, fix the compensation of such appointees, and remove such appointees at the pleasure of the Board. The governing body of the city shall approve any

personnel administrative or compensation policy or procedure before implementation of such policy or procedure by the Library Board.

(D) The Library Board may establish rules and regulations for the government of the library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency. The Library Board may fix and impose, by general rules, penalties and forfeitures for trespasses upon or injury to the library grounds, rooms, books, or other property, for failure to return any book, or for violation of any bylaw, rule, or regulation. The Board shall have and exercise such power as may be necessary to carry out the spirit and intent of Neb. RS 51-201 through 51-219 in establishing and maintaining the library and reading room.

(Neb. RS 51-211)

§ 90.17 GROUNDS AND BUILDING.

The Library Board may purchase or lease grounds, exercise the power of eminent domain, and condemn real estate for the purpose of securing a site for a library building. The procedure to condemn property shall be exercised in the manner set forth in Neb. RS 76-704 through 76-724.

(Neb. RS 51-210)

§ 90.18 SALE AND CONVEYANCE OF REAL ESTATE.

(A) The Library Board may, by resolution, direct the sale and conveyance of any real estate owned by the Board or by the public library, which is not used for library purposes, or of any real estate so donated or devised to the Board or to the library upon such terms as the Board may deem best.

(B) Before any such sale is made the Library Board shall advertise the sale once each week for 3 consecutive weeks in a legal newspaper published or, if none is published, of general circulation in the city. The notice shall set out the time, place, terms, manner of sale, legal description of such real estate, and the right to reject any and all bids. If the bid or bids have not been rejected, then the real estate shall be sold to the highest bidder for cash, and the Chairperson of the Library Board, upon resolution of the Library Board directing him or her so to do, shall convey the real estate to the purchaser of such real estate upon his or her payment of his or her bid. If within 30 days after the third publication of the notice a remonstrance against the sale is signed by 30% of the registered voters of the city voting at the last regular city election and is filed with the City Council, the property shall not then, nor within 1 year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(Neb. RS 51-216)

§ 90.19 MORTGAGES; RELEASE OR RENEWAL.

The president of the Library Board shall have the power to release, upon full payment, any mortgage constituting a credit to the library fund and standing in the name of the Library Board. The signature of the president on any such release shall be authenticated by the secretary of the Board. The president and secretary in like manner, upon resolution duly passed and adopted by the Board, may renew any such mortgage.

(Neb. RS 51-206)

§ 90.20 COST OF USE.

(A) Except as provided in division (B) of this section, the library and reading room shall be free of charge for the use of the inhabitants of the city, subject always to such reasonable regulations as the Library Board may adopt to render the library of the greatest use to the inhabitants. The Library Board may exclude from the use of the library and reading rooms any person who willfully violates or refuses to comply with rules and regulations established for the government thereof.

(Neb. RS 51-212)

(B) The public library shall make its basic services available without charge to all residents of the city. The Board may fix and impose reasonable fees, not to exceed the library's actual cost, for nonbasic services.

(Neb. RS 51-211)

(C) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BASIC SERVICES. Include, but are not limited to, free loan of circulating print and nonprint materials from the local collection and general reference and information services.

NONBASIC SERVICES. Include, but are not limited to, use of:

- (a) Photocopying equipment;
- (b) Telephones, facsimile equipment, and other telecommunications equipment;
- (c) Media equipment;
- (d) Personal computers; and
- (e) Videocassette recording and playing equipment.

(Neb. RS 51-201.01)

§ 90.21 DISCRIMINATION PROHIBITED.

No library service shall be denied to any person because of race, sex, religion, age, color, national origin, ancestry, physical handicap, or marital status.

(Neb. RS 51-211)

§ 90.22 ANNUAL REPORT.

The Library Board shall, on or before the second Monday in February in each year, make a report to the City Council of the condition of its trust on the last day of the prior fiscal year. The report shall show all money received and credited or expended; the number of materials held, including books, video and audio materials, software programs, and materials in other formats; the number of periodical subscriptions on record, including newspapers; the number of materials added and the number withdrawn from the collection during the year; the number of materials circulated during the year; and other statistics, information, and suggestions as the Library Board may deem of general interest or as the City Council may require. The report shall be verified by affidavit of the president and secretary of the Library Board.

(Neb. RS 51-213)

§ 90.23 PENALTIES; RECOVERY; DISPOSITION.

Penalties imposed or accruing by any bylaw or regulation of the Library Board and any court costs and attorney's fees may be recovered in a civil action before any court having jurisdiction, such action to be instituted in the name of the Library Board. Money, other than any court costs and attorney's fees, collected in such actions shall be placed in the treasury of the city to the credit of the library fund. Attorney's fees collected pursuant to this section shall be placed in the treasury of the city and credited to the budget of the City Attorney's office.

(Neb. RS 51-214)

§ 90.24 DONATIONS.

Any person may make donation of money, lands, or other property for the benefit of the public library. The title to property so donated may be made to and shall vest in the Library Board and their successors in office, and the Board shall thereby become the owners thereof in trust to the uses of the public library.

(Neb. RS 51-215)

§ 90.25 IMPROPER BOOK REMOVAL.

It shall be unlawful for any person not authorized by the regulations made by the Library Board to take a book from the public library without the consent of the Librarian or an authorized employee of the library. Any person removing a book from the library without properly checking it out shall be deemed to be guilty of an offense.

Penalty, see § 10.99

CHAPTER 91: HEALTH AND SAFETY

Section

General Provisions

- 91.01 Health regulations
- 91.02 Enforcement official
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Nuisances

- 91.20 Definition
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- 91.22 Adjoining land owners; intervention before trial
- 91.23 Dead or diseased trees
- 91.24 Weeds; litter; stagnant water
- 91.25 Garbage and refuse

Fire Prevention

- 91.30 Open burning ban; waiver

GENERAL PROVISIONS

§ 91.01 HEALTH REGULATIONS.

For the purpose of promoting the health and safety of the residents of the city, the Board of Health shall, from time to time, adopt such rules and regulations relative thereto and shall make such inspections, prescribe such penalties, and make such reports as may be necessary toward that purpose.

Statutory reference:

Authority to regulate, see Neb. RS 17-121

§ 91.02 ENFORCEMENT OFFICIAL.

The Police Chief or other official designated by the City Council, as the quarantine officer, shall be the chief health officer of the city. It shall be his or her duty to notify the City Council and the Board of Health of health nuisances within the city and its zoning jurisdiction.

Statutory reference:

Quarantine officer, see Neb. RS 17-121

§ 91.03 COUNTY BOARD OF HEALTH.

It shall be the duty of the Board of Health to work closely with the County Health Board in protecting the health and welfare of the residents of the city.

NUISANCES**§ 91.20 DEFINITION.**

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

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:

- (a) Injures or endangers the comfort, repose, health, or safety of others;
- (b) Offends decency;
- (c) Is offensive to the senses;
- (d) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the city;
- (e) In any way renders other persons insecure in life or the use of property; or
- (f) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

(B) *Specific definition.* The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things 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) Privies, vaults, cesspools, 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, houseyards, barnyards, stableyards, factory yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, 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 city;
- (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, that nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the city, nor the dumping of non-putrefying waste in a place and manner approved by the health officer;
- (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 or galvanized iron receptacles;
- (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, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition in which flies or rats 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 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 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 fowl of any kind are confined or on which is stored tankage

or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located, are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the city or are maintained and kept in such a manner as to be injurious to the public health; or

(12) All other things specifically designated as nuisances elsewhere in this code.
Penalty, see § 10.99

§ 91.21 ABATEMENT PROCEDURE.

(A) The owner or occupant of any real estate within the corporate limits or zoning jurisdiction of the city shall keep such real estate free of nuisances. Except to the extent that conflicting procedures are otherwise provided, the procedures in this section shall apply to abatement of nuisances.

(B) Upon determination by the Board of Health or designated official that the owner or occupant of any such real estate has failed to keep the real estate free of nuisances, notice to abate and remove such nuisance and notice of the right to a hearing before the City Council and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or by certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the real estate upon which the nuisance is to be abated and removed. The notice shall describe the condition as found by the Board of Health or designated official and state that the condition has been declared a nuisance and must be remedied at once.

(C) If within 5 days after receipt of such notice or publication or posting, whichever is applicable, the owner or occupant of the real estate does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done.

(D) If within 5 days after receipt of such notice or publication or posting, whichever is applicable, the owner or occupant requests in writing a hearing with the City Council, the Council shall fix a time and place at which a hearing will be held. Notice of the hearing shall be given by personal service or certified mail and require the owner or occupant to appear before the Council to show cause why such condition should not be found to be a nuisance and remedied. The notice shall be given not less than 7 nor more than 14 days before the time of the hearing. Upon the date fixed for the hearing and pursuant to the notice, the Council shall hear all objections made by the owner or occupant and shall hear evidence submitted by the Board of Health or designated official. If after consideration of all the evidence, the City Council finds that the condition is a nuisance, it shall, by resolution, order and direct the owner or occupant to remedy the nuisance at once. If the owner or occupant refuses or neglects to promptly comply with the order to abate and remove the nuisance, the Council may have such work done.

(E) The costs and expenses of any such work shall be paid by the owner. If unpaid for 2 months after such work is done, the city may either:

(1) Levy and assess the costs and expenses of the work upon the real estate so benefitted as a special assessment in the same manner as other special assessments for improvements are levied and assessed; or

(2) Recover in a civil action the costs and expenses of the work upon the real estate and the adjoining streets and alleys.

Statutory reference:

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

Nuisances prohibited, see Neb. RS 28-1321

Similar provisions, see Neb. RS 17-563

Zoning jurisdiction, Neb. RS 17-1001

Cross reference:

Authority to obtain injunction against nuisance, see § 10.99

§ 91.22 ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL.

In cases of appeal from an action of the City Council condemning real property as a nuisance or as dangerous under the police powers of the city, the owners of the adjoining property may intervene in the action at any time before trial.

(Neb. RS 19-710)

§ 91.23 DEAD OR DISEASED TREES.

(A) (1) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city or within its extraterritorial zoning jurisdiction.

(2) Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove the nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within 14 days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have the work done to abate and remove the dead or diseased trees. If the owner or occupant of the lot or piece of ground does not request a hearing with the city within five days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The city may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefitted as a special assessment.

(Neb. RS 17-555)

(B) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees on private property within the corporate limits of the city or within its extraterritorial zoning jurisdiction. The provisions in division (A)(2) shall apply to such nuisances. For the purpose of carrying out the provisions of this section, the city police shall have the authority to enter upon private property to inspect the trees thereon.

§ 91.24 WEEDS; LITTER; STAGNANT WATER.

(A) Lots or pieces of ground within the city or within its extraterritorial zoning jurisdiction shall be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon.

(B) The owner or occupant of any lot or piece of ground within the city or within its extraterritorial zoning jurisdiction shall keep the lot or piece of ground and the adjoining streets and alleys free of any growth of 12 inches or more in height of weeds, grasses, or worthless vegetation.

(C) The throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or within its extraterritorial zoning jurisdiction is prohibited.

(D) It is hereby declared to be a nuisance to permit or maintain any growth of 12 inches or more in height of weeds, grasses, or worthless vegetation on any lot or piece of ground within the city or within its extraterritorial zoning jurisdiction or on the adjoining streets or alleys or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(E) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating this section, be guilty of an offense.

(F) (1) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within 14 days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done.

(2) The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either:

(a) Levy and assess the costs and expenses of the work upon the lot or piece of ground so benefitted as a special assessment in the same manner as other special assessments for improvements are levied and assessed; or

(b) Recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(G) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LITTER. Includes but is not limited to:

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

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

(c) Grass, leaves, and worthless vegetation except when used as ground mulch or in a compost pile;

(d) Offal and dead animals; and

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

WEEDS. Include, but are not limited to: bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus sp.*) (tourn), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

(Neb. RS 17-563) Penalty, see § 10.99

§ 91.25 GARBAGE AND REFUSE.

(A) The owner, duly authorized agent, or tenant of any lot or land within the corporate limits or zoning jurisdiction of the city shall remove garbage or refuse found upon the lot or land or upon the streets, roads, or alleys abutting the lot or land which constitutes a public nuisance.

(B) Notice that removal of garbage or refuse is necessary shall be given to each owner or owner's duly authorized agent and to the tenant if any. The notice shall be provided by personal service or by certified mail. After providing the notice, the city through its proper offices shall, in addition to other

proper remedies, remove the garbage or refuse, or cause it to be removed, from the lot or land and streets, roads, or alleys.

(C) If the Mayor declares that the accumulation of garbage or refuse upon any lot or land constitutes an immediate nuisance and hazard to public health and safety, the city shall remove the garbage or refuse, or cause it to be removed, from the lot or land within 48 hours after notice by personal service or following receipt of a certified letter in accordance with division (B) of this section if the garbage or refuse has not been removed.

(D) Whenever the city removes any garbage or refuse, or causes it to be removed, from any lot or land pursuant to this section, it shall, after a hearing conducted by the City Council, assess the cost of the removal against the lot or land.

(Neb. RS 18-1752)

FIRE PREVENTION

§ 91.30 OPEN BURNING BAN; WAIVER.

(A) There shall be an open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land.

(B) The Fire Chief may waive an open burning ban under division (A) of this section for an area under the city Fire Department's jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the Fire Chief to a person desiring to conduct open burning shall be in writing, signed by the Fire Chief, and on a form provided by the State Fire Marshal.

(C) The Fire Chief may waive the open burning ban in the city Fire Department's jurisdiction when conditions are acceptable to the Chief. Anyone intending to burn in that jurisdiction when the open burning ban has been waived shall notify the Fire Chief of his or her intention to burn prior to starting the burn.

(D) The Fire Chief may adopt standards listing the conditions acceptable for issuing a permit to conduct open burning under division (B) of this section.

(E) The Fire Department may charge a fee not to exceed \$10 for each such permit issued. This fee shall be remitted to the City Council for inclusion in the general funds allocated to the Fire Department. These funds shall not reduce the tax requirements for the Fire Department. No such fee shall be collected from any state or political subdivision to which such a permit is issued to conduct open burning under division (B) of this section in the course of that state's or political subdivision's official duties.

(Neb. RS 81-520.01)

Penalty, see § 10.99

CHAPTER 92: PUBLIC WAYS AND PROPERTY

Section

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- 92.02 Streets, alleys, walks, malls, and other improvements
- 92.03 Maintenance and control
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CITY PROPERTY**§ 92.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

OVERSEER OF STREETS. The city official with general charge, direction, and control of streets and sidewalks. If one official is responsible for streets and another official is responsible for sidewalks, **OVERSEER OF STREETS** shall mean whichever one is appropriate in the context the term is used.

SIDEWALK SPACE. The portion of a street between curb lines and adjacent property lines.

§ 92.02 STREETS, ALLEYS, WALKS, MALLS, AND OTHER IMPROVEMENTS.

The City Council may grade, partially or to an established grade, change grade, curb, rebuild, gutter, regutter, pave, gravel, regravel, macadamize, remacadamize, widen, or narrow streets or roadways, resurface or re-lay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the city corporate area and the area adjoining the city; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefitted in proportion to such benefits, except as provided in Neb. RS 19-2428 through 19-2431. The City Council may by ordinance create improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more types of the improvements authorized under this section

in a single district in one proceeding. All of the improvements which are to be funded by a levy of special assessment on the property especially benefitted shall be ordered as provided in Neb. RS 17-510 to 17-512, except as otherwise provided in Neb. RS 17-509.

(Neb. RS 17-509)

Statutory reference:

Other provisions on improvements, assessments, and bonds, see Neb. RS 17-513 to 17-524, 18-1751, 19-2401, and 19-2408 to 19-2415

§ 92.03 MAINTENANCE AND CONTROL.

The City Council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the city and shall cause the same to be kept open and in repair and free from nuisances.

(Neb. RS 17-567)

§ 92.04 REGULATION OF OBSTRUCTIONS.

(A) The city may remove all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or at the expense of the city and require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(B) The city may regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the city.

(Neb. RS 17-555)

§ 92.05 REGULATION OF SNOW, ICE, AND OTHER ENCROACHMENTS.

(A) The city shall have power to prevent and remove all encroachments, including snow, ice, mud or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other city property.

(Neb. RS 17-557)

(B) If the abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in division (A), the city through the proper officers may cause such encroachments to be removed, and the cost of removal shall be paid out of the street fund. The City Council shall assess the cost of the notice and removal of the encroachment against the abutting property as a special assessment. The special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be

subject to the same penalties as other special assessments and shall draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the street fund. (Neb. RS 17-557.01)

§ 92.06 PERMITTED USE OF PUBLIC STREET SPACE.

Any person engaged in the erection, construction, reconstruction, wrecking, or repairing of any building, or the construction or repair of a sidewalk along any street, may occupy the public street space with the building material and equipment as long as is necessary if such person makes application to and receives a permit to do so in writing from the Overseer of Streets. No permit shall authorize the occupancy of more than 1/3 of the roadway of the public space adjacent to the real estate on which the building or sidewalk is to be erected, constructed, reconstructed, wrecked, or repaired. A suitable passageway for pedestrians shall be maintained within the public space included in the permit, which passageway shall be protected and lighted in the manner required by the Overseer of Streets.

Penalty, see § 10.99

§ 92.07 POLES, WIRES, AND PIPE LINES.

(A) Poles, wires, conduits, gas mains, pipe lines, and other appurtenances of public service companies shall be located or erected over, upon, or under the streets, alleys, and common grounds of the city. Application for location of such appurtenances shall be made to the City Council in writing. Approval by the Council shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, wires, conduits, gas mains, pipe lines, or other appurtenances shall at all times erect and locate their appurtenances at such places and in such manner as shall be designated by the Council.

(B) All poles, wires, conduits, gas mains, pipe lines, and other appurtenances shall be removed or relocated by the companies at their own expense when requested to do so by the Council. Any such removal or relocation shall be ordered by resolution of the Council and the City Clerk shall notify any and all companies affected. The companies shall, within 24 hours after receiving notice, at their own expense, cause the poles, wires, conduits, gas mains, pipe lines, or other appurtenances to be removed or relocated. The Council shall designate another location as closely as possible where the appurtenances may be reset or placed.

(C) All poles, wires, conduits, gas mains, pipe lines, or other appurtenances shall be reset, placed, or erected in such a manner that they will not interfere with the water system; the sewerage system; any poles, wires, conduits, mains, lines, or other appurtenances of any public utility; any adjacent buildings; or travel on the public ways and property. Whenever possible, all poles, wires, conduits, gas mains, pipe lines, and appurtenances shall be confined to the alleys of the city.

§ 92.08 DANGEROUS STAIRWAYS AND ENTRANCES.

It shall be unlawful for any person to construct or maintain any stairway, open cellarway, open basement way, or open entrance thereto in or adjacent to any sidewalk, pavement, or street, and any such entrance is hereby declared to be a public nuisance, except that all existing stairways, open cellarways, open basement ways, or open entrances thereto in or adjacent to sidewalks, pavements, or streets may be permitted to remain from and after the adoption of this prohibition if the person owning or using the opening in the sidewalk, pavement, or street satisfies the Overseer of Streets that the opening is properly protected by a balustrade, or coping of durable material, and furnishes the city with a bond in the amount set by the City Council for the benefit of any person who might suffer an injury or damage by reason of the use of the stairway, cellarway, basement way, or entrance.

§ 92.09 EXCAVATIONS AND EXPOSURES; BARRICADES AND LIGHTS.

Any owner or occupant engaged in construction or demolition of any building or improvement upon or near the public ways and property shall protect all excavations or exposures of any kind by suitable barricades or guards by day and by warning lights at night. The failure, neglect, or refusal of the owner or occupant to erect and maintain such protections shall constitute a violation of this section, and the city may stop all work upon the buildings and improvements until suitable protections are erected and maintained in the required manner.

§ 92.10 GUTTERING AND EAVE SPOUTS.

It shall be unlawful for any person to erect or maintain any dwelling house or business building within the limits of the city where the dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alleys or shall be buried beneath the sidewalks and drain into the streets where it is found to be impossible to drain the eave spouts into the alley.

§ 92.11 PROHIBITED OBSTRUCTIONS.

(A) It shall be unlawful for any person to obstruct, or encumber, by fences, gates, buildings, structures, or otherwise, any of the streets, alleys, or sidewalks.

(B) The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property permits or suffers to remain on any premises owned or controlled by him or her any hedge, shrubbery, bush, or similar growth within 2 feet adjacent to the lot line, whether there is a sidewalk abutting or adjoining the premises or not. It shall be the duty of owners and occupants to at all times keep trimmed and pruned all such similar growth.

(C) Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property, or wholly upon the abutting property, and interfering with the use, making, or construction of any public improvement or so that the roots thereof interfere with any utility wire or pipe shall be deemed an obstruction. Such trees and shrubs and their roots may be removed by the city at the expense of the owner of the property upon which the trees or shrubs are partially or wholly located if the owner fails or neglects, after notice, to do so.

(D) When any obstruction described in this section is determined to exist, the city may proceed against the owner or occupant of the property adjacent to the sidewalk space as provided in § 91.21. Penalty, see § 10.99

§ 92.12 TREES IN SIDEWALK SPACE.

(A) No person shall plant any tree or allow any tree to grow within the sidewalk space without first making a written or verbal application to and receiving a written permit from the Overseer of Streets upon payment of the fee, if any, established by the City Council.

(B) Any tree planted within the sidewalk space after the adoption of this prohibition shall be deemed to be unlawfully planted and growing and may be determined to be a nuisance. Nothing in this section shall be construed to apply to any trees growing within the sidewalk space prior to the adoption of this prohibition.

(C) When any such tree is determined to be a nuisance, the city may proceed against the owner or occupant of the property adjacent to the sidewalk space as provided in § 91.21. Penalty, see § 10.99

§ 92.13 OVERHANGING BRANCHES.

(A) The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which there extend the branches of trees shall at all times keep the branches or limbs thereof trimmed to the height of at least 8 feet above the surface of the walk and at least 14 feet above the surface of the street or to the heights otherwise specified by the City Council.

(B) Whenever the branches or limbs of any tree extend over streets or sidewalks contrary to such provisions so as to interfere with the lighting of the street from street lights or with the convenience of the public using the street or sidewalk, the city may proceed against the owner or occupant of the property abutting or adjacent to the street or sidewalk as provided in § 91.21. Penalty, see § 10.99

§ 92.14 SIGNS AND CANOPIES.

(A) No person shall erect or maintain any sign, signboard, poster, or rigid canopy over any street, sidewalk, or alley or on other public property without having first obtained a permit therefor. Permits for signs, signboards, posters, and canopies shall be issued by the City Clerk, subject to the approval of the Overseer of Streets, upon the payment of the fee, if any, established by the City Council.

(B) All signs, signboards, posters, and canopies extending over any public sidewalk, street, alley, or other public place must be securely fastened and constructed so that there will be no danger of the them being dislodged by ordinary winds or falling from other causes.

(C) No sign, signboard, poster, or canopy shall be erected or maintained which extends over any public sidewalk, street, alley, or other public place in such a location as to obstruct the view of any traffic light, sign, or signal.

(D) Upon a determination that a sign, signboard, poster, or canopy is in violation of this section, the city may proceed against the owner or occupant of the premises where such the sign, signboard, poster, or canopy is located as provided in § 91.21.

Penalty, see § 10.99

§ 92.15 CUTTING INTO PAVING, CURB, OR SIDEWALK.

(A) It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the City Council. Before any person obtains a permit, he or she shall inform the City Clerk of the place where such cutting is to be done and it shall be the duty of the Overseer of Streets to inspect the proposed place of entry into the paving, sidewalk, or curb.

(B) When cutting into any paving, curb, or sidewalk, it shall be the duty of the party to comply with such rules and regulations as may be prescribed by the Council or the City Engineer. When the applicant is ready to close the opening made, he or she shall inform the Overseer of Streets, who shall supervise and inspect the materials used and the work done in closing the opening.

(C) It shall be discretionary with the Council to order the Overseer of Streets, under the supervision and inspection of the City Engineer or the committee of the Council on the streets and alleys, to do the cutting and closing of the paving, curb, or sidewalk and charge the costs thereof to the party who obtained the permit. The Council may consent to the cutting and closing of the paving, curb, or sidewalk by the party holding the permit.

(D) Before any permit is issued by the Council, the applicant for the permit shall deposit with the City Treasurer a sum set by resolution of the Council for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the city for the purpose of replacing the paving, curb, or sidewalk in the event the work is done by the city. If the Board elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be

retained by the city until the work is completed to the satisfaction of the Overseer of Streets or of the committee of the Council on streets and alleys.

(E) In addition to making the deposit, the applicant shall, before any permit is issued, execute a bond to the city with a good and sufficient surety to be approved by the Council in a sum set by resolution.

§ 92.16 HEAVY EQUIPMENT.

(A) It shall be unlawful for any person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing.

(B) Except as provided in § 71.05, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon the pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter, or curb, except that where heavy vehicles, structures, and machines move along paved or unpaved streets the city police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed.

SALE AND ACQUISITION OF PROPERTY; PUBLIC WORKS

§ 92.30 SALE AND CONVEYANCE; REAL PROPERTY.

(A) Except as provided in division (G) of this section, the power of the city to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of that property and the manner and terms of such sales, except that the property shall not be sold at public auction or by sealed bid when:

- (1) The property is being sold in compliance with the requirements of federal or state grants or programs;
- (2) The property is being conveyed to another public agency; or
- (3) The property consists of streets and alleys.

(B) The City Council may establish a minimum price for real property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(C) After the passage of the resolution directing the sale, notice of all proposed sales of property described in division (A) of this section and the terms of such sales shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in the city.

(D) (1) If within 30 days after the third publication of the notice a remonstrance petition against the sale is signed by registered voters of the city equal in number to 30% of the registered voters of the city voting at the last regular city election held therein and is filed with the City Council, that property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(2) Upon the receipt of the remonstrance, the City Council, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the petition. The City Council shall deliver the petition to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the petition, the Election Commissioner or County Clerk shall issue to the City Council a written receipt that the petition is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the City Council. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and city or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and city or post office address match the registration records and that the registration was received on or before the date on which the petition was filed with the City Council. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the City Council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process.

(4) Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the Election Commissioner or County Clerk shall set forth the reason for the invalidity of the signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the Election Commissioner or County

Clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature.

(5) The Election Commissioner or County Clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the remonstrance and the certifications to the City Council within 40 days after the receipt of the remonstrance from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than 20 signatures on 1 signature page shall be counted.

(6) The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The City Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(E) Real estate now owned or hereafter owned by the city may be conveyed without consideration to the state for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of Neb. RS 18-1001 through 18-1006.

(F) Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the 30-day right-of-remonstrance period, the property shall then be sold. The sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. (Neb. RS 17-503)

(G) Divisions (A) through (F) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property, the total fair market value of which is less than \$5,000. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the city for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (Neb. RS 17-503.01)

§ 92.31 SALE AND CONVEYANCE; PERSONAL PROPERTY.

(A) The power of the city to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the city for a period of not less than seven days prior to the sale of the property. If the fair market value of the property is greater than \$5,000, notice of the sale shall also be published once in a legal newspaper in or of general circulation in the city at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale.

(B) Personal property may be conveyed notwithstanding the procedure in division (A) of this section when:

(1) Such property is being sold in compliance with the requirements of federal or state grants or programs; or

(2) Such property is being conveyed to another public agency.

(Neb. RS 17-503.02)

§ 92.32 ACQUISITION OR CONSTRUCTION OF PUBLIC BUILDINGS; ELECTION REQUIREMENTS.

(A) The city is authorized and empowered to purchase, accept by gift or devise, purchase real estate upon which to erect, and erect a building or buildings for an auditorium, fire station, city building, or community house for housing city enterprises and social and recreation purposes, and other public buildings, including the construction of buildings authorized to be constructed by Neb. RS Chapter 72, article 14, and including construction of buildings to be leased in whole or in part by the city to any other political or governmental subdivision of the state authorized by law to lease such buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the city.

(B) Except as provided in division (C) of this section, before any such purchase can be made or building erected, the question shall be submitted to the electors of the city at a general city election or at an election duly called for that purpose, or as set forth in division (D) of this section, and be adopted by a majority of the electors voting on such question.

(Neb. RS 17-953)

(C) If the funds to be used to finance the purchase or construction of a building pursuant to this section are available other than through a bond issue, then either:

(1) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the city and no election shall be required to approve the purchase or construction unless within 30 days after the publication of the notice, a remonstrance petition against the purchase or construction is signed by registered voters of the city equal in number to 15% of the registered voters of the city voting at the last regular city election held therein and is filed with the City Council. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. If a petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the city at a general city election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or

(2) The City Council may proceed without providing the notice and right of remonstrance required in division (C)(1) of this section if the property can be purchased below the fair market value

as determined by an appraisal, there is a willing seller, and the purchase price is less than \$25,000. The purchase shall be approved by the City Council after notice and public hearing as provided in § 92.34. (Neb. RS 17-953.01)

(D) (1) The Mayor and City Council adopting the proposition to make such purchase or erect such building or buildings for the purposes set forth in division (A) of this section shall have the power to borrow money and pledge the property and credit of the city upon its negotiable bonds. No such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance, at a general city election or at a special election called for the submission of such proposition. The question of such purchase or erection of such a building or buildings, as set forth in division (A) of this section, and the question of the issuance of the negotiable bonds referred to in this division may be submitted as 1 question at a general city or special election if so ordered by resolution or ordinance.

(2) Notice of the time and place of the election shall be given by publication in some legal newspaper printed in or of general circulation in the city 3 successive weeks immediately prior thereto.

(3) No such election for the issuance of such bonds shall be called until a petition therefor signed by at least 10% of the legal voters of the city has been presented to the City Council. The number of voters voting at the last regular city election prior to the presenting of the petition shall be deemed the number of votes in the city for the purpose of determining the sufficiency of the petition.

(4) The question of bond issues for such purpose in the city when defeated shall not be resubmitted for 6 months from and after the date of such election.

(5) When the building to be constructed is to be used by the state or its agency or agencies under a lease authorized by Neb. RS Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the state, when the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the state is more than 50% of the area of the building, and when such sum does not exceed \$2,000,000, then no such vote of the electors will be required.

(Neb. RS 17-954)

§ 92.33 ACQUISITION OF REAL PROPERTY; APPRAISAL.

Notwithstanding any other provision of law, the city shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000 or more unless an appraisal of such property has been performed by a certified real property appraiser.

(Neb. RS 13-403)

§ 92.34 ACQUISITION OF REAL PROPERTY; PUBLIC MEETING; ACCESS FOR RECREATIONAL USE.

(A) The city shall acquire an interest in real property by purchase or eminent domain only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing.

(B) The city shall provide to the public a right of access for recreational use to real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational use shall meet or exceed such right held by a private landowner adjacent to the real property.

(Neb. RS 18-1755)

§ 92.35 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS.

(A) (1) Except as otherwise provided in this section and Neb. RS 81-3449 and 81-3453, the city shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer.

(2) This division (A) shall not apply to any public work in which the contemplated expenditure for the complete project does not exceed \$100,000 or the adjusted dollar amount set by the Board of Engineers and Architects.

(Neb. RS 81-3445)

(B) The provisions of division (A) of this section regulating the practice of architecture do not apply to the following activities or the other activities specified in Neb. RS 81-3449:

(1) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(2) A public service provider who employs a design professional performing professional services for itself;

(3) The practice of any other certified trade or legally recognized profession;

(4) Earthmoving and related work associated with soil and water conservation practices performed any land owned by the city that is not subject to a permit from the Department of Natural Resources; and

(5) The work of employees and agents of the city performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance.

(Neb. RS 81-3449)

(C) The provisions of division (A) of this section regulating the practice of engineering do not apply to the following activities, the activities specified in division (B) of this section, or the other activities specified in Neb. RS 81-3453:

(1) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant; and

(2) The construction of water wells as defined in Neb. RS 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the city to be designed or supervised by an engineer or unless legal requirements are imposed upon the city as a part of a public water supply; (Neb. RS 81-3453)

(D) For the purpose of this section, the city is considered a public service provider if it employs or appoints an architect or a professional engineer to be in responsible charge of the city's architectural or engineering work.

(Neb. RS 81-3423)

§ 92.36 SPECIAL ASSESSMENTS FOR PUBLIC WORKS OR IMPROVEMENTS; NOTICE TO NONRESIDENT PROPERTY OWNERS.

(A) Before any political subdivision or special taxing district for public works or public improvements shall be formed, and before the city or any political subdivision or special taxing district may impose any special assessment for public works or public improvements, a copy of any notice required to be published by law shall be mailed to the last-known address of all nonresident property owners as shown on the current tax rolls at the time such notice is first published.

(Neb. RS 13-310)

(B) The City Clerk or any other person upon whom the duty is imposed by law to publish notice required by law in regard to the formation of a special taxing district for public works or public improvements shall mail by certified mail with return receipt requested a copy of the published notice in regard to the formation of any special taxing district within the city to the last-known address as shown on the current tax rolls of each nonresident property owner.

(Neb. RS 13-311)

(C) The City Clerk or any other person upon whom the duty is imposed by law to publish notice required by law in regard to any special assessment by a special taxing district shall mail by certified mail with return receipt requested a copy of such notice to be published to the last-known address as shown on the current tax rolls of each nonresident property owner.

(Neb. RS 13-312)

(D) The failure of the City Clerk any other person upon whom the duty is imposed by law to mail a copy of a published notice as provided in this section shall invalidate the assessment against the property involved while permitting all other assessments and procedures to be lawful.

(Neb. RS 13-313)

(E) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

NONRESIDENT PROPERTY OWNER. Any person or corporation whose residence and mailing address as shown on the current tax rolls is outside the boundaries of the county and who is a record owner of property within the boundaries of the city, special assessment district, or taxing district involved.

(Neb. RS 13-314)

SIDEWALKS

§ 92.50 REQUIREMENT TO KEEP CLEAN.

It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon the sidewalk. Unless the City Council has provided otherwise, all sidewalks within the business district shall be cleaned within 5 hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before 9:00 a.m. the following day, and sidewalks within the residential areas of the city shall be cleaned within 24 hours after the cessation of the storm.

Penalty, see § 10.99

§ 92.51 USE OF SPACE BENEATH.

No person shall be allowed to keep or use the space beneath the sidewalk lying between lot line and curb line unless a permit has been obtained from the City Council. Before any permit is granted, the applicant shall submit plans and specifications of any present or proposed construction to the City Engineer. If the plans or specifications are disapproved by the Engineer, no permit shall be granted. All permits hereafter granted shall continue only upon the condition that the party receiving them builds, maintains, and keeps in repair a sidewalk over the space used or constructed to be used and pays all

damages that may be sustained by any person by reason of such use or by reason of the sidewalk being defective or in a dangerous condition. As a condition precedent to the issuance or continuance of any permit for the use of any space underneath the city sidewalks as contemplated in this section, the City Council may require the applicant to furnish a bond to the city as obligee for the benefit of any person who may suffer an injury or damage by reason of such use. The bond shall be in such sum as the City Council, in its discretion, may designate.

Penalty, see § 10.99

§ 92.52 CONSTRUCTION AT OWNER'S INITIATIVE.

(A) Any person desiring to construct, or cause to be constructed, any sidewalk shall do so only as provided in this section. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

(B) The owner shall make application in writing for a permit and file such application in the office of the City Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The Overseer of Streets shall issue the desired permit unless good cause appears why the permit should be denied, except that if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the Overseer of Streets shall submit the application to the City Council for determination as to whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed, such sidewalk at any other location, grade, or elevation than so designated by the city. All sidewalks shall be built and constructed on the established grade or elevation, and if there is no established grade, then on the grade or elevation indicated by the Overseer of Streets.

§ 92.53 CONSTRUCTION AND REPAIR AT CITY DIRECTION.

(A) (1) The Mayor and City Council may construct and repair sidewalks or cause the construction and repair of sidewalks in such manner as the Mayor and City Council deem necessary and assess the expense of such construction or repairs on the property in front of which such construction or repairs are made, after having given notice:

(a) By publication in one issue of a legal newspaper of general circulation in the city; and

(b) By either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such construction or repair.

(2) The powers conferred under this section are in addition to those provided in Neb. RS 17-509 to 17-521 and may be exercised without creating an improvement district.

(3) If the owner of any property abutting any street or avenue or part thereof fails to construct or repair any sidewalk in front of the owner's property within the time and in the manner as directed and

requested by the Mayor and City Council, after having received due notice to do so, the Mayor and City Council may cause the sidewalk to be constructed or repaired and may assess the cost of such construction or repairs against the property.

(Neb. RS 17-522)

(B) All sidewalks shall be constructed and repaired in conformity with such plans and specifications as may be approved by the City Council.

(C) Assessments made under the provisions of this section shall be made and assessed in the following manner:

(1) Such assessment shall be made by the City Council at a special meeting, by a resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements, and the amount charged against the same, which, with the vote, shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper in or of general circulation in the city at least four weeks before the same shall be held or, in lieu thereof, personal service may be made upon persons owning or occupying property to be assessed; and

(2) All such assessments shall be known as special assessments for improvements and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, and shall be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other city taxes.

(Neb. RS 17-524)

Statutory reference:

Authority to improve through sidewalk district, see Neb. RS 19-2417 through 19-2419

STREETS AND ALLEYS

§ 92.65 DEDICATION TO PUBLIC USE.

No street or alley which shall hereafter be dedicated to public use, by the proprietor of ground in the city, shall be deemed a public street or alley, or be under the use or control of the City Council, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

(Neb. RS 17-567)

§ 92.66 GRADING, PAVING, AND OTHER IMPROVEMENTS.

The city has the power to provide for the grading and repair of any street, avenue, or alley and the construction of bridges, culverts, and sewers. No street, avenue, or alley shall be graded unless the grading is ordered to be done by the affirmative vote of 2/3 of the City Council.

(Neb. RS 17-508)

Cross reference:

Other provisions on grading and paving, see § 92.02

Statutory reference:

Acquisition of additional land or easement, see Neb. RS 18-1705

Boundary street with county or another municipality, see Neb. RS 18-2005

Limited street improvement districts, see Neb. RS 19-2416

§ 92.67 IMPROVEMENTS WITHOUT PETITION OR CREATION OF DISTRICT.

(A) The city may, without petition or creating a street improvement district, grade, curb, gutter, and pave:

(1) Any portion of a street otherwise paved so as to make 1 continuous paved street, but the portion to be so improved shall not exceed 2 blocks, including intersections, or 1,325 feet, whichever is the lesser;

(2) Any unpaved street or alley which intersects a paved street for a distance of not to exceed 1 block on either side of that paved street; and

(3) Any side street or alley within its corporate limits connecting with a major traffic street for a distance not to exceed 1 block from that major traffic street.

(B) Those improvements may be performed upon any portion of a street or alley or any unpaved street or alley not previously improved to meet or exceed the minimum standards for pavement set by the city for its paved streets.

(C) In order to defray the costs and expenses of these improvements, the Mayor and City Council may levy and collect special taxes and assessments or issue paving bonds as provided in Neb. RS 18-2003.

(Neb. RS 18-2001 through 18-2004)

§ 92.68 OPENING, WIDENING, IMPROVING, OR VACATING.

(A) (1) The city shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the city and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the city, or by the owners of the property therein, shall be ascertained in that manner as shall be provided by ordinance.

(2) Whenever any street, avenue, alley, or lane is vacated, the same shall revert to the owners of the abutting real estate, 1/2 on each side thereof, and become a part of that property, unless the city reserves title in the ordinance vacating such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(3) When a portion of a street, avenue, alley, or lane is vacated only on 1 side of the center thereof, the title to the land shall vest in the owner of the abutting property and become a part of that property, unless the city reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(4) When the city vacates all or any portion of a street, avenue, alley, or lane, the city shall, within 30 days after the effective date of the vacation, file a certified copy of the vacating ordinance with the Register of Deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

(Neb. RS 17-558)

(B) The city shall have power to create, open, widen, or extend any street, avenue, alley, off-street parking area, or other public way, or annul, vacate, or discontinue the same.

(Neb. RS 17-559)

§ 92.69 VACATING PUBLIC WAYS; PROCEDURE.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SPECIAL DAMAGES. Only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his or her property and which result from the City Council vacating a street, avenue, alley, lane, or similar public way. **SPECIAL DAMAGES** shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the city or public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the city or public at large.

(B) Whenever the City Council decides that it would be in the best interests of the city to vacate a street, avenue, alley, lane, or similar public way, the City Council shall comply with the following procedure.

(1) *Notice.* Notice shall be given to all abutting property owners either by first class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the city. The content of the notice shall advise the abutting property owners that the City Council will consider vacating that street, avenue, alley, lane, or similar public way at its next regular meeting, or, if a special meeting is scheduled for the discussion, then the date, time, and place of that meeting.

(2) *Consent; waiver.* The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the City Council and waive their right of access. The signing of this form shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the City Council's action was proper. If the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating the street, avenue, alley, lane, or similar public way under the authority granted by Neb. RS 17-558 and 17-559.

(3) *Ordinance.* The City Council shall pass an ordinance that includes essentially the following provisions:

- (a) A declaration that the action is expedient for the public good or in the best interests of the city;
- (b) A statement that the city will have an easement for maintaining all utilities; and
- (c) A method or procedure for ascertaining special damages to abutting property owners.

(C) The Mayor shall appoint 3 or 5 or 7 disinterested residents of the city to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating the street, avenue, alley, lane, or similar public way. The

appointees of the special commission shall be approved by the City Council. Only special damages shall be awarded to the abutting property owners.

(D) In determining the amount of compensation to award the abutting property owners as special damages, the commission shall use the following rule:

An abutting property owner is entitled to recover as compensation the difference between the value of the property immediately before and immediately after the vacating of the street, avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation.

§ 92.70 CROSSINGS.

The City Council may order and cause to be constructed, under the supervision of the Overseer of Streets, those street, avenue, and alley crossings as the City Council deems necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the City Clerk, the City Clerk shall refer the application to the Overseer of Streets, who shall investigate and make a recommendation to the City Council. Action by the City Council on the application, whether the application is approved or rejected, shall be considered final.

§ 92.71 NAMES AND NUMBERS.

The City Council may at any time, by ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along those streets shall retain those numbers as the City Council may require. It shall be the duty of the Overseer of Streets, upon the erection of any new building, to assign the proper numbers to the building and give notice to the owner and occupant of the same.

Penalty, see § 10.99

§ 92.72 DRIVEWAY APPROACHES.

(A) The Overseer of Streets may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure, including pavement or sidewalks.

(B) The City Clerk shall give the property owner notice by registered letter or certified mail, directed to the last known address of the owner or the agent of the owner, directing the repair or replacement of the driveway approach. If within 30 days of mailing the notice the property owner fails or neglects to cause the repairs or replacements to be made, the Overseer of Streets may cause the work to be done and assess the cost upon the property served by the approach.

(Neb. RS 18-1748) Penalty, see § 10.99

§ 92.73 EXCAVATION.

It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the Overseer of Streets authorizing those excavations. Penalty, see § 10.99

§ 92.74 DRIVING STAKES.

It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the Overseer of Streets. Penalty, see § 10.99

§ 92.75 MIXING CONCRETE.

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever. Penalty, see § 10.99

§ 92.76 HARMFUL LIQUIDS.

It shall be unlawful for any person to place or permit to leak in the gutter of any street any waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon the streets. Penalty, see § 10.99

§ 92.77 SNOW, DEBRIS, AND THE LIKE ON STREET PROHIBITED.

It shall be unlawful to place, push, or deposit snow, sleet, ice, or mud, or any debris, including leaves, grass, and branches, from private property onto the streets of the city.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see Neb. RS 17-557

CHAPTER 93: ANIMALS

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GENERAL PROVISIONS**§ 93.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANIMAL. Any vertebrate member of the animal kingdom other than an uncaptured wild creature.

ANIMAL CONTROL OFFICER. Any person authorized by law or employed or appointed for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensing, control, seizure, or impoundment of animals.

OWNER. Any person who owns, possesses, keeps, harbors, or has charge, custody, or control of an animal or permits an animal to habitually remain or be lodged or fed within his or her house, store, building, enclosure, yard, lot, grounds, or premises. **OWNER** does not include any veterinarian or kennel operator temporarily maintaining on his or her premises an animal owned by another person for not more than 30 days.

RUN AT LARGE. Not being under the actual control of the owner by means of:

(a) A leash, cord, chain, or other suitable means of physical restraint which is securely fastened or tethered in a manner sufficient to keep the animal on the premises where tethered;

(b) A leash, cord, chain, or other suitable means of physical restraint of 6 feet or less in length physically held by the owner;

(c) Being confined within a cage, receptacle, enclosed vehicle, fenced enclosure, or shelter; or

(d) Being within the real property limits of the owner and in the owner's presence and under direct and effective voice or other control.

§ 93.02 RUNNING AT LARGE; TETHERING.

(A) It shall be unlawful for the owner of any cow, hog, horse, mule, sheep, goat, dog, chicken, turkey, goose, or other animal except a cat to permit the animal to run at large at any time on any of the public ways and property or the property of another in the city or to be tethered or staked out in such a manner so as to allow the animal to reach or pass into any public way or property or any property of another.

(B) The owner of a cat may permit the cat to run at large within the corporate limits subject to any restrictions or prohibitions otherwise imposed by the City Council.

(C) Any animal found running at large or tethered or staked out in violation of this section is a public nuisance and may be impounded or destroyed as provided in this chapter.

(D) Nothing in this section shall be construed to permit anyone to own an animal in the corporate limits of the city that is prohibited by the City Council.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see Neb. RS 17-526 and 17-547

Fine for permitting collarless dog to run at large, see Neb. RS 54-607

Cross reference:

Restrictions on cats; prohibited animals, see Title XVII

§ 93.03 WILD ANIMALS.

No wild animals may be kept within the corporate limits except wild animals kept for exhibition purposes by circuses and educational institutions.

Penalty, see § 10.99

§ 93.04 KILLING, POISONING, AND INJURING.

It shall be unlawful for any person to kill, administer or cause to be administered poison of any sort to, or in any manner injure, maim, or destroy or attempt to injure, maim, or destroy any animal or to place any poison or poisoned food where it is accessible to an animal, except that:

(A) This section shall not apply to any law enforcement officer or animal control officer acting within his or her power and duty;

(B) This section shall not apply if the animal is vicious, dangerous, or showing characteristics of rabies and cannot be captured without danger to the persons attempting to effect a capture of the animal; and

(C) Any owner of a dog that he or she wishes to be destroyed may place the dog in an animal pound or shelter or with a licensed veterinarian to be humanely destroyed and disposed of according to the provisions in this chapter or other provisions of law.

Penalty, see § 10.99

§ 93.05 ENCLOSURES.

All pens, cages, sheds, yards, or any other area or enclosure for the confinement of animals not specifically barred within the corporate limits shall be kept in a clean and orderly manner so as not to become a menace or nuisance to the neighborhood in which the enclosure is located.

Penalty, see § 10.99

§ 93.06 ABANDONMENT, NEGLECT, AND MISTREATMENT.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDON. To leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health.

ANIMAL. Any vertebrate member of the animal kingdom. **ANIMAL** does not include an uncaptured wild creature or a livestock animal as defined in this section.

BOVINE. A cow, an ox, or a bison.

CRUELLY MISTREAT. To knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal.

CRUELLY NEGLECT. To fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health.

HUMANE KILLING. The destruction of an animal by a method which causes the animal a minimum of pain and suffering.

LAW ENFORCEMENT OFFICER. Any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of the city or any other city or village, or any other public official authorized by the city or any other city or village to enforce state or local animal control laws, rules, regulations, or ordinances. **LAW ENFORCEMENT OFFICER** also includes a special investigator appointed as a deputy state sheriff as authorized pursuant to Neb. RS 81-201 while acting within the authority of the Director of Agriculture.

LIVESTOCK ANIMAL. Any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, or poultry.

OWNER OR CUSTODIAN. Any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person.

POLICE ANIMAL. A horse or dog owned or controlled by the state or any county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties.

(Neb. RS 28-1008)

(B) *Enforcement powers; immunity.*

(1) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

(2) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner or custodian as prescribed in Neb. RS 29-422 to 29-429.

(3) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

(Neb. RS 28-1012)

(C) *Violation.*

(1) A person who intentionally, knowingly, or recklessly abandons, cruelly neglects, or cruelly mistreats an animal is guilty of an offense.

(2) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties.

(Neb. RS 28-1009) Penalty, see § 10.99

Statutory reference:

Authority to prohibit cruelty to animals, see Neb. RS 17-138

Serious illness or injury to animal; death of animal; felony, see Neb. RS 28-1008 and 28-1009

Exemptions, see Neb. RS 28-1013

§ 93.07 EQUINE; BOVINE; PROHIBITED ACTS.

(A) (1) No person shall intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest.

(2) The intentional tripping or causing to fall, or lassoing or roping the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(Neb. RS 54-911)

(B) (1) No person shall intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest.

(2) The intentional tripping, causing to fall, or dragging of any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(Neb. RS 54-912) Penalty, see § 10.99

Statutory reference:

Livestock Animal Welfare Act, see Neb. RS 54-907 through 54-912

§ 93.08 IMPOUNDMENT.

(A) This section shall apply to the impoundment of animals to which § 93.24 does not apply.

(B) Any animal found in violation of the provisions of this chapter shall be impounded. All impounded domestic animals shall be given proper care, treatment, and maintenance.

(C) Notice of impoundment of all animals, including any significant marks of identification, shall be posted at the pound and at the office of the City Clerk within 24 hours after impoundment as public notification of impoundment. Notice of the impoundment of any licensed dog shall also be mailed to the owner listed on the license application by regular U.S. mail to the address listed on the application.

(D) Each impounded domestic animal shall be kept and maintained at the pound for a period of not less than 5 days after public notice has been given unless reclaimed earlier by the owner. The owner may reclaim the animal during the period of impoundment by payment of any general impoundment and daily board fees set by resolution of the City Council and on file in the office of the City Clerk, except that in addition, an unusual or other nondomesticated or wild animal shall only be released upon condition that the owner shall immediately remove the animal from the city or destroy it. A diseased animal may be released upon a determination that the health and safety of the public is no longer threatened. The owner of any released animal shall be required to comply with any licensing and rabies vaccination requirements applicable to such animal within 72 hours after release.

(E) If the animal is unclaimed at the end of required waiting period after public notice has been given, the animal control officer may destroy and dispose of the animal in a humane manner in accordance with applicable rules and regulations, except that if in the judgment of the officer a suitable home can be found for the animal, the animal shall be turned over to the person who can provide such home and the new owner shall be required to pay all fees and meet all applicable licensing and vaccinating requirements. The city shall acquire legal title to any unlicensed dog or any other animal impounded in the animal shelter for a period longer than the required waiting period after giving notice. The owner of the animal shall remain liable for payment of the fees established by the City Council.

Statutory reference:

Authority to establish pens and pounds, see Neb. RS 17-548 and 71-4408

Authority to impound and sell animals, see Neb. RS 17-526 and 17-547

§ 93.09 OFFICER'S COMPENSATION.

If the City Council so provides, any official appointed or designated to destroy and dispose of animals under the provisions of this chapter shall be paid, in addition to his or her regular salary or other compensation, the sum set by the Council for each animal so destroyed and disposed of.

Statutory reference:

Authority to compensate keeper of pound, see Neb. RS 17-548

§ 93.10 INTERFERENCE WITH POLICE.

It shall be unlawful for any person to hinder, delay, or interfere with any police officer or animal control officer who is performing any duty enjoined upon that person by the provisions of this chapter or to break open, or in any manner directly or indirectly aid, counsel, or advise the breaking open, of the animal shelter, any ambulance wagon, or any other vehicle used for the collecting or conveying of animals to the shelter.

Cross reference:

Obstructing a peace officer prohibited, see § 132.05

RABIES**§ 93.20 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CAT. A cat which is a household pet.

DEPARTMENT. The state Department of Health and Human Services.

DOMESTIC ANIMAL. Any dog of the species *Canis familiaris*, cat of the species *Felis domesticus*, or ferret of the species *Mustela putorius furo*.

HYBRID ANIMAL. Any animal which is the product of the breeding of a domestic dog with a nondomestic canine species.

OWN. To possess, keep, harbor, or have control of, charge of, or custody of a domestic or hybrid animal. This term does not apply to domestic or hybrid animals owned by other persons which are temporarily maintained on the premises of a veterinarian or kennel operator for a period of not more than 30 days.

OWNER. Any person possessing, keeping, harboring, or having charge or control of any domestic or hybrid animal or permitting any domestic or hybrid animal to habitually be or remain on or be lodged

or fed within the person's house, yard, or premises. This term does not apply to veterinarians or kennel operators temporarily maintaining on their premises domestic or hybrid animals owned by other persons for a period of not more than 30 days.

RABIES CONTROL AUTHORITY. City health and law enforcement officials who shall enforce the provisions of this subchapter relating to the vaccination and impoundment of domestic or hybrid animals. Such public officials shall not be responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections.

VACCINATION AGAINST RABIES. The inoculation of a domestic or hybrid animal with a United States Department of Agriculture-licensed rabies vaccine administered consistent with its labeling. The vaccination shall be performed by a veterinarian duly licensed to practice veterinary medicine in the State of Nebraska or licensed in the state where the vaccination was administered.

(Neb. RS 71-4401)

§ 93.21 VACCINATION REQUIRED; COST; EXEMPTIONS.

(A) Every domestic animal in the city shall be vaccinated against rabies with a licensed vaccine and revaccinated at intervals specified by rules and regulations adopted and promulgated by the department. Young domestic animals shall be initially vaccinated at the age specified in the rules and regulations. Unvaccinated domestic animals acquired or moved into the city shall be vaccinated within 30 days after purchase or arrival unless under the age for initial vaccination.

(B) (1) Except as provided in division (B)(3) of this section, every hybrid animal in the city shall be vaccinated against rabies and shall be revaccinated at intervals specified by rules and regulations adopted and promulgated by the department. A young hybrid animal shall be initially vaccinated at the age specified in such rules and regulations. An unvaccinated hybrid animal acquired or moved into the city shall be vaccinated within 30 after purchase or arrival unless under the age for initial vaccination.

(2) The rabies vaccine used to vaccinate a hybrid animal pursuant to this section shall be sold only to licensed veterinarians.

(3) An owner of a hybrid animal in the city prior to the date of development of a licensed vaccine determined scientifically to be reliable in preventing rabies in a hybrid animal shall have one year after such date to comply with this section.

(Neb. RS 71-4402)

(C) The cost of rabies vaccination shall be borne by the owner of the domestic or hybrid animal.

(Neb. RS 71-4404)

(D) (1) The provisions of this subchapter with respect to vaccination shall not apply to any domestic or hybrid animal owned by a person temporarily remaining within the city for less than 30 days, to any domestic or hybrid animal brought into the city for field trial or show purposes, or to any domestic or hybrid animal brought into the city for hunting purposes for a period of less than 30 days. Such domestic

or hybrid animals shall be kept under strict supervision of the owner. It shall be unlawful to bring any domestic or hybrid animal into the city which does not comply with the animal health laws and import rules and regulations of the state which are applicable to domestic or hybrid animals.

(2) Domestic or hybrid animals assigned to a research institution or a similar facility shall be exempt from this subchapter.

(Neb. RS 71-4405) Penalty, see § 10.99

§ 93.22 POST-INCIDENT MANAGEMENT.

Any domestic animal which has bitten any person or caused an abrasion of the skin of any person shall be subjected to post-incident management as provided in rules and regulations adopted and promulgated by the department.

(Neb. RS 71-4406) Penalty, see § 10.99

§ 93.23 DOMESTIC OR HYBRID ANIMAL OR LIVESTOCK; POSTEXPOSURE MANAGEMENT.

Domestic or hybrid animals or livestock known to have been exposed to a confirmed or suspected rabid animal shall be subjected to postexposure management as provided in rules and regulations adopted and promulgated by the department.

(Neb. RS 71-4407) Penalty, see § 10.99

§ 93.24 ANIMAL POUND; IMPOUNDMENT; RELEASE; FEES.

(A) (1) The rabies control authority may authorize an animal pound or pounds or may enter into a cooperative agreement with a licensed veterinarian for the establishment and operation of a pound.

(2) Any dog or hybrid of the family Canidae found outside the owner's premises whose owner does not possess a valid certificate of rabies vaccination and valid rabies vaccination tag for the dog or hybrid of the family Canidae shall be impounded. The rabies control authority may require the impoundment of domestic or hybrid animals other than dogs or hybrid of the family Canidae. All impounded domestic or hybrid animals shall be given proper care, treatment, and maintenance. Each impounded domestic or hybrid animal shall be kept and maintained at the pound for a period of not less than 72 hours unless reclaimed earlier by the owner.

(3) Notice of impoundment of all animals, including any significant marks of identification, shall be posted at the pound as public notification of impoundment. Any unvaccinated domestic or hybrid animal may be reclaimed by its owner during the period of impoundment by payment of prescribed pound fees and by complying with the rabies vaccination requirement of this subchapter within 72 hours of release. Any vaccinated domestic or hybrid animal impounded because its owner has not presented a valid certificate of rabies vaccination and a valid rabies vaccination tag for the domestic or hybrid

animal may be reclaimed by its owner by furnishing proof of rabies vaccination and payment of all impoundment fees prior to release.

(4) At the expiration of impoundment a domestic or hybrid animal may be claimed by payment of established pound fees and by compliance with the rabies vaccination requirement of this subchapter within 72 hours of release. If the domestic or hybrid animal is unclaimed at the end of 5 days, the authorities may dispose of the domestic or hybrid animal in accordance with applicable laws or rules and regulations.

(Neb. RS 71-4408)

(B) Impoundment fees shall be paid by the owner. Fees for impoundment at public facilities shall be established by the rabies control authority.

(Neb. RS 71-4411)

§ 93.25 PROCLAMATION OF DANGER.

Whenever in its opinion the danger to the public safety from a species of rabid animals is great or imminent, the City Council shall issue a proclamation ordering all owners of any such species to muzzle the animal or to confine it for a period of not less than 30 days or more than 90 days from the date of the proclamation or until the danger is passed. The animal may be harbored by any good and sufficient means in a house, garage, or yard on the premises on which the owner may reside. Upon issuance of a proclamation, all owners of any such species shall muzzle or confine the animal as provided in this section.

Penalty, see § 10.99

§ 93.26 ENFORCEMENT.

(A) When the owner of any domestic or hybrid animal or other animal fails or refuses to comply with § 93.22 or 93.23, the rabies control authority shall obtain an order for seizure of the animal pursuant to Neb. RS Chapter 29, article 8.

(Neb. RS 71-4410)

(B) In the city, all ordinances, codes, or rules and regulations concerning the control of rabies or the vaccination of domestic or hybrid animals against rabies shall be enforced by the city health and law enforcement officials or those other officers with regulatory authority as specified by the City Council.

(Neb. RS 71-4412)

DOGS**§ 93.40 LICENSE AND TAX REQUIRED; EXEMPTION; TAGS.**

(A) Any owner of a dog over the age of 6 months within the city shall, within 30 days after acquisition of the dog, acquire a license for the dog annually by or before the May 1 of each year. Licenses shall be issued by the City Clerk upon payment of a license tax in the amount established by the City Council, plus the \$1.25 fee required under Neb. RS 54-603(3). It shall be unlawful for the owner of a dog to wrongfully and knowingly license an unspayed female dog as a male or spayed female dog if the Council has established different license taxes for such dogs.

(B) The tax shall be delinquent from and after May 10. The owner of any dog brought into or harbored within the corporate limits subsequent to May 1 of any year shall be liable for payment of the dog tax, and such tax shall be delinquent if not paid within 10 days thereafter. The license shall not be transferable, and no refund will be allowed in case of death, sale, or other disposition of the licensed dog.

(C) The owner shall state, at the time the application is made and upon printed forms provided for such purpose, his or her name and address and the name, breed, color, and sex of each dog owned by him or her. A certificate of rabies vaccination, effective for the ensuing year of the license, shall be presented when application for a license is made, and no license or tag shall be issued until the certificate is shown.

(D) Every service animal shall be licensed as required by this section, but no license tax shall be charged. Upon the retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of the required license tax.

(Neb. RS 54-603)

(E) (1) Upon the payment of the license tax, the Clerk shall issue to the owner of the dog a license certificate and a metallic tag, which shall be valid until April 30 following such licensing. The Clerk shall issue tags of a suitable design that are different in appearance each year.

(2) The metallic tag and the rabies tag shall be properly attached to the collar or harness of the dog. It shall be unlawful for the owner of any dog to permit or allow such dog to wear any licensing identification other than the metallic tag issued by the Clerk.

(3) If a license tag is lost, upon satisfactory evidence that the original tag was issued in accordance with the provisions of this section, the Clerk shall issue a duplicate or new tag for the balance of the year for which the license tax has been paid and shall charge and collect a fee established by the City Council for each duplicate or new tag so issued.

(F) All license taxes, fees, and other collections shall be credited to the general fund of the city, except as otherwise provided by Neb. RS 54-603.

Penalty, see § 10.99

Statutory reference:

Authority to impose license tax, require rabies certificate, and destroy unlicensed dogs, see Neb. RS 17-526, 54-603, and 71-4412

§ 93.41 COLLAR OR HARNESS REQUIRED.

(A) It shall be the duty of every owner of a dog to securely place upon the neck of the dog a good and sufficient collar with a metallic plate thereon. The plate shall be plainly inscribed with the name of the owner.

(Neb. RS 54-605)

(B) The owner of a dog may use a harness instead of a collar as long as the harness meets all other requirements of division (A) of this section.

Penalty, see § 10.99

§ 93.42 REMOVAL OF COLLAR, HARNESS, OR TAGS.

It shall be unlawful for any person to remove, or cause to be removed, the collar, harness, metallic license tag, or rabies tag from any dog without the consent of the owner of the dog.

Penalty, see § 10.99

§ 93.43 LIABILITY OF OWNER.

It shall be unlawful for the owner to allow a dog to injure or destroy any real or personal property of any description belonging to another person. The owner of the dog, in addition to the usual judgment upon conviction, may be made to be liable to the person injured in an amount equal to the value of the damage sustained.

Penalty, see § 10.99

Statutory reference:

*Authority to guard against injuries or annoyances, see Neb. RS 17-526
Statutory liability for damages, see Neb. RS 54-601, 56-602, and 54-606*

§ 93.44 BARKING AND CHASING; COMPLAINTS.

(A) It shall be unlawful for the owner to allow a dog to annoy or disturb any neighborhood or person by loud, continued, or frequent barking, howling, or yelping or to habitually bark at or chase pedestrians, drivers, or owners of horses or vehicles while they are on any public sidewalks, streets, or alleys in the city.

(B) Upon the written complaint of 2 or more affected persons from different households, filed within any 30-day period with the City Clerk or animal control officer, that any dog owned by the person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this section, the city police or animal control officer shall investigate the complaint and, if in his or her opinion the situation warrants, notify the owner to silence and restrain the dog.

(C) The provisions of this section shall not be construed to apply to any city animal shelter. Penalty, see § 10.99

Statutory reference:

Authority to guard against annoyances, see Neb. RS 17-526

§ 93.45 DANGEROUS DOGS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANIMAL CONTROL AUTHORITY. An entity authorized to enforce the animal control laws of the city, and includes any local law enforcement agency or other agency designated by the city to enforce the animal control laws of the city.

ANIMAL CONTROL OFFICER. Any individual employed, appointed, or authorized by an animal control authority for the purpose of aiding in the enforcement of this section or any other law or ordinance relating to the licensing of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

DANGEROUS DOG.

(a) Any dog that, according to the records of the animal control authority:

(i) Has killed a human being;

(ii) Has inflicted injury on a human being that requires medical treatment;

(iii) Has killed a domestic animal without provocation; or

(iii) Has been previously determined to be a potentially dangerous dog by an animal control authority, the owner has received notice of such determination from an animal control authority or an animal control officer, and the dog inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals.

(b) A dog shall not be defined as a **DANGEROUS DOG** if the individual was tormenting, abusing, or assaulting the dog at the time of the injury or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog.

(c) A dog shall not be defined as a **DANGEROUS DOG** if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined in Neb. RS 20-203, 28-520, or 28-521, was committing any other tort upon the property of the owner of the dog, was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

(d) A dog shall not be defined as a **DANGEROUS DOG** if the dog is a police animal as defined in Neb. RS 28-1008.

DOMESTIC ANIMAL. A cat, a dog, or livestock. Livestock includes buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit.

MEDICAL TREATMENT. Treatment administered by a physician or other licensed health care professional that results in sutures or surgery or treatment for one or more broken bones.

OWNER. Any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog.

POTENTIALLY DANGEROUS DOG.

(a) Any dog that when unprovoked:

(i) Inflicts an injury on a human being that does not require medical treatment; or

(ii) Injures a domestic animal; or

(iii) Chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack.

(b) Any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

(Neb. RS 54-617)

(B) (1) A dangerous dog that has been declared as such shall be spayed or neutered and implanted with a microchip identification number by a licensed veterinarian within 30 days after such declaration. The cost of both procedures is the responsibility of the owner of the dangerous dog. Written proof of both procedures and the microchip identification number shall be provided to the animal control authority after the procedures are completed.

(2) No owner of a dangerous dog shall permit the dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash.

(3) Except as provided in division (B)(4) of this section or for a reasonable veterinary purpose, no owner of a dangerous dog shall transport such dog or permit such dog to be transported to another county, city, or village in this state.

(4) An owner of a dangerous dog may transport such dog or permit such dog to be transported to another county, city, or village in this state for the purpose of permanent relocation of the owner if the owner has obtained written permission prior to such relocation from the animal control authority of the county, city, or village in which the owner resides and from the county, city, or village in which the owner will reside. Each animal control authority may grant such permission based upon a reasonable evaluation of both the owner and the dog, including if the owner has complied with the laws of this state and of the county, city, or village in which he or she resides with regard to dangerous dogs after the dog was declared dangerous. An animal control authority shall not grant permission under this section if the county, city, or village has an ordinance or resolution prohibiting the relocation of dangerous dogs. After the permanent relocation, the animal control authority of the county, city, or village in which the owner resides shall monitor the owner and such dog for a period of at least 30 days but not to exceed 90 days to ensure the owner's compliance with the laws of this state and of such county, city, or village with regard to dangerous dogs. Nothing in this division shall permit the rescindment of the declaration of dangerous dog.

(Neb. RS 54-618)

(C) (1) No person, firm, partnership, limited liability company, or corporation shall own, keep, or harbor or allow to be in or on any premises occupied by him, her, or it or under his, her, or its charge or control any dangerous dog without such dog being confined so as to protect the public from injury.

(2) While unattended on the owner's property, a dangerous dog shall be securely confined, in a humane manner, indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the dog from escaping. The pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground at least one foot. The pen or structure shall also protect the dog from the elements. The pen or structure shall be at least ten feet from any property line of the owner. The owner of a dangerous dog shall post warning signs on the property where the dog is kept that are clearly visible from all areas of public access and that inform persons that a dangerous dog is on the property. Each warning sign shall be no less than ten inches by twelve inches and shall contain the words warning and dangerous animal in high-contrast lettering at least three inches high on a black background.

(Neb. RS 54-619)

(D) *Failure to comply.*

(1) Any dangerous dog may be immediately confiscated by an animal control officer if the owner is in violation of this section. The owner shall be responsible for the reasonable costs incurred by the animal control authority for the care of a dangerous dog confiscated by an animal control officer or for the destruction of any dangerous dog if the action by the animal control authority is pursuant to law and if the owner violated this section.

(Neb. RS 54-620)

(2) In addition to any other penalty, a court may order the animal control authority to dispose of a dangerous dog in an expeditious and humane manner.

(Neb. RS 54-621)

(E) (1) Any owner whose dangerous dog inflicts on a human being a serious bodily injury as defined in Neb. RS 28-109 is guilty of a Class I misdemeanor for the first offense, whether or not the same dangerous dog is involved.

(2) It is a defense to a violation of division (E)(1) of this section that the dangerous dog was, at the time of the infliction of the serious bodily injury, in the custody of or under the direct control of a person other than the owner or the owner's immediate family.

(Neb. RS 54-622.01)

(F) *Effect of prior conviction.* If a dangerous dog of an owner with a prior conviction under this section attacks or bites a human being or domestic animal, in addition to any other penalty, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(Neb. RS 54-623) Penalty, see § 10.99

Statutory reference:

Owner felony liability; serious bodily injury second offense, see Neb. RS 54-622.01

Prior conviction; ownership of dangerous dog prohibited for ten years after, see Neb. RS 54-623

TITLE XI: BUSINESS REGULATIONS

Chapter

110. BUSINESS LICENSING

111. ALCOHOLIC BEVERAGES

112. TOBACCO AND CIGARETTES

113. SALES AND ADVERTISING

Cross-reference:

Local legislation regarding these topics, see Title XVII

CHAPTER 110: BUSINESS LICENSING

Section

Occupation Taxes

- 110.01 Levies authorized
- 110.02 Collection dates
- 110.03 Certificates
- 110.04 Failure to pay

OCCUPATION TAXES

§ 110.01 LEVIES AUTHORIZED.

(A) The city shall have power to raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city and regulate such occupation or business by ordinance. Any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under Neb. RS 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under Neb. RS 77-2704.24. The occupation tax shall be imposed in the manner provided in Neb. RS 18-1208, except that Neb. RS 18-1208 does not apply to an occupation tax subject to Neb. RS 86-704. All such taxes shall be uniform in respect to the classes upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other musical entertainments given exclusively by the citizens of the city.

(Neb. RS 17-525)

(B) The City Council shall have authority, by ordinance, to impose an occupation tax of not more than \$5 per annum on each fire insurance corporation, company, or association, doing business in the city, for the use, support, and benefit of volunteer fire departments, regularly organized under the laws of the state regulating the same. The City Clerk shall collect with diligence the occupation tax so imposed. Upon the receipt of the tax the Clerk shall pay over the proceeds thereof to the City Treasurer who shall credit the same to a fund to be known as special occupation tax fund for benefit of the volunteer fire department. Upon proper claim filed by the Chief of the Fire Department and allowed by

the City Council, the Treasurer shall pay over the proceeds of the tax in the fund from time to time for the use of the Fire Department, as hereinbefore provided.

(Neb. RS 35-106)

(C) Notwithstanding any ordinance or charter power to the contrary, the city shall not impose an occupation tax on the business of any person, firm, or corporation licensed under the Nebraska Liquor Control Act and doing business within the corporate limits of the city in any sum which exceeds 2 times the amount of the license fee required to be paid under the Act to obtain such license.

(Neb. RS 53-132)

Statutory reference:

*Occupation taxes generating more than \$300,000; imposition or increase; election required, see
Neb. RS 18-1208*

Cross reference:

Levy amounts, see Title XVII

§ 110.02 COLLECTION DATES.

Unless provided otherwise or levied daily, any occupation taxes imposed by the City Council shall be due and payable on May 1 of each year, except that any occupation taxes collected from Class C liquor licensees shall be due and payable on November 1 of each year. Upon payment of an occupation tax by any person to the City Clerk, the Clerk shall give a receipt, properly dated, specifying the person paying the tax and the amount paid. Any revenue collected shall be deposited into the general fund by the City Treasurer except as otherwise specifically provided. The Treasurer shall keep an accurate account of all revenue turned over to him or her. All forms and receipts herein mentioned shall be issued in duplicate. One copy shall then be kept by each party in the transaction.

§ 110.03 CERTIFICATES.

The receipt issued after the payment of any occupation tax shall be the occupation tax certificate. The certificate shall specify the amount of the tax and the name of the person and business that paid the tax. The occupation tax certificate shall then be displayed in a prominent place or carried in such a way as to be easily accessible while business is being conducted.

§ 110.04 FAILURE TO PAY.

If any person, company, or corporation fails or neglects to pay the occupation taxes as provided in this chapter on the day they become due and payable, the city shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of 1% per month until paid.

CHAPTER 111: ALCOHOLIC BEVERAGES

Section

General Provisions

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- 111.02 Sale or gift to minor or mentally incompetent person prohibited
- 111.03 Consumption in public places or places open to the public; restrictions
- 111.04 Removal of intoxicated persons from public or quasi-public property

Licenses Required

- 111.20 Manufacture, sale, delivery, and possession; general prohibitions; exceptions
- 111.21 Acquisition and possession; restrictions
- 111.22 Licensee requirements
- 111.23 Licenses; city powers and duties
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- 111.28 Owner of premises or agent; liability
- 111.29 Licensee; liability for acts of officer, agent, or employee
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Retail Establishments

- 111.45 Location
- 111.46 Access to dwellings
- 111.47 Sanitary conditions
- 111.48 Hours of sale
- 111.49 Credit sales prohibited
- 111.50 Original package required
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GENERAL PROVISIONS**§ 111.01 DEFINITIONS.**

For purposes of this chapter, the definitions found in Neb. RS 53-103.01 through 53-103.42 shall be used.

§ 111.02 SALE OR GIFT TO MINOR OR MENTALLY INCOMPETENT PERSON PROHIBITED.

No person shall sell, furnish, give away, dispose of, exchange, or deliver, or permit the sale, gift, or procuring of any alcoholic liquors, to or for any minor or to any person who is mentally incompetent. (Neb. RS 53-180) Penalty, see § 10.99

§ 111.03 CONSUMPTION IN PUBLIC PLACES OR PLACES OPEN TO THE PUBLIC; RESTRICTIONS.

(A) Except when the Nebraska Liquor Control Commission has issued a license as provided in Neb. RS 53-186(2) or as provided in Neb. RS 60-6,211.08, it is unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(Neb. RS 53-186)

(B) It is unlawful for any person owning, operating, managing, or conducting any bottle club, dance hall, restaurant, café, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act. It is unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, café, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the Act. This division does not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages or to limousines or buses operated under Neb. RS 60-6,211.08.

(Neb. RS 53-186.01)

§ 111.04 REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY.

(A) Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others, or who is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take the intoxicated person to his or her home or to place the person in any hospital, clinic, or mental health substance use treatment

center, or with a medical doctor as may be necessary to preserve life or to prevent injury. The effort at placement shall be deemed reasonable if the officer contacts such facilities or doctor which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If these efforts are unsuccessful or are not feasible, the officer may then place the intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances longer than 24 hours.

(B) The placement of the person in civil protective custody shall be recorded at the facility or jail at which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to the person designated by the person taken into civil protective custody.

(C) The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of his or her official duty and shall not be criminally or civilly liable for these actions.

(D) The taking of an individual into civil protective custody under this section shall not be considered an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(E) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MENTAL HEALTH SUBSTANCE USE TREATMENT CENTER. Has the same meaning as in Neb. RS 71-423.

PUBLIC PROPERTY. Any public right-of-way, street, highway, alley, park, or other state, county, or city-owned property.

QUASI-PUBLIC PROPERTY. Private or publicly owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.
(Neb. RS 53-1,121) Penalty, see § 10.99

LICENSES REQUIRED

§ 111.20 MANUFACTURE, SALE, DELIVERY, AND POSSESSION; GENERAL PROHIBITIONS; EXCEPTIONS.

(A) No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in this chapter and the Nebraska Liquor Control Act.

(B) Nothing in this chapter shall prevent:

(1) The possession of alcoholic liquor legally obtained as provided in this chapter or the Act for the personal use of the possessor and his or her family or guests;

(2) The making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests;

(3) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of that hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians;

(4) The possession and dispensation of alcoholic liquor by an authorized representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony;

(5) Persons who are 16 years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;

(6) Persons who are 16 years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;

(7) Persons who are 16 years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment;

(8) Persons who are 16 years old or older from completing a transaction for the sale of alcoholic liquor in the course of their employment if they are not handling or serving alcoholic liquor; or

(9) Persons who are 19 years old or older from serving or selling alcoholic liquor in the course of their employment.

(Neb. RS 53-168.06)

Penalty, see § 10.99

§ 111.21 ACQUISITION AND POSSESSION; RESTRICTIONS.

(A) It shall be unlawful for any person to purchase, receive, acquire, accept, or possess any alcoholic liquor acquired from any other person other than one duly licensed to handle alcoholic liquor under this chapter and the Nebraska Liquor Control Act unless within specific exemptions or exceptions provided in this chapter or the Act.

(Neb. RS 53-175)

(B) (1) Except as otherwise provided in this section, it shall be unlawful for any person to transport, import, bring, ship, or cause to be transported, imported, brought, or shipped into this state for the personal use of the possessor, his or her family, or guests a quantity of alcoholic liquor in excess of nine liters in any one calendar month.

(2) Division (B)(1) of this section does not apply to a person importing alcoholic liquor from a holder of a retail direct sales shipping license or its equivalent, which alcoholic liquor is for personal use or for use by such person's family or guests, if the total amount imported by such person in any one calendar year does not exceed 108 liters.

(Neb. RS 53-194.03)

Penalty, see § 10.99

§ 111.22 LICENSEE REQUIREMENTS.

(A) No license shall be issued to:

(1) A person who is not a resident of this state, except in case of railroad, airline, or boat licenses;

(2) A person who is not of good character and reputation in the community in which he or she resides;

(3) A person who is not a resident of this state and legally able to work in this state;

(4) A person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States;

(5) A person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant Neb. RS Chapter 28, art. 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this division on May 18, 1983, shall not prevent any person holding a license on that date from retaining or renewing that license if the conviction or plea occurred prior to May 18, 1983;

(6) A person whose license issued under the Nebraska Liquor Control Act has been revoked for cause;

(7) A person who at the time of application for renewal of any license issued under the Act would not be eligible for that license upon initial application;

(8) A partnership, unless 1 of the partners is a resident of this state and unless all the members of that partnership are otherwise qualified to obtain a license;

(9) A limited liability company, unless 1 of the members is a resident of this state and unless all the members of that company are otherwise qualified to obtain a license;

(10) A corporation, if any officer or director of the corporation or any stockholder owning in the aggregate more than 25% of the stock of that corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in divisions (A)(1) and (A)(3) of this section, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. This division shall not apply to railroad licenses;

(11) A person whose place of business is conducted by a manager or agent, unless that manager or agent possesses the same qualifications required of the licensee;

(12) A person who does not own the premises for which a license is sought or does not have a lease or combination of leases on the premises for the full period for which the license is to be issued;

(13) Except as provided in this division, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such an applicant shall become eligible for a liquor license only if the Nebraska Liquor Control Commission finds from the evidence that the public interest will not be infringed upon if the license is granted. It shall be *prima facie* evidence that when a spouse is ineligible to receive a liquor license, the applicant is also ineligible to receive a liquor license. This *prima facie* evidence shall be overcome if it is shown to the satisfaction of the Commission:

(a) The licensed business will be the sole property of the applicant; and

(b) The licensed premises will be properly operated.

(14) A person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal;

(15) A law enforcement officer, except that this division shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization; or

(16) A person less than 21 years of age.

(B) When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or person who is mentally incompetent.

(Neb. RS 53-125)

§ 111.23 LICENSES; CITY POWERS AND DUTIES.

(A) The City Council is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, bottle club, craft brewery, and microdistillery licensees carried on within the corporate limits of the city.

(Neb. RS 53-134.03)

(B) During the period of 45 days after the date of receipt by mail or electronic delivery from the Nebraska Liquor Control Commission notice and a copy of an application for a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license, the City Council may make and submit to the Commission recommendations relative to the granting or refusal to grant the license to the applicant.

(Neb. RS 53-131)

(C) The City Council, with respect to licenses within the corporate limits of the city, has the following powers, functions, and duties with respect to retail, bottle club, craft brewery, and microdistillery licenses:

(1) To cancel or revoke for cause retail, craft brewery, or microdistillery licenses to sell or dispense alcoholic liquor or bottle club licenses issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation adopted by the City Council has been or is being violated, and at that time examine the premises of the licensee in connection with such determination. Any law enforcement officer who determines that any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated shall report such violation in writing to the Executive Director of the Commission:

(a) Within 30 days after determining that such violation has occurred;

(b) Within 30 days after the conclusion of an ongoing police investigation; or

(c) Within 30 days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon these complaints in the manner provided in the Act;

(4) To receive retail, bottle club, craft brewery, and microdistillery license fees as provided in Neb. RS 53-124 and 53-124.01 and pay the same, after the license has been delivered to the applicant, to the City Treasurer;

(5) To examine or cause to be examined any applicant or any retail, bottle club, craft brewery, or microdistillery licensee upon whom notice of cancellation or revocation has been served as provided in the Act, to examine or cause to be examined the books and records of any applicant or licensee, except as otherwise provided for bottle club licensees under state law, and to hear testimony and to take proof

for its information in the performance of its duties. For purposes of obtaining any of the information desired, the City Council may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in § 111.30, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. The order of cancellation or revocation may be appealed to the Commission within 30 days after the date of the order by filing a notice of appeal with the Commission. The Commission shall handle the appeal in the manner provided for hearing on an application in Neb. RS 53-133; and

(7) Upon receipt from the Commission of the notice and copy of application as provided in Neb. RS 53-131, to fix a time and place for a hearing at which the City Council shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of the hearing shall be published in a legal newspaper in or of general circulation in the city, 1 time not less than 7 and not more than 14 days before the time of the hearing. The notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the City Council in support of or in protest against the issuance of the license may do so at the time of the hearing. The hearing shall be held not more than 45 days after the date of receipt of the notice from the Commission, and after the hearing the City Council shall cause to be recorded in the minute record of its proceedings a resolution recommending either issuance or refusal of the license. The City Clerk shall mail to the Commission by first class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the Commission. If the Commission refuses to issue such a license, the cost of publication of notice shall be paid by the Commission from the security for costs.

(Neb. RS 53-134)

(D) (1) When the Nebraska Liquor Control Commission mails or delivers to the City Clerk a retail, craft brewery, or microdistillery license issued or renewed by the Commission, the Clerk shall deliver the license to the licensee upon receipt from the licensee of proof of payment of:

(a) The license fee if by the terms of Neb. RS 53-124 the fee is payable to the City Treasurer;

(b) Any fee for publication of notice of hearing before the City Council upon the application for the license;

(c) The fee for publication of notice of renewal, if applicable, as provided in Neb. RS 53-135.01; and

(d) Occupation taxes, if any, imposed by the city, except that Class J retail licensees shall not be subject to occupation taxes.

(2) Notwithstanding any ordinance or charter power to the contrary, the city shall not impose an occupation tax on the business of any person, firm, or corporation licensed under the Nebraska Liquor

Control Act and doing business within the corporate limits of the city in any sum which exceeds 2 times the amount of the license fee required to be paid under the Act to obtain that license.
(Neb. RS 53-132)

§ 111.24 LICENSED PREMISES; INSPECTIONS.

The City Council shall cause frequent inspection to be made on the premises of all retail licensees and bottle club licensees. If it is found that any such licensee is violating any provision of this chapter, the Nebraska Liquor Control Act, or the rules and regulations of the Nebraska Liquor Control Commission, or is failing to observe in good faith the purposes of this chapter or the Act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his or her defense.

(Neb. RS 53-116.01)

§ 111.25 LICENSE RENEWAL; CITY POWERS AND DUTIES.

(A) A retail or bottle club license issued by the Nebraska Liquor Control Commission and outstanding may be automatically renewed by the Commission in the absence of a written request by the City Council to require the licensee to submit an application for renewal. Any licensed retail premises located in an area which is annexed to the city shall file a formal application for a license, and while the application is pending, the licensee may continue all license privileges until the original license expires or is canceled or revoked. If that license expires within 60 days following the annexation date of the area, the license may be renewed by order of the Commission for not more than 1 year.

(Neb. RS 53-135)

(B) The City Clerk shall cause to be published in a legal newspaper in or of general circulation in the city, 1 time between January 10 and January 30 of each year, individual notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the city, except that notice of the right of automatic renewal of Class C licenses shall be published between the dates of July 10 and July 30 of each year. If written protests to the issuance of automatic renewal of a license are filed in the office of the City Clerk by 3 or more residents of the city on or before February 10, or August 10 for Class C licenses, the City Council shall hold a hearing to determine whether continuation of the license should be allowed. Upon the conclusion of any hearing required by this section, the City Council may request a licensee to submit an application as provided in Neb. RS 53-135.

(Neb. RS 53-135.01)

§ 111.26 CATERING LICENSES.

(A) The holder of a license to sell alcoholic liquor at retail issued under Neb. RS 53-124, a craft brewery license, a microdistillery license, or a farm winery license may obtain an annual catering license by filing an application and license fee with the Nebraska Liquor Control Commission.

(B) Upon receipt from the Commission of the notice and a copy of the application as provided in Neb. RS 53-124.12, the City Council shall process the application in the same manner as provided in § 111.23.

(C) The City Council, with respect to catering licensees within its corporate limits, may cancel a catering license for cause for the remainder of the period for which that catering license is issued. Any person whose catering license is canceled may appeal to the District Court.

(D) The City Council may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the City Council. The tax may not exceed double the license fee for a catering license.

(Neb. RS 53-124.12)

§ 111.27 DISPLAY OF LICENSE.

Every licensee under the Nebraska Liquor Control Act shall cause his or her license to be framed and hung in plain view in a conspicuous place on the licensed premises.

(Neb. RS 53-148) Penalty, see § 10.99

§ 111.28 OWNER OF PREMISES OR AGENT; LIABILITY.

If the owner of the licensed premises or any person from whom the licensee derives the right to possession of the premises, or the agent of that owner or person, knowingly permits the licensee to use the licensed premises in violation of the terms of the Nebraska Liquor Control Act or any city ordinance, that owner, agent, or other person shall be deemed guilty of a violation of the Act or ordinance to the same extent as the licensee and be subject to the same punishment.

(Neb. RS 53-1,101) Penalty, see § 10.99

§ 111.29 LICENSEE; LIABILITY FOR ACTS OF OFFICER, AGENT, OR EMPLOYEE.

Every act or omission of whatsoever nature constituting a violation of any of the provisions of the Nebraska Liquor Control Act or any city ordinance by any officer, director, manager, or other agent or employee of any licensee, if the act is committed or omission is made with the authorization, knowledge, or approval of the licensee, shall be deemed and held to be the act of the employer or licensee, and the employer or licensee shall be punishable in the same manner as if the act or omission had been done or omitted by the licensee personally.

(Neb. RS 53-1,102) Penalty, see § 10.99

§ 111.30 CITIZEN COMPLAINTS.

Any five residents of the city shall have the right to file a complaint with the City Council stating that any retail licensee or bottle club licensee subject to the jurisdiction of the City Council has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the Act. The complaint shall be in writing in the form prescribed by the City Council and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the City Council is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for that belief, it shall set the matter for hearing within 10 days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of the hearing and of the particular charge in the complaint. The complaint shall in all cases be disposed of by the City Council within 30 days from the date the complaint was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided in Neb. RS 53-1,115.

(Neb. RS 53-134.04)

RETAIL ESTABLISHMENTS**§ 111.45 LOCATION.**

(A) Except as otherwise provided in division (B) of this section, no license shall be issued for the sale at retail of any alcoholic liquor or for a bottle club within 150 feet of any church, school, hospital, or home for indigent persons or for veterans and their wives or children. This prohibition does not apply to any location within such distance of 150 feet:

(1) For which a license to sell alcoholic liquor at retail or for a bottle club has been granted by the Nebraska Liquor Control Commission for two years continuously prior to making of application for license;

(2) To hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935; or

(3) To a college or university in the state which is subject to Neb. RS 53-177.01.

(B) If a proposed location for the sale at retail of any alcoholic liquor or for a bottle club is within 150 feet of any church, a license may be issued if the commission gives notice to the affected church and holds a hearing as prescribed in Neb. RS 53-133 if the affected church submits a written request for a hearing.

(Neb. RS 53-177)

(C) No alcoholic liquor, other than beer, shall be sold for consumption on the premises within 300 feet from the campus of any college or university within the city, and no bottle club shall be operated within 300 feet from the campus of any college, except that this section:

(1) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(2) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to Neb. RS 53-124.15.

(Neb. RS 53-177.01) Penalty, see § 10.99

Statutory reference:

State commission may waive 300-feet requirement, see Neb. RS 53-177.01

§ 111.46 ACCESS TO DWELLINGS.

Except in the case of hotels and clubs, no alcoholic liquor shall be manufactured or sold at retail or wholesale upon any premises which have any access which leads from the premises to any other portion of the same building or structure used for dwelling or lodging purposes and permitted to be used or kept accessible for use by the public. This section does not prevent any connection between the premises and such other portion of the building or structure which is used only by the licensee, his or her family, or personal guests.

(Neb. RS 53-178) Penalty, see § 10.99

§ 111.47 SANITARY CONDITIONS.

It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons. The licensed premises shall be subject to any health inspections the City Council or the city police may make or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the sanitary conditions shall be made at all hearings concerning the application for or renewal of a liquor license.

Penalty, see § 10.99

Statutory reference:

Authority to regulate licensed premises, see Neb. RS 53-134.03

State sanitary rules and regulations authorized, see Neb. RS 53-118

§ 111.48 HOURS OF SALE.

(A) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1 a.m. and 6 a.m. except that the City Council with respect to area inside the corporate limits of the city may by ordinance or resolution:

(1) Require closing prior to 1 a.m. on any day;

(2) If adopted by a vote of at least two-thirds of the members of the City Council, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1 a.m. and prior to 2 a.m. on any day;

(3) If adopted by a vote of at least two-thirds of the members of City Council, permit retail sale of alcoholic liquor for consumption off the premises later than 1 a.m. and prior to 2 a.m. on any day; or

(4) If adopted by a vote of at least two-thirds of the members of City Council, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, and permit retail sale of alcoholic liquor for consumption off the premises later than 1 a.m. and prior to 2 a.m. on any day.

(B) Except as provided for and allowed by ordinance of the City Council, no alcoholic liquor, including beer, shall be sold at retail or dispensed inside the corporate limits of the city between the hours of 6 a.m. Sunday and 1 a.m. Monday. This division (B) shall not apply after 12 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C license or a Class I license.

(C) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of 15 minutes after the closing hour applicable to the licensed premises and 6 a.m. on any day.

(D) Nothing in this section shall prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section.

(Neb. RS 53-179)

Cross reference:

Local legislation regarding hours of sale, see Title XVII

§ 111.49 CREDIT SALES PROHIBITED.

(A) No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise, or in payment for any services rendered, and if any person extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law.

(B) Nothing in this section shall prevent the following:

(1) Any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance with the bylaws of such club;

(2) Any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests; or

(3) Any licensed retailer engaged in the sale of wine or distilled spirits from issuing tasting cards to customers.

(Neb. RS 53-183) Penalty, see § 10.99

§ 111.50 ORIGINAL PACKAGE REQUIRED.

No person, except a manufacturer or wholesaler, shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor. It shall be unlawful for any person to have in his or her possession for sale at retail any bottles, casks, or other containers containing alcoholic liquor except in original packages. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale.

(Neb. RS 53-184) Penalty, see § 10.99

§ 111.51 MINOR'S PRESENCE RESTRICTED.

It shall be unlawful for any person who owns, manages, or leases an establishment selling alcoholic beverages at retail to allow any minor under the age of 18 years of age to frequent or otherwise remain in the establishment unless the minor is accompanied by his or her parent or legal guardian, and unless the minor remains seated with and under the immediate control of the parent or legal guardian.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see Neb. RS 53-134.03

§ 111.52 KEG SALES; REQUIREMENTS; PROHIBITED ACTS.

(A) When any person licensed to sell alcoholic liquor at retail sells alcohol for consumption off the premises in a container with a liquid capacity of five or more gallons or 18.92 or more liters, the seller shall record the date of the sale, the keg identification number, the purchaser's name and address, and the number of the purchaser's motor vehicle operator's license, state identification card, or military identification, if the military identification contains a picture of the purchaser, together with the purchaser's signature. This record shall be on a form prescribed by the Nebraska Liquor Control Commission and shall be kept by the licensee at the retail establishment where the purchase was made

for not less than six months. The records kept pursuant to this section shall be available for inspection by any law enforcement officer during normal business hours or at any other reasonable time. Any person violating this section shall be guilty of an offense.

(Neb. RS 53-167.02)

(B) Any person who unlawfully tampers with, alters, or removes the keg identification number from a container described in division (A) or is in possession of a container described in division (A) with an altered or removed keg identification number after the container has been taken from the licensed premises pursuant to a retail sale and before its return to the licensed premises or other place where returned kegs are accepted shall be guilty of an offense.

(Neb. RS 53-167.03) Penalty, see § 10.99

CHAPTER 112: TOBACCO AND CIGARETTES

Section

- 112.01 License to sell; issuance
- 112.02 License application
- 112.03 License term; fees
- 112.04 Rights of licensee
- 112.05 Disposition of fees
- 112.06 Transfer of license
- 112.07 Reissuance of revoked and forfeited license

§ 112.01 LICENSE TO SELL; ISSUANCE.

Licenses for the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material to persons 19 years of age or over shall be issued to individuals, partnerships, limited liability companies, and corporations by the City Clerk upon application duly made as provided in § 112.02.

(Neb. RS 28-1421)

Statutory reference:

Licenses required, see Neb. RS 28-1420

Prohibited sales, see Neb. RS 28-1421

§ 112.02 LICENSE APPLICATION.

Every person, partnership, limited liability company, or corporation desiring a license under Neb. RS 28-1420 to 28-1429 shall file with the City Clerk a written application stating the name of the person, partnership, limited liability company, or corporation for whom the license is desired and the exact location of the place of business and shall deposit with the application the amount of the license fee provided in § 112.03. If the applicant is an individual, the application shall include the applicant's social security number.

(Neb. RS 28-1422)

§ 112.03 LICENSE TERM; FEES.

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

(B) The license fee for any person, partnership, limited liability company, or corporation selling at retail shall be \$10.

(C) Any person, partnership, limited liability company, or corporation selling annually in the aggregate more than 150,000 cigars, packages of cigarettes, electronic nicotine delivery system, and packages of tobacco in any form, at wholesale, shall pay a license fee of \$100, and if such combined annual sales amount to less than 150,000 cigars, packages of cigarettes, electronic nicotine delivery system, and packages of tobacco, the annual license fee shall be \$15. No wholesaler's license shall be issued in any year on a less basis than \$100 per annum unless the applicant shall file with the application a statement duly sworn to by himself or herself, or if applicant is a partnership, by a member of the firm, or if a limited liability company, by a member or manager of the company, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, electronic nicotine delivery system, and packages of tobacco in every form have not exceeded in the aggregate 150,000 annually and that such sales will not exceed such aggregate amount for the current year for which the license is to issue. Any person swearing falsely in such affidavit shall be guilty of an offense, and such wholesaler's license shall be revoked until the full license fee is paid.

(D) If application for license is made after July 1 of any calendar year, the fee shall be $\frac{1}{2}$ of the fee provided in this section.

(Neb. RS 28-1423) Penalty, see § 10.99

§ 112.04 RIGHTS OF LICENSEE.

(A) The license provided for in §§ 112.01 and 112.02 shall, when issued, authorize the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material by the licensee and employees, to persons 19 years of age or over, at the place of business described in the license for the term therein authorized, unless the license is forfeited as a result of court action as provided in Neb. RS 28-1425.

(Neb. RS 28-1424)

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

(Neb. RS 28-1425)

Statutory reference:

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

§ 112.05 DISPOSITION OF FEES.

All money collected as license fees under the provisions of this chapter shall be paid over by the City Clerk to the treasurer of the school fund for the city.

(Neb. RS 28-1426)

§ 112.06 TRANSFER OF LICENSE.

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

(Neb. RS 28-1428)

§ 112.07 REISSUANCE OF REVOKED AND FORFEITED LICENSE.

In the event that the license of a licensee hereunder shall be revoked and forfeited as provided in Neb. RS 28-1425, no new license shall be issued to such licensee until the expiration of 1 year from the date of such revocation and forfeiture.

(Neb. RS 28-1429)

CHAPTER 113: SALES AND ADVERTISING

Section

Peddlers and Solicitors

- 113.01 Definitions
- 113.02 License required
- 113.03 Application procedure
- 113.04 Standards for issuance
- 113.05 Revocation procedure
- 113.06 Standards for revocation
- 113.07 Appeal procedure
- 113.08 Exhibition of identification
- 113.09 Policy on soliciting
- 113.10 Notice regulating soliciting
- 113.11 Posted notice; solicitors to comply
- 113.12 Prohibited solicitation

PEDDLERS AND SOLICITORS

§ 113.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

GOODS. Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

ITINERANT MERCHANT. Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the city and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the city.

PEDDLER. Any person, not an itinerant merchant, who:

- (1) Travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or
- (2) Without traveling from place to place, sells or offers goods for sale from any public place within the city.

SOLICITOR. Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

§ 113.02 LICENSE REQUIRED.

- (A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the city.
- (B) The fee for the license required by this chapter shall be as set from time to time by the city.
- (C) No license issued under this chapter shall be transferable.
- (D) All licenses issued under this chapter shall expire 90 days after the date of issuance thereof. Penalty, see § 10.99

§ 113.03 APPLICATION PROCEDURE.

(A) All applicants for licenses required by this chapter shall file an application with the City Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:

- (1) The name and address of the applicant;
- (2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the city;
- (b) The local address of such individual;
- (c) The permanent address of such individual;
- (d) The capacity in which such individual will act;

- (3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;
- (4) The time period or periods during which it is proposed to carry on applicant's business;
- (5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;
 - (b) If goods, their invoice value and whether they are to be sold by sample as well as from stock;
 - (c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;
- (6) The nature of the advertising proposed to be done for the business;
- (7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified in division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above:

- (1) A description of the applicant;
- (2) A description of any vehicle proposed to be used in the business, including its registration number, if any.

(C) All applicants for licenses required by this chapter shall attach to their application, if required by the city, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than 10 days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

Penalty, see § 10.99

§ 113.04 STANDARDS FOR ISSUANCE.

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant:

- (1) Has been convicted of a crime of moral turpitude; or
- (2) Has made willful misstatements in the application; or
- (3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like; or
- (4) Has committed prior fraudulent acts; or
- (5) Has a record of continual breaches of solicited contracts;

will constitute valid reasons for disapproval of an application.

§ 113.05 REVOCATION PROCEDURE.

Any license or permit granted under this chapter may be revoked by the City Clerk after notice and hearing, pursuant to the standards in § 113.06. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least 10 days prior to the date set for the hearing.

§ 113.06 STANDARDS FOR REVOCATION.

A license granted under this chapter may be revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application; or
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license; or
- (C) Any violation of this chapter; or
- (D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or
- (E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

§ 113.07 APPEAL PROCEDURE.

(A) Any person aggrieved by a decision under §§ 113.04 or 113.06 shall have the right to appeal to the City Council. The appeal shall be taken by filing with the City Council, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The City Council shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 113.05.

(B) The order of the City Council after the hearing shall be final.

§ 113.08 EXHIBITION OF IDENTIFICATION.

(A) Any license issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than 1 place within the city shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(B) The City Clerk shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed.

Penalty, see § 10.99

§ 113.09 POLICY ON SOLICITING.

It is hereby declared to be the policy of the city that the occupants of the residences in the city shall make the determination of whether solicitors shall be, or shall not be, invited to their respective residences.

§ 113.10 NOTICE REGULATING SOLICITING.

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, approximately 3 inches by 4 inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

"NO SOLICITORS INVITED"

(B) The letters shall be at least 1/3-inch in height.

(C) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

§ 113.11 POSTED NOTICE; SOLICITORS TO COMPLY.

(A) It shall be the duty of every solicitor upon going onto any premises in the city upon which a residence is located to first examine the notice provided for in § 113.10 if any is attached, and be governed by the statement contained on the notice. If the notice states "NO SOLICITORS INVITED," then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

Penalty, see § 10.99

§ 113.12 PROHIBITED SOLICITATION.

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of § 113.10 above.

Penalty, see § 10.99

TITLE XIII: GENERAL OFFENSES

Chapter

- 130. PROPERTY OFFENSES**
- 131. OFFENSES AGAINST PUBLIC ORDER**
- 132. OFFENSES AGAINST PUBLIC JUSTICE AND ADMINISTRATION**
- 133. OFFENSES AGAINST PUBLIC HEALTH AND SAFETY**
- 134. OFFENSES AGAINST PUBLIC MORALS**

Cross-reference:

Local legislation regarding these topics, see Title XVII

CHAPTER 130: PROPERTY OFFENSES

Section

- 130.01 Criminal mischief
- 130.02 Criminal trespass
- 130.03 Electrical interference
- 130.04 Injury to trees
- 130.05 Posting

§ 130.01 CRIMINAL MISCHIEF.

(A) A person commits criminal mischief if he or she:

- (1) Damages property of another intentionally or recklessly; or
- (2) Intentionally tampers with property of another so as to endanger person or property; or
- (3) Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.

(B) Criminal mischief is an offense:

- (1) If the actor intentionally or maliciously causes pecuniary loss of \$500 or more but less than \$5,000; or
- (2) If the actor intentionally, maliciously, or recklessly causes pecuniary loss in an amount of less than \$500 or if his or her action results in no pecuniary loss.

(Neb. RS 28-519) Penalty, see § 10.99

§ 130.02 CRIMINAL TRESPASS.

(A) A person commits first degree criminal trespass if:

- (1) He or she enters or secretly remains in any building or occupied structure, or any separately secured or occupied portion thereof, knowing that he or she is not licensed or privileged to do so; or
- (2) He or she enters or remains in or on a public power infrastructure facility knowing that he or she does not have the consent of a person who has the right to give consent to be in or on the facility.

(B) First degree criminal trespass is a Class I misdemeanor.

(C) For purposes of this section, ***PUBLIC POWER INFRASTRUCTURE FACILITY*** means a power plant, an electrical station or substation, or any other facility which is used by a public power supplier as defined in Neb. RS 70-2103 to support the generation, transmission, or distribution of electricity and which is surrounded by a fence or is otherwise enclosed.

(Neb. RS 28-520)

(D) (1) A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, to enter or remain in any place as to which notice against trespass is given by:

(a) Actual communication to the actor; or

(b) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) Fencing or other enclosure manifestly designed to exclude intruders, except as otherwise provided in division (A) of this section.

(2) Second degree criminal trespass is a Class III misdemeanor, except as provided for in division (D)(3) of this section.

(3) Second degree criminal trespass is a Class II misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person. (Neb. RS 28-521) Penalty, see § 10.99

§ 130.03 ELECTRICAL INTERFERENCE.

Any person operating, or causing to be operated, any motor, sign, or other electrical apparatus that is connected with the light and power system shall equip the apparatus with proper filtering attachments to eliminate interference, provided that the provisions herein shall not apply to the use of necessary medical equipment or apparatus where electrical interference cannot be reasonably and safely eliminated. Any person who so operates or causes to be operated any such electrical apparatus that interferes habitually with radio and television reception shall be deemed to be guilty of an offense.

Penalty, see § 10.99

Statutory reference:

Provisions on nuisances, see Neb. RS 18-1720 and 28-1321

§ 130.04 INJURY TO TREES.

It shall be unlawful for any person purposely or carelessly and without lawful authority to cut down, carry away, injure, break down, or destroy any fruit, ornamental, shade, or other tree or trees standing or growing on any land belonging to another person or persons or on any public land in the corporate

limits. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by it, shall make an application to the City Council to do so, and the written permit of the City Council in accordance with their decision to allow such an action shall constitute the only lawful authority on the part of the company to do so.

Penalty, see § 10.99

§ 130.05 POSTING.

It shall be unlawful for any person to use the streets, sidewalks, or public grounds of the city for signs, signposts, or the posting of handbills or advertisements without written permission of the City Council.

Penalty, see § 10.99

CHAPTER 131: OFFENSES AGAINST PUBLIC ORDER

Section

- 131.01 Disorderly conduct
- 131.02 Street games
- 131.03 Obstruction of public ways
- 131.04 Obstructing water flow
- 131.05 Disturbing the peace

§ 131.01 DISORDERLY CONDUCT.

It shall be unlawful for any person to engage in conduct or behavior which disturbs the peace and good order of the city by clamor or noise, intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places or otherwise violating the public peace by indecent or disorderly conduct or lewd or lascivious behavior.

Penalty, see § 10.99

Statutory reference:

Authority to prevent disorderly conduct, see Neb. RS 17-129

Authority to regulate noise, riots, and routs, see Neb. RS 17-556

§ 131.02 STREET GAMES.

It shall be unlawful for any person to play catch, bat a ball, or kick or throw a football, or to engage in any exercise or sport, upon the city streets and sidewalks. Nothing herein shall be construed to prohibit or prevent the City Council from ordering from time to time certain streets and public places blocked off for the purpose of providing a safe area to engage in such exercise and sport.

Penalty, see § 10.99

Statutory reference:

Additional authority, see Neb. RS 17-555 and 17-557

Authority to regulate excavation and obstruction of streets, see Neb. RS 17-142

§ 131.03 OBSTRUCTION OF PUBLIC WAYS.

It shall be unlawful for any person to erect, maintain, or suffer to remain on any street or public sidewalk a stand, wagon, display, or other obstruction inconvenient to or inconsistent with the public use of the same.

Penalty, see § 10.99

Statutory reference:

Additional authority, see Neb. RS 17-555 and 17-557

Authority to regulate excavation and obstruction of streets, see Neb. RS 17-142

Penalties for injuring or obstructing roads, see Neb. RS 39-301 and 39-302

§ 131.04 OBSTRUCTING WATER FLOW.

It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe, or hydrant.

Penalty, see § 10.99

Statutory reference:

Authority to abate nuisances, see Neb. RS 17-555

Authority to prevent water obstruction, see Neb. RS 17-920

§ 131.05 DISTURBING THE PEACE.

It shall be unlawful for any person intentionally to disturb the peace and quiet of any person, family, or neighborhood.

(Neb. RS 28-1322) Penalty, see § 10.99

CHAPTER 132: OFFENSES AGAINST PUBLIC JUSTICE AND ADMINISTRATION

Section

- 132.01 Impersonating a public servant
- 132.02 Impersonating a peace officer
- 132.03 Refusing to aid a peace officer
- 132.04 Resisting arrest without the use of a deadly or dangerous weapon
- 132.05 Obstructing a peace officer
- 132.06 Interfering with firefighter
- 132.07 False reporting

§ 132.01 IMPERSONATING A PUBLIC SERVANT.

It shall be unlawful for any person falsely to pretend to be a public servant other than a peace officer and perform any act in that pretended capacity. It is no defense that the office the actor pretended to hold did not in fact exist.

(Neb. RS 28-609) Penalty, see § 10.99

§ 132.02 IMPERSONATING A PEACE OFFICER.

It shall be unlawful for any person to falsely pretend to be a peace officer and perform any act in that pretended capacity.

(Neb. RS 28-610) Penalty, see § 10.99

§ 132.03 REFUSING TO AID A PEACE OFFICER.

It shall be unlawful for any person, upon a request by a person known to him or her to be a peace officer, unreasonably to refuse or fail to aid the peace officer in:

- (A) Apprehending any person charged with or convicted of any offense against any of the laws of this state or city; or
- (B) Securing the offender when apprehended; or
- (C) Conveying the offender to the jail of the county or this city.

(Neb. RS 28-903) Penalty, see § 10.99

§ 132.04 RESISTING ARREST WITHOUT THE USE OF A DEADLY OR DANGEROUS WEAPON.

(A) It shall be unlawful for any person, without the use of a deadly or dangerous weapon, while intentionally preventing or attempting to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another, to:

- (1) Use or threaten to use physical force or violence against the peace officer or another;
- (2) Use any other means which creates a substantial risk of causing physical injury to the peace officer or another; or
- (3) Employ means requiring substantial force to overcome resistance to effecting the arrest.

(B) It is an affirmative defense to prosecution under this section if the peace officer involved was out of uniform and did not identify himself or herself as a peace officer by showing his or her credentials to the person whose arrest is attempted.

(Neb. RS 28-904) Penalty, see § 10.99

§ 132.05 OBSTRUCTING A PEACE OFFICER.

(A) A person commits the offense of obstructing a peace officer when, by using or threatening to use violence, force, physical interference, or obstacle, he or she intentionally obstructs, impairs, or hinders:

- (1) The enforcement of the penal law or the preservation of the peace by a peace officer or judge acting under color of his or her official authority; or
- (2) A police animal assisting a peace officer acting pursuant to the peace officer's official authority.

(B) For purposes of this section, **POLICE ANIMAL** means a horse or dog owned or controlled by the state or any county, city, or village for the purpose of assisting a peace officer acting pursuant to his or her official authority.

(Neb. RS 28-906) Penalty, see § 10.99

§ 132.06 INTERFERING WITH FIREFIGHTER.

A person commits the offense of interfering with a firefighter if at any time and place where any firefighter is discharging or attempting to discharge any official duties, the person willfully:

- (A) Resists or interferes with the lawful efforts of any firefighter in the discharge or attempt to discharge an official duty;
- (B) Disobeys the lawful orders given by any firefighter while performing his or her duties;
- (C) Engages in any disorderly conduct which delays or prevents a fire from being extinguished within a reasonable time; or
- (D) Forbids or prevents others from assisting or extinguishing a fire, or exhorts another person, as to whom he or she has no legal right or obligation to protect or control, not to assist in extinguishing a fire.

(Neb. RS 28-908) Penalty, see § 10.99

§ 132.07 FALSE REPORTING.

- (A) It shall be unlawful for any person to:
 - (1) Furnish material information he or she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or impede the investigation of an actual criminal matter;
 - (2) Furnish information he or she knows to be false alleging the existence of the need for the assistance of an emergency medical service or out-of-hospital emergency care provider or an emergency in which human life or property are in jeopardy to any hospital, emergency medical service, or other person or governmental agency;
 - (3) Furnish any information, or cause information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false concerning the need for assistance of a fire department or any personnel or equipment of such a department;
 - (4) Furnish any information he or she knows to be false concerning the location of any explosive in any building or other property to any person; or
 - (5) Furnish material information he or she knows to be false to any governmental department or agency with the intent to instigate an investigation or to impede an ongoing investigation and which actually results in causing or impeding the investigation.
- (B) A person who violates this section commits the offense of false reporting.

(Neb. RS 28-907) Penalty, see § 10.99

CHAPTER 133: OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section

General Provisions

- 133.01 Maintaining a nuisance
- 133.02 Appliances in yard
- 133.03 Putting carcass or filthy substance into well, spring, brook, or stream
- 133.04 Prohibited fences
- 133.05 Littering
- 133.06 Raising or producing stagnant water

Substance Offenses

- 133.20 Use of tobacco by persons under the age of 19
- 133.21 Sale of tobacco to persons under the age of 19
- 133.22 Misrepresentation by person under the age of 19 to obtain tobacco
- 133.23 Misrepresentation by minor to obtain alcohol
- 133.24 Minors; prohibited acts involving alcoholic liquor
- 133.25 Drinking on public property; open beverage container

Motor Vehicle and Highway Offenses

- 133.40 Abandoned automobiles
- 133.41 Unlicensed or inoperable vehicles

Weapons Offenses

- 133.60 Discharge of firearms
- 133.61 Slingshots, air guns, BB guns

GENERAL PROVISIONS**§ 133.01 MAINTAINING A NUISANCE.**

(A) A person commits the offense of maintaining a nuisance if he or she erects, keeps up or continues, and maintains any nuisance to the injury of any part of the citizens of this city.

(B) The erecting, continuing, using, or maintaining of any building, structure, or other place for the exercise of any trade, employment, manufacture, or other business which, by occasioning noxious exhalations, noisome or offensive smells, becomes injurious and dangerous to the health, comfort, or property of individuals or the public; the obstructing or impeding, without legal authority, of the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome or impure of any watercourse, stream, or water; or unlawfully diverting any such watercourse from its natural course or state to the injury or prejudice of others; and the obstructing or encumbering by fences, building, structures or otherwise of any of the public highways or streets or alleys of the city, shall be deemed nuisances.

(C) A person guilty of erecting, continuing, using, maintaining, or causing any such nuisance shall be guilty of a violation of this section and in every such case the offense shall be construed and held to have been committed in any county whose inhabitants are or have been injured or aggrieved thereby.

(D) The court, in case of conviction of such offense, shall order every such nuisance to be abated or removed.

(Neb. RS 28-1321) Penalty, see § 10.99

§ 133.02 APPLIANCES IN YARD.

It shall be unlawful for any person to permit a refrigerator, icebox, freezer, or any other dangerous appliance to be in the open and accessible to children whether on private or public property unless the person first removes all doors and makes the same reasonably safe.

Penalty, see § 10.99

Statutory reference:

Authority to prohibit nuisances within zoning jurisdiction, see Neb. RS 18-1720

§ 133.03 PUTTING CARCASS OR FILTHY SUBSTANCE INTO WELL, SPRING, BROOK, OR STREAM.

Whoever shall put any dead animal, carcass or part thereof, or other filthy substance into any well, or into any spring, brook, or branch of running water, of which use is made for domestic purposes, shall be guilty of an offense.

(Neb. RS 28-1304) Penalty, see § 10.99

§ 133.04 PROHIBITED FENCES.

It shall be unlawful for any person to erect, or cause to be erected, and maintain any barbed wire or electric fence within the corporate limits, where the fence abuts a public sidewalk, street, or alley. Penalty, see § 10.99

Statutory reference:

Restrictions on barbed wire fences, see Neb. RS 39-307

§ 133.05 LITTERING.

(A) Any person who deposits, throws, discards, or otherwise disposes of any litter on any public or private property or in any waters commits the offense of littering unless:

- (1) The property is an area designated by law for the disposal of that type of material and the person is authorized by the proper public authority to so use the property; or
- (2) The litter is placed in a receptacle or container installed on the property for that purpose.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LITTER. Includes all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state, but does not include wastes of primary processes of farming or manufacturing.

WASTE MATERIAL. Any material appearing in a place or in a context not associated with that material's function or origin.

(C) Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this section, the operator of the motor vehicle or watercraft commits the offense of littering.

(Neb. RS 28-523) Penalty, see § 10.99

§ 133.06 RAISING OR PRODUCING STAGNANT WATER.

Whoever shall build, erect, continue, or keep up any dam or other obstruction in any river or stream of water in the city and thereby raise an artificial pond, or produce stagnant waters, which shall be manifestly injurious to the public health and safety shall be guilty of an offense and the court shall, moreover, order every such nuisance to be abated or removed.

(Neb. RS 28-1303) Penalty, see § 10.99

SUBSTANCE OFFENSES**§ 133.20 USE OF TOBACCO BY PERSONS UNDER THE AGE OF 19.**

Whoever, being a person under the age of 19 years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems or alternative nicotine products, or use tobacco in any form whatever in this city, shall be guilty of an offense. Any person charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco.

(Neb. RS 28-1418) Penalty, see § 10.99

§ 133.21 SALE OF TOBACCO TO PERSONS UNDER THE AGE OF 19.

Whoever shall sell, give, or furnish in any way any tobacco in any form whatever, or any cigarettes or cigarette paper, electronic nicotine delivery systems, or alternative nicotine products, to any person under 19 years of age is guilty of an offense.

(Neb. RS 28-1419) Penalty, see § 10.99

§ 133.22 MISREPRESENTATION BY PERSON UNDER THE AGE OF 19 TO OBTAIN TOBACCO.

Any person under the age of 19 years who obtains cigars, tobacco, cigarettes, or cigarette material, electronic nicotine delivery systems, or alternative nicotine products from a licensee hereunder by representing that he or she is of the age of 19 years or over, is guilty of an offense.

(Neb. RS 28-1427) Penalty, see § 10.99

§ 133.23 MISREPRESENTATION BY MINOR TO OBTAIN ALCOHOL.

No minor, as defined by Neb. RS 53-103.23, shall obtain, or attempt to obtain, alcoholic liquor by misrepresentation of age, or by any other method, in any tavern or other place where alcoholic liquor is sold.

(Neb. RS 53-180.01) Penalty, see § 10.99

Statutory reference:

Penalty for manufacturing false identification intended for minors, see Neb. RS 53-180.05

§ 133.24 MINORS; PROHIBITED ACTS INVOLVING ALCOHOLIC LIQUOR.

(A) For purposes of this section, the definitions found in Neb. RS 53-103.01 through 53-103.42 shall apply, including, but not limited to, the definitions of the terms "alcoholic liquor," "consume," "minor," "sale," and "to sell."

(B) Except as otherwise provided in § 111.20, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the state or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the state or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a bona fide religious rite, ritual, or ceremony or in his or her permanent place of residence.

(C) It shall be unlawful for any person under 21 years of age to transport, consume, or knowingly possess or have under his or her control beer or other alcoholic liquor in or transported by any motor vehicle.

(Neb. RS 53-180.02) Penalty, see § 10.99

Statutory reference:

Minor Alcoholic Liquor Liability Act, see Neb. RS 53-401 through 53-409

§ 133.25 DRINKING ON PUBLIC PROPERTY; OPEN BEVERAGE CONTAINER.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALCOHOLIC BEVERAGE.

(a) Beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description, containing 0.5% or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(b) Wine of not less than 0.5% alcohol by volume; or

(c) Distilled spirits, which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

(d) ***ALCOHOLIC BEVERAGE*** does not include trace amounts not readily consumable as a beverage.

HIGHWAY. A road or street including the entire area within the right-of-way.

LIMOUSINE. A luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least 5 and no more than 14 persons behind the driver with a physical partition separating the driver seat from the passenger compartment. **LIMOUSINE** does not include taxicabs, hotel or airport buses or shuttles, or buses.

OPEN ALCOHOLIC BEVERAGE CONTAINER. Except as provided in Neb. RS 53-123.04(3) and 53-123.11(1)(c), any bottle, can, or other receptacle:

- (a) That contains any amount of alcoholic beverage; and
- (b) (i) That is open or has a broken seal; or
- (ii) The contents of which are partially removed.

PASSENGER AREA. The area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in the area. **PASSENGER AREA** does not include the area behind the last upright seat of the motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(B) Except as otherwise provided in this section, it is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this city.

(C) Except as provided in § 111.03 or division (D) of this section, it is unlawful for any person to consume an alcoholic beverage:

- (1) In a public parking area or on any highway in this city; or
- (2) Inside a motor vehicle while in a public parking area or on any highway in this city.

(D) This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by rules and regulations adopted and promulgated by the state Public Service Commission and subject to Neb. Admin. Code, Chapter 75, Article 3. Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this city if:

- (1) The driver of the limousine or bus is prohibited from consuming alcoholic liquor; and
- (2) Alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area.

(Neb. RS 60-6,211.08)

Penalty, see § 10.99

MOTOR VEHICLE AND HIGHWAY OFFENSES**§ 133.40 ABANDONED AUTOMOBILES.**

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED VEHICLE.

(a) A motor vehicle is an ***ABANDONED VEHICLE***:

(i) If left unattended, with no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than 6 hours on any public property;

(ii) If left unattended for more than 24 hours on any public property, except a portion thereof on which parking is legally permitted;

(iii) If left unattended for more than 48 hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(iv) If left unattended for more than 7 days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(v) If left for more than 30 days in the custody of a city law enforcement agency after the agency has sent a letter to the last-registered owner under division (D) of this section; or

(vi) If removed from private property by the city pursuant to a city ordinance or this code.

(b) An all-terrain vehicle or minibike is an ***ABANDONED VEHICLE***:

(i) If left unattended for more than 24 hours on any public property, except a portion thereof on which parking is legally permitted;

(ii) If left unattended for more than 48 hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(iii) If left unattended for more than 7 days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(iv) If left for more than 30 days in the custody of a city law enforcement agency after the agency has sent a letter to the last-registered owner under division (D) of this section; or

(vi) If removed from private property by the city pursuant to a city ordinance or this code.

(c) A **MOBILE HOME** is an abandoned vehicle if left in place on private property for more than 30 days after a local governmental unit, pursuant to an ordinance or resolution, has sent a certified letter to each of the last-registered owners and posted a notice on the mobile home, stating that the mobile home is subject to sale or auction or vesting of title as set forth in Neb. RS 60-1903.

(d) No motor vehicle subject to forfeiture under Neb. RS 28-431 shall be an **ABANDONED VEHICLE** under this section.

MOBILE HOME. A movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit, and shall include a manufactured home as defined in Neb. RS 71-4603. **MOBILE HOME** does not include a mobile home or manufactured home for which an affidavit of affixture has been recorded pursuant to Neb. RS 60-169.

PRIVATE PROPERTY. Any privately owned property which is not included within the definition of public property.

PUBLIC PROPERTY. Any public right-of-way, street, highway, alley, or park or other state, county, or city-owned property.

(Neb. RS 60-1901)

(B) If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid In Transit stickers issued pursuant to Neb. RS 60-376 affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of \$250 or less, title shall immediately vest in the city. Any certificate of title issued under this division to the city shall be issued at no cost to the city.

(Neb. RS 60-1902)

(C) (1) Except for vehicles governed by division (B) of this section, the city shall make an inquiry concerning the last-registered owner of such vehicle as follows:

(a) Abandoned vehicle with license plates affixed, to the jurisdiction which issued such license plates; or

(b) Abandoned vehicle with no license plates affixed, to the Department of Motor Vehicles.

(2) The city shall notify the last-registered owner, if any, that the vehicle in question has been determined to be an abandoned vehicle and that, if unclaimed, either:

(a) It will be sold or will be offered at public auction after 5 days from the date such notice was mailed; or

(b) Title will vest in the city 30 days after the date such notice was mailed.

(3) If the agency described in division (C)(1)(a) or (b) of this section also notifies the city that a lien or mortgage exists, such notice shall also be sent to the lienholder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle.

(4) Title to an abandoned vehicle, if unclaimed, shall vest in the city:

(a) Five days after the date the notice is mailed if the vehicle will be sold or offered at public auction under division (C)(2)(a) of this section;

(b) Thirty days after the date the notice is mailed if the city will retain the vehicle; or

(c) If the last-registered owner cannot be ascertained, when notice of such fact is received.

(5) After title to the abandoned vehicle vests pursuant to division (C)(4) of this section, the city may retain for use, sell, or auction the abandoned vehicle. If the city has determined that the vehicle should be retained for use, the city shall, at the same time that the notice, if any, is mailed, publish in a newspaper of general circulation in the jurisdiction an announcement that the city intends to retain the abandoned vehicle for its use and that title will vest in the city 30 days after the publication.

(Neb. RS 60-1903)

(D) (1) If a city law enforcement agency has custody of a motor vehicle for investigatory purposes and has no further need to keep it in custody, it shall send a certified letter to each of the last-registered owners stating that the vehicle is in the custody of the law enforcement agency, that the vehicle is no longer needed for law enforcement purposes, and that after 30 days the agency will dispose of the vehicle.

(2) This division shall not apply to motor vehicles subject to forfeiture under Neb. RS 28-431.

(3) No storage fees shall be assessed against the registered owner of a motor vehicle held in custody for investigatory purposes under this division (D) unless the registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor related to the offense for which the law enforcement agency took the vehicle into custody. If a registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor but is not convicted, the registered owner shall be entitled to a refund of the storage fees.

(Neb. RS 60-1903.01)

(E) (1) A law enforcement agency is authorized to remove an abandoned or trespassing vehicle from private property upon the request of the private property owner on whose property the vehicle is located and upon information indicating that the vehicle is an abandoned or trespassing vehicle. After removal, the law enforcement agency with custody of the vehicle shall follow the procedures in Neb. RS 60-1902 and 60-1903.

(2) A law enforcement agency is authorized to contact a private towing service in order to remove an abandoned or trespassing vehicle from private property upon the request of the private property owner on whose property the vehicle is located and upon information indicating that the vehicle is an abandoned or trespassing vehicle. A vehicle towed away under this subsection is subject to Neb. RS 52-601.01 to 52-605 and 60-2410 by the private towing service which towed the vehicle.

(3) A private property owner is authorized to remove or cause the removal of an abandoned or trespassing vehicle from such property and may contact a private towing service for such removal. A private towing service that tows the vehicle shall notify, within 24 hours, the designated law enforcement agency in the jurisdiction from which the vehicle is removed and provide the registration plate number, the vehicle identification number, if available, the make, model, and color of the vehicle, and the name of the private towing service and the location, if applicable, where the private towing service is storing the vehicle. A vehicle towed away under this subsection is subject to Neb. RS 52-601.01 to 52-605 and 60-2410 by the private towing service that towed the vehicle.

(4) For purposes of this section, a trespassing vehicle is a vehicle that is parked without permission on private property that is not typically made available for public parking.
(Neb. RS 60-1903.02)

(F) If a state agency caused an abandoned vehicle described in division (A)(a)(5) or (A)(b)(4) of this section to be removed from public property in this city, the state agency shall be entitled to custody of the vehicle. If a state agency caused an abandoned vehicle described in division (A)(a)(1), (2), (3), or (4) or (A)(b)(1), (2), or (3) of this section to be removed from public property in this city, the state agency shall deliver the vehicle to the city which shall have custody.
(Neb. RS 60-1904)

(G) Any proceeds from the sale of an abandoned vehicle in the city's custody less any expenses incurred by the city shall be held by the city without interest, for the benefit of the owner or lienholders of such vehicle for a period of two years. If not claimed within such two-year period, the proceeds shall be paid into the general fund of the city.
(Neb. RS 60-1905)

(H) Neither the owner, owner's agent, owner's employee, lessee, nor occupant of the premises from which any abandoned vehicle is removed, nor the city, shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the city or its contractual agent, while in the possession of a private towing service, or as a result of any subsequent disposition.
(Neb. RS 60-1906)

(H) No person shall cause any vehicle to be an abandoned vehicle as described in division (A)(a)(1), (2), (3), or (4) or (A)(b)(1), (2), or (3) of this section.
(Neb. RS 60-1907)

(I) No person other than one authorized by the city or appropriate state agency shall destroy, deface, or remove any part of a vehicle which is left unattended on a highway or other public place

without license plates affixed or which is abandoned. Anyone violating this division shall be guilty of an offense.

(Neb. RS 60-1908)

(J) The last-registered owner of an abandoned vehicle shall be liable to the city for the costs of removal and storage of such vehicle.

(Neb. RS 60-1909)

(K) Any person violating the provisions of this section shall be guilty of an offense.

(Neb. RS 60-1911) Penalty, see § 10.99

Statutory reference:

Motor Vehicle Registration Act, see Neb. RS 60-301

§ 133.41 UNLICENSED OR INOPERABLE VEHICLES.

(A) No person in charge or control of any property within the city, other than city property, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any partially dismantled, inoperable, wrecked, junked, or discarded vehicle to remain on that property longer than 30 days.

(B) No unlicensed vehicle shall be permitted to remain on any private or public property for any length of time, provided that this section shall not apply to the following:

(1) A vehicle bearing a valid "In Transit" sticker;

(2) A vehicle in an enclosed building;

(3) A vehicle on the premises of a business enterprise operated in a lawful place and manner when the vehicle is necessary to the lawful operation of the business; or

(4) A vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(C) Any vehicle allowed to remain on property in violation of this section shall constitute a nuisance and shall be abated, and any person violating this section shall be guilty of an offense.

Penalty, see § 10.99

Statutory reference:

"In Transit" stickers, see Neb. RS 60-376

WEAPONS OFFENSES**§ 133.60 DISCHARGE OF FIREARMS.**

It shall be unlawful for any person, except an officer of the law in the discharge of official duty, to fire or discharge any gun, pistol, or other fowling piece within the city, except that nothing in this section shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have written permission from the City Council.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see Neb. RS 17-556

§ 133.61 SLINGSHOTS, AIR GUNS, BB GUNS.

It shall be unlawful for any person to discharge a slingshot, air gun, BB gun, or the like loaded with rock or other dangerous missiles at any time or under any circumstances within the city.

Penalty, see § 10.99

CHAPTER 134: OFFENSES AGAINST PUBLIC MORALS

Section

- 134.01 Prostitution
- 134.02 Public indecency
- 134.03 Gambling

§ 134.01 PROSTITUTION.

(A) Except as provided in division (C) of this section, any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in Neb. RS 28-318, with any person not his or her spouse, in exchange for money or other thing of value, commits the offense of prostitution.

(B) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in Neb. RS 28-830.

(C) If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of division (A) of this section is:

(1) A person engaging in those acts as a direct result of being a trafficking victim as defined in Neb. RS 28-830, such person shall be immune from prosecution for a prostitution offense; or

(2) A person under 18 years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under Neb. RS 43-248 and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under 18 years of age into custody under this section shall immediately report an allegation of a violation of Neb. RS 28-831 to the Department of Health and Human Services which shall commence an investigation within 24 hours under the Child Protection and Family Safety Act.

(Neb. RS 28-801) Penalty, see § 10.99

§ 134.02 PUBLIC INDECENCY.

(A) A person, 18 years of age or over, commits the offense of public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

- (1) An act of sexual penetration as defined in Neb. RS 28-318;
- (2) An exposure of the genitals of the body done with intent to affront or alarm any person; or
- (3) A lewd fondling or caressing of the body of another person of the same or opposite sex.

(B) It shall not be a violation of this section for an individual to breast-feed a child in a public place. (Neb. RS 28-806) Penalty, see § 10.99

§ 134.03 GAMBLING.

- (A) For the purpose of this section, the definitions found in Neb. RS 28-1101 shall be used.
- (B) A person commits the offense of promoting gambling if he or she knowingly:
 - (1) Advances or profits from any unlawful gambling activity by:
 - (a) Engaging in bookmaking;
 - (b) Receiving, in connection with any unlawful gambling scheme or enterprise, any amount of money played in the scheme or enterprise in any 1 day; or
 - (c) Betting something of value in an amount of \$500 or more with one or more persons in one day; or
 - (2) Participates in unlawful gambling as a player by betting less than \$500 in any one day. (Neb. RS 28-1104)
- (C) (1) A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.
- (2) The owner or operator of a retail establishment who is not a manufacturer, distributor, or seller of mechanical amusement devices as defined under the Mechanical Amusement Device Tax Act, shall have an affirmative defense to possession of a gambling device described in division (C)(1) of this section if the device bears an unexpired mechanical amusement device decal as required by such Act. However, such affirmative defense may be overcome if the owner or operator had actual knowledge that operation of the device constituted unlawful gambling activity at any time such device was operated on the premises of the retail establishment.

(3) Notwithstanding any other provisions of this division, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of 26 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, is hereby declared to be illegal.
(Neb. RS 28-1107)

(D) In any prosecution under this section, it shall be an affirmative defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of an unlawful gambling activity.

(Neb. RS 28-1108)

(E) Proof of possession of any gambling device shall be *prima facie* evidence of possession thereof with knowledge of its contents and character.

(Neb. RS 28-1109)

(F) It shall be no defense to a prosecution under any provision of this section relating to gambling that the gambling is conducted outside this city and is not in violation of the laws of the jurisdiction in which it is conducted.

(Neb. RS 28-1110)

(G) In addition to any other penalty, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in Neb. RS 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices, or any gambling devices be forfeited as a part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, conducted pursuant to Neb. RS 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of this section.

(Neb. RS 28-1111)

(H) In any prosecution for an offense defined in this section, when the defendant's status as a player constitutes an excusing condition, the fact that the defendant was a player shall constitute an affirmative defense.

(Neb. RS 28-1112)

(I) Nothing in this section shall be construed to:

(1) Apply to or prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings; or

(2) Prohibit or punish the conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise when conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or Neb. RS 9-701.

(Neb. RS 28-1113)

(J) In any prosecution under this section in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and shall constitute *prima facie* evidence of the occurrence of the event.

(Neb. RS 28-1117) Penalty, see § 10.99

TITLE XV: LAND USAGE

Chapter

150. BUILDING REGULATIONS

Cross-reference:

Local legislation regarding these topics, see Title XVII

CHAPTER 150: BUILDING REGULATIONS

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Building Permits and Regulations

- 150.01 Requirement
- 150.02 Limitation
- 150.03 Duplicate to County Assessor
- 150.04 Excavations and exposures; barricades and lights

Moving of Buildings

- 150.20 Regulations
- 150.21 Deposit

Unsafe Buildings

- 150.35 Definition
- 150.36 Prohibitions
- 150.37 Determination; notice
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Building Inspector

- 150.55 Power and authority
- 150.56 Right of entry
- 150.57 Permit cards
- 150.58 Time of inspection
- 150.59 Appeal from decision

BUILDING PERMITS AND REGULATIONS**§ 150.01 REQUIREMENT.**

Any person desiring to commence or proceed to erect, construct, repair, enlarge, demolish, or relocate any building or dwelling, or cause the same to be done, shall file with the City Clerk an application for a building permit. The application shall be in writing on a form to be furnished by the City Clerk for that purpose. Every such application shall set forth the legal description of the land upon which the construction or relocation is to take place, the nature of the use or occupancy, the principal dimensions, the estimated cost, the names of the owner, architect, and contractor, and such other information as may be requested thereon. The application, plans, and specifications so filed with the City Clerk shall be checked and examined by the City Council, and if they are found to be in conformity with the requirements of this chapter and all other ordinances applicable thereto, the City Council shall authorize the City Clerk to issue the applicant a permit upon payment of a permit fee set by the Council by resolution. Whenever there is a discrepancy between permit application procedures contained herein and those contained in any building code adopted by reference, the provisions contained herein shall govern.

Penalty, see § 10.99

§ 150.02 LIMITATION.

If the work for which a permit has been issued shall not have begun within 6 months of the date thereof, or if the construction is discontinued for a period of 6 months, the permit shall be void. Before work can be resumed, a new permit shall be obtained in the same manner and form as an original permit. Penalty, see § 10.99

§ 150.03 DUPLICATE TO COUNTY ASSESSOR.

Whenever a building permit is issued for the erection, alteration, or repair of any building within the city's jurisdiction, if the improvement is \$2,500 or more, a duplicate of the permit shall be issued to the County Assessor.

(Neb. RS 18-1743)

§ 150.04 EXCAVATIONS AND EXPOSURES; BARRICADES AND LIGHTS.

Any owner, tenant, or lessee causing the construction, demolition, or moving of any building or improvement within the city shall protect all excavations, exposures, open basements, building materials, and debris by suitable barricades or guards by day and by warning lights at night. The failure, neglect, or refusal of the owner, tenant, or lessee to erect and maintain such protections shall constitute a violation of this section, and the Building Inspector or other city law enforcement authority may stop all

work upon the buildings and improvements until suitable protections are erected and maintained in the required manner.

Penalty, see § 10.99

MOVING OF BUILDINGS

§ 150.20 REGULATIONS.

(A) It shall be unlawful for any person, firm, or corporation to move any building or structure within the city without a written permit to do so. Application may be made to the City Clerk and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the City Council may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the building is presently located.

(B) The City Clerk shall refer the application to the City Council or its designee for approval of the proposed route over which the building is to be moved. Upon approval, the City Clerk shall issue the permit, provided that a good and sufficient corporate surety bond, check, or cash in an amount set by motion of the City Council and conditioned upon moving the building without doing damage to any private or city property is filed with the City Clerk prior to the granting of any permit.

(C) No moving permit shall be required to move a building that is 10 feet wide or less, and 20 feet long or less, and when in a position to move, 15 feet high or less.

(D) In the event it will be necessary for any licensed building mover to interfere with the telephone or telegraph poles and wires, or a gas line, the company or companies owning, using, or operating the poles, wires, or line shall, upon proper notice of at least 24 hours, be present and assist by disconnecting the poles, wires, or line relative to the building moving operation. All expense of the disconnection, removal, or related work shall be paid in advance by the licensee unless the disconnection or work is furnished on different terms as provided in the company's franchise.

(E) Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the city, notice in writing of the time and route of the building moving operation shall be given to the various officials in charge of the city utility departments, who shall proceed in behalf of the city and at the expense of the mover to make such disconnections and do such work as is necessary.

Penalty, see § 10.99

Statutory reference:

Authority to regulate moving of buildings, see Neb. RS 17-142

§ 150.21 DEPOSIT.

At such time as the building moving has been completed, the Building Inspector or other designated official shall inspect the premises and report to the City Clerk as to the extent of damages, if any, resulting from the relocation and whether any city laws have been violated during the operation. Upon a satisfactory report from the Building Inspector or other designated official, the City Clerk shall return the corporate surety bond, cash, or check deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the City Council may apply the money deposited for the purpose of defraying the expense of correcting the conditions. If the expense of correcting the hazardous condition is greater than the amount of the deposit set by the City Council, the City Council may recover the excess expense by civil suit or otherwise as prescribed by law.

UNSAFE BUILDINGS**§ 150.35 DEFINITION.**

(A) For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

UNSAFE BUILDING. Includes any building, shed, fence, or other human-made structure:

(a) Which is dangerous to the public health because of its condition and which may cause or aid in the spread of disease or injury to the health of the occupants of it or neighboring structures;

(b) Which because of faulty construction, age, lack of proper repair, or any other cause is especially liable to fire and constitutes or creates a fire hazard; or

(c) Which by reason of faulty construction or any other cause is liable to cause injury or damage by the collapse or fall of all or any part of the structure.

(B) Any such unsafe building in the city is hereby declared to be a nuisance.
Penalty, see § 10.99

§ 150.36 PROHIBITIONS.

It shall be unlawful to maintain or permit the existence of any unsafe building in the city, and it shall be unlawful for the owner, occupant, or person in custody of any dangerous building to permit the same

to remain in an unsafe condition or to occupy the building or permit it to be occupied while it is in an unsafe condition.

Penalty, see § 10.99

Statutory reference:

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

§ 150.37 DETERMINATION; NOTICE.

(A) (1) Whenever the City Council or its designee has made a determination that a building or other structure in the city is an unsafe building, it shall be the duty of the City Clerk to post the property accordingly and to file a copy of such determination or resolution in the office of the County Register of Deeds to be recorded.

(Neb. RS 18-1722.01)

(2) The Clerk shall also serve written notice upon the owner and any occupant of the building or other structure by certified mail or personal service.

(B) This notice shall state that the building has been declared to be in an unsafe condition, that the dangerous condition must be removed or remedied by repairing or altering the building or by demolishing it, and that the condition must be remedied within 60 days from the date of receipt. The notice may be in the following terms:

“To _____ (owner-occupant of premises), of the premises known and described as _____.

“You are hereby notified that _____ (describe building) on the premises above mentioned has been determined to be an unsafe building and a nuisance after inspection by _____. The causes for this decision are _____ (here insert the facts as to the dangerous condition).

“You must remedy this condition or demolish the building within 60 days from the date of receipt of this notice or the city will proceed to do so. Appeal of this determination may be made to the City Council, acting as the Board of Appeals, by filing with the City Clerk within 10 days from the date of receipt of this notice a request for a hearing.”

(C) If the person receiving the notice has not complied within 60 days from the date of receipt of the notice, or taken an appeal from the determination that a dangerous building exists within 10 days from the time when this notice is served upon that person by personal service or certified mail, the Building Inspector or other designated official may, upon orders of the City Council, proceed to remedy the condition or demolish the unsafe building.

§ 150.38 APPEAL; DEMOLITION; DUTY TO INFORM COUNTY.

(A) Upon receiving the notice to repair or demolish the building, the owner of the building, within the time stipulated, may in writing to the City Clerk request a hearing before the City Council, sitting as the Board of Appeals, to present reasons why the building should not be repaired or demolished. The City Council shall grant such a hearing within 10 days from the date of receiving the request. A written notice of the City Council's decision following the hearing shall be sent to the property owner by certified mail.

(B) If the City Council rejects the appeal, the owner shall have 60 days from the sending of the decision to begin repair or demolition and removal. If after the 60-day period the owner has not begun work, the City Council shall proceed to cause the work to be done, except that the property owner may appeal the decision to the appropriate court for adjudication, during which proceedings the decision of the City Council shall be stayed.

(C) Any city police officer or member of the City Council shall at once inform the County Treasurer of the removal or demolition of or a levy of attachment upon any item of real property known to him or her.

(Neb. RS 77-1725.01)

§ 150.39 EMERGENCY.

Where any unsafe building or structure poses an immediate danger to the health, safety, or general welfare of any person or persons and the owner fails to remedy the situation in a reasonable time after notice to do so, the city may summarily repair or demolish and remove that building or structure.

§ 150.40 SPECIAL ASSESSMENTS.

(A) If any owner of any building or structure fails, neglects, or refuses to comply with notice by or on behalf of the city to repair, rehabilitate, or demolish and remove a building or structure which is an unsafe building or structure and a public nuisance, the city may proceed with the work specified in the notice to the property owner. A statement of the cost of this work shall be transmitted to the City Council.

(B) The City Council may:

(1) Levy the cost as a special assessment against the lot or real estate upon which the building or structure is located. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments; or

(2) Collect the cost from the owner of the building or structure and enforce the collection by civil action in any court of competent jurisdiction.

(Neb. RS 18-1722)

BUILDING INSPECTOR**§ 150.55 POWER AND AUTHORITY.**

The Building Inspector shall be the city official who shall have the duty of enforcing all city building and housing regulations, if any. He or she shall inspect all buildings repaired, altered, built, or moved in the city as often as necessary to ensure compliance with all city ordinances. He or she shall have the power and authority to order, at the direction of the City Council, all work stopped on any construction, alteration, or relocation which violates any provisions prescribed in any city building and housing regulations. He or she shall, at the direction of the City Council, issue permission to continue any construction, alteration, or relocation when the City Council is satisfied that no provision will be violated. If the stop order is an oral one, it shall be followed by a written stop order within 1 hour. This written order may be served by any city police officer. In the event that the city has building and housing regulations and the Mayor fails to appoint a Building Inspector, the chief city law enforcement officer shall be the Building Inspector ex officio.

§ 150.56 RIGHT OF ENTRY.

It shall be unlawful for any person to refuse to allow the Building Inspector entry into any building or structure where the work of construction, alteration, repair, or relocation is taking place, for the purpose of making official inspections at any reasonable hour.

Penalty, see § 10.99

§ 150.57 PERMIT CARDS.

Upon the issuance of a building permit, the Building Inspector shall furnish to the applicant a permit card which shall be a distinctive color and shall contain the nature of the work, the location of the building, the number of the permit, and the date of issuance. The card shall be prominently displayed on the principal frontage of the building site close to or upon the building or structure and shall so remain until the final inspection has been made.

Penalty, see § 10.99

§ 150.58 TIME OF INSPECTION.

The Building Inspector, upon notification from the permit holder or his or her agent, shall make the following inspections of the building or structure and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent that the work fails to comply with the requirements of the city code: foundation inspection shall be made after trenches are excavated and the necessary forms erected; frame inspection shall be made after the roof, framing, fire-blocking, and

backing is in place and all pipes, chimneys, and vents are complete; and final inspection shall be made after the building is completed and ready for occupancy. It shall be unlawful for any person to do work or cause work to be done beyond the point indicated in each successive inspection without the written approval of the Building Inspector.

Penalty, see § 10.99

§ 150.59 APPEAL FROM DECISION.

In the event it is claimed that the true intent and meaning of any city building or housing regulation has been wrongly interpreted by the Building Inspector, that the time allowed for compliance with any order of the Building Inspector is too short, or that conditions peculiar to a particular building make it unreasonably difficult to meet the literal requirements prescribed by the regulation and by the Building Inspector, the owner, his or her agent, or the occupant may file a notice of appeal within 10 days after the decision or order of the Building Inspector has been made. The City Council shall hear all appeals and shall have the power and authority, when appealed to, to modify the decision or order of the Building Inspector. Such a decision shall be final, subject only to any remedy which the aggrieved person may have at law or equity. Applications for review shall be in writing and shall state the reasons why the variance should be made. A variance shall be granted only where it is evident that reasonable safety and sanitation is assured and may include conditions not generally specified by the building or housing regulation to achieve that end. A copy of any variance so granted shall be sent to both the Building Inspector and the applicant.

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THE NEBRASKA BASIC CODE REVISION HIGHLIGHTS November 2019

The Nebraska Basic Code (“NBC”) is updated annually with state law changes. The NBC is also revised as needed to better meet municipalities’ local needs, by implementing suggestions directly from municipalities and recommendations from the League of Nebraska Municipalities. Below are highlights of some of this year’s changes.

TITLE III: ADMINISTRATION

- Ch. 34: Changing requirements for number of signatures required to place the name of a candidate upon a partisan ballot. (LB 411)
- Ch 34: Revising procedures regarding recall election procedures. (LB 411)
- Ch 35: Updating language regarding requirements to establish sinking funds. (LB 193)
- Ch. 35: Changing the procedure for setting a city or village’s property tax request. (LB 103; LB 212)

TITLE IX: GENERAL REGULATIONS

- Ch. 93: Changing and eliminating provisions relating to rabies. (LB 61)

TITLE XI: BUSINESS REGULATIONS

- Ch. 111: Revising provisions relating to removal of intoxicated persons from public or quasi-public property. (LB 200)
- Ch. 112: Revising provisions relating to licenses to sell tobacco products by changing the legal age from 18 to 19; Revising provisions to add electronic nicotine delivery systems as a type of product sold. (LB 149; LB 397)

TITLE XIII: GENERAL OFFENSES

- Ch. 133: Revising provisions relating to sale and use of tobacco products, electronic nicotine delivery systems, and alternative nicotine products by changing the legal age from 18 to 19. (LB 149; LB 397)
- Ch. 134: Specifying that an individual breast-feeding a child in public is not an act of public indecency. (LB 209)
- Ch. 134: Revising provisions relating to gambling devices. (LB 538)